

SB 1825

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THE STATE SENATE
Thursday, February 21, 2008

Senate Bill No. 1825
As Amended

SENATE BILL NO. 1825 - By: IVESTER of the Senate and BRADDOCK of the House.

[property - Oklahoma Uniform Trust Code - codification -
recodification - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1101 of Title 60, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Uniform Trust Code".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1102 of Title 60, unless there is created a duplication in numbering, reads as follows:

SCOPE

The Oklahoma Uniform Trust Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1103 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 DEFINITIONS

5 For purposes of the Oklahoma Uniform Trust Code:

6 1. "Action", with respect to an act of a trustee, includes a
7 failure to act;

8 2. "Ascertainable standard" means a standard relating to an
9 individual's health, education, support, or maintenance within the
10 meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal
11 Revenue Code of 1986, as in effect or as later amended;

12 3. "Beneficiary" means a person that:

13 a. has a present or future beneficial interest in a
14 trust, vested or contingent, or

15 b. in a capacity other than that of trustee, holds a
16 power of appointment over trust property;

17 4. "Charitable trust" means a trust, or portion of a trust,
18 created for a charitable purpose described in subsection A of
19 Section 26 of this act;

20 5. "Conservator" means a person appointed by the court to
21 administer the estate of an adult individual;

1 6. "Environmental law" means a federal, state, or local law,
2 rule, regulation, or ordinance relating to protection of the
3 environment;

4 7. "Guardian" means a person appointed by the court, to make
5 decisions regarding the person or property of a minor or adult,
6 pursuant to the Oklahoma Guardianship and Conservatorship Act. The
7 term does not include a guardian ad litem;

8 8. "Interests of the beneficiaries" means the beneficial
9 interests provided in the terms of the trust;

10 9. "Jurisdiction", with respect to a geographic area, includes
11 a state or country;

12 10. "Person" means an individual; corporation; business trust;
13 estate; trust; partnership; limited liability company; association;
14 joint venture; government; governmental subdivision, agency, or
15 instrumentality; public corporation; or any other legal or
16 commercial entity;

17 11. "Power of withdrawal" means a presently exercisable general
18 power of appointment other than a power exercisable by a trustee
19 which is limited by an ascertainable standard related to a
20 beneficiary-trustee's health, education, maintenance, or support, or
21 which is exercisable by another person only upon consent of the
22 trustee or a person holding an adverse interest;

1 12. "Property" means anything that may be the subject of
2 ownership, whether real or personal, legal or equitable, or any
3 interest therein;

4 13. "Qualified beneficiary" means, unless the trust instrument
5 provides otherwise, a beneficiary who, on the date the beneficiary's
6 qualification is determined:

7 a. is a distributee or permissible distributee of a
8 present interest in trust income or principal, or has
9 a vested remainder interest in the trust,

10 b. is a charitable organization expressly entitled to
11 receive benefits under the terms of a charitable trust
12 or a person appointed to enforce a trust created for
13 the care of an animal or another noncharitable purpose
14 as provided in Section 29 or 30 of this act, or

15 c. is the Attorney General of this state with respect to
16 a charitable trust having its principal place of
17 administration in this state;

18 14. "Revocable", as applied to a trust, means revocable by the
19 settlor without the consent of the trustee or a person holding an
20 adverse interest;

21 15. "Settlor" means a person, including a testator, who
22 creates, or contributes property to, a trust. If more than one
23 person creates or contributes property to a trust, each person is a

1 settlor of the portion of the trust property attributable to that
2 person's contribution except to the extent another person has the
3 power to revoke or withdraw that portion. The term trustor shall
4 also mean settlor;

5 16. "Spendthrift provision" means a term of a trust which
6 restrains both voluntary and involuntary transfer of a beneficiary's
7 interest;

8 17. "State" means a state of the United States, the District of
9 Columbia, Puerto Rico, the United States Virgin Islands, or any
10 territory or insular possession subject to the jurisdiction of the
11 United States. The term includes an Indian tribe or band recognized
12 by federal law or formally acknowledged by a state;

13 18. "Terms of a trust" means the manifestation of the settlor's
14 intent regarding a trust's provisions as expressed in the trust
15 instrument or as may be established by other evidence that would be
16 admissible in a judicial proceeding;

17 19. "Trust instrument" means an instrument executed by the
18 settlor that contains terms of the trust, including any amendments
19 thereto; and

20 20. "Trustee" includes an original, additional, and successor
21 trustee, and a cotrustee.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1104 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 KNOWLEDGE

5 A. Subject to subsection B of this section, a person has
6 knowledge of a fact if the person:

7 1. Has actual knowledge of it;

8 2. Has received a notice or notification of it; or

9 3. From all the facts and circumstances known to the person at
10 the time in question, has reason to know it.

11 B. An organization that conducts activities through employees
12 has notice or knowledge of a fact involving a trust only from the
13 time the information was received by an employee having
14 responsibility to act for the trust, or would have been brought to
15 the employee's attention if the organization had exercised
16 reasonable diligence. An organization exercises reasonable
17 diligence if it maintains reasonable routines for communicating
18 significant information to the employee having responsibility to act
19 for the trust and there is reasonable compliance with the routines.
20 Reasonable diligence does not require an employee of the
21 organization to communicate information unless the communication is
22 part of the individual's regular duties or the individual knows a

1 matter involving the trust would be materially affected by the
2 information.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1105 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 DEFAULT AND MANDATORY RULES

7 A. Except as otherwise provided in the terms of the trust, the
8 Oklahoma Uniform Trust Code governs the duties and powers of a
9 trustee, relations among trustees, and the rights and interests of a
10 beneficiary.

11 B. Unless the trust instrument provides otherwise, the trustee
12 shall have a duty under paragraphs 2 and 3 of subsection B of
13 Section 71 of this act to notify the qualified beneficiaries of an
14 irrevocable trust who have attained twenty-five (25) years of age of
15 the existence of the trust, the identity of the trustee, and their
16 right to request trustee reports.

17 C. The terms of a trust prevail over any provision of this act
18 except:

19 1. The requirements for creating a trust;

20 2. The duty of a trustee to act in good faith and in accordance
21 with the purposes of the trust;

- 1 3. The requirement that a trust and its terms be for the
2 benefit of its beneficiaries, and that the trust have a purpose that
3 is lawful, not contrary to public policy, and possible to achieve;
- 4 4. The power of the court to modify or terminate a trust under
5 Sections 31 through 38 of this act;
- 6 5. The effect of a spendthrift provision and the rights of
7 certain creditors and assignees to reach a trust as provided in
8 Article 5 of this act;
- 9 6. The power of the court under Section 51 of this act to
10 require, dispense with, or modify or terminate a bond;
- 11 7. The power of the court under subsection B of Section 57 of
12 this act to adjust a trustee's compensation specified in the terms
13 of the trust which is unreasonably low or high;
- 14 8. The duty under subsection A of Section 71 of this act to
15 respond to the request of a qualified beneficiary of an irrevocable
16 trust for trustee's reports and other information reasonably related
17 to the administration of a trust;
- 18 9. The effect of an exculpatory term under Section 83 of this
19 act;
- 20 10. The rights under Sections 85 through 88 of this act of a
21 person other than a trustee or beneficiary;
- 22 11. Periods of limitation for commencing a judicial proceeding;

1 D. The trustee shall notify the qualified beneficiaries of a
2 proposed transfer of a trust's principal place of administration to
3 a location outside of this state, not less than sixty (60) days
4 before initiating the transfer. The notice of proposed transfer
5 must include:

6 1. The name of the jurisdiction to which the principal place of
7 administration is to be transferred;

8 2. The address and telephone number at the new location at
9 which the trustee can be contacted;

10 3. An explanation of the reasons for the proposed transfer;

11 4. The date on which the proposed transfer is anticipated to
12 occur; and

13 5. The date, not less than sixty (60) days after the giving of
14 the notice, by which the qualified beneficiary must notify the
15 trustee of an objection to the proposed transfer.

16 E. The authority of a trustee under this section to transfer a
17 trust's principal place of administration to a location outside of
18 this state, terminates if a qualified beneficiary notifies the
19 trustee of an objection to the proposed transfer on or before the
20 date specified in the notice.

21 F. In connection with a transfer of the trust's principal place
22 of administration, the trustee may transfer some or all of the trust

1 property to a successor trustee designated in the terms of the trust
2 or appointed pursuant to Section 53 of this act.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1109 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 METHODS AND WAIVER OF NOTICE

7 A. Notice to a person under this act or the sending of a
8 document to a person under this act must be accomplished in a manner
9 reasonably suitable under the circumstances and likely to result in
10 the receipt of the notice or document. Permissible methods of
11 notice or for sending a document include first-class mail, personal
12 delivery, delivery to the person's last-known place of residence or
13 place of business, or a properly directed electronic message.

14 B. Notice otherwise required under this act or a document
15 otherwise required to be sent under this act need not be provided to
16 a person whose identity or location is unknown to and not reasonably
17 ascertainable by the trustee.

18 C. Notice under this act or the sending of a document under
19 this act may be waived by the person to be notified or sent the
20 document.

21 D. Notice of a judicial proceeding must be given as provided in
22 the applicable rules of civil procedure.

1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1110 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 NONJUDICIAL SETTLEMENT AGREEMENTS

5 A. For purposes of this section, "interested persons" means
6 persons whose consent would be required in order to achieve a
7 binding settlement were the settlement to be approved by the court.

8 B. Except as otherwise provided in subsection C of this
9 section, interested persons may enter into a binding nonjudicial
10 settlement agreement with respect to any matter involving a trust.

11 C. A nonjudicial settlement agreement is valid only to the
12 extent it does not violate a material purpose of the trust and
13 includes terms and conditions that could be properly approved by the
14 court under this act or other applicable law.

15 D. Matters that may be resolved by a nonjudicial settlement
16 agreement include, but are not limited to:

17 1. The interpretation or construction of the terms of the
18 trust;

19 2. The approval of a trustee's report or accounting;

20 3. Direction to a trustee to refrain from performing a
21 particular act or the grant to a trustee of any necessary or
22 desirable power;

1 Section 175. A. If, after making ~~an express~~ a trust, the
2 ~~trustor~~ settlor is divorced, all provisions in such ~~express~~ trust in
3 favor of the ~~trustor's~~ settlor's former spouse, which are to take
4 effect upon the death of the ~~trustor~~ settlor, are thereby revoked.
5 Annulment of the ~~trustor's~~ settlor's marriage shall have the same
6 effect as a divorce. In the event of either divorce or annulment,
7 the ~~trustor's~~ settlor's former spouse shall be treated for all
8 purposes under the ~~express~~ trust, as having predeceased the ~~trustor~~
9 settlor. For purposes of this section, "~~express~~ trust" shall
10 include a "Totten Trust" as described in Section 902 of Title 6 of
11 the Oklahoma Statutes and shall not include a "business trust".

12 B. Subsection A of this section shall not apply:

13 1. If the decree of divorce or annulment is vacated;

14 2. If the ~~trustor~~ settlor had remarried said former spouse and
15 was married to said spouse at the time of the ~~trustor's~~ settlor's
16 death;

17 3. If the decree of divorce or annulment contains a provision
18 expressing an intention contrary to subsection A of this section;

19 4. If the ~~trustor~~ settlor makes the ~~express~~ trust subsequent to
20 the divorce or annulment;

21 5. To the extent, if any, the ~~express~~ trust contains a
22 provision expressing an intention contrary to subsection A of this
23 section; or

1 JURISDICTION OVER TRUSTEE AND BENEFICIARY

2 A. By accepting the trusteeship of a trust having its principal
3 place of administration in this state or by moving the principal
4 place of administration to this state, the trustee submits
5 personally to the jurisdiction of the courts of this state regarding
6 any matter involving the trust.

7 B. With respect to their interests in the trust, the
8 beneficiaries of a trust having its principal place of
9 administration in this state are subject to the jurisdiction of the
10 courts of this state regarding any matter involving the trust. By
11 accepting a distribution from such a trust, the recipient submits
12 personally to the jurisdiction of the courts of this state regarding
13 any matter involving the trust.

14 C. This section does not preclude other methods of obtaining
15 jurisdiction over a trustee, beneficiary, or other person receiving
16 property from the trust.

17 SECTION 15. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1115 of Title 60, unless there
19 is created a duplication in numbering, reads as follows:

20 SUBJECT-MATTER JURISDICTION

21 The district court has exclusive jurisdiction of proceedings in
22 this state brought by a trustee or beneficiary concerning the
23 administration of a trust.

1 SECTION 16. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1116 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 VENUE

5 A. Except as otherwise provided in subsection B of this
6 section, venue for a judicial proceeding involving a trust is in the
7 county of this state in which the trust's principal place of
8 administration is or will be located and, if the trust is created by
9 will and the estate is not yet closed, in the county in which the
10 decedent's estate is being administered.

11 B. If a trust has no trustee, venue for a judicial proceeding
12 for the appointment of a trustee is in a county of this state in
13 which a beneficiary resides, in a county in which any trust property
14 is located, and if the trust is created by will, in the county in
15 which the decedent's estate was or is being administered.

16 ARTICLE 3

17 REPRESENTATION

18 SECTION 17. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1117 of Title 60, unless there
20 is created a duplication in numbering, reads as follows:

21 REPRESENTATION: BASIC EFFECT

1 as permissible appointees, takers in default, or otherwise, are
2 subject to the power.

3 SECTION 19. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1119 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 REPRESENTATION BY FIDUCIARIES AND PARENTS

7 To the extent there is no conflict of interest between the
8 representative and the person represented or among those being
9 represented with respect to a particular question or dispute:

10 1. A conservator or guardian of the property may represent and
11 bind the estate that the conservator or guardian of the property
12 controls;

13 2. A guardian of the person may represent and bind the ward if
14 a guardian of the property or conservator of the ward's estate has
15 not been appointed;

16 3. An agent having authority to act with respect to the
17 particular question or dispute may represent and bind the principal;

18 4. A trustee may represent and bind the beneficiaries of the
19 trust;

20 5. A personal representative of a decedent's estate may
21 represent and bind persons interested in the estate; and

1 6. A parent may represent and bind the parent's minor or unborn
2 child if a conservator or guardian for the child has not been
3 appointed.

4 SECTION 20. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1120 of Title 60, unless there
6 is created a duplication in numbering, reads as follows:

7 REPRESENTATION BY PERSON HAVING
8 SUBSTANTIALLY IDENTICAL INTEREST

9 Unless otherwise represented, a minor, incapacitated, or unborn
10 individual, or a person whose identity or location is unknown and
11 not reasonably ascertainable, may be represented by and bound by
12 another having a substantially identical interest with respect to
13 the particular question or dispute, but only to the extent there is
14 no conflict of interest between the representative and the person
15 represented.

16 SECTION 21. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1121 of Title 60, unless there
18 is created a duplication in numbering, reads as follows:

19 APPOINTMENT OF REPRESENTATIVE

20 A. If the court determines that an interest is not represented
21 under this article, or that the otherwise available representation
22 might be inadequate, the court may appoint a representative to
23 receive notice, give consent, and otherwise represent, bind, and act

1 on behalf of a minor, incapacitated, or unborn individual, or a
2 person whose identity or location is unknown. A representative may
3 be appointed to represent several persons or interests.

4 B. A representative may act on behalf of the individual
5 represented with respect to any matter arising under this act,
6 whether or not a judicial proceeding concerning the trust is
7 pending.

8 C. In making decisions, a representative may consider general
9 benefit accruing to the living members of the individual's family.

10

ARTICLE 4

11

CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

12

SECTION 22. AMENDATORY 60 O.S. 2001, Section 175.6, is

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amended to read as follows:

14

METHODS OF CREATING TRUST

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Section 175.6 A trust may be created by:

16

~~A. A declaration by the owner of property that he holds it as~~

17

~~trustee for another person, or for himself and another person or~~

18

~~persons; or~~

19

~~B. A transfer inter vivos by the owner of property to another~~

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~~person as trustee for the transferor or for a third person; or~~

21

~~C. A transfer by will by the owner of property to another~~

22

~~person as trustee for a third person; or~~

1 ~~D. An appointment by one person having a power of appointment~~
2 ~~to another person as trustee for the donee of the power or for a~~
3 ~~third person; or~~

4 ~~E. A promise by one person to another person whose rights~~
5 ~~thereunder are to be held in trust for a third person; or~~

6 ~~F. A beneficiary may be a cotrustee and the legal and equitable~~
7 ~~title to the trust estate shall not merge by reason thereof.~~

8 ~~Provided, however, that no trust in relation to real property shall~~
9 ~~be valid, unless created or declared.~~

10 1. ~~By a written instrument subscribed by the trustor or by his~~
11 ~~agent thereto authorized by writing~~ Transfer of property to another
12 person as trustee during the settlor's lifetime or by will or other
13 disposition taking effect upon the settlor's death;

14 2. ~~By the instrument under which the trustee claims the estate~~
15 ~~affected~~ Declaration by the owner of property that the owner holds
16 identifiable property as trustee;

17 3. Exercise of a power of appointment in favor of a trustee; or

18 4. Agreement between settlor and trustee.

19 SECTION 23. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1123 of Title 60, unless there
21 is created a duplication in numbering, reads as follows:

22 REQUIREMENTS FOR CREATION

23 A. A trust is created only if:

- 1 1. The settlor has capacity to create a trust;
- 2 2. The settlor indicates an intention to create the trust;
- 3 3. The trust has a definite beneficiary or is:
 - 4 a. a charitable trust,
 - 5 b. a trust for the care of an animal, as provided in
 - 6 Section 29 of this act, or
 - 7 c. a trust for a noncharitable purpose, as provided in
 - 8 Section 30 of this act;
- 9 4. The trustee has duties to perform; and
- 10 5. The same person is not the sole trustee and sole
- 11 beneficiary.

12 B. A beneficiary is definite if the beneficiary can be
13 ascertained now or in the future, subject to any applicable rule
14 against perpetuities.

15 C. A power in a trustee to select a beneficiary from an
16 indefinite class is valid. If the power is not exercised within a
17 reasonable time, the power fails and the property subject to the
18 power passes to the persons who would have taken the property had
19 the power not been conferred.

20 SECTION 24. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1124 of Title 60, unless there
22 is created a duplication in numbering, reads as follows:

23 TRUSTS CREATED IN OTHER JURISDICTIONS

1 A trust not created by will is validly created if its creation
2 complies with the law of jurisdiction in which the trust instrument
3 was executed, or the law of the jurisdiction in which, at the time
4 of creation:

5 1. The settlor was domiciled, had a place of abode, or was a
6 national;

7 2. A trustee was domiciled or had a place of business; or

8 3. Any trust property was located.

9 SECTION 25. AMENDATORY 60 O.S. 2001, Section 175.2, is
10 amended to read as follows:

11 TRUST PURPOSES

12 Section 175.2 A trust ~~in relation to real and personal~~
13 ~~property, or either of them,~~ may be created for any purpose or
14 ~~purposes for which a contract may be made~~ only to the extent its
15 purposes are lawful, not contrary to public policy, and possible to
16 achieve. A trust and its terms shall be for the benefit of its
17 beneficiaries.

18 SECTION 26. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1126 of Title 60, unless there
20 is created a duplication in numbering, reads as follows:

21 CHARITABLE PURPOSES; ENFORCEMENT

22 A. A charitable trust may be created for any eleemosynary
23 purposes, the relief of poverty, the advancement of education or

1 religion, the promotion of health, governmental or municipal
2 purposes, or other purposes the achievement of which is beneficial
3 to the community.

4 B. If the terms of a charitable trust do not indicate a
5 particular charitable purpose or beneficiary, the court may select
6 one or more charitable purposes or beneficiaries. The selection
7 must be consistent with the settlor's intention to the extent it can
8 be ascertained.

9 C. The settlor of a charitable trust, among others, may
10 maintain a proceeding to enforce the trust.

11 SECTION 27. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1127 of Title 60, unless there
13 is created a duplication in numbering, reads as follows:

14 CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE

15 A trust is void to the extent its creation was induced by fraud,
16 duress, or undue influence.

17 SECTION 28. AMENDATORY 60 O.S. 2001, Section 136, is
18 amended to read as follows:

19 Section 136.

20 EVIDENCE OF ORAL TRUST

21 Ne A. Except as required by a statute other than this act, a
22 trust need not be evidenced by a trust instrument, but the creation

1 of an oral trust and its terms may be established only by clear and
2 convincing evidence.

3 B. A beneficiary may be a cotrustee and the legal and equitable
4 title to the trust estate shall not merge by reason thereof.

5 Provided, however, that no trust in relation to real property is
6 shall be valid, unless created or declared:

7 1. By a written instrument, subscribed by the ~~grantor~~ trustor
8 or by his or her agent thereto authorized by writing; or

9 2. By the instrument under which the trustee claims the estate
10 affected; ~~or,~~

11 ~~3. By operation of law.~~

12 SECTION 29. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1129 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 TRUST FOR CARE OF ANIMAL

16 A. A trust may be created to provide for the care of an animal
17 alive during the settlor's lifetime. The trust terminates upon the
18 death of the animal or, if the trust was created to provide for the
19 care of more than one animal alive during the settlor's lifetime,
20 upon the death of the last surviving animal.

21 B. A trust authorized by this section may be enforced by a
22 person appointed in the terms of the trust or, if no person is so
23 appointed, by a person appointed by the court. A person having an

1 interest in the welfare of the animals may request the court to
2 appoint a person to enforce the trust or to remove a person
3 appointed.

4 C. Property of a trust authorized by this section may be
5 applied only to its intended use, except to the extent the court
6 determines that the value of the trust property exceeds the amount
7 required for the intended use, considering the current and future
8 needs of the animals. Except as otherwise provided in the terms of
9 the trust, property not required for the intended use must be
10 distributed to the settlor, if then living, otherwise to the
11 settlor's successors in interest. Notwithstanding the foregoing,
12 the settlor may specifically override this provision by specific
13 reference and prevent the distribution of property in excess of the
14 intended use until all the animals are deceased or as otherwise
15 provided for by the terms of the trust.

16 SECTION 30. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1130 of Title 60, unless there
18 is created a duplication in numbering, reads as follows:

19 NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY

20 Except as otherwise provided in Section 29 of this act or by
21 another statute, the following rules apply:

22 1. A trust may be created for a noncharitable purpose without a
23 definite or definitely ascertainable beneficiary or for a

1 noncharitable but otherwise valid purpose to be selected by the
2 trustee. The trust may not be enforced for more than twenty-one
3 (21) years;

4 2. A trust authorized by this section may be enforced by a
5 person appointed in the terms of the trust or, if no person is so
6 appointed, by a person appointed by the court; and

7 3. Property of a trust authorized by this section may be
8 applied only to its intended use, except to the extent the court
9 determines that the value of the trust property exceeds the amount
10 required for the intended use. Except as otherwise provided in the
11 terms of the trust, property not required for the intended use must
12 be distributed to the settlor, if then living, otherwise to the
13 settlor's successors in interest.

14 SECTION 31. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1131 of Title 60, unless there
16 is created a duplication in numbering, reads as follows:

17 MODIFICATION OR TERMINATION OF TRUST;

18 PROCEEDINGS FOR APPROVAL OR DISAPPROVAL

19 A. In addition to the methods of termination prescribed by
20 Sections 32 through 35 of this act, a trust terminates to the extent
21 the trust is revoked or expires pursuant to its terms, no purpose of
22 the trust remains to be achieved, or the purposes of the trust have

1 become unlawful, contrary to public policy, or impossible to
2 achieve.

3 B. A proceeding to approve or disapprove a proposed
4 modification or termination under Sections 32 through 37 of this
5 act, or trust combination or division under Section 38 of this act,
6 may be commenced by a trustee or beneficiary, and a proceeding to
7 approve or disapprove a proposed modification or termination under
8 Section 32 of this act may be commenced by the settlor. The settlor
9 of a charitable trust may maintain a proceeding to modify the trust
10 under Section 34 of this act.

11 SECTION 32. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1132 of Title 60, unless there
13 is created a duplication in numbering, reads as follows:

14 MODIFICATION OR TERMINATION OF NONCHARITABLE
15 IRREVOCABLE TRUST BY CONSENT

16 A. A noncharitable irrevocable trust may be modified or
17 terminated upon consent of the settlor and all beneficiaries, even
18 if the modification or termination is inconsistent with a material
19 purpose of the trust. If upon petition to the court finds that the
20 settlor and all beneficiaries consent to the modification or
21 termination of an irrevocable trust, the court shall enter an order
22 approving the modification or termination even if the modification
23 or termination is inconsistent with a material purpose of the trust.

1 A settlor's power to consent to a trust's modification or
2 termination may be exercised by an agent under a power of attorney
3 only to the extent expressly authorized by the power of attorney or
4 the terms of the trust; by the settlor's conservator with the
5 approval of the court supervising the conservatorship if an agent is
6 not so authorized; or by the settlor's guardian with the approval of
7 the court supervising the guardianship if an agent is not so
8 authorized and a conservator has not been appointed.

9 B. A noncharitable irrevocable trust may be terminated upon
10 consent of all of the beneficiaries if the court concludes that
11 continuance of the trust is not necessary to achieve any material
12 purpose of the trust. A noncharitable irrevocable trust may be
13 modified upon consent of all of the beneficiaries if the court
14 concludes that modification is not inconsistent with a material
15 purpose of the trust.

16 C. Upon termination of a trust under subsection A or B of this
17 section, the trustee shall distribute the trust property as agreed
18 by the beneficiaries.

19 D. If not all of the beneficiaries consent to a proposed
20 modification or termination of the trust under subsection A or B of
21 this section, the modification or termination may be approved by the
22 court if the court is satisfied that:

1 C. Upon termination of a trust under this section, the trustee
2 shall distribute the trust property in a manner consistent with the
3 purposes of the trust.

4 D. This section does not apply to an easement for conservation
5 or preservation.

6 SECTION 36. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1136 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 REFORMATION TO CORRECT MISTAKES

10 The court may reform the terms of a trust, even if unambiguous,
11 to conform the terms to the settlor's intention if it is proved by
12 clear and convincing evidence that both the settlor's intent and the
13 terms of the trust were affected by a mistake of fact or law,
14 whether in expression or inducement.

15 SECTION 37. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1137 of Title 60, unless there
17 is created a duplication in numbering, reads as follows:

18 MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES

19 To achieve the settlor's tax objectives, the court may modify
20 the terms of a trust in a manner that is not contrary to the
21 settlor's probable intention. The court may provide that the
22 modification has retroactive effect.

1 SECTION 38. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1138 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 COMBINATION AND DIVISION OF TRUSTS

5 After notice to the qualified beneficiaries, a trustee may
6 combine two or more trusts into a single trust or divide a trust
7 into two or more separate trusts, if the result does not impair
8 rights of any beneficiary or adversely affect achievement of the
9 purposes of the trust.

10 ARTICLE 5

11 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

12 SECTION 39. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1139 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE

16 To the extent a beneficiary's interest is not protected by a
17 spendthrift provision, the court may authorize a creditor or
18 assignee of the beneficiary to reach the beneficiary's interest by
19 attachment of present or future distributions to or for the benefit
20 of the beneficiary or other means. The court may limit the award to
21 such relief as is appropriate under the circumstances.

1 SECTION 40. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1140 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 SPENDTHRIFT PROVISION

5 A. A spendthrift provision is valid only if it restrains both
6 voluntary and involuntary transfer of a beneficiary's interest.

7 B. A term of a trust providing that the interest of a
8 beneficiary is held subject to a spendthrift trust, or words of
9 similar import, is sufficient to restrain both voluntary and
10 involuntary transfer of the beneficiary's interest.

11 C. A beneficiary may not transfer an interest in a trust in
12 violation of a valid spendthrift provision and, except as otherwise
13 provided in this article, a creditor or assignee of the beneficiary
14 may not reach the interest or a distribution by the trustee before
15 its receipt by the beneficiary.

16 SECTION 41. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1141 of Title 60, unless there
18 is created a duplication in numbering, reads as follows:

19 EXCEPTIONS TO SPENDTHRIFT PROVISION

20 A. For purposes of section, "child" includes any person for
21 whom an order or judgment for child support has been entered in this
22 or another state.

1 B. 1. Even if a trust contains a spendthrift provision, a
2 beneficiary's child, spouse, or a person who has provided necessary
3 services to the beneficiary, who has a judgment or court order
4 against the beneficiary for support or maintenance, or a judgment
5 creditor who has provided services for the protection of a
6 beneficiary's interest in the trust, may obtain from a court an
7 order attaching present or future distributions of all income due or
8 to accrue in the future to the beneficiary.

9 2. In all cases not mentioned in paragraph 1 of this
10 subsection, all income due or to accrue in the future to the
11 beneficiary in excess of Twenty-five Thousand Dollars (\$25,000.00)
12 per calendar year shall be subject to garnishment by creditors of
13 the beneficiary and shall be fully alienable by the beneficiary.

14 C. A spendthrift provision is unenforceable against a claim of
15 this state or the United States to the extent a statute of this
16 state or federal law so provides.

17 SECTION 42. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1142 of Title 60, unless there
19 is created a duplication in numbering, reads as follows:

20 DISCRETIONARY TRUSTS; EFFECT OF STANDARD

21 A. Whether or not a trust contains a spendthrift provision, a
22 creditor of a beneficiary may not compel a distribution that is
23 subject to the trustee's discretion, even if:

1 may reach may not exceed the settlor's interest in the portion of
2 the trust attributable to that settlor's contribution.

3 B. For purposes of this section:

4 1. During the period the power may be exercised, the holder of
5 a power of withdrawal is treated in the same manner as the settlor
6 of a revocable trust to the extent of the property subject to the
7 power; and

8 2. Upon the lapse, release, or waiver of the power, the holder
9 is treated as the settlor of the trust only to the extent the value
10 of the property affected by the lapse, release, or waiver exceeds
11 the greater of the amount specified in Section 2041(b)(2) or 2514(e)
12 of the Internal Revenue Act of 1986, or Section 2503(b) of the
13 Internal Revenue Act of 1986, in each case as in effect on the
14 effective date of this act, or as later amended.

15 SECTION 44. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1144 of Title 60, unless there
17 is created a duplication in numbering, reads as follows:

18 OVERDUE DISTRIBUTION

19 Whether or not a trust contains a spendthrift provision, a
20 creditor or assignee of a beneficiary may reach a mandatory
21 distribution of income or principal, including a distribution upon
22 termination of the trust, if the trustee has not made the

1 distribution to the beneficiary within a reasonable time after the
2 mandated distribution date.

3 SECTION 45. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1145 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 PERSONAL OBLIGATIONS OF TRUSTEE

7 Trust property is not subject to personal obligations of the
8 trustee, even if the trustee becomes insolvent or bankrupt.

9 ARTICLE 6

10 REVOCABLE TRUSTS

11 SECTION 46. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1146 of Title 60, unless there
13 is created a duplication in numbering, reads as follows:

14 CAPACITY OF SETTLOR OF REVOCABLE TRUST

15 The capacity required to create, amend, revoke or add property
16 to a revocable trust, or to direct the actions of the trustee of a
17 revocable trust, is the same as that required to make a will. This
18 section does not impose the same formalities on the execution of a
19 trust instrument as are imposed on the execution of an attested
20 will.

21 SECTION 47. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1147 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

1 REVOCATION OR AMENDMENT OF REVOCABLE TRUST

2 A. Unless the terms of a trust expressly provide that the trust
3 is irrevocable, the settlor may revoke or amend the trust.

4 B. If a revocable trust is created or funded by more than one
5 settlor:

6 1. To the extent the trust consists of community property, the
7 trust may be revoked by either spouse acting alone but may be
8 amended only by joint action of both spouses;

9 2. To the extent the trust consists of property other than
10 community property, each settlor may revoke or amend the trust with
11 regard to the portion of the trust property attributable to that
12 settlor's contribution; and

13 3. Upon the revocation or amendment of the trust by fewer than
14 all of the settlors, the trustee shall promptly notify the other
15 settlors of the revocation or amendment.

16 C. The settlor may revoke or amend a revocable trust:

17 1. By substantial compliance with a method provided in the
18 terms of the trust; or

19 2. If the terms of the trust do not provide a method or the
20 method provided in the terms is not expressly made exclusive, by any
21 method manifesting clear and convincing evidence of the settlor's
22 intent.

1 D. Upon revocation of a revocable trust, the trustee shall
2 deliver the trust property as the settlor directs.

3 E. A settlor's powers with respect to revocation, amendment, or
4 distribution of trust property may be exercised by an agent under a
5 power of attorney only to the extent expressly authorized by the
6 terms of the trust or the power.

7 F. A conservator or guardian of the property of the settlor or,
8 if no conservator or guardian of the property has been appointed, a
9 guardian of the person of the settlor may exercise a settlor's
10 powers with respect to revocation, amendment, or distribution of
11 trust property only with the approval of the court supervising the
12 conservatorship or guardianship.

13 G. A trustee who does not know that a trust has been revoked or
14 amended is not liable to the settlor or settlor's successors in
15 interest for distributions made and other actions taken on the
16 assumption that the trust had not been amended or revoked.

17 SECTION 48. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1148 of Title 60, unless there
19 is created a duplication in numbering, reads as follows:

20 SETTLOR'S POWERS; POWERS OF WITHDRAWAL

21 A. While a trust is revocable and the settlor has capacity to
22 revoke the trust, rights of the beneficiaries are subject to the

1 control of, and the duties of the trustee are owed exclusively to,
2 the settlor.

3 B. During the period the power may be exercised, the holder of
4 a power of withdrawal has the rights of a settlor of a revocable
5 trust under this section to the extent of the property subject to
6 the power.

7 SECTION 49. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1149 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST;
11 DISTRIBUTION OF TRUST PROPERTY

12 A. A person may commence a judicial proceeding to contest the
13 validity of a trust that was revocable at the settlor's death within
14 the earlier of:

15 1. One (1) year after the settlor's death; or

16 2. One hundred twenty (120) days after the trustee sent the
17 person a copy of the trust instrument and a notice informing the
18 person of the trust's existence, of the trustee's name and address,
19 and of the time allowed for commencing a proceeding.

20 B. Upon the death of the settlor of a trust that was revocable
21 at the settlor's death, the trustee may proceed to distribute the
22 trust property in accordance with the terms of the trust. The
23 trustee is not subject to liability for doing so unless:

1 B. The court may specify the amount of a bond, its liabilities,
2 and whether sureties are necessary. The court may modify or
3 terminate a bond at any time.

4 C. A regulated financial service institution qualified to do
5 trust business in this state need not give bond, even if required by
6 the terms of the trust.

7 SECTION 52. AMENDATORY 60 O.S. 2001, Section 175.17, is
8 amended to read as follows:

9 Section 175.17 ~~Unless it is otherwise provided by the trust~~
10 ~~instrument, or an amendment thereof, or by court order:~~

11 A. ~~Any power vested in three or more trustees may be exercised~~
12 ~~by a majority of the trustees; but no trustee who has not joined in~~
13 ~~exercising a power shall be liable to the beneficiaries or to others~~
14 ~~for the consequences of the exercise, nor shall a dissenting trustee~~
15 ~~be liable for the consequences of an act in which the trustee joins~~
16 ~~at the direction of the majority trustees, if the trustee expressed~~
17 ~~his dissent in writing to any of the cotrustees at or before the~~
18 ~~time of the joinder.~~

19 B. ~~Where two or more trustees are appointed by will or a~~
20 ~~voluntary trust to execute a trust and one or more of them die, the~~
21 ~~survivor may execute the trust and may exercise the discretionary~~
22 ~~powers given to the trustees jointly, unless the terms of the will~~
23 ~~or agreement express a contrary opinion.~~

1 ~~C. Any cotrustee may give a power of attorney to another~~
2 ~~trustee or authorize a cotrustee to perform any act in the~~
3 ~~administration of the trust, but the trustee giving a power of~~
4 ~~attorney or authorizing an act to be performed by the cotrustee~~
5 ~~shall have the same liability and responsibility as if the trustee~~
6 ~~had performed the act done pursuant to the authorization.~~

7 ~~D. Nothing in this section shall excuse a cotrustee from~~
8 ~~liability for inactivity in the administration of the trust, nor for~~
9 ~~failure to attempt to prevent a breach of trust.~~

10 ~~E. Where two or more trustees, none of whom is the settlor,~~
11 ~~have the power as trustees to make discretionary distributions of~~
12 ~~either principal or income to or for the benefit of one of them, the~~
13 ~~trustee beneficiary may only make such discretionary distributions~~
14 ~~which provide for the health, education, or maintenance of the~~
15 ~~trustee beneficiary or to support the trustee beneficiary in an~~
16 ~~accustomed manner of living. The provisions of this subsection~~
17 ~~shall apply to any trust created under a document executed on or~~
18 ~~before the effective date of this act unless:~~

19 ~~1. The trust is revocable or amendable and the settlor revokes~~
20 ~~or amends the trust at any time to provide otherwise; or~~

21 ~~2. The trust is irrevocable and all parties in interest elect~~
22 ~~affirmatively not to be subject to this subsection. Such election~~
23 ~~must be made on or before the later of three (3) years after the~~

1 ~~effective date of this act, or three (3) years after the date on~~
2 ~~which the trust becomes irrevocable~~

3 COTRUSTEES

4 A. Cotrustees who are unable to reach a unanimous decision may
5 act by majority decision.

6 B. If a vacancy occurs in a cotrusteeship, the remaining
7 cotrustees may act for the trust.

8 C. A cotrustee must participate in the performance of a
9 trustee's function unless the cotrustee is unavailable to perform
10 the function because of absence, illness, disqualification under
11 other law, or other temporary incapacity or the cotrustee has
12 properly delegated the performance of the function to another
13 trustee.

14 D. If a cotrustee is unavailable to perform duties because of
15 absence, illness, disqualification under other law, or other
16 temporary incapacity, and prompt action is necessary to achieve the
17 purposes of the trust or to avoid injury to the trust property, the
18 remaining cotrustee or a majority of the remaining cotrustees may
19 act for the trust.

20 E. Any cotrustee may give a power of attorney to another
21 trustee or authorize a cotrustee to perform any act in the
22 administration of the trust, but the trustee giving a power of
23 attorney or authorizing an act to be performed by the cotrustee

1 shall have the same liability and responsibility as if the trustee
2 had performed the act done pursuant to the authorization.

3 F. Except as otherwise provided in subsection G of this
4 section, a trustee who does not join in an action of another trustee
5 is not liable for the action.

6 G. Each trustee shall exercise reasonable care to prevent a
7 cotrustee from committing a serious breach of trust.

8 H. A dissenting trustee who joins in an action at the direction
9 of the majority of the trustees and who notified any cotrustee of
10 the dissent at or before the time of the action is not liable for
11 the action unless the action is a serious breach of trust.

12 SECTION 53. AMENDATORY 60 O.S. 2001, Section 175.37, is
13 amended to read as follows:

14 ~~Section 175.37 Upon the death of a sole or surviving trustee of~~
15 ~~an express trust and in the absence of the trust providing for a~~
16 ~~practical method of appointment, the power to appoint a trustee~~
17 ~~shall vest in the court having jurisdiction thereof, and on petition~~
18 ~~of any person interested such court shall appoint a successor in~~
19 ~~whom the trust shall vest~~

20 VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR

21 Unless the trust instrument provides otherwise:

22 1. A vacancy in a trusteeship occurs if:

- 1 a. a person designated as trustee rejects the
- 2 trusteeship,
- 3 b. a person designated as trustee cannot be identified or
- 4 does not exist,
- 5 c. a trustee resigns,
- 6 d. a trustee is disqualified or removed,
- 7 e. a trustee dies, or
- 8 f. a guardian or conservator is appointed for an
- 9 individual serving as trustee;

10 2. If one or more cotrustees remain in office, a vacancy in a
11 trusteeship need not be filled. A vacancy in a trusteeship must be
12 filled if the trust has no remaining trustee;

13 3. A vacancy in a trusteeship of a noncharitable trust that is
14 required to be filled must be filled in the following order of
15 priority:

- 16 a. by a person designated in the terms of the trust to
- 17 act as successor trustee,
- 18 b. by a person appointed by unanimous agreement of the
- 19 qualified beneficiaries, or
- 20 c. by a person appointed by the court;

21 4. A vacancy in a trusteeship of a charitable trust that is
22 required to be filled must be filled in the following order of
23 priority:

- 1 a. by a person designated in the terms of the trust to
2 act as successor trustee,
3 b. by a person selected by the charitable organizations
4 and qualified beneficiaries expressly designated to
5 receive distributions under the terms of the trust, or
6 c. by a person appointed by the court; and

7 5. Whether or not a vacancy in a trusteeship exists or is
8 required to be filled, the court may appoint an additional trustee
9 or special fiduciary whenever the court considers the appointment
10 necessary for the administration of the trust.

11 SECTION 54. AMENDATORY 60 O.S. 2001, Section 175.38, is
12 amended to read as follows:

13 Section 175.38 ~~Upon petition of any trustee of an express~~
14 ~~trust, a court having jurisdiction may accept his resignation, and~~
15 ~~discharge him from the trust upon such terms as the rights of the~~
16 ~~persons interested in the execution of the trust may require~~

17 RESIGNATION OF TRUSTEE

18 Unless the trust instrument provides otherwise:

19 1. A trustee may resign:

- 20 a. upon at least thirty (30) days' notice to the
21 qualified beneficiaries, the settlor, if living, and
22 all cotrustees, or
23 b. with the approval of the court;

1 a. the trustee has committed a serious breach of trust,
2 b. because of unfitness, unwillingness, or persistent
3 failure of the trustee to administer the trust
4 effectively, the court determines that removal of the
5 trustee best serves the interests of the
6 beneficiaries, or
7 c. there has been a substantial change of circumstances
8 or removal is requested by all of the qualified
9 beneficiaries, the court finds that removal of the
10 trustee best serves the interests of all of the
11 beneficiaries and is not inconsistent with a material
12 purpose of the trust, and a suitable cotrustee or
13 successor trustee is available; and

14 3. Pending a final decision on a request to remove a trustee,
15 or in lieu of or in addition to removing a trustee, the court may
16 order such appropriate relief under subsection B of Section 76 of
17 this act as may be necessary to protect the trust property or the
18 interests of the beneficiaries.

19 SECTION 56. AMENDATORY 60 O.S. 2001, Section 173, is
20 amended to read as follows:

21 Section 173. ~~Instruments creating express trusts may provide~~
22 ~~for succession to any trustee, in case of the death, resignation,~~
23 ~~removal, or incapacity of such trustee. In case of any such~~

1 ~~succession, the title to the trust property shall at once vest in~~
2 ~~the succeeding trustee~~

3 DELIVERY OF PROPERTY BY FORMER TRUSTEE

4 A. Unless a cotrustee remains in office or the court otherwise
5 orders, and until the trust property is delivered to a successor
6 trustee or other person entitled to it, a trustee who has resigned
7 or been removed has the duties of a trustee and the powers necessary
8 to protect the property.

9 B. A trustee who has resigned or been removed shall proceed
10 expeditiously to deliver the trust property within the trustee's
11 possession to the cotrustee, successor trustee, or other person
12 entitled to it.

13 SECTION 57. AMENDATORY 60 O.S. 2001, Section 175.48, is
14 amended to read as follows:

15 Section 175.48 ~~A trustee acting in a fiduciary capacity, as~~
16 ~~herein authorized, is entitled to receive such compensation or~~
17 ~~commission as provided for in the trust agreement or other contract.~~
18 ~~If the amount of such compensation or commission is not regulated by~~
19 ~~or stipulated in the trust agreement, the trustee may charge and~~
20 ~~deduct a reasonable compensation or commission for the services~~
21 ~~rendered and the responsibilities assumed. Where the trustee is~~
22 ~~acting under appointment by a court, such compensation or commission~~

1 ~~shall be paid, irrespective of the provisions in the trust~~
2 ~~instrument, as allowed or approved by that court~~

3 COMPENSATION OF TRUSTEE

4 A. If the terms of a trust do not specify the trustee's
5 compensation, a trustee is entitled to compensation that is
6 reasonable under the circumstances.

7 B. If the terms of a trust specify the trustee's compensation,
8 the trustee is entitled to be compensated as specified, but the
9 court may allow more or less compensation if:

10 1. The duties of the trustee are substantially different from
11 those contemplated when the trust was created; or

12 2. The compensation specified by the terms of the trust would
13 be unreasonably low or high.

14 SECTION 58. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1158 of Title 60, unless there
16 is created a duplication in numbering, reads as follows:

17 REIMBURSEMENT OF EXPENSES

18 A. A trustee is entitled to be reimbursed out of the trust
19 property, with interest as appropriate, for:

20 1. Expenses that were properly incurred in the administration
21 of the trust; and

1 B. Subject to the rights of persons dealing with or assisting
2 the trustee as provided in Section 87 of this act, a sale,
3 encumbrance, or other transaction involving the investment or
4 management of trust property entered into by the trustee for the
5 trustee's own personal account or which is otherwise affected by a
6 conflict between the trustee's fiduciary and personal interests is
7 voidable by a beneficiary affected by the transaction unless:

8 1. The transaction was authorized by the terms of the trust;

9 2. The transaction was approved by the court;

10 3. The beneficiary did not commence a judicial proceeding
11 within the time allowed by Section 80 of this act;

12 4. The beneficiary consented to the trustee's conduct, ratified
13 the transaction, or released the trustee in compliance with Section
14 84 of this act; or

15 5. The transaction involves a contract entered into or claim
16 acquired by the trustee before the person became or contemplated
17 becoming trustee.

18 C. A sale, encumbrance, or other transaction involving the
19 investment or management of trust property is presumed to be
20 affected by a conflict between personal and fiduciary interests if
21 it is entered into by the trustee with:

22 1. The trustee's spouse;

1 2. The trustee's descendants, siblings, parents, or their
2 spouses;

3 3. An agent or attorney of the trustee; or

4 4. A corporation or other person or enterprise in which the
5 trustee, or a person that owns a significant interest in the
6 trustee, has an interest that might affect the trustee's best
7 judgment.

8 D. A transaction not concerning trust property in which the
9 trustee engages in the trustee's individual capacity involves a
10 conflict between personal and fiduciary interests if the transaction
11 concerns an opportunity properly belonging to the trust.

12 E. An investment by a trustee in securities of an investment
13 company, investment trust or insurance products of an insurance
14 company, to which the trustee, or its affiliate, provides services
15 in a capacity other than as trustee is not presumed to be affected
16 by a conflict between personal and fiduciary interests if the
17 investment or insurance product otherwise complies with the prudent
18 investor rule of this Code. In addition to its compensation for
19 acting as trustee, the trustee may be compensated by the investment
20 company or investment trust or insurance company for providing those
21 services out of fees charged to the trust. If the trustee receives
22 compensation from the investment company or investment trust for
23 providing investment advisory or investment management services, the

1 trustee at least annually shall notify the persons entitled under
2 Section 71 of this act to receive a copy of the trustee's annual
3 report of the rate and method by which that compensation was
4 determined.

5 F. In voting shares of stock or in exercising powers of control
6 over similar interests in other forms of enterprise, the trustee
7 shall act in the best interests of the beneficiaries. If the trust
8 is the sole owner of a corporation or other form of enterprise, the
9 trustee shall elect or appoint directors or other managers who will
10 manage the corporation or enterprise in the best interests of the
11 beneficiaries.

12 G. This section does not preclude the following transactions,
13 if fair to the beneficiaries:

14 1. An agreement between a trustee and a beneficiary relating to
15 the appointment or compensation of the trustee;

16 2. Payment of reasonable compensation to the trustee;

17 3. A transaction between a trust and another trust, decedent's
18 estate, guardianship or conservatorship of which the trustee is a
19 fiduciary or in which a beneficiary has an interest;

20 4. A deposit of trust money in a regulated financial-service
21 institution operated by the trustee; or

22 5. An advance by the trustee of money for the protection of the
23 trust.

1 H. The court may appoint a special fiduciary to make a decision
2 with respect to any proposed transaction that might violate this
3 section if entered into by the trustee.

4 SECTION 61. AMENDATORY 60 O.S. 2001, Section 175.66, is
5 amended to read as follows:

6 Section 175.66 ~~Impartiality.~~

7 IMPARTIALITY

8 If a trust has two or more beneficiaries, the trustee shall act
9 impartially in investing, ~~and~~ managing and distributing the trust
10 ~~assets, taking into account any differing interests of the~~
11 beneficiaries property, giving due regard to the beneficiaries'
12 respective interests.

13 SECTION 62. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1162 of Title 60, unless there
15 is created a duplication in numbering, reads as follows:

16 PRUDENT ADMINISTRATION

17 A trustee shall administer the trust as a prudent person would,
18 by considering the purposes, terms, distributional requirements, and
19 other circumstances of the trust. In satisfying this standard, the
20 trustee shall exercise reasonable care, skill, and caution.

21 SECTION 63. AMENDATORY 60 O.S. 2001, Section 175.67, is
22 amended to read as follows:

23 Section 175.67 ~~Investment costs.~~

1 COSTS OF ADMINISTRATION

2 In ~~investing and managing~~ administering a trust assets, a
3 trustee may only incur costs that are ~~appropriate and~~ reasonable in
4 relation to the ~~assets~~ trust property, the purposes of the trust,
5 and the skills of the trustee.

6 SECTION 64. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1164 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 TRUSTEE'S SKILLS

10 A trustee who has special skills or expertise, or is named
11 trustee in reliance upon the trustee's representation that the
12 trustee has special skills or expertise, shall use those special
13 skills or expertise.

14 SECTION 65. AMENDATORY 60 O.S. 2001, Section 175.69, is
15 amended to read as follows:

16 Section 175.69 ~~Delegation of investment and management~~
17 ~~functions.~~

18 DELEGATION BY TRUSTEE

19 A. A trustee may delegate ~~investment and management functions~~
20 duties and powers that a prudent trustee of comparable skills could
21 properly delegate under the circumstances. The trustee shall
22 exercise reasonable care, skill, and caution in:

- 23 1. Selecting an agent;

1 trustee, the trustee shall act in accordance with an exercise of the
2 power unless the attempted exercise is manifestly contrary to the
3 terms of the trust or the trustee knows the attempted exercise would
4 constitute a serious breach of a fiduciary duty that the person
5 holding the power owes to the beneficiaries of the trust.

6 C. The terms of a trust may confer upon a trustee or other
7 person a power to direct the modification or termination of the
8 trust.

9 SECTION 67. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1167 of Title 60, unless there
11 is created a duplication in numbering, reads as follows:

12 CONTROL AND PROTECTION OF TRUST PROPERTY

13 A trustee shall take reasonable steps to take control of and
14 protect the trust property.

15 SECTION 68. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1168 of Title 60, unless there
17 is created a duplication in numbering, reads as follows:

18 RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY

19 A. A trustee shall keep adequate records of the administration
20 of the trust.

21 B. A trustee shall keep trust property separate from the
22 trustee's own property.

1 C. A trustee shall cause the trust property to be designated so
2 that the interest of the trust, to the extent feasible, appears in
3 records maintained by a party other than a trustee or beneficiary.

4 D. If the trustee maintains records clearly indicating the
5 respective interests, a trustee may invest as a whole the property
6 of two or more separate trusts.

7 SECTION 69. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1169 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 ENFORCEMENT AND DEFENSE OF CLAIMS

11 A trustee shall take reasonable steps to enforce claims of the
12 trust and to defend claims against the trust.

13 SECTION 70. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1170 of Title 60, unless there
15 is created a duplication in numbering, reads as follows:

16 COLLECTING TRUST PROPERTY

17 A trustee shall take reasonable steps to compel a former trustee
18 or other person to deliver trust property to the trustee, and to
19 redress a breach of trust known to the trustee to have been
20 committed by a former trustee.

21 SECTION 71. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1171 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

1 DUTY TO INFORM AND REPORT

2 A. A trustee shall keep the qualified beneficiaries of the
3 trust reasonably informed about the administration of the trust and
4 of the material facts necessary for them to protect their interests.
5 Unless unreasonable under the circumstances, a trustee shall
6 promptly respond to a qualified beneficiary's request for
7 information related to the administration of the trust.

8 B. A trustee:

9 1. Upon request of a qualified beneficiary, shall promptly
10 furnish to the beneficiary a copy of the trust instrument;

11 2. Within sixty (60) days after accepting a trusteeship, shall
12 notify the qualified beneficiaries of the acceptance and of the
13 trustee's name, address, and telephone number;

14 3. Within sixty (60) days after the date the trustee acquires
15 knowledge of the creation of an irrevocable trust, or the date the
16 trustee acquires knowledge that a formerly revocable trust has
17 become irrevocable, whether by the death of the settlor or
18 otherwise, shall notify the qualified beneficiaries of the trust's
19 existence, of the identity of the settlor or settlors, of the right
20 to request a copy of the trust instrument, and of the right to a
21 trustee's report as provided in subsection C of this section; and

22 4. Shall notify the qualified beneficiaries in advance of any
23 change in the method or rate of the trustee's compensation.

1 C. A trustee shall send to the distributees or permissible
2 distributees of current trust income or principal, and to qualified
3 beneficiaries who request it, at least annually and at the
4 termination of the trust, a report of the trust property,
5 liabilities, receipts, and disbursements, including the source and
6 amount of the trustee's compensation, a listing of the trust assets
7 and, if feasible, their respective market values. Upon a vacancy in
8 a trusteeship, unless a cotrustee remains in office, a report must
9 be sent to the qualified beneficiaries by the former trustee. A
10 personal representative, conservator, or guardian may send the
11 qualified beneficiaries a report on behalf of a deceased or
12 incapacitated trustee.

13 D. A beneficiary may waive the right to a trustee's report or
14 other information otherwise required to be furnished under this
15 section. A beneficiary, with respect to future reports and other
16 information, may withdraw a waiver previously given.

17 SECTION 72. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1172 of Title 60, unless there
19 is created a duplication in numbering, reads as follows:

20 DISCRETIONARY POWERS; TAX SAVINGS

21 A. Notwithstanding the breadth of discretion granted to a
22 trustee in the terms of the trust, including the use of such terms
23 as "absolute", "sole", or "uncontrolled", the trustee shall exercise

1 a discretionary power in good faith and in accordance with the terms
2 and purposes of the trust and the interests of the beneficiaries.

3 B. Subject to subsection D of this section, and unless the
4 terms of the trust expressly indicate that a rule in this subsection
5 does not apply:

6 1. A person other than a settlor who is a beneficiary and
7 trustee of a trust that confers on the trustee a power to make
8 discretionary distributions to or for the trustee's personal benefit
9 may exercise the power only in accordance with an ascertainable
10 standard; and

11 2. A trustee may not exercise a power to make discretionary
12 distributions to satisfy a legal obligation of support that the
13 trustee personally owes another person.

14 C. A power whose exercise is limited or prohibited by
15 subsection B of this section may be exercised by a majority of the
16 remaining trustees whose exercise of the power is not so limited or
17 prohibited. If the power of all trustees is so limited or
18 prohibited, the court may appoint a special fiduciary with authority
19 to exercise the power.

20 D. Subsection B of this section does not apply to:

21 1. A power held by the settlor's spouse who is the trustee of a
22 trust for which a marital deduction, as defined in Section
23 2056(b)(5) or 2523(e) of the Internal Revenue Act of 1986, as in

1 effect on the effective date of this act, or as later amended, was
2 previously allowed;

3 2. Any trust during any period that the trust may be revoked or
4 amended by its settlor; or

5 3. A trust if contributions to the trust qualify for the annual
6 exclusion under Section 2503(c) of the Internal Revenue Act of 1986,
7 as in effect on the effective date of this act, or as later amended.

8 SECTION 73. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1173 of Title 60, unless there
10 is created a duplication in numbering, reads as follows:

11 GENERAL POWERS OF TRUSTEE

12 A. A trustee, without authorization by the court, may exercise:

13 1. Powers conferred by the terms of the trust; and

14 2. Except as limited by the terms of the trust:

15 a. all powers over the trust property which an unmarried
16 owner has over individually owned property,

17 b. any other powers appropriate to achieve the proper
18 investment, management, and distribution of the trust
19 property, and

20 c. any other powers conferred by this act.

21 B. The exercise of a power is subject to the fiduciary duties
22 prescribed in Sections 59 through 73 of this act.

1 SECTION 74. AMENDATORY 60 O.S. 2001, Section 175.24, is
2 amended to read as follows:

3 Section 175.24 ~~Powers of trustees — Enumeration — Others not~~
4 ~~excluded — Bond of trustee.~~

5 A. ~~In the absence of contrary or limiting provisions in the~~
6 ~~trust agreement or a subsequent order or decree of a court of~~
7 ~~competent jurisdiction, the trustee of an express trust is~~
8 ~~authorized:~~

9 1. ~~To exchange, reexchange, subdivide, develop, improve,~~
10 ~~dedicate to public use, make or vacate public plats, adjust~~
11 ~~boundaries, or partition real property, and to adjust differences in~~
12 ~~valuation by giving or receiving money or money's worth. — Easements~~
13 ~~may be dedicated to public use without consideration if deemed by~~
14 ~~the trustee to be for the best interest of the trust;~~

15 2. ~~To grant options and to sell real or personal property at~~
16 ~~public auction or at private sale for cash, or upon credit secured~~
17 ~~by lien upon the property sold or upon such property or a part~~
18 ~~thereof or other property;~~

19 3. ~~To grant or take leases of real property and of all rights~~
20 ~~and privileges above or below the surface of real property for any~~
21 ~~term or terms, including exploration for and removal of oil, gas,~~
22 ~~and other minerals, with or without options of purchase, and with or~~
23 ~~without covenants as to erection of buildings or as to renewals~~

1 ~~thereof, though the term of the lease or renewals thereof, or of~~
2 ~~such options extend beyond the term of the trust;~~

3 ~~4. To raze existing party walls or buildings or erect new party~~
4 ~~walls or buildings alone or jointly with owners of adjacent~~
5 ~~property. To make ordinary repairs and in addition thereto such~~
6 ~~extraordinary alterations in buildings or other structures which are~~
7 ~~necessary to make the property productive. To effect and keep in~~
8 ~~force, fire, rent, title, liability, casualty, or other insurance of~~
9 ~~any nature, in any form and in any amount;~~

10 ~~5. To compromise, contest, arbitrate, or settle any and all~~
11 ~~claims of or against the trust estate or the trustee as such. To~~
12 ~~abandon property deemed by the trustee burdensome or valueless;~~

13 ~~6. To pay calls, assessments, and any other sums chargeable or~~
14 ~~accruing against, or on account of shares of stock or other~~
15 ~~securities in the hands of the trustee where such payment may be~~
16 ~~legally enforceable against the trustee or any property of the~~
17 ~~trust, or the trustee deems payment expedient and for the best~~
18 ~~interest of the trust. To sell or exercise stock subscription or~~
19 ~~conversion rights, participate in foreclosures, reorganizations,~~
20 ~~consolidations, mergers, liquidations, pooling agreements and voting~~
21 ~~trusts; to assent to corporate sales, leases, and encumbrances, and~~
22 ~~in general, except as limited by the particular trust agreement,~~
23 ~~have and exercise all powers of an absolute owner in respect of such~~

1 ~~securities. In the exercise of the foregoing powers the trustee~~
2 ~~shall be authorized, where he deems such course expedient, to~~
3 ~~deposit stocks, bonds, or other securities with any protective or~~
4 ~~other committee formed by or at the instance of persons holding~~
5 ~~similar securities, under such terms and conditions respecting the~~
6 ~~deposit thereof as the trustee may approve. Any stock or other~~
7 ~~securities obtained by conversion, reorganization, consolidation,~~
8 ~~merger, liquidation, or the exercise of subscription rights shall be~~
9 ~~free, unless the trust agreement provides otherwise, from any~~
10 ~~restrictions on sale or otherwise contained in the trust agreement~~
11 ~~relative to the securities originally held;~~

12 ~~7. To make such investment directly or in the form of~~
13 ~~securities of, or other interests in, any open end or closed end~~
14 ~~management type investment company or investment trust registered~~
15 ~~under the Investment Company Act of 1940, 15 U.S.C.A. Section 80a-1~~
16 ~~et seq.; provided, that the portfolio of such investment company or~~
17 ~~investment trust is limited to United States Government obligations~~
18 ~~and to repurchase agreements fully collateralized by such United~~
19 ~~States Government obligations, and provided further, that any such~~
20 ~~investment company or investment trust shall take delivery of such~~
21 ~~collateral, either directly or through an authorized custodian;~~

22 ~~8. To borrow money or create an indebtedness or obligation~~
23 ~~including any bond indebtedness or obligation, except as limited by~~

1 ~~the provisions of the Oklahoma Trust Act, and generally to execute~~
2 ~~any deed or other instrument and to do all things in relation to~~
3 ~~such trust necessary or desirable for carrying out any of the above~~
4 ~~powers or incident to the purposes of such trust; and~~

5 ~~9. To employ attorneys, accountants, agents, and brokers~~
6 ~~reasonably necessary in the administration of the trust estate;~~
7 ~~permit real estate held in trust to be occupied by a surviving~~
8 ~~spouse or minor child of the trustor and, where reasonably necessary~~
9 ~~for the maintenance of the surviving wife or minor child, invest~~
10 ~~trust funds in real property to be used for a home by such~~
11 ~~beneficiary; make any contracts pertaining to oil, gas, or other~~
12 ~~natural resources as are customary in the community where the real~~
13 ~~property held in trust is situated; in the trustee's discretion pay~~
14 ~~funeral expenses of any beneficiary actually receiving benefits from~~
15 ~~the trust estate at the time of the death of the beneficiary.~~

16 ~~B. The following rules of administration shall be applicable to~~
17 ~~all express trusts but such rules shall not be exclusive of those~~
18 ~~otherwise imposed by law unless contrary to these rules:~~

19 ~~1. Where a trustee is authorized to sell or dispose of land,~~
20 ~~such authority shall include the right to sell or dispose of part~~
21 ~~thereof, whether the division is horizontal, vertical, or made in~~
22 ~~any other way, or undivided interests therein;~~

1 ~~2. Where a trustee is authorized by the trust agreement~~
2 ~~creating the trust or by law to pay or apply capital money subject~~
3 ~~to the trust for any purpose or in any manner, the trustee shall~~
4 ~~have and shall be deemed always to have had power to raise the money~~
5 ~~required by selling, converting, calling in, or mortgaging or~~
6 ~~otherwise encumbering all or any part of the trust property for the~~
7 ~~time being in possession;~~

8 ~~3. A trustee shall have a lien and may be reimbursed with~~
9 ~~interest for, or pay or discharge out of the trust property, either~~
10 ~~principal or income or both, all advances made for the benefit or~~
11 ~~protection of the trust or its property and all expenses, losses,~~
12 ~~and liabilities, not resulting from the negligence of the trustee,~~
13 ~~incurred in or about the execution or protection of the trust or~~
14 ~~because of the trustee holding or ownership of any property subject~~
15 ~~thereto; and~~

16 ~~4. When the happening of any event, including marriage,~~
17 ~~divorce, attainment of a certain age, performance of educational~~
18 ~~requirements, death, or any other event, affects distribution of~~
19 ~~income or principal of trust estates, the trustees shall not be~~
20 ~~liable for mistakes of fact prior to the actual knowledge or written~~
21 ~~notice of such fact.~~

22 ~~C. The powers, duties, and responsibilities stated in the~~
23 ~~Oklahoma Trust Act or the Oklahoma Uniform Prudent Investor Act~~

1 ~~shall not be deemed to exclude other implied powers, duties, or~~
2 ~~responsibilities not inconsistent herewith.~~

3 ~~D. The trustee shall pay all taxes and assessments levied or~~
4 ~~assessed against the trust estate or the trustee by governmental~~
5 ~~taxing or assessing agencies.~~

6 ~~E. No trustee shall be required to give bond unless the~~
7 ~~instrument creating the trust, or a court of competent jurisdiction~~
8 ~~in its discretion upon the application of an interested party~~
9 ~~requires a bond to be given~~

10 SPECIFIC POWERS OF TRUSTEE

11 Without limiting the authority conferred by Section 73 of this
12 act or unless restricted by the trust instrument, a trustee may:

13 1. Collect trust property and accept or reject additions to the
14 trust property from a settlor or any other person;

15 2. Acquire or sell property, for cash or on credit, at public
16 or private sale;

17 3. Exchange, partition, or otherwise change the character of
18 trust property;

19 4. Deposit trust money in an account in a regulated financial-
20 service institution;

21 5. Borrow money, with or without security, and mortgage or
22 pledge trust property for a period within or extending beyond the
23 duration of the trust;

1 6. With respect to an interest in a proprietorship,
2 partnership, limited liability company, business trust, corporation,
3 or other form of business or enterprise, continue the business or
4 other enterprise and take any action that may be taken by
5 shareholders, members, or property owners, including merging,
6 dissolving, or otherwise changing the form of business organization
7 or contributing additional capital;

8 7. With respect to stocks or other securities, exercise the
9 rights of an absolute owner, including the right to:

10 a. vote, or give proxies to vote, with or without power
11 of substitution, or enter into or continue a voting
12 trust agreement,

13 b. hold a security in the name of a nominee or in other
14 form without disclosure of the trust so that title may
15 pass by delivery,

16 c. pay calls, assessments, and other sums chargeable or
17 accruing against the securities, and sell or exercise
18 stock subscription or conversion rights, and

19 d. deposit the securities with a depository or other
20 regulated financial service institution;

21 8. With respect to an interest in real property, construct, or
22 make ordinary or extraordinary repairs to, alterations to, or
23 improvements in, buildings or other structures, demolish

1 improvements, raze existing or erect new party walls or buildings,
2 subdivide or develop land, dedicate land to public use or grant
3 public or private easements, and make or vacate plats and adjust
4 boundaries;

5 9. Enter into a lease for any purpose as lessor or lessee,
6 including a lease or other arrangement for exploration and removal
7 of natural resources, with or without the option to purchase or
8 renew, for a period within or extending beyond the duration of the
9 trust;

10 10. Grant an option involving a sale, lease, or other
11 disposition of trust property or acquire an option for the
12 acquisition of property, including an option exercisable beyond the
13 duration of the trust, and exercise an option so acquired;

14 11. Insure the property of the trust against damage or loss and
15 insure the trustee, the trustee's agents, and beneficiaries against
16 liability arising from the administration of the trust;

17 12. Abandon or decline to administer property of no value or of
18 insufficient value to justify its collection or continued
19 administration;

20 13. With respect to possible liability for violation of
21 environmental law:

22 a. inspect or investigate property the trustee holds or
23 has been asked to hold, or property owned or operated

1 by an organization in which the trustee holds or has
2 been asked to hold an interest, for the purpose of
3 determining the application of environmental law with
4 respect to the property,
5 b. take action to prevent, abate, or otherwise remedy any
6 actual or potential violation of any environmental law
7 affecting property held directly or indirectly by the
8 trustee, whether taken before or after the assertion
9 of a claim or the initiation of governmental
10 enforcement,
11 c. decline to accept property into trust or disclaim any
12 power with respect to property that is or may be
13 burdened with liability for violation of environmental
14 law,
15 d. compromise claims against the trust which may be
16 asserted for an alleged violation of environmental
17 law, and
18 e. pay the expense of any inspection, review, abatement,
19 or remedial action to comply with environmental law;
20 14. Pay or contest any claim, settle a claim by or against the
21 trust, and release, in whole or in part, a claim belonging to the
22 trust;

1 15. Pay taxes, assessments, compensation of the trustee and of
2 employees and agents of the trust, and other expenses incurred in
3 the administration of the trust;

4 16. Exercise elections with respect to federal, state, and
5 local taxes;

6 17. Select a mode of payment under any employee benefit or
7 retirement plan, annuity, or life insurance payable to the trustee,
8 exercise rights thereunder, including exercise of the right to
9 indemnification for expenses and against liabilities, and take
10 appropriate action to collect the proceeds;

11 18. Make loans out of trust property, including loans to a
12 beneficiary on terms and conditions the trustee considers to be fair
13 and reasonable under the circumstances, and the trustee has a lien
14 on future distributions for repayment of those loans;

15 19. Pledge trust property to guarantee loans made by others to
16 a qualified beneficiary;

17 20. Appoint a trustee to act in another jurisdiction with
18 respect to trust property located in the other jurisdiction, confer
19 upon the appointed trustee all of the powers and duties of the
20 appointing trustee, require that the appointed trustee furnish
21 security, and remove any trustee so appointed;

22 21. Pay an amount distributable to a beneficiary who is under a
23 legal disability or who the trustee reasonably believes is

1 incapacitated, by paying it directly to the beneficiary or applying
2 it for the beneficiary's benefit, or by:

3 a. paying it to the beneficiary's conservator or, if the
4 beneficiary does not have a conservator, the
5 beneficiary's guardian,

6 b. paying it to the beneficiary's custodian under the
7 Oklahoma Uniform Transfers to Minors Act and, for that
8 purpose, creating a custodianship,

9 c. if the trustee does not know of a conservator,
10 guardian, custodian, or custodial trustee, paying it
11 to an adult relative or other person having legal or
12 physical care or custody of the beneficiary, to be
13 expended on the beneficiary's behalf, or

14 d. managing it as a separate fund on the beneficiary's
15 behalf, subject to the beneficiary's continuing right
16 to withdraw the distribution;

17 22. On distribution of trust property or the division or
18 termination of a trust, make distributions in divided or undivided
19 interests, allocate particular assets in proportionate or
20 disproportionate shares, value the trust property for those
21 purposes, and adjust for resulting differences in valuation;

1 C. An exculpatory term drafted, caused to be drafted, or
2 reviewed by an attorney for the settlor is presumed to be fair and
3 reasonable and its existence and contents are presumed to have been
4 adequately communicated to the settlor unless proven otherwise by
5 clear and convincing evidence.

6 SECTION 84. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1191 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION

10 A trustee is not liable to a beneficiary for breach of trust if
11 the beneficiary consented to the conduct constituting the breach,
12 released the trustee from liability for the breach, or ratified the
13 transaction constituting the breach, unless:

14 1. The consent, release, or ratification of the beneficiary was
15 induced by improper conduct of the trustee; or

16 2. The court finds by clear and convincing evidence that at the
17 time of the consent, release, or ratification, the beneficiary did
18 not know or have reason to know of the beneficiary's rights or of
19 the material facts relating to the breach.

20 SECTION 85. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1192 of Title 60, unless there
22 is created a duplication in numbering, reads as follows:

23 LIMITATION ON PERSONAL LIABILITY OF TRUSTEE

1 partnership is not personally liable on a contract entered into by
2 the partnership after the trust's acquisition of the interest if the
3 fiduciary capacity was disclosed in the contract or in a statement
4 previously filed pursuant to the Oklahoma Revised Uniform
5 Partnership Act, the Oklahoma Uniform Limited Partnership Act, or
6 the partnership law of another state.

7 B. Except as otherwise provided in subsection C of this
8 section, a trustee who holds an interest as a general partner is not
9 personally liable for torts committed by the partnership or for
10 obligations arising from ownership or control of the interest unless
11 the trustee is personally at fault.

12 C. The immunity provided by this section does not apply if an
13 interest in the partnership is held by the trustee in a capacity
14 other than that of trustee or is held by the trustee's spouse or one
15 or more of the trustee's descendants, siblings, or parents, or the
16 spouse of any of them.

17 D. If the trustee of a revocable trust holds an interest as a
18 general partner, the settlor is personally liable for contracts and
19 other obligations of the partnership as if the settlor were a
20 general partner.

21 SECTION 87. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1194 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

1 PROTECTION OF PERSON DEALING WITH TRUSTEE

2 A. A person other than a beneficiary who in good faith assists
3 a trustee, or who in good faith and for value deals with a trustee,
4 without knowledge that the trustee is exceeding or improperly
5 exercising the trustee's powers is protected from liability as if
6 the trustee properly exercised the power.

7 B. A person other than a beneficiary who in good faith deals
8 with a trustee is not required to inquire into the extent of the
9 trustee's powers or the propriety of their exercise.

10 C. A person who in good faith delivers assets to a trustee need
11 not ensure their proper application.

12 D. A person other than a beneficiary who in good faith assists
13 a former trustee, or who in good faith and for value deals with a
14 former trustee, without knowledge that the trusteeship has
15 terminated is protected from liability as if the former trustee were
16 still a trustee.

17 E. Comparable protective provisions of other laws relating to
18 commercial transactions or transfer of securities by fiduciaries
19 prevail over the protection provided by this section.

20 SECTION 88. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1195 of Title 60, unless there
22 is created a duplication in numbering, reads as follows:

23 CERTIFICATION OF TRUST

1 A. Instead of furnishing a copy of the trust instrument to a
2 person other than a beneficiary, the trustee may furnish to the
3 person a certification of trust, which may vary depending on its
4 purpose and whether the trustee is an individual or a corporation,
5 and may contain the following information:

6 1. That the trust exists and the date the trust instrument was
7 executed;

8 2. The identity of the settlor;

9 3. The identity and address of the currently acting trustee;

10 4. The powers of the trustee relevant to the transaction or
11 transactions;

12 5. The revocability or irrevocability of the trust and the
13 identity of any person holding a power to revoke the trust;

14 6. The authority of cotrustees to sign or otherwise
15 authenticate and whether all or less than all are required in order
16 to exercise powers of the trustee; and

17 7. The manner of taking title to trust property.

18 B. A certification of trust may be signed or otherwise
19 authenticated by any trustee.

20 C. A certification of trust must state that the trust has not
21 been revoked, modified, or amended in any manner that would cause
22 the representations contained in the certification of trust to be
23 incorrect.

1 D. A certification of trust need not contain the dispositive
2 terms of a trust.

3 E. A recipient of a certification of trust may require the
4 trustee to furnish copies of those excerpts from the original trust
5 instrument and later amendments which designate the trustee and
6 confer upon the trustee the power to act in the pending transaction.

7 F. A person who acts in reliance upon a certification of trust
8 without knowledge that the representations contained therein are
9 incorrect is not liable to any person for so acting and may assume
10 without inquiry the existence of the facts contained in the
11 certification. Knowledge of the terms of the trust may not be
12 inferred solely from the fact that a copy of all or part of the
13 trust instrument is held by the person relying upon the
14 certification.

15 G. A person who in good faith enters into a transaction in
16 reliance upon a certification of trust may enforce the transaction
17 against the trust property as if the representations contained in
18 the certification were correct.

19 H. A person making a demand for the trust instrument in
20 addition to a certification of trust or excerpts is liable for
21 damages if the court determines that the person did not act in good
22 faith in demanding the trust instrument.

1 I. This section does not limit the right of a person to obtain
2 a copy of the trust instrument in a judicial proceeding concerning
3 the trust.

4 J. Any recipient of a certificate of trust who is also in need
5 of the trust's taxpayer identification number may request it, but
6 only in a separate document which shall not be recorded publicly.

7 K. When the trustee is an individual, not a corporation, the
8 recipient of a certificate of trust may also require supplemental
9 information identifying the name and address of the successor
10 trustees.

11 ARTICLE 11

12 MISCELLANEOUS PROVISIONS

13 SECTION 89. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1196 of Title 60, unless there
15 is created a duplication in numbering, reads as follows:

16 UNIFORMITY OF APPLICATION AND CONSTRUCTION

17 In applying and construing the Oklahoma Uniform Trust Code,
18 consideration may be given to the need to promote uniformity of the
19 law with respect to its subject matter among the states that enact
20 it.

21 SECTION 90. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1197 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

1 RELATION TO ELECTRONIC SIGNATURES IN
2 GLOBAL AND NATIONAL COMMERCE ACT

3 This article modifies, limits and supersedes the federal
4 Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
5 Section 7001 et seq., but does not modify, limit or supersede
6 Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize
7 electronic delivery of any of the notices described in Section
8 103(b) of that Act, 15 U.S.C. Section 7003(b).

9 SECTION 91. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1198 of Title 60, unless there
11 is created a duplication in numbering, reads as follows:

12 APPLICATION TO EXISTING RELATIONSHIPS

13 A. Except as otherwise provided in this act, on November 1,
14 2005:

15 1. This act applies to all trusts created before, on, or after
16 November 1, 2005, but no provision of this act shall make invalid a
17 trust created before November 1, 2005, prejudice the interests of
18 the beneficiaries of a trust created before November 1, 2005, or
19 contravene the terms of a trust created before November 1, 2005;

20 2. This act applies to all judicial proceedings concerning
21 trusts commenced on or after November 1, 2005;

22 3. This act applies to judicial proceedings concerning trusts
23 commenced before November 1, 2005 unless the court finds that

1 application of a particular provision of this act would
2 substantially interfere with the effective conduct of the judicial
3 proceedings or prejudice the rights of the parties, in which case
4 the particular provision of this act does not apply and the
5 superseded law applies;

6 4. Any rule of construction or presumption provided in this act
7 applies to trust instruments executed before November 1, 2005 unless
8 there is a clear indication of a contrary intent in the terms of the
9 trust; and

10 5. An act done before November 1, 2005 is not affected by this
11 act.

12 B. If a right is acquired, extinguished, or barred upon the
13 expiration of a prescribed period that has commenced to run under
14 any other statute before November 1, 2005, that statute continues to
15 apply to the right even if it has been repealed or superseded.

16 SECTION 92. AMENDATORY 60 O.S. 2001, Section 181, is
17 amended to read as follows:

18 Section 181.

19 UNLIMITED MARITAL DEDUCTION; CONSTRUCTION OF TRUST

20 Any trust of a trustor dying after December 31, 1981, which
21 contains a marital deduction formula expressly providing that the
22 spouse of the trustor is to receive the maximum amount of property
23 qualifying for the marital deduction allowable by federal law shall

1 be construed as referring to the unlimited marital deduction
2 provided by the Economic Recovery Tax Act of 1981, Public Law 97-34.
3 This provision shall apply retrospectively to trusts of trustors
4 dying after December 31, 1981.

5 SECTION 93. RECODIFICATION 60 O.S. 2001, Section 175, as
6 amended by Section 12 of this act, shall be recodified as Section
7 1112 of Title 60 of the Oklahoma Statutes, unless there is created a
8 duplication in numbering;

9 60 O.S. 2001, Section 175.6, as amended by Section 22 of this
10 act, shall be recodified as Section 1122 of Title 60 of the Oklahoma
11 Statutes, unless there is created a duplication in numbering;

12 60 O.S. 2001, Section 175.2, as amended by Section 25 of this
13 act, shall be recodified as Section 1125 of Title 60 of the Oklahoma
14 Statutes, unless there is created a duplication in numbering;

15 60 O.S. 2001, Section 136, as amended by Section 28 of this act,
16 shall be recodified as Section 1128 of Title 60 of the Oklahoma
17 Statutes, unless there is created a duplication in numbering;

18 60 O.S. 2001, Section 602, as amended by Section 34 of this act,
19 shall be recodified as Section 1134 of Title 60 of the Oklahoma
20 Statutes, unless there is created a duplication in numbering;

21 60 O.S. 2001, Section 175.17, as amended by Section 52 of this
22 act, shall be recodified as Section 1152 of Title 60 of the Oklahoma
23 Statutes, unless there is created a duplication in numbering;

1 60 O.S. 2001, Section 175.37, as amended by Section 53 of this
2 act, shall be recodified as Section 1153 of Title 60 of the Oklahoma
3 Statutes, unless there is created a duplication in numbering;

4 60 O.S. 2001, Section 175.38, as amended by Section 54 of this
5 act, shall be recodified as Section 1154 of Title 60 of the Oklahoma
6 Statutes, unless there is created a duplication in numbering;

7 60 O.S. 2001, Section 175.39, as amended by Section 55 of this
8 act, shall be recodified as Section 1155 of Title 60 of the Oklahoma
9 Statutes, unless there is created a duplication in numbering;

10 60 O.S. 2001, Section 173, as amended by Section 56 of this act,
11 shall be recodified as Section 1156 of Title 60 of the Oklahoma
12 Statutes, unless there is created a duplication in numbering;

13 60 O.S. 2001, Section 175.48, as amended by Section 57 of this
14 act, shall be recodified as Section 1157 of Title 60 of the Oklahoma
15 Statutes, unless there is created a duplication in numbering;

16 60 O.S. 2001, Section 175.66, as amended by Section 61 of this
17 act, shall be recodified as Section 1161 of Title 60 of the Oklahoma
18 Statutes, unless there is created a duplication in numbering;

19 60 O.S. 2001, Section 175.67, as amended by Section 63 of this
20 act, shall be recodified as Section 1163 of Title 60 of the Oklahoma
21 Statutes, unless there is created a duplication in numbering;

1 60 O.S. 2001, Section 175.69, as amended by Section 65 of this
2 act, shall be recodified as Section 1165 of Title 60 of the Oklahoma
3 Statutes, unless there is created a duplication in numbering;

4 60 O.S. 2001, Section 175.24, as amended by Section 74 of this
5 act, shall be recodified as Section 1174 of Title 60 of the Oklahoma
6 Statutes, unless there is created a duplication in numbering;

7 60 O.S. 2001, Section 175.60, shall be recodified as Section
8 1176 of Title 60 of the Oklahoma Statutes, unless there is created a
9 duplication in numbering;

10 60 O.S. 2001, Section 175.61, shall be recodified as Section
11 1177 of Title 60 of the Oklahoma Statutes, unless there is created a
12 duplication in numbering;

13 60 O.S. 2001, Section 175.62, shall be recodified as Section
14 1178 of Title 60 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering;

16 60 O.S. 2001, Section 175.63, shall be recodified as Section
17 1179 of Title 60 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering;

19 60 O.S. 2001, Section 175.64, shall be recodified as Section
20 1180 of Title 60 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering;

1 60 O.S. 2001, Section 175.69, shall be recodified as Section
2 1181 of Title 60 of the Oklahoma Statutes, unless there is created a
3 duplication in numbering;

4 60 O.S. 2001, Section 175.70, shall be recodified as Section
5 1182 of Title 60 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering; and

7 60 O.S. 2001, Section 181, as amended by Section 92 of this act,
8 shall be recodified as Section 1199 of Title 60 of the Oklahoma
9 Statutes, unless there is created a duplication in numbering;

10 60 O.S. 2001, Section 175.101, shall be recodified as Section
11 1301 of Title 60 of the Oklahoma Statutes, unless there is created a
12 duplication in numbering;

13 60 O.S. 2001, Section 175.102, shall be recodified as Section
14 1302 of Title 60 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering;

16 60 O.S. 2001, Section 175.103, shall be recodified as Section
17 1303 of Title 60 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering;

19 60 O.S. 2001, Section 175.104, shall be recodified as Section
20 1304 of Title 60 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering;

1 60 O.S. 2001, Section 175.201, shall be recodified as Section
2 1305 of Title 60 of the Oklahoma Statutes, unless there is created a
3 duplication in numbering;

4 60 O.S. 2001, Section 175.202, shall be recodified as Section
5 1306 of Title 60 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering;

7 60 O.S. 2001, Section 175.301, shall be recodified as Section
8 1307 of Title 60 of the Oklahoma Statutes, unless there is created a
9 duplication in numbering;

10 60 O.S. 2001, Section 175.302, shall be recodified as Section
11 1308 of Title 60 of the Oklahoma Statutes, unless there is created a
12 duplication in numbering;

13 60 O.S. 2001, Section 175.303, shall be recodified as Section
14 1309 of Title 60 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering;

16 60 O.S. 2001, Section 175.401, shall be recodified as Section
17 1310 of Title 60 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering;

19 60 O.S. 2001, Section 175.402, shall be recodified as Section
20 1311 of Title 60 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering;

1 60 O.S. 2001, Section 175.403, shall be recodified as Section
2 1312 of Title 60 of the Oklahoma Statutes, unless there is created a
3 duplication in numbering;

4 60 O.S. 2001, Section 175.404, shall be recodified as Section
5 1313 of Title 60 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering;

7 60 O.S. 2001, Section 175.405, shall be recodified as Section
8 1314 of Title 60 of the Oklahoma Statutes, unless there is created a
9 duplication in numbering;

10 60 O.S. 2001, Section 175.406, shall be recodified as Section
11 1315 of Title 60 of the Oklahoma Statutes, unless there is created a
12 duplication in numbering;

13 60 O.S. 2001, Section 175.407, shall be recodified as Section
14 1316 of Title 60 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering;

16 60 O.S. 2001, Section 175.408, shall be recodified as Section
17 1317 of Title 60 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering;

19 60 O.S. 2001, Section 175.409, shall be recodified as Section
20 1318 of Title 60 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering;

1 60 O.S. 2001, Section 175.410, shall be recodified as Section
2 1319 of Title 60 of the Oklahoma Statutes, unless there is created a
3 duplication in numbering;

4 60 O.S. 2001, Section 175.411, shall be recodified as Section
5 1320 of Title 60 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering;

7 60 O.S. 2001, Section 175.412, shall be recodified as Section
8 1321 of Title 60 of the Oklahoma Statutes, unless there is created a
9 duplication in numbering;

10 60 O.S. 2001, Section 175.413, shall be recodified as Section
11 1322 of Title 60 of the Oklahoma Statutes, unless there is created a
12 duplication in numbering;

13 60 O.S. 2001, Section 175.414, shall be recodified as Section
14 1323 of Title 60 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering;

16 60 O.S. 2001, Section 175.415, shall be recodified as Section
17 1324 of Title 60 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering;

19 60 O.S. 2001, Section 175.501, shall be recodified as Section
20 1325 of Title 60 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering;

1 60 O.S. 2001, Section 175.502, shall be recodified as Section
2 1326 of Title 60 of the Oklahoma Statutes, unless there is created a
3 duplication in numbering;

4 60 O.S. 2001, Section 175.503, shall be recodified as Section
5 1327 of Title 60 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering;

7 60 O.S. 2001, Section 175.504, shall be recodified as Section
8 1328 of Title 60 of the Oklahoma Statutes, unless there is created a
9 duplication in numbering;

10 60 O.S. 2001, Section 175.505, shall be recodified as Section
11 1329 of Title 60 of the Oklahoma Statutes, unless there is created a
12 duplication in numbering;

13 60 O.S. 2001, Section 175.506, shall be recodified as Section
14 1330 of Title 60 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering;

16 60 O.S. 2001, Section 175.601, shall be recodified as Section
17 1331 of Title 60 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering; and

19 60 O.S. 2001, Section 175.602, shall be recodified as Section
20 1332 of Title 60 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering.

22 SECTION 94. REPEALER 60 O.S. 2001, Sections 140, 175.1,
23 175.3, 175.9, 175.10, 175.11, 175.12, 175.13, 175.14, 175.15,

1 175.18, 175.21, 175.23, 175.25, 175.40, 175.41, 175.42, 175.49,
2 175.50, 175.53, 175.54, 175.55, 175.57, 175.65, 175.71, 175.72 and
3 601, are hereby repealed.

4 SECTION 95. This act shall become effective November 1, 2008.

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-19-08 - DO
6 PASS, As Amended and Coauthored.