

Chapter 11.104B RCW
UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT

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ARTICLE 1
GENERAL PROVISIONS

RCW 11.104B.001 Short title. This chapter may be known and cited as the uniform fiduciary income and principal act. [2021 c 140 s 2101.]

RCW 11.104B.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accounting period" means a calendar year, unless a fiduciary selects another period of 12 calendar months or approximately 12 calendar months. The term includes a part of a calendar year or another period of 12 calendar months or approximately 12 calendar months which begins when an income interest begins or ends when an income interest ends.

(2) "Asset-backed security" means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by their terms convert into cash within a finite time. The term includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security. The term does not include an asset to which RCW 11.104B.200, 11.104B.280, or 11.104B.330 applies.

(3) "Beneficiary" includes:

(a) For a trust:

(i) A current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;

(ii) A remainder beneficiary; and

(iii) Any other successor beneficiary; and

(b) For an estate, an heir, legatee, and devisee.

(4) "Court" means the court in this state having jurisdiction relating to a trust or estate.

(5) "Current income beneficiary" means a beneficiary to which a fiduciary may distribute net income, whether or not the fiduciary also may distribute principal to the beneficiary.

(6) "Distribution" means a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, made under the terms of the trust, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust. "Distribute," "distributed," and "distributee" have corresponding meanings.

(7) "Estate" means a decedent's estate. The term includes the property of the decedent as the estate is originally constituted and the property of the estate as it exists at any time during administration.

(8) "Fiduciary" includes a trustee, personal representative, and person acting under a delegation from a fiduciary. The term includes a person that holds property for a successor beneficiary whose interest may be affected by an allocation of receipts and expenditures between income and principal. If there are two or more cofiduciaries, the term includes all cofiduciaries acting under the terms of the trust and applicable law.

(9) "Income" means money or other property a fiduciary receives as current return from principal. The term includes a part of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 4 of this chapter.

(10) "Income interest" means the right of a current income beneficiary to receive all or part of net income, whether the terms of the trust require the net income to be distributed or authorize the net income to be distributed in the fiduciary's discretion. The term includes the right of a current beneficiary to use property held by a fiduciary.

(11) "Independent person" means a person that is not:

(a) For a trust:

(i) A beneficiary that is a distributee or permissible distributee of trust income or principal or would be a distributee or permissible distributee of trust income or principal if either the trust or the interests of the distributees or permissible distributees of trust income or principal were terminated, assuming no power of appointment is exercised;

(ii) A settlor of the trust; or

(iii) An individual whose legal obligation to support a beneficiary may be satisfied by a distribution from the trust;

(b) For an estate, a beneficiary;

(c) A spouse, parent, brother, sister, or issue of an individual described in (a) or (b) of this subsection;

(d) A corporation, partnership, limited liability company, or other entity in which persons described in (a) through (c) of this subsection, in the aggregate, have voting control; or

(e) An employee of a person described in (a), (b), (c), or (d) of this subsection.

(12) "Mandatory income interest" means the right of a current income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(13) "Net income" means the total allocations during an accounting period to income under the terms of a trust and this chapter minus the disbursements during the period, other than distributions, allocated to income under the terms of the trust and this chapter. To the extent the trust is a unitrust under Article 3 of this chapter, the term means the unitrust amount determined under Article 3 of this chapter. The term includes an adjustment from principal to income under RCW 11.104B.070. The term does not include an adjustment from income to principal under RCW 11.104B.070.

(14) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(15) "Personal representative" means an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person's status.

(16) "Principal" means property held in trust for distribution to, production of income for, or use by a current or successor beneficiary.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Settlor" means a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, the term includes each person, to the extent of the trust property attributable to that person's contribution, except to the extent another person has the power to revoke or withdraw that portion.

(19) "Special tax benefit" means:

(a) Exclusion of a transfer to a trust from gifts described in 26 U.S.C. Sec. 2503(b) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, because of the qualification of an income interest in the trust as a present interest in property;

(b) Status as a qualified subchapter S trust described in 26 U.S.C. Sec. 1361(d)(3) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, at a time the trust holds stock of

an S corporation described in 26 U.S.C. Sec. 1361(a)(1) of the federal internal revenue code of 1986, as amended, as of January 1, 2022;

(c) An estate or gift tax marital deduction for a transfer to a trust under 26 U.S.C. Sec. 2056 or 2523 of the federal internal revenue code of 1986, as amended, as of January 1, 2022, which depends or depended in whole or in part on the right of the settlor's spouse to receive the net income of the trust;

(d) Exemption in whole or in part of a trust from the federal generation-skipping transfer tax imposed by 26 U.S.C. Sec. 2601 of the federal internal revenue code of 1986, as amended, as of January 1, 2022, because the trust was irrevocable on September 25, 1985, if there is any possibility that:

(i) A taxable distribution, as defined in 26 U.S.C. Sec. 2612(b) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, could be made from the trust; or

(ii) A taxable termination, as defined in 26 U.S.C. Sec. 2612(a) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, could occur with respect to the trust; or

(e) An inclusion ratio, as defined in 26 U.S.C. Sec. 2642(a) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, of the trust which is less than one, if there is any possibility that:

(i) A taxable distribution, as defined in 26 U.S.C. Sec. 2612(b) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, could be made from the trust; or

(ii) A taxable termination, as defined in 26 U.S.C. Sec. 2612(a) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, could occur with respect to the trust.

(20) "Successive interest" means the interest of a successor beneficiary.

(21) "Successor beneficiary" means a person entitled to receive income or principal or to use property when an income interest or other current interest ends.

(22) "Terms of a trust" means:

(a) Except as otherwise provided in (b) of this subsection, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) Expressed in the trust instrument; or

(ii) Established by other evidence that would be admissible in a judicial proceeding;

(b) The trust's provisions as established, determined, or amended by:

(i) A trustee or trust director in accordance with applicable law;

(ii) Court order; or

(iii) A nonjudicial settlement agreement under *chapter 11.98A RCW; or

(c) For an estate, a will.

(23) "Trust":

(a) Includes:

(i) An express trust, private or charitable, with additions to the trust, wherever and however created; and

(ii) A trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust; and

(b) Does not include:

(i) A constructive trust;

(ii) A resulting trust, conservatorship, guardianship, multiparty account, custodial arrangement for a minor, business trust, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, retirement benefits, or employee benefits of any kind; or

(iii) An arrangement under which a person is a nominee, escrowee, or agent for another.

(24) "Trustee" means a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(25) "Will" means any testamentary instrument recognized by applicable law which makes a legally effective disposition of an individual's property, effective at the individual's death. The term includes a codicil or other amendment to a testamentary instrument. [2021 c 140 s 2102.]

***Reviser's note:** Chapter 11.98A RCW was repealed in its entirety by 2020 c 303 s 19.

RCW 11.104B.010 Scope. Except as otherwise provided in the terms of a trust or this chapter, this chapter applies to a trust or estate. [2021 c 140 s 2103.]

RCW 11.104B.020 Governing law. (1) Except as otherwise provided in the terms of a trust or this chapter, this chapter applies when this state is the principal place of administration of a trust or estate, subject to the following rules:

(a) If the trust was created before January 1, 2022, this chapter applies only to a decision or action occurring on or after January 1, 2022; and

(b) If the principal place of administration of the trust is changed to this state on or after January 1, 2022, this chapter applies only to a decision or action occurring on or after the date of the change.

(2) Without precluding other means to establish a sufficient connection with the designated jurisdiction in a directed trust, terms of the trust which designate the principal place of administration of the trust are valid and controlling if:

(a) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(b) A trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction; or

(c) All or part of the administration occurs in the designated jurisdiction.

(3) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration of a trust to this state, the trustee submits to the application of this chapter to any matter within the scope of this chapter involving the trust. [2021 c 140 s 2104.]

ARTICLE 2

FIDUCIARY DUTIES—JUDICIAL REVIEW

RCW 11.104B.050 Fiduciary duties—General principles. (1) In making an allocation or determination or exercising discretion under this chapter, a fiduciary shall:

(a) Act in good faith, based on what is fair and reasonable to all beneficiaries;

(b) Administer a trust or estate impartially, except to the extent the terms of the trust manifest an intent that the fiduciary shall or may favor one or more beneficiaries;

(c) Administer the trust or estate in accordance with the terms of the trust, even if there is a different provision in this chapter; and

(d) Administer the trust or estate in accordance with this chapter, except to the extent the terms of the trust provide otherwise or authorize the fiduciary to determine otherwise.

(2) A fiduciary's allocation, determination, or exercise of discretion under this chapter is presumed to be fair and reasonable to all beneficiaries. A fiduciary may exercise a discretionary power of administration given to the fiduciary by the terms of the trust, and an exercise of the power which produces a result different from a result required or permitted by this chapter does not create an inference that the fiduciary abused the fiduciary's discretion.

(3) A fiduciary shall:

(a) Add a receipt to principal, to the extent neither the terms of the trust nor this chapter allocates the receipt between income and principal; and

(b) Charge a disbursement to principal, to the extent neither the terms of the trust nor this chapter allocates the disbursement between income and principal.

(4) A fiduciary may exercise the power to adjust under RCW 11.104B.070, convert an income trust to a unitrust under RCW 11.104B.120(1)(a), change the percentage or method used to calculate a unitrust amount under RCW 11.104B.120(1)(b), or convert a unitrust to an income trust under RCW 11.104B.120(1)(c), if the fiduciary determines the exercise of the power is necessary to administer the trust or estate in accordance with the requirements of subsection (1) of this section.

(5) Factors the fiduciary must consider in making the determination under subsection (4) of this section include:

(a) The terms of the trust;

(b) The nature, distribution standards, and expected duration of the trust;

(c) The effect of the allocation rules, including specific adjustments between income and principal, under Articles 4 through 7 of this chapter;

(d) The desirability of liquidity and regularity of income;

(e) The desirability of the preservation and appreciation of principal;

(f) The extent to which an asset is used or may be used by a beneficiary;

(g) The increase or decrease in the value of principal assets, reasonably determined by the fiduciary;

(h) Whether and to what extent the terms of the trust give the fiduciary power to accumulate income or invade principal or prohibit the fiduciary from accumulating income or invading principal;

(i) The extent to which the fiduciary has accumulated income or invaded principal in preceding accounting periods;

(j) The effect of current and reasonably expected economic conditions; and

(k) The reasonably expected tax consequences of the exercise of the power. [2021 c 140 s 2201.]

RCW 11.104B.060 Fiduciary duties—Judicial review of exercise of discretionary power—Request for instruction. (1) In this section, "fiduciary decision" means:

(a) A fiduciary's allocation between income and principal or other determination regarding income and principal required or authorized by the terms of the trust or this chapter;

(b) The fiduciary's exercise or nonexercise of a discretionary power regarding income and principal granted by the terms of the trust or this chapter, including the power to adjust under RCW 11.104B.070, convert an income trust to a unitrust under RCW 11.104B.120(1)(a), change the percentage or method used to calculate a unitrust amount under RCW 11.104B.120(1)(b), or convert a unitrust to an income trust under RCW 11.104B.120(1)(c); or

(c) The fiduciary's implementation of a decision described in (a) or (b) of this subsection.

(2) The court may not order a fiduciary to change a fiduciary decision unless the court determines that the fiduciary decision was an abuse of the fiduciary's discretion.

(3) If the court determines that a fiduciary decision was an abuse of the fiduciary's discretion, the court may order a remedy authorized by law. To place the beneficiaries in the positions the beneficiaries would have occupied if there had not been an abuse of the fiduciary's discretion, the court may order:

(a) The fiduciary to exercise or refrain from exercising the power to adjust under RCW 11.104B.070;

(b) The fiduciary to exercise or refrain from exercising the power to convert an income trust to a unitrust under RCW 11.104B.120(1)(a), change the percentage or method used to calculate a unitrust amount under RCW 11.104B.120(1)(b), or convert a unitrust to an income trust under RCW 11.104B.120(1)(c);

(c) The fiduciary to distribute an amount to a beneficiary;

(d) A beneficiary to return some or all of a distribution; or

(e) The fiduciary to withhold an amount from one or more future distributions to a beneficiary.

(4) On petition by a fiduciary for instruction, the court may determine whether a proposed fiduciary decision will result in an abuse of the fiduciary's discretion. If the petition describes the proposed decision, contains sufficient information to inform the beneficiary of the reasons for making the proposed decision and the facts on which the fiduciary relies, and explains how the beneficiary will be affected by the proposed decision, a beneficiary that opposes the proposed decision has the burden to establish that it will result in an abuse of the fiduciary's discretion. [2021 c 140 s 2202.]

RCW 11.104B.070 Fiduciary duties—Power to adjust. (1) Except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, may adjust between income and principal if the fiduciary determines the exercise of the power to adjust is necessary to administer the trust or estate in accordance with the requirements of RCW 11.104B.050(1).

(2) This section does not create a duty to exercise or consider the power to adjust under subsection (1) of this section or to inform a beneficiary about the applicability of this section.

(3) A fiduciary that in good faith exercises or fails to exercise the power to adjust under subsection (1) of this section is not liable to a person affected by the exercise or failure to exercise.

(4) In deciding whether and to what extent to exercise the power to adjust under subsection (1) of this section, a fiduciary shall consider all factors the fiduciary considers relevant, including relevant factors in RCW 11.104B.050(5) and the application of RCW 11.104B.200(9), 11.104B.270, or 11.104B.320.

(5) A fiduciary may not exercise the power under subsection (1) of this section to make an adjustment or under RCW 11.104B.270 to make a determination that an allocation is insubstantial if:

(a) The adjustment or determination would reduce the amount payable to a current income beneficiary from a trust that qualifies for a special tax benefit, except to the extent the adjustment is made to provide for a reasonable apportionment of the total return of the trust between the current income beneficiary and successor beneficiaries;

(b) The adjustment or determination would change the amount payable to a beneficiary, as a fixed annuity or a fixed fraction of the value of the trust assets, under the terms of the trust;

(c) The adjustment or determination would reduce an amount that is permanently set aside for a charitable purpose under the terms of the trust, unless both income and principal are set aside for the charitable purpose;

(d) Possessing or exercising the power would cause a person to be treated as the owner of all or part of the trust for federal income tax purposes;

(e) Possessing or exercising the power would cause all or part of the value of the trust assets to be included in the gross estate of an individual for federal estate tax purposes;

(f) Possessing or exercising the power would cause an individual to be treated as making a gift for federal gift tax purposes;

(g) The fiduciary is not an independent person;

(h) The trust is irrevocable and provides for income to be paid to the settlor and possessing or exercising the power would cause the adjusted principal or income to be considered an available resource or available income under a public benefit program; or

(i) The trust is a unitrust under Article 3 of this chapter.

(6) If subsection (5)(d), (e), (f), or (g) of this section applies to a fiduciary:

(a) A cofiduciary to which subsection (5)(d) through (g) of this section does not apply may exercise the power to adjust, unless the exercise of the power by the remaining cofiduciary or cofiduciaries is not permitted by the terms of the trust or law other than this chapter; or

(b) If there is no cofiduciary to which subsection (5)(d) through (g) of this section does not apply, the fiduciary may appoint a

cofiduciary to which subsection (5) (d) through (g) of this section does not apply, which may be a special fiduciary with limited powers, and the appointed cofiduciary may exercise the power to adjust under subsection (1) of this section, unless the appointment of a cofiduciary or the exercise of the power by a cofiduciary is not permitted by the terms of the trust or law other than this chapter.

(7) A fiduciary may release or delegate to a cofiduciary the power to adjust under subsection (1) of this section if the fiduciary determines that the fiduciary's possession or exercise of the power will or may:

(a) Cause a result described in subsection (5) (a) through (f) or (h) of this section; or

(b) Deprive the trust of a tax benefit or impose a tax burden not described in subsection (5) (a) through (f) of this section.

(8) A fiduciary's release or delegation to a cofiduciary under subsection (7) of this section of the power to adjust under subsection (1) of this section:

(a) Must be in a record;

(b) Applies to the entire power, unless the release or delegation provides a limitation, which may be a limitation to the power to adjust:

(i) From income to principal;

(ii) From principal to income;

(iii) For specified property; or

(iv) In specified circumstances;

(c) For a delegation, may be modified by a redelegation under this subsection by the cofiduciary to which the delegation is made; and

(d) Subject to (c) of this subsection (8), is permanent, unless the release or delegation provides a specified period, including a period measured by the life of an individual or the lives of more than one individual.

(9) Terms of a trust which deny or limit the power to adjust between income and principal do not affect the application of this section, unless the terms of the trust expressly deny or limit the power to adjust under subsection (1) of this section.

(10) The exercise of the power to adjust under subsection (1) of this section in any accounting period may apply to the current period, the immediately preceding period, and one or more subsequent periods.

(11) A description of the exercise of the power to adjust under subsection (1) of this section must be:

(a) Included in a report, if any, sent to all beneficiaries; or

(b) Communicated at least annually to all beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised. [2021 c 140 s 2203.]

ARTICLE 3 UNITRUSTS

RCW 11.104B.100 Unitrusts—Definitions. The definitions in this section apply throughout this article unless the context clearly requires otherwise.

- (1) "Applicable value" means the amount of the net fair market value of a trust taken into account under RCW 11.104B.160.
- (2) "Express unitrust" means a trust for which, under the terms of the trust without regard to this article, income or net income must or may be calculated as a unitrust amount.
- (3) "Income trust" means a trust that is not a unitrust.
- (4) "Net fair market value of a trust" means the fair market value of the assets of the trust, less the noncontingent liabilities of the trust.
- (5) "Unitrust" means a trust for which net income is a unitrust amount. The term includes an express unitrust.
- (6) "Unitrust amount" means an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term means the applicable value, multiplied by the unitrust rate.
- (7) "Unitrust policy" means a policy described in RCW 11.104B.140 through 11.104B.180 and adopted under RCW 11.104B.120.
- (8) "Unitrust rate" means the rate used to compute the unitrust amount under subsection (6) of this section for a unitrust administered under a unitrust policy. [2021 c 140 s 2301.]

RCW 11.104B.110 Unitrusts—Application—Duties and remedies. (1)

Except as otherwise provided in subsection (2) of this section, this article applies to:

- (a) An income trust, unless the terms of the trust expressly prohibit use of this article by a specific reference to this article or an explicit expression of intent that net income not be calculated as a unitrust amount; and
- (b) An express unitrust, except to the extent the terms of the trust explicitly:
- (i) Prohibit use of this article by a specific reference to this article;
- (ii) Prohibit conversion to an income trust; or
- (iii) Limit changes to the method of calculating the unitrust amount.
- (2) This article does not apply to a trust described in 26 U.S.C. Sec. 170(f)(2)(B), 642(c)(5), 664(d), or 2702(a)(3)(A)(ii) or (iii) or (b), as amended, as of January 1, 2022.
- (3) An income trust to which this article applies under subsection (1)(a) of this section may be converted to a unitrust under this article regardless of the terms of the trust concerning distributions. Conversion to a unitrust under this article does not affect other terms of the trust concerning distributions of income or principal.
- (4) This article applies to an estate only to the extent a trust is a beneficiary of the estate. To the extent of the trust's interest in the estate, the estate may be administered as a unitrust, the administration of the estate as a unitrust may be discontinued, or the percentage or method used to calculate the unitrust amount may be changed, in the same manner as for a trust under this article.
- (5) This article does not create a duty to take or consider action under this article or to inform a beneficiary about the applicability of this article.

(6) A fiduciary that in good faith takes or fails to take an action under this article is not liable to a person affected by the action or inaction. [2021 c 140 s 2302.]

RCW 11.104B.120 Unitrusts—Authority of fiduciary. (1) A fiduciary, without court approval, by complying with subsections (2) and (6) of this section, may:

(a) Convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust policy for the trust providing:

(i) That in administering the trust the net income of the trust will be a unitrust amount rather than net income determined without regard to this article; and

(ii) The percentage and method used to calculate the unitrust amount;

(b) Change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount; or

(c) Convert a unitrust to an income trust if the fiduciary adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to this article rather than a unitrust amount.

(2) A fiduciary may take an action under subsection (1) of this section if:

(a) The fiduciary determines that the action will assist the fiduciary to administer a trust impartially;

(b) The fiduciary sends a notice in a record, in the manner required by RCW 11.104B.130, describing and proposing to take the action;

(c) The fiduciary sends a copy of the notice under (b) of this subsection (2) to each settlor of the trust which is:

(i) If an individual, living; or

(ii) If not an individual, in existence;

(d) At least one member of each class of beneficiaries receiving the notice under (b) of this subsection (2) is:

(i) If an individual, legally competent;

(ii) If not an individual, in existence; or

(iii) Represented in the manner provided in RCW 11.104B.130(2);

and

(e) The fiduciary does not receive, by the date specified in the notice under RCW 11.104B.130(3)(f), an objection in a record to the action proposed under (b) of this subsection (2) from a person to which the notice under (b) of this subsection (2) is sent.

(3) If a fiduciary receives, not later than the date stated in the notice under RCW 11.104B.130(3)(e), an objection in a record described in RCW 11.104B.130(3)(d) to a proposed action, the fiduciary or a beneficiary may request the court to have the proposed action taken as proposed, taken with modifications, or prevented. A person described in RCW 11.104B.130(1) may oppose the proposed action in the proceeding under this subsection, whether or not the person:

(a) Consented under RCW 11.104B.130(2); or

(b) Objected under RCW 11.104B.130(3)(d).

(4) If, after sending a notice under subsection (2)(b) of this section, a fiduciary decides not to take the action proposed in the

notice, the fiduciary shall notify in a record each person described in RCW 11.104B.130(1) of the decision not to take the action and the reasons for the decision.

(5) If a beneficiary requests in a record that a fiduciary take an action described in subsection (1) of this section and the fiduciary declines to act or does not act within 90 days after receiving the request, the beneficiary may request the court to direct the fiduciary to take the action requested.

(6) In deciding whether and how to take an action authorized by subsection (1) of this section, or whether and how to respond to a request by a beneficiary under subsection (5) of this section, a fiduciary shall consider all factors relevant to the trust and the beneficiaries, including relevant factors in RCW 11.104B.050(5).

(7) A fiduciary may release or delegate the power to convert an income trust to a unitrust under subsection (1)(a) of this section, change the percentage or method used to calculate a unitrust amount under subsection (1)(b) of this section, or convert a unitrust to an income trust under subsection (1)(c) of this section, for a reason described in RCW 11.104B.070(7) and in the manner described in RCW 11.104B.070(8). [2021 c 140 s 2303.]

RCW 11.104B.130 Unitrusts—Notice. (1) A notice required by RCW 11.104B.120(2)(b) must be sent to:

(a) All beneficiaries that receive or are entitled to receive income from the trust or would be entitled to receive a distribution of principal if the trust were terminated at the time the notice is sent, assuming no power of appointment is exercised; and

(b) Each person that is granted a power over the trust by the terms of the trust, to the extent the power is exercisable when the person is not then serving as a trustee:

(i) Including a:

(A) Power over the investment, management, or distribution of trust property or other matters of trust administration; and

(B) Power to appoint or remove a trustee or person described in this subsection; and

(ii) Excluding a:

(A) Power of appointment;

(B) Power of a beneficiary over the trust, to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary; and

(C) Power over the trust if the terms of the trust provide that the power is held in a nonfiduciary capacity and the power must be held in a nonfiduciary capacity to achieve a tax objective under the federal internal revenue code of 1986, as amended, as of January 1, 2022.

(2) A person may consent in a record at any time to action proposed under RCW 11.104B.120(2)(b). A notice required by RCW 11.104B.120(2)(b) need not be sent to a person that consents under this subsection.

(3) A notice required by RCW 11.104B.120(2)(b) must include:

(a) The action proposed under RCW 11.104B.120(2)(b);

(b) For a conversion of an income trust to a unitrust, a copy of the unitrust policy adopted under RCW 11.104B.120(1)(a);

(c) For a change in the percentage or method used to calculate the unitrust amount, a copy of the unitrust policy or amendment or

replacement of the unitrust policy adopted under RCW 11.104B.120(1)(b);

(d) A statement that the person to which the notice is sent may object to the proposed action by stating in a record the basis for the objection and sending or delivering the record to the fiduciary;

(e) The date by which an objection under (d) of this subsection (3) must be received by the fiduciary, which must be at least 30 days after the date the notice is sent;

(f) The date on which the action is proposed to be taken and the date on which the action is proposed to take effect;

(g) The name and contact information of the fiduciary; and

(h) The name and contact information of a person that may be contacted for additional information. [2021 c 140 s 2304.]

RCW 11.104B.140 Unitrusts—Unitrust policies. (1) In administering a unitrust under this article, a fiduciary shall follow a unitrust policy adopted under RCW 11.104B.120(1)(a) or (b) or amended or replaced under RCW 11.104B.120(1)(b).

(2) A unitrust policy must provide:

(a) The unitrust rate or the method for determining the unitrust rate under RCW 11.104B.150;

(b) The method for determining the applicable value under RCW 11.104B.160; and

(c) The rules described in RCW 11.104B.150 through 11.104B.180, which apply in the administration of the unitrust, whether the rules are:

(i) Mandatory, as provided in RCW 11.104B.160(1) and 11.104B.170(1); or

(ii) Optional, as provided in RCW 11.104B.150, 11.104B.160(2), 11.104B.170(2), and 11.104B.180(1), to the extent the fiduciary elects to adopt those rules. [2021 c 140 s 2305.]

RCW 11.104B.150 Unitrusts—Unitrust rates. (1) Except as otherwise provided in RCW 11.104B.180(2)(a), a unitrust rate may be:

(a) A fixed unitrust rate; or

(b) A unitrust rate that is determined for each period using:

(i) A market index or other published data; or

(ii) A mathematical blend of market indices or other published data over a stated number of preceding periods.

(2) Except as otherwise provided in RCW 11.104B.180(2)(a), a unitrust policy may provide:

(a) A limit on how high the unitrust rate determined under subsection (1)(b) of this section may rise;

(b) A limit on how low the unitrust rate determined under subsection (1)(b) of this section may fall;

(c) A limit on how much the unitrust rate determined under subsection (1)(b) of this section may increase over the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods;

(d) A limit on how much the unitrust rate determined under subsection (1)(b) of this section may decrease below the unitrust rate for the preceding period or a mathematical blend of unitrust rates over a stated number of preceding periods; or

(e) A mathematical blend of any of the unitrust rates determined under subsection (1)(b) of this section and (a) through (d) of this subsection. [2021 c 140 s 2306.]

RCW 11.104B.160 Unitrusts—Applicable value. (1) A unitrust policy must provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including:

- (a) The frequency of valuing the asset, which need not require a valuation in every period; and
- (b) The date for valuing the asset in each period in which the asset is valued.

(2) Except as otherwise provided in RCW 11.104B.180(2)(b), a unitrust policy may provide methods for determining the amount of the net fair market value of the trust to take into account in determining the applicable value, including:

- (a) Obtaining an appraisal of an asset for which fair market value is not readily available;
- (b) Exclusion of specific assets or groups or types of assets;
- (c) Other exceptions or modifications of the treatment of specific assets or groups or types of assets;
- (d) Identification and treatment of cash or property held for distribution;
- (e) Use of:
 - (i) An average of fair market values over a stated number of preceding periods; or
 - (ii) Another mathematical blend of fair market values over a stated number of preceding periods;
- (f) A limit on how much the applicable value of all assets, groups of assets, or individual assets may increase over:
 - (i) The corresponding applicable value for the preceding period; or
 - (ii) A mathematical blend of applicable values over a stated number of preceding periods;
- (g) A limit on how much the applicable value of all assets, groups of assets, or individual assets may decrease below:
 - (i) The corresponding applicable value for the preceding period; or
 - (ii) A mathematical blend of applicable values over a stated number of preceding periods;
- (h) The treatment of accrued income and other features of an asset which affect value; and
- (i) Determining the liabilities of the trust, including treatment of liabilities to conform with the treatment of assets under (a) through (h) of this subsection (2). [2021 c 140 s 2307.]

RCW 11.104B.170 Unitrusts—Period. (1) A unitrust policy must provide the period used under RCW 11.104B.150 and 11.104B.160. Except as otherwise provided in RCW 11.104B.180(2)(c), the period may be:

- (a) A calendar year;
- (b) A 12-month period other than a calendar year;
- (c) A calendar quarter;
- (d) A three-month period other than a calendar quarter; or
- (e) Another period.

(2) Except as otherwise provided in RCW 11.104B.180(2), a unitrust policy may provide standards for:

(a) Using fewer preceding periods under RCW 11.104B.150 (1)(b)(ii) or (2)(c) or (d) if:

(i) The trust was not in existence in a preceding period; or

(ii) Market indices or other published data are not available for a preceding period;

(b) Using fewer preceding periods under RCW 11.104B.160(2) (e)(i) or (ii), (f)(ii), or (g)(ii) if:

(i) The trust was not in existence in a preceding period; or

(ii) Fair market values are not available for a preceding period;

and

(c) Prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates. [2021 c 140 s 2308.]

RCW 11.104B.180 Unitrust—Special tax benefits—Other rules. (1) A unitrust policy may:

(a) Provide methods and standards for:

(i) Determining the timing of distributions;

(ii) Making distributions in cash or in-kind or partly in cash and partly in-kind; or

(iii) Correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount;

(b) Specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid; or

(c) Provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.

(2) If a trust qualifies for a special tax benefit or a fiduciary is not an independent person:

(a) The unitrust rate established under RCW 11.104B.150 may not be less than three percent or more than five percent;

(b) The only provisions of RCW 11.104B.160 that apply are RCW 11.104B.160 (1) and (2)(a), (d), (e)(i), and (i);

(c) The only period that may be used under RCW 11.104B.170 is a calendar year under RCW 11.104B.170(1)(a); and

(d) The only other provisions of RCW 11.104B.170 that apply are RCW 11.104B.170(2) (b)(i) and (c). [2021 c 140 s 2309.]

ARTICLE 4
ALLOCATION OF RECEIPTS

RCW 11.104B.200 Receipts from entities—Character. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Capital distribution" means an entity distribution of money that is a:

(i) Return of capital; or

(ii) Distribution in total or partial liquidation of the entity.

(b) "Entity":

(i) Means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization or arrangement in which a fiduciary owns or holds an interest, whether or not the entity is a taxpayer for federal income tax purposes; and

(ii) Does not include:

(A) A trust or estate to which RCW 11.104B.210 applies;

(B) A business or other activity to which RCW 11.104B.220 applies, which is not conducted by an entity described in (b) (i) of this subsection (1);

(C) An asset-backed security; or

(D) An instrument or arrangement to which RCW 11.104B.350 applies.

(c) "Entity distribution" means a payment or transfer by an entity made to a person in the person's capacity as an owner or holder of an interest in the entity.

(2) In this section, an attribute or action of an entity includes an attribute or action of any other entity in which the entity owns or holds an interest, including an interest owned or held indirectly through another entity.

(3) Except as otherwise provided in subsection (4) (b) through (d) of this section, a fiduciary shall allocate to income:

(a) Money received in an entity distribution; and

(b) Tangible personal property of nominal value received from the entity.

(4) A fiduciary shall allocate to principal:

(a) Property received in an entity distribution which is not:

(i) Money; or

(ii) Tangible personal property of nominal value;

(b) Money received in an entity distribution in an exchange for part or all of the fiduciary's interest in the entity, to the extent the entity distribution reduces the fiduciary's interest in the entity relative to the interests of other persons that own or hold interests in the entity;

(c) Money received in an entity distribution that the fiduciary determines or estimates is a capital distribution; and

(d) Money received in an entity distribution from an entity that is:

(i) A regulated investment company or real estate investment trust if the money received is a capital gain dividend for federal income tax purposes; or

(ii) Treated for federal income tax purposes comparably to the treatment described in (d) (i) of this subsection (4).

(5) A fiduciary may determine or estimate that money received in an entity distribution is a capital distribution:

(a) By relying without inquiry or investigation on a characterization of the entity distribution provided by or on behalf of the entity, unless the fiduciary:

(i) Determines, on the basis of information known to the fiduciary, that the characterization is or may be incorrect; or

(ii) Owns or holds more than 50 percent of the voting interest in the entity;

(b) By determining or estimating, on the basis of information known to the fiduciary or provided to the fiduciary by or on behalf of the entity, that the total amount of money and property received by the fiduciary in the entity distribution or a series of related entity

distributions is or will be greater than 20 percent of the fair market value of the fiduciary's interest in the entity; or

(c) If neither (a) or (b) of this subsection (5) applies, by considering the factors in subsection (6) of this section and the information known to the fiduciary or provided to the fiduciary by or on behalf of the entity.

(6) In making a determination or estimate under subsection (5) (c) of this section, a fiduciary may consider:

(a) A characterization of an entity distribution provided by or on behalf of the entity;

(b) The amount of money or property received in:

(i) The entity distribution; or

(ii) What the fiduciary determines is or will be a series of related entity distributions;

(c) The amount described in (b) of this subsection compared to the amount the fiduciary determines or estimates is, during the current or preceding accounting periods:

(i) The entity's operating income;

(ii) The proceeds of the entity's sale or other disposition of:

(A) All or part of the business or other activity conducted by the entity;

(B) One or more business assets that are not sold to customers in the ordinary course of the business or other activity conducted by the entity; or

(C) One or more assets other than business assets, unless the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets;

(iii) If the entity's primary activity is to invest in assets to realize gain on the disposition of all or some of the assets, the gain realized on the disposition;

(iv) The entity's regular, periodic entity distributions;

(v) The amount of money the entity has accumulated;

(vi) The amount of money the entity has borrowed;

(vii) The amount of money the entity has received from the sources described in RCW 11.104B.260, 11.104B.290, 11.104B.300, and 11.104B.310; and

(viii) The amount of money the entity has received from a source not otherwise described in this subsection; and

(d) Any other factor the fiduciary determines is relevant.

(7) If, after applying subsections (3) through (6) of this section, a fiduciary determines that a part of an entity distribution is a capital distribution but is in doubt about the amount of the entity distribution which is a capital distribution, the fiduciary shall allocate to principal the amount of the entity distribution which is in doubt.

(8) If a fiduciary receives additional information about the application of this section to an entity distribution before the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary may consider the additional information before making the payment to the beneficiary and may change a decision to make the payment to the beneficiary.

(9) If a fiduciary receives additional information about the application of this section to an entity distribution after the fiduciary has paid part of the entity distribution to a beneficiary, the fiduciary is not required to change or recover the payment to the beneficiary but may consider that information in determining whether

to exercise the power to adjust under RCW 11.104B.070. [2021 c 140 s 2401.]

RCW 11.104B.210 Receipts from entities—Distributions from trusts and estates. A fiduciary shall allocate to income an amount received as a distribution of income, including a unitrust distribution under Article 3 of this chapter, from a trust or estate in which the fiduciary has an interest, other than an interest the fiduciary purchased in a trust that is an investment entity, and shall allocate to principal an amount received as a distribution of principal from the trust or estate. If a fiduciary purchases, or receives from a settlor, an interest in a trust that is an investment entity, RCW 11.104B.200, 11.104B.340, or 11.104B.350 applies to a receipt from the trust. [2021 c 140 s 2402.]

RCW 11.104B.220 Receipts from entities—Businesses and other activities conducted by fiduciary. (1) This section applies to a business or other activity conducted by a fiduciary if the fiduciary determines that it is in the interests of the beneficiaries to account separately for the business or other activity instead of:

(a) Accounting for the business or other activity as part of the fiduciary's general accounting records; or

(b) Conducting the business or other activity through an entity described in RCW 11.104B.200(1)(b)(i).

(2) A fiduciary may account separately under this section for the transactions of a business or other activity, whether or not assets of the business or other activity are segregated from other assets held by the fiduciary.

(3) A fiduciary that accounts separately under this section for a business or other activity:

(a) May determine:

(i) The extent to which the net cash receipts of the business or other activity must be retained for:

(A) Working capital;

(B) The acquisition or replacement of fixed assets; and

(C) Other reasonably foreseeable needs of the business or other activity; and

(ii) The extent to which the remaining net cash receipts are accounted for as principal or income in the fiduciary's general accounting records for the trust;

(b) May make a determination under (a) of this subsection (3) separately and differently from the fiduciary's decisions concerning distributions of income or principal; and

(c) Shall account for the net amount received from the sale of an asset of the business or other activity, other than a sale in the ordinary course of the business or other activity, as principal in the fiduciary's general accounting records for the trust, to the extent the fiduciary determines that the net amount received is no longer required in the conduct of the business or other activity.

(4) Activities for which a fiduciary may account separately under this section include:

(a) Retail, manufacturing, service, and other traditional business activities;

(b) Farming;

- (c) Raising and selling livestock and other animals;
- (d) Managing rental properties;
- (e) Extracting minerals, water, and other natural resources;
- (f) Growing and cutting timber;
- (g) An activity to which RCW 11.104B.330, 11.104B.340, or 11.104B.350 applies; and
- (h) Any other business conducted by the fiduciary. [2021 c 140 s 2403.]

RCW 11.104B.230 Receipts not normally apportioned—Principal receipts. A fiduciary shall allocate to principal:

- (1) To the extent not allocated to income under this chapter, an asset received from:
 - (a) An individual during the individual's lifetime;
 - (b) An estate;
 - (c) A trust on termination of an income interest; or
 - (d) A payor under a contract naming the fiduciary as beneficiary;
- (2) Except as otherwise provided in this article, money or other property received from the sale, exchange, liquidation, or change in form of a principal asset;
- (3) An amount recovered from a third party to reimburse the fiduciary because of a disbursement described in RCW 11.104B.410(1) or for another reason to the extent not based on loss of income;
- (4) Proceeds of property taken by eminent domain, except that proceeds awarded for loss of income in an accounting period are income if a current income beneficiary had a mandatory income interest during the period;
- (5) Net income received in an accounting period during which there is no beneficiary to which a fiduciary may or must distribute income; and
- (6) Other receipts as provided in RCW 11.104B.270 through 11.104B.350. [2021 c 140 s 2404.]

RCW 11.104B.240 Receipts not normally apportioned—Rental property. To the extent a fiduciary does not account for the management of rental property as a business under RCW 11.104B.220, the fiduciary shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods:

- (1) Must be added to principal and held subject to the terms of the lease, except as otherwise provided by law other than this chapter; and
- (2) Is not allocated to income or available for distribution to a beneficiary until the fiduciary's contractual obligations have been satisfied with respect to that amount. [2021 c 140 s 2405.]

RCW 11.104B.250 Receipts not normally apportioned—Receipt on obligation to be paid in money. (1) This section does not apply to an obligation to which RCW 11.104B.280, 11.104B.290, 11.104B.300, 11.104B.310, 11.104B.330, 11.104B.340, or 11.104B.350 applies.

(2) A fiduciary shall allocate to income, without provision for amortization of premium, an amount received as interest on an obligation to pay money to the fiduciary, including an amount received as consideration for prepaying principal.

(3) A fiduciary shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the fiduciary. A fiduciary shall allocate to income the increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable, at maturity or another future time, in an amount that exceeds the amount in consideration of which it was issued. [2021 c 140 s 2406.]

RCW 11.104B.260 Receipts not normally apportioned—Insurance policies and contracts. (1) This section does not apply to a contract to which RCW 11.104B.280 applies.

(2) Except as otherwise provided in subsection (3) of this section, a fiduciary shall allocate to principal the proceeds of a life insurance policy or other contract received by the fiduciary as beneficiary, including a contract that insures against damage to, destruction of, or loss of title to an asset. The fiduciary shall allocate dividends on an insurance policy to income to the extent premiums on the policy are paid from income and to principal to the extent premiums on the policy are paid from principal.

(3) A fiduciary shall allocate to income proceeds of a contract that insures the fiduciary against loss of:

- (a) Occupancy or other use by a current income beneficiary;
- (b) Income; or

(c) Subject to RCW 11.104B.220, profits from a business. [2021 c 140 s 2407.]

RCW 11.104B.270 Receipts normally apportioned—Insubstantial allocation not required. (1) If a fiduciary determines that an allocation between income and principal required by RCW 11.104B.280, 11.104B.290, 11.104B.300, 11.104B.310, or 11.104B.340 is insubstantial, the fiduciary may allocate the entire amount to principal, unless RCW 11.104B.070(5) applies to the allocation.

(2) A fiduciary may presume an allocation is insubstantial under subsection (1) of this section if:

(a) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; and

(b) The asset producing the receipt to be allocated has a fair market value less than 10 percent of the total fair market value of the assets owned or held by the fiduciary at the beginning of the accounting period.

(3) The power to make a determination under subsection (1) of this section may be:

(a) Exercised by a cofiduciary in the manner described in RCW 11.104B.070(6); or

(b) Released or delegated for a reason described in RCW 11.104B.070(7) and in the manner described in RCW 11.104B.070(8). [2021 c 140 s 2408.]

RCW 11.104B.280 Receipts normally apportioned—Deferred compensation, annuities, and similar payments. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Internal income of a separate fund" means the amount determined under subsection (2) of this section.

(b) "Marital trust" means a trust:

(i) Of which the settlor's surviving spouse is the only current income beneficiary and is entitled to a distribution of all the current net income of the trust; and

(ii) That qualifies for a marital deduction with respect to the settlor's estate under 26 U.S.C. Sec. 2056 of the federal internal revenue code of 1986, as amended, as of January 1, 2022, because:

(A) An election to qualify for a marital deduction under 26 U.S.C. Sec. 2056(b)(7) of the federal internal revenue code of 1986, as amended, as of January 1, 2022, has been made; or

(B) The trust qualifies for a marital deduction under 26 U.S.C. Sec. 2056(b)(5) of the federal internal revenue code of 1986, as amended, as of January 1, 2022.

(c) "Payment" means an amount a fiduciary may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future amounts the fiduciary may receive. The term includes an amount received in money or property from the payor's general assets or from a separate fund created by the payor.

(d) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock bonus, or stock ownership plan.

(2) For each accounting period, the following rules apply to a separate fund:

(a) The fiduciary shall determine the internal income of the separate fund as if the separate fund were a trust subject to this chapter.

(b) If the fiduciary cannot determine the internal income of the separate fund under (a) of this subsection (2), the internal income of the separate fund is deemed to equal four percent of the value of the separate fund, according to the most recent statement of value preceding the beginning of the accounting period.

(c) If the fiduciary cannot determine the value of the separate fund under (b) of this subsection (2), the value of the separate fund is deemed to equal the present value of the expected future payments, as determined under 26 U.S.C. Sec. 7520 of the federal internal revenue code of 1986, as amended, as of January 1, 2022, for the month preceding the beginning of the accounting period for which the computation is made.

(3) A fiduciary shall allocate a payment received from a separate fund during an accounting period to income, to the extent of the internal income of the separate fund during the period, and the balance to principal.

(4) The fiduciary of a marital trust shall:

(a) Withdraw from a separate fund the amount the current income beneficiary of the trust requests the fiduciary to withdraw, not greater than the amount by which the internal income of the separate fund during the accounting period exceeds the amount the fiduciary otherwise receives from the separate fund during the period;

(b) Transfer from principal to income the amount the current income beneficiary requests the fiduciary to transfer, not greater than the amount by which the internal income of the separate fund during the period exceeds the amount the fiduciary receives from the separate fund during the period after the application of (a) of this subsection (2) [(4)]; and

(c) Distribute to the current income beneficiary as income:

(i) The amount of the internal income of the separate fund received or withdrawn during the period; and

(ii) The amount transferred from principal to income under (b) of this subsection (2) [(4)].

(5) For a trust, other than a marital trust, of which one or more current income beneficiaries are entitled to a distribution of all the current net income, the fiduciary shall transfer from principal to income the amount by which the internal income of a separate fund during the accounting period exceeds the amount the fiduciary receives from the separate fund during the period. [2021 c 140 s 2409.]

RCW 11.104B.290 Receipts normally apportioned—Liquidating assets. (1) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a limited time. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance.

(2) This section does not apply to a receipt subject to RCW 11.104B.200, 11.104B.280, 11.104B.300, 11.104B.310, 11.104B.330, 11.104B.340, 11.104B.350, or 11.104B.420.

(3) A fiduciary shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal. [2021 c 140 s 2410.]

RCW 11.104B.300 Receipts normally apportioned—Minerals, water, and other natural resources. (1) To the extent a fiduciary accounts for a receipt from an interest in minerals, water, or other natural resources pursuant to this section, the fiduciary shall allocate the receipt:

(a) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income;

(b) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal;

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90 percent must be allocated to principal and the balance to income; or

(d) If an amount is received from a working interest or any other interest not provided for in (a), (b), or (c) of this subsection, 90 percent of the net amount received must be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 90 percent of the amount must be allocated to principal and the balance to income.

(3) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(4) If a fiduciary owns or holds an interest in minerals, water, or other natural resources on January 1, 2022, the fiduciary may allocate receipts from the interest as provided in this chapter or in the manner used by the fiduciary before January 1, 2022. If the fiduciary acquires an interest in minerals, water, or other natural resources after January 1, 2022, the fiduciary shall allocate receipts from the interest as provided in this chapter. [2021 c 140 s 2411.]

RCW 11.104B.310 Receipts normally apportioned—Timber. (1) To the extent a fiduciary does not account for receipts from the sale of timber and related products as a business under RCW 11.104B.220, the fiduciary shall allocate the net receipts:

(a) To income, to the extent the amount of timber cut from the land does not exceed the rate of growth of the timber;

(b) To principal, to the extent the amount of timber cut from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) Between income and principal if the net receipts are from the lease of land used for growing and cutting timber or from a contract to cut timber from land, by determining the amount of timber cut from the land under the lease or contract and applying the rules in (a) or (b) of this subsection; or

(d) To principal, to the extent advance payments, bonuses, and other payments are not allocated under (a), (b), or (c) of this subsection.

(2) In determining net receipts to be allocated under subsection (1) of this section, a fiduciary shall deduct and transfer to principal a reasonable amount for depletion.

(3) This section applies to land owned or held by a fiduciary whether or not a settlor was cutting timber from the land before the fiduciary owned or held the property.

(4) If a fiduciary owns or holds an interest in land used for growing and cutting timber before January 1, 2022, the fiduciary may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the fiduciary before January 1, 2022. If the fiduciary acquires an interest in land used for growing and cutting timber on or after January 1, 2022, the fiduciary shall allocate net receipts from the sale of timber and related products as provided in this section. [2021 c 140 s 2412.]

RCW 11.104B.320 Receipts normally apportioned—Marital deduction property not productive of income. (1) If a trust received property for which a gift or estate tax marital deduction was allowed and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent the trust assets otherwise do not provide the spouse with sufficient income from or use of the trust assets to qualify for the deduction, to:

(a) Make property productive of income;

(b) Convert property to property productive of income within a reasonable time; or

(c) Exercise the power to adjust under RCW 11.104B.070.

(2) The trustee may decide which action or combination of actions in subsection (1) of this section to take. [2021 c 140 s 2413.]

RCW 11.104B.330 Receipts normally apportioned—Derivatives and options. (1) In this section, "derivative" means a contract, instrument, other arrangement, or combination of contracts, instruments, or other arrangements, the value, rights, and obligations of which are, in whole or in part, dependent on or derived from an underlying tangible or intangible asset, group of tangible or intangible assets, index, or occurrence of an event. The term includes stocks, fixed income securities, and financial instruments and arrangements based on indices, commodities, interest rates, weather-related events, and credit default events.

(2) To the extent a fiduciary does not account for a transaction in derivatives as a business under RCW 11.104B.220, the fiduciary shall allocate all receipts from the transaction and all disbursements made in connection with the transaction to principal.

(3) Subsection (4) of this section applies if:

(a) A fiduciary:

(i) Grants an option to buy property from a trust, whether or not the trust owns the property when the option is granted;

(ii) Grants an option that permits another person to sell property to the trust; or

(iii) Acquires an option to buy property for the trust or an option to sell an asset owned by the trust; and

(b) The fiduciary or other owner of the asset is required to deliver the asset if the option is exercised.

(4) If this subsection applies, the fiduciary shall allocate 10 percent to income and the balance to principal of the following amounts:

(a) An amount received for granting the option;

(b) An amount paid to acquire the option; and

(c) Gain or loss realized on the exercise, exchange, settlement, offset, closing, or expiration of the option. [2021 c 140 s 2414.]

RCW 11.104B.340 Receipts normally apportioned—Asset-backed securities. (1) If a fiduciary receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the fiduciary shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(2) If a fiduciary receives one or more payments in exchange for the fiduciary's entire interest in an asset-backed security in one accounting period, the fiduciary shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the fiduciary shall allocate 10 percent of the payment to income and the balance to principal. [2021 c 140 s 2415.]

RCW 11.104B.350 Receipts normally apportioned—Other financial instruments and arrangements. A fiduciary shall allocate receipts

from or related to a financial instrument or arrangement not otherwise addressed by this chapter. The allocation must be consistent with RCW 11.104B.330 and 11.104B.340. [2021 c 140 s 2416.]

ARTICLE 5
ALLOCATION OF DISBURSEMENTS

RCW 11.104B.400 Disbursements—Disbursement from income.

Subject to RCW 11.104B.430, and except as otherwise provided in RCW 11.104B.500(3) (b) or (c), a fiduciary shall disburse from income:

(1) One-half of:

(a) The regular compensation of the fiduciary and any person providing investment advisory, custodial, or other services to the fiduciary, to the extent income is sufficient; and

(b) An expense for an accounting, judicial or nonjudicial proceeding, or other matter that involves both income and successive interests, to the extent income is sufficient;

(2) The balance of the disbursements described in subsection (1) of this section, to the extent a fiduciary that is an independent person determines that making those disbursements from income would be in the interests of the beneficiaries;

(3) Another ordinary expense incurred in connection with administration, management, or preservation of property and distribution of income, including interest, an ordinary repair, regularly recurring tax assessed against principal, and an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily an income interest, to the extent income is sufficient; and

(4) A premium on insurance covering loss of a principal asset or income from or use of the asset. [2021 c 140 s 2501.]

RCW 11.104B.410 Disbursements—Disbursement from principal. (1)

Subject to RCW 11.104B.440, and except as otherwise provided in RCW 11.104B.500(3)(b), a fiduciary shall disburse from principal:

(a) The balance of the disbursements described in RCW 11.104B.400 (1) and (3) after application of RCW 11.104B.400(2);

(b) The fiduciary's compensation calculated on principal as a fee for acceptance, distribution, or termination;

(c) A payment of an expense to prepare for or execute a sale or other disposition of property;

(d) A payment on the principal of a trust debt;

(e) A payment of an expense of an accounting, judicial or nonjudicial proceeding, or other matter that involves primarily principal, including a proceeding to construe the terms of the trust or protect property;

(f) A payment of a premium for insurance, including title insurance, not described in RCW 11.104B.400(4), of which the fiduciary is the owner and beneficiary;

(g) A payment of an estate or inheritance tax or other tax imposed because of the death of a decedent, including penalties, apportioned to the trust; and

(h) A payment:

(i) Related to environmental matters, including:

(A) Reclamation;
(B) Assessing environmental conditions;
(C) Remediating and removing environmental contamination;
(D) Monitoring remedial activities and the release of substances;
(E) Preventing future releases of substances;
(F) Collecting amounts from persons liable or potentially liable for the costs of activities described in (h) (i) (A) through (E) of this subsection (1);
(G) Penalties imposed under environmental laws or regulations;
(H) Other actions to comply with environmental laws or regulations;
(I) Statutory or common law claims by third parties; and
(J) Defending claims based on environmental matters; and
(ii) For a premium for insurance for matters described in (h) (i) of this subsection (1).
(2) If a principal asset is encumbered with an obligation that requires income from the asset to be paid directly to a creditor, the fiduciary shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation. [2021 c 140 s 2502.]

RCW 11.104B.420 Disbursements—Transfer from income to principal for depreciation. (1) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a tangible asset having a useful life of more than one year.

(2) A fiduciary may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(a) Of the part of real property used or available for use by a beneficiary as a residence;

(b) Of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(c) Under this section, to the extent the fiduciary accounts:

(i) Under RCW 11.104B.290 for the asset; or

(ii) Under RCW 11.104B.220 for the business or other activity in which the asset is used.

(3) An amount transferred to principal under this section need not be separately held. [2021 c 140 s 2503.]

RCW 11.104B.430 Disbursements—Reimbursement of income from principal. (1) If a fiduciary makes or expects to make an income disbursement described in subsection (2) of this section, the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income.

(2) To the extent the fiduciary has not been and does not expect to be reimbursed by a third party, income disbursements to which subsection (1) of this section applies include:

(a) An amount chargeable to principal but paid from income because principal is illiquid;

(b) A disbursement made to prepare property for sale, including improvements and commissions; and

(c) A disbursement described in RCW 11.104B.410(1).

(3) If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (1) of this section. [2021 c 140 s 2504.]

RCW 11.104B.440 Disbursements—Reimbursement of principal from income. (1) If a fiduciary makes or expects to make a principal disbursement described in subsection (2) of this section, the fiduciary may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or provide a reserve for future principal disbursements.

(2) To the extent a fiduciary has not been and does not expect to be reimbursed by a third party, principal disbursements to which subsection (1) of this section applies include:

(a) An amount chargeable to income but paid from principal because income is not sufficient;

(b) The cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, including a special assessment;

(c) A disbursement made to prepare property for rental, including tenant allowances, leasehold improvements, and commissions;

(d) A periodic payment on an obligation secured by a principal asset, to the extent the amount transferred from income to principal for depreciation is less than the periodic payment; and

(e) A disbursement described in RCW 11.104B.410(1).

(3) If an asset whose ownership gives rise to a principal disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (1) of this section. [2021 c 140 s 2505.]

RCW 11.104B.450 Disbursements—Income taxes. (1) A tax required to be paid by a fiduciary based on receipts allocated to income must be charged to income.

(2) A tax required to be paid by a fiduciary based on receipts allocated to principal must be charged to principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a fiduciary on a share of an entity's taxable income must be charged:

(a) To income to the extent that receipts from the entity are allocated only to income;

(b) To principal to the extent that receipts from the entity are allocated only to principal;

(c) Proportionately to income and principal to the extent that receipts from the entity are allocated to both income and principal.

(4) Before applying subsections (1) through (3) of this section, the trustee must adjust income or principal receipts by the distributions to a beneficiary for which the trust receives an income tax deduction. [2021 c 140 s 2506.]

RCW 11.104B.460 Disbursements—Adjustment between income and principal because of taxes. (1) A fiduciary may make an adjustment between income and principal to offset the shifting of economic

interests or tax benefits between current income beneficiaries and successor beneficiaries which arises from:

(a) An election or decision the fiduciary makes regarding a tax matter, other than a decision to claim an income tax deduction to which subsection (2) of this section applies;

(b) An income tax or other tax imposed on the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by the fiduciary; or

(c) Ownership by the fiduciary of an interest in an entity a part of whose taxable income, whether or not distributed, is includable in the taxable income of the fiduciary or a beneficiary.

(2) If the amount of an estate tax marital or charitable deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes and, as a result, estate taxes paid from principal are increased and income taxes paid by the fiduciary or a beneficiary are decreased, the fiduciary shall charge each beneficiary that benefits from the decrease in income tax to reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax, to the extent the principal used to pay the increase would have qualified for a marital or charitable deduction but for the payment. The share of the reimbursement for each fiduciary or beneficiary whose income taxes are reduced must be the same as its share of the total decrease in income tax.

(3) A fiduciary that charges a beneficiary under subsection (2) of this section may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting another method or combination of methods. [2021 c 140 s 2507.]

ARTICLE 6

DEATH OF INDIVIDUAL OR TERMINATION OF INCOME INTEREST

RCW 11.104B.500 Death or termination of interest—Determination and distribution of net income. (1) This section applies when:

(a) The death of an individual results in the creation of an estate or trust; or

(b) An income interest in a trust terminates, whether the trust continues or is distributed.

(2) A fiduciary of an estate or trust with an income interest that terminates shall determine, under subsection (7) of this section and Articles 4, 5, and 7 of this chapter, the amount of net income and net principal receipts received from property specifically given to a beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.

(3) A fiduciary shall determine the income and net income of an estate or income interest in a trust which terminates, other than the amount of net income determined under subsection (2) of this section, under Articles 4, 5, and 7 of this chapter and by:

(a) Including in net income all income from property used or sold to discharge liabilities;

(b) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries, court

costs and other expenses of administration, and interest on estate and inheritance taxes and other taxes imposed because of the decedent's death, but the fiduciary may pay the expenses from income of property passing to a trust for which the fiduciary claims a federal estate tax marital or charitable deduction only to the extent:

(i) The payment of the expenses from income will not cause the reduction or loss of the deduction; or

(ii) The fiduciary makes an adjustment under RCW 11.104B.460(2); and

(c) Paying from principal other disbursements made or incurred in connection with the settlement of the estate or the winding up of an income interest that terminates, including:

(i) To the extent authorized by the decedent's will, the terms of the trust, or applicable law, debts, funeral expenses, disposition of remains, family allowances, estate and inheritance taxes, and other taxes imposed because of the decedent's death; and

(ii) Related penalties that are apportioned, by the decedent's will, the terms of the trust, or applicable law, to the estate or income interest that terminates.

(4) If a decedent's will, the terms of a trust, or applicable law provides for the payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount outright, the fiduciary shall make the payment from net income determined under subsection (3) of this section or from principal to the extent net income is insufficient.

(5) If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends because of an income beneficiary's death, and no payment of interest or the equivalent of interest is provided for by the terms of the trust or applicable law, the fiduciary shall pay the interest or the equivalent of interest to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(6) A fiduciary shall distribute net income remaining after payments required by subsections (4) and (5) of this section in the manner described in RCW 11.104B.510 to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(7) A fiduciary may not reduce principal or income receipts from property described in subsection (2) of this section because of a payment described in RCW 11.104B.400 or 11.104B.410, to the extent the decedent's will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property must be determined by including the amount the fiduciary receives or pays regarding the property, whether the amount accrued or became due before, on, or after the date of the decedent's death or an income interest's terminating event, and making a reasonable provision for an amount the estate or income interest may become obligated to pay after the property is distributed. [2021 c 140 s 2601.]

RCW 11.104B.510 Death or termination of interest—Distribution to successor beneficiary. (1) Except to the extent Article 3 of this

chapter applies for a beneficiary that is a trust, each beneficiary described in RCW 11.104B.500(6) is entitled to receive a share of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to which this section applies, each beneficiary, including a beneficiary that does not receive part of the distribution, is entitled, as of each distribution date, to a share of the net income the fiduciary received after the decedent's death, an income interest's other terminating event, or the preceding distribution by the fiduciary.

(2) In determining a beneficiary's share of net income under subsection (1) of this section, the following rules apply:

(a) The beneficiary is entitled to receive a share of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date.

(b) The beneficiary's fractional interest under (a) of this subsection must be calculated:

(i) On the aggregate value of the assets as of the distribution date without reducing the value by any unpaid principal obligation; and

(ii) Without regard to:

(A) Property specifically given to a beneficiary under the decedent's will or the terms of the trust; and

(B) Property required to pay pecuniary amounts not in trust.

(c) The distribution date under (a) of this subsection may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which the assets are distributed.

(3) To the extent a fiduciary does not distribute under this section all the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain records showing the interest of each beneficiary in the net income.

(4) If this section applies to income from an asset, a fiduciary may apply the rules in this section to net gain or loss realized from the disposition of the asset after the decedent's death, an income interest's terminating event, or the preceding distribution by the fiduciary. [2021 c 140 s 2602.]

ARTICLE 7

APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

RCW 11.104B.550 Death or termination of interest—When right to income begins and ends. (1) An income beneficiary is entitled to net income in accordance with the terms of the trust from the date an income interest begins. The income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to:

(a) The trust for the current income beneficiary; or

(b) A successive interest for a successor beneficiary.

(2) An asset becomes subject to a trust under subsection (1) (a) of this section:

(a) For an asset that is transferred to the trust during the settlor's life, on the date the asset is transferred;

(b) For an asset that becomes subject to the trust because of a decedent's death, on the date of the decedent's death, even if there is an intervening period of administration of the decedent's estate; or

(c) For an asset that is transferred to a fiduciary by a third party because of a decedent's death, on the date of the decedent's death.

(3) An asset becomes subject to a successive interest under subsection (1)(b) of this section on the day after the preceding income interest ends, as determined under subsection (4) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs or on the last day of a period during which there is no beneficiary to which a fiduciary may or must distribute income. [2021 c 140 s 2701.]

RCW 11.104B.560 Death or termination of interest—Apportionment of receipts and disbursements when decedent dies or income interest begins.

(1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to which RCW 11.104B.500(2) applies, to principal if its due date occurs before the date on which:

(a) For an estate, the decedent died; or

(b) For a trust or successive interest, an income interest begins.

(2) If the due date of a periodic income receipt or disbursement occurs on or after the date on which a decedent died or an income interest begins, a fiduciary shall allocate the receipt or disbursement to income.

(3) If an income receipt or disbursement is not periodic or has no due date, a fiduciary shall treat the receipt or disbursement under this section as accruing from day to day. The fiduciary shall allocate to principal the portion of the receipt or disbursement accruing before the date on which a decedent died or an income interest begins, and to income the balance.

(4) A receipt or disbursement is periodic under subsections (2) and (3) of this section if:

(a) The receipt or disbursement must be paid at regular intervals under an obligation to make payments; or

(b) The payor customarily makes payments at regular intervals.

(5) An item of income or obligation is due under this section on the date the payor is required to make a payment. If a payment date is not stated, there is no due date.

(6) Distributions to shareholders or other owners from an entity to which RCW 11.104B.200 applies are due:

(a) On the date fixed by or on behalf of the entity for determining the persons entitled to receive the distribution;

(b) If no date is fixed, on the date of the decision by or on behalf of the entity to make the distribution; or

(c) If no date is fixed and the fiduciary does not know the date of the decision by or on behalf of the entity to make the distribution, on the date the fiduciary learns of the decision. [2021 c 140 s 2702.]

RCW 11.104B.570 Death or termination of interest—Apportionment when income interest ends. (1) In this section, "undistributed income" means net income received on or before the date on which an income interest ends. The term does not include an item of income or expense which is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) Except as otherwise provided in subsection (3) of this section, when a mandatory income interest of a beneficiary ends, the fiduciary shall pay the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust to the beneficiary or, if the beneficiary does not survive the date the interest ends, to the beneficiary's estate.

(3) If a beneficiary has an unqualified power to withdraw more than five percent of the value of a trust immediately before an income interest ends:

(a) The fiduciary shall allocate to principal the undistributed income from the portion of the trust which may be withdrawn; and

(b) Subsection (2) of this section applies only to the balance of the undistributed income.

(4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value of assets ends, the fiduciary shall prorate the final payment as required to preserve an income tax, gift tax, estate tax, or other tax benefit. [2021 c 140 s 2703.]

ARTICLE 8 MISCELLANEOUS PROVISIONS

RCW 11.104B.900 Uniformity of application and construction. (1) In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(2) To the extent that this chapter is in conflict with RCW 11.68.090, RCW 11.68.090 prevails. [2021 c 140 s 2801.]

RCW 11.104B.901 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. Sec. 7003(b)). [2021 c 140 s 2802.]

RCW 11.104B.902 Application. This chapter applies to a trust or estate existing or created on or after January 1, 2022, except as otherwise expressly provided in the terms of the trust or RCW 11.104B.001 through 11.104B.901. [2021 c 140 s 2803.]

RCW 11.104B.903 Application of chapter 11.96A RCW. Nothing in chapter 345, Laws of 2002 is intended to restrict the application of chapter 11.96A RCW to issues, questions, or disputes that arise under

or that relate to chapter 345, Laws of 2002. Any and all such issues, questions, or disputes shall be resolved judicially or nonjudicially under chapter 11.96A RCW. [2002 c 345 s 603. Formerly RCW 11.104A.901.]

RCW 11.104B.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 s 40. Formerly RCW 11.104A.907.]

RCW 11.104B.905 Effective date—2021 c 140 ss 2101-2806. Sections 2101 through 2806 of this act take effect January 1, 2022. [2021 c 140 s 2809.]