FIRST ENGROSSMENT

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1034

Introduced by

Legislative Council

(Judiciary Committee)

A BILL for an Act to create and enact a new section to chapter 59-08 and chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, 59-19, and 59-20 of the North Dakota Century Code, relating to adoption of the uniform trust code and charitable trusts; to amend and reenact section 3-02-05, subsection 24 of section 10-33-21, section 10-33-105, subsection 7 of section 23-20.3-03.1, sections 23-21.1-03, 30.1-18-03, 30.1-20-13, 30.1-29-17, 30.1-32-03, 30.1-34-02, 38-10-12, and 38-13-01, and subsection 2 of section 59-08-01 of the North Dakota Century Code, relating to trusts; to repeal chapters 30.1-32, 30.1-33, 30.1-34, 59-01, 59-02, 59-03, 59-04, and 59-05 of the North Dakota Century Code, relating to trusts; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 3-02-05 of the North Dakota Century Code is amended and reenacted as follows:

3-02-05. General authority limited. An authority expressed in general terms, however broad, does not authorize an agent~~:~~

~~1.~~ ~~To~~ to act in ~~his~~ the agent's own name unless ~~it~~ doing so is the usual course of business to ~~do so;~~

~~2.~~ ~~To~~ define the scope of ~~his~~ the agent's agency~~;~~ or

~~3.~~ ~~To~~ to do any act ~~which~~ that a trustee is forbidden to do ~~by the provisions of sections 59-01-09 to 59-01-19, inclusive~~ under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

SECTION 2. AMENDMENT. Subsection 24 of section 10-33-21 of the North Dakota Century Code is amended and reenacted as follows:

24. Except when the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with ~~sections 59-02-08.1 through~~

~~59-02-08.11~~ chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

SECTION 3. AMENDMENT. Section 10-33-105 of the North Dakota Century Code is amended and reenacted as follows:

10-33-105. Distribution of assets.

1. In performing the duties under section 10-33-100, the board, or the officers acting under the direction of the board, shall distribute the assets of the corporation in the following order of priority:
   a. Distribution of assets received and held for a special use or purpose under subsection 2;
   b. Payment of costs and expenses of the dissolution proceedings, including attorney's fees and disbursements;
   c. Payment of debts, obligations, and liabilities of the corporation;
   d. Distribution of assets pursuant to articles or bylaws of the dissolving corporation or the rules or canons of another organization under subsection 3; and
   e. Distribution of remaining assets under subsection 4.
2. Assets of the corporation may not be diverted from the uses and purposes for which the assets have been received and held or from the uses and purposes expressed or intended by the original donor.
3. When the articles or bylaws of the dissolving corporation, or the rules or canons of another organization by which the dissolving corporation is bound, provide for a particular distribution of the assets of the dissolving corporation, the assets must be distributed accordingly.
4. The distribution of assets held for or devoted to a charitable or public use or purpose is subject to section ~~59-02-22~~ 59-20-01.

SECTION 4. AMENDMENT. Subsection 7 of section 23-20.3-03.1 of the North Dakota Century Code is amended and reenacted as follows:

7. Before agreeing to any institutional controls or responsibility exemptions, the department may require insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on

the property after the site-specific responsibility exemptions and institutional controls are established, and must require such insurance coverage or other financial assurance when the projected cost of an active monitoring or remediation program exceeds five hundred thousand dollars. The department may enter a joint agreement with affected political subdivisions, state or federal agencies, property owners, lenders, the administrator of the petroleum tank release compensation fund, or any responsible or potentially responsible party concerning payment for or funding of any insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on contaminated or affected properties. Such agreements do not waive the liability limitations that apply by law to the state, to state agencies, or to political subdivisions, except up to the amounts, and subject to the terms, conditions, and limitations, of any insurance policy or any financial assurance fund created by the joint agreement of the parties under this subsection. Any financial assurance fund must comply with chapters ~~59-01, 59-02, 59-03, and 59-04,~~ 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 and be managed for the benefit of the affected persons or community, but liability of the fund may not exceed the amount deposited with the fund.

SECTION 5. AMENDMENT. Section 23-21.1-03 of the North Dakota Century Code is amended and reenacted as follows:

23-21.1-03. Creation of perpetual care fund.

1. Any organization subject to this chapter which is organized or commences business in this state and desires to operate as a perpetual care cemetery, before selling or disposing of any interment space or lots, shall establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash, except that the minimum perpetual care and maintenance guarantee fund for organizations in operation on July 1, 1963, must be five thousand dollars. The perpetual care and maintenance guarantee fund must be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court shall have jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond

required, and investment of funds as provided by ~~chapter 59-04~~ chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 relating to the administration of trust estates. Only the income from such fund may be used for the care and maintenance of the cemetery for which it was established. All such organizations shall submit at least annually, to the district court, such reports as are required. The clerks of each of the district courts shall transmit copies of all reports, and rules and regulations enacted by the organization, to the state department of health and the commissioner of financial institutions.

2. To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

~~1.~~ a. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult space, whichever is the greater.

~~2.~~ b. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches [1006.8 millimeters] in length or ten dollars for each space up to sixty inches [1524 millimeters] in length, whichever is the greater.

~~3.~~ c. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each space or crypt in a mausoleum, whichever is the greater, except a mausoleum located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community mausoleum itself shall contain a minimum of twenty percent of the cost of the construction of such public or community mausoleum.

~~4.~~ d. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a columbarium, except a columbarium located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or

community columbarium itself shall contain a minimum of twenty percent of the cost of the construction of such public or community columbarium.

~~5.~~ e. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars, whichever is the greater, for each interment space in crypt gardens or any other structure or device by whatever name, established or constructed wholly or partially above the natural surface of the ground, for the interment of any dead human body.

3. There is no required perpetual care fund deposit on spaces provided without charge for paupers and infants.

SECTION 6. AMENDMENT. Section 30.1-18-03 of the North Dakota Century Code is amended and reenacted as follows:

30.1-18-03. (3-703) General duties - Relation and liability to persons interested in estate - Standing to sue.

1. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees ~~as described by section 30.1-34-02~~. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this title, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this title, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

2. A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will authorizes a personal representative to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, authorizes the personal representative to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal

proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described in this title.

3. Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at the decedent's death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death.

SECTION 7. AMENDMENT. Section 30.1-20-13 of the North Dakota Century Code is amended and reenacted as follows:

30.1-20-13. (3-913) Distributions to trustee.

1. Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries ~~as provided in section 30.1-34-03~~.
2. If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if the personal representative apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and the personal representative may withhold distribution until the court has acted.
3. No inference of negligence on the part of the personal representative shall be drawn from the personal representative's failure to exercise the authority conferred by subsections 1 and 2.

SECTION 8. AMENDMENT. Section 30.1-29-17 of the North Dakota Century Code is amended and reenacted as follows:

30.1-29-17. (5-417) General duty of conservator. In the exercise of conservator's powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees ~~as described by section 30.1-34-02~~.

SECTION 9. AMENDMENT. Section 30.1-32-03 of the North Dakota Century Code is amended and reenacted as follows:

30.1-32-03. (7-103) Effect of registration.

1. By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the district court in any proceeding under ~~section 30.1-33-01~~ chapter 59-10 relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding must be delivered to the trustee, or mailed to the trustee by ordinary first-class mail, at the trustee's address as listed in the registration or as thereafter reported to the district court and to the trustee's address as then known to the petitioner.
2. To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this state are subject to the jurisdiction of the district court of registration for the purposes of proceedings under ~~section 30.1-33-01~~ chapter 59-10, provided notice is given pursuant to section 30.1-03-01.

SECTION 10. AMENDMENT. Section 30.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-34-02. (7-302) Trustee's standard of care and performance. Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets as provided in ~~sections 59-02-08.1 through 59-02-08.11~~ chapter 59-17.

SECTION 11. AMENDMENT. Section 38-10-12 of the North Dakota Century Code is amended and reenacted as follows:

38-10-12. Appointment of trustee to execute mineral lease if contingent future interests are involved. If lands, or any estate or interest therein, are subject to any contingent future interest, legal or equitable, by way of remainder, reversion, or possibility of reverter, upon the happening of a condition subsequent, or otherwise, created by deed, will, or otherwise, and whether a trust is involved or not, and it is made to appear that it will be advantageous to the present and ultimate owners of said lands or estate or interest therein, the district court of the county in which the land or a portion thereof is situated has the power, pending the happening of any contingency and the vesting of such future interest or interests, to declare a trust in said lands or estate or interest therein, appoint a trustee therefor, and to authorize such trustee to sell, on such terms and containing such conditions as the court may prescribe, execute and

deliver a valid oil, gas, coal, or other mineral lease covering said lands or estate or interest therein. If a trust is in existence and there is a trustee serving under the trust, the trustee appointed by the court under this section must be the same trustee or trustees as are serving under the existing trust. All proceedings must substantially comply with that provided for the administration of trusts in chapters ~~30.1-33, 30.1-34, and 59-04~~ 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

SECTION 12. AMENDMENT. Section 38-13-01 of the North Dakota Century Code is amended and reenacted as follows:

38-13-01. Appointment of trustee to execute mineral lease and other documents if owner or claimant is absent - Administration of trust. If any undivided mineral, leasehold, or royalty interest in land is claimed or owned by a person whose place of residence and whereabouts is unknown, and cannot reasonably be ascertained, the district court of the county in which the said land or a portion thereof is situated has the power to declare a trust in the interest of such owner or claimant and appoint a trustee therefor. Upon satisfactory proof made by the petitioner that a diligent but unsuccessful effort to locate such owner or claimant has been made and that it will be in the best interest of all owners of interests in said lands, the court shall authorize such trustee to execute and deliver an oil, gas, or other mineral lease, an assignment of leasehold interest, a ratification, division orders or other related documents or instruments on such terms and conditions as the court may approve. All proceedings must substantially comply with that provided for the administration of trusts in chapters ~~30.1-33, 30.1-34, and 59-04~~ 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

SECTION 13. AMENDMENT. Subsection 2 of section 59-08-01 is amended and reenacted as follows:

2. "Self-settled special needs trust" means a trust created by an individual with a disability after August 10, 1993, which qualifies under 42 U.S.C. ~~1396p(d)(4)(A)~~ 1396p(d)(4).

SECTION 14. A new section to chapter 59-08 of the North Dakota Century Code is created and enacted as follows:

Conflicts with other chapters. If any provision of this chapter conflicts with chapter 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, or 59-19, the provision of this chapter takes precedence.

SECTION 15. Chapter 59-09 of the North Dakota Century Code is created and enacted as follows:

59-09-01. (101) Short title. Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 may be cited as the North Dakota Uniform Trust Code.

59-09-02. (102) Scope.

1. Except as provided in subsection 2, chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 apply to express trusts, whether charitable or noncharitable and testamentary or inter vivos, and to trusts created pursuant to a statute or a judgment or decree that requires the trust to be administered in the manner of an express trust.
2. Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 do not apply to:
    a. A trust that is part of an employee benefit arrangement or an individual retirement account.
    b. A trust account established under a qualified tuition savings program pursuant to section 6-09-38.
    c. Trust accounts maintained on behalf of clients or customers by licensed service professionals, including trust accounts maintained by attorneys pursuant to the North Dakota Rules of Professional Conduct and by real estate brokers pursuant to chapter 43-23.
    d. An endowment care fund established by a cemetery authority pursuant to chapter 23-21.
    e. Funds maintained by public bodies as defined by chapter 1-07 or other governmental unit entities.
    f. Trust funds held for a single business transaction or an escrow arrangement.
    g. Trusts created by a depository agreement with a financial institution.
    h. An account maintained under the North Dakota Uniform Transfers to Minors Act as contained in chapter 47-24.1.

i. A fund maintained pursuant to court order in conjunction with a bankruptcy proceeding or a business liquidation.

j. A voting trust described in chapter 10-19.1.

k. Funds maintained to manage proceeds from class actions.

l. A trust created solely to secure the performance of an obligation.

m. A trust created on behalf of a resident of a residential facility.

n. A trust managed by a nonprofit association for disabled individuals under 42 U.S.C. 1396p(d)(4), as in effect on the effective date of chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 and under the rules adopted by the department of human services.

o. A resulting or constructive trust.

59-09-03. (103) Definitions. Any term not specifically defined in this section has the meaning provided in title 30.1. Unless the context otherwise requires, in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19:

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

2. "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

3. "Beneficiary" means a person that:

   a. Has a present or future beneficial interest in a trust, vested or contingent; including the owner of an interest by assignment or transfer; or

   b. In a capacity other than that of a trustee, holds a power of appointment over trust property.

4. "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection 1 of section 59-12-05.

5. "Conservator" is as defined in section 30.1-01-06.

6. "Distributee" means any person who receives property of a trust from a trustee, other than as a creditor or purchaser.

7. "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

8. "Guardian" is as defined in section 30.1-01-06.

9. "Internal Revenue Code" means the Internal Revenue Code of 1986, or corresponding future provisions of federal tax law.

10. "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

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

12. "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

13. "Power of withdrawal" means a presently excisable general power of appointment other than a power:

    a. Exercisable by a trustee and limited by an ascertainable standard; or

    b. Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

14. "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

15. "Qualified beneficiary":

    a. Means a beneficiary who, on the date the beneficiary's qualification is determined:

        (1) Is a permissible distributee of trust income or principal;

        (2) Would be a permissible distributee of trust income or principal if the interests of the distributees described in paragraph 1 terminated on that date without causing the trust to terminate; or

        (3) Would be a permissible distributee of trust income or principal if the trust terminated on that date.

    b. Does not include a contingent distributee or a contingent permissible distributee of trust income or principal whose interest in the trust in not reasonably expected to vest.

16. "Record" means information that is enshrined on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

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

18. "Settlor" means a person, including a testator, that creates, or contributes property to a trust and if more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

19. "Signed" means:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by a facsimile telecommunication or electronically, or in any other manner reproduced on the record, is place on a record or instrument with the present intention to authenticate the record or instrument.

b. With respect to a record or instrument required by this chapter to be filed with the clerk of court, that:

(1) The record or instrument has been signed by a person authorized to do so by this chapter or by the trust instrument; and

(2) The signature and the record or instrument are communicated by a method or medium acceptable to the clerk of court.

20. "Special needs trust" means special needs trust as defined in section 59-08-01.

21. "Spendthrift provision" means a term of a trust which restrains either the voluntary or involuntary or both the voluntary and involuntary transfer of a beneficiary's interest and does not include or prevent a disclaimer of an interest of a beneficiary.

22. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

24. "Trust instrument" means a record signed by the settlor that contains terms of the trust, including any amendments to the record and any modifications permitted by court order or by binding nonjudicial settlement agreement.

25. "Trustee" includes an original, additional, and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court.

59-09-04. (104) Knowledge.

1. Subject to subsection 2, a person has knowledge of a fact if the person has actual knowledge of a fact; has received a notice or notification of a fact; or from all the facts and circumstances known to the person at the time in question, has reason to know a fact.

2. An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if the organization maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

59-09-05. (105) Default and mandatory rules.

1. Except as otherwise provided in the terms of the trust, this title governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

2. The terms of a trust prevail over any provision of this title except:

   a. The requirements for creating a trust;

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

   c. The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful and possible to achieve;

   d. The power of the court to modify or terminate a trust under sections 59-12-10, 59-12-11, 59-12-12, 59-12-13, 59-12-14, 59-12-15, and 59-12-16;

e. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in chapter 59-13;

f. The power of the court under section 59-15-02 to require, dispense with, or modify or terminate a bond;

g. The power of the court under subsection 2 of section 59-15-08 to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

h. The effect of an exculpatory term under section 59-18-08;

i. The rights under sections 59-18-10, 59-18-11, 59-18-12, and 59-18-13 of a person other than a trustee or beneficiary;

j. Periods of limitation for commencing a judicial proceeding;

k. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

l. The subject matter jurisdiction of the court and venue for commencing a proceeding as provided in section 59-10-04.

59-09-06. (106) Common law of trusts - Principles of equity. The common law of trusts and principles of equity supplement chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, except to the extent modified by chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or another statute of this state.

59-09-07. (107) Governing law. The meaning and effect of the terms of a trust are determined by the law of the jurisdiction designated in the terms or, in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

59-09-08. (108) Principal place of administration.

1. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction, or all or part of the administration occurs in the designated jurisdiction.

2. A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

3. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection 2, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

4. The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration or a proposed transfer of some or all of the trust property to a successor trustee not less than sixty days before initiating the transfer. The notice of proposed transfer must include the name of the jurisdiction to which the principal place of administration is to be transferred; the address and telephone number at the new location at which the trustee can be contacted; an explanation of the reasons for the proposed transfer; the date on which the proposed transfer is anticipated to occur; and the date, not less than sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

5. The authority of a trustee under this section to transfer a trust's principal place of administration or a proposed transfer of some or all of the trust property to a successor trustee terminates if a majority of the qualified beneficiaries notify the trustee of an objection to the proposed transfer on or before the date specified in the notice.

6. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 59-15-04.

59-09-09. (109) Methods and waiver of notice.

1. Notice to a person under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or the sending of a document to a person under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail,

personal delivery, delivery to the person's last-known place of residence or place of business, or a properly directed electronic message.

2. Notice otherwise required under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or a document otherwise required to be sent under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 does not need to be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

3. Notice under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or the sending of a document under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 may be waived by the person to be notified or sent the document.

4. Notice of a judicial proceeding must be given as provided in the applicable North Dakota Rules of Civil Procedure or as provided under section 30.1-03-01.

59-09-10. (110) Others treated as qualified beneficiaries.

1. A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 if the charitable organization, on the date the charitable organization's qualification is being determined:

   a. Is a permissible distributee of trust income or principal;

   b. Would be a permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

   c. Would be a permissible distributee of trust income or principal if the trust terminated on that date.

2. A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 59-12-08 or 59-12-09 has the rights of a qualified beneficiary under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

3. The attorney general of this state has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

59-09-11. (111) Nonjudicial settlement agreements.

1. For purposes of this section, "interested persons" means a trustee and persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.
2. Except as otherwise provided in subsection 3, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.
3. A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or other applicable law. A spendthrift provision in the terms of a trust is presumed to constitute a material purpose of the trust.
4. Matters that may be resolved by a nonjudicial settlement agreement include the interpretation or construction of the terms of the trust, the approval of a trustee's report or accounting, direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power, the resignation or appointment of a trustee and the determination of a trustee's compensation, transfer of a trust's principal place of administration, liability of a trustee for an action relating to the trust, the extent or waiver of bond of a trustee, and the criteria for distribution to a beneficiary where the trustee is given discretion.
5. Any interested person may request the court to approve a nonjudicial settlement agreement to determine whether the representation as provided in chapter 59-11 was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.

59-09-12. (112) Rules of construction. The rules of construction that apply to the interpretation of and disposition of property by will or other governing instrument provided for under chapter 30.1-09.1 also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

SECTION 16. Chapter 59-10 of the North Dakota Century Code is created and enacted as follows:

59-10-01. (201) Role of court in administration of trust.

1. The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.
2. A trust is not subject to continuing judicial supervision unless ordered by the court.
3. A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

59-10-02. (202) Jurisdiction over trustee and beneficiary.

1. By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.
2. With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from the trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.
3. This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

59-10-03. Reserved.

59-10-04. (204) Venue.

1. Except as otherwise provided in subsection 2, venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.
2. If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

SECTION 17. Chapter 59-11 of the North Dakota Century Code is created and enacted as follows:

59-11-01. (301) Representation - Basic effect.

1. Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person. Notice of a hearing on any petition for a judicial hearing must be given as provided in the North Dakota Rules of Civil Procedure.
2. The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation to the trustee or representative before the consent would otherwise have become effective.
3. Except as otherwise provided in sections 59-12-11 and 59-14-02, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.
4. A settlor may not represent and bind a beneficiary under this chapter with respect to the termination or modification of a trust under subsection 1 of section 59-12-11.

59-11-02. (302) Representation by holder of general power of appointment. The holder of a presently exercisable general power of appointment and the persons represented with respect to the particular question or dispute may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power. The term "presently exercisable general power of appointment" includes a testamentary general power of appointment having no conditions precedent to its exercise other than the death of the holder, the validity of the holder's last will and testament, and the inclusion of a provision in the will sufficient to exercise this power.

59-11-03. (303) Representation by fiduciaries and parents. To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

1. A conservator may represent and bind the estate that the conservator controls to the extent of the powers and authority conferred upon conservators generally or by court order.
2. A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed to the extent of the powers and authority conferred upon guardians generally or by court order.

3. An agent under a power of attorney or having other written authority to act with respect to the particular question or dispute may represent and bind the principal.

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

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

6. A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed. If a disagreement arises between parents seeking to represent the same minor child:

   a. The parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child;

   b. If both parents are beneficiaries of the trust that is the subject of the representation, the parent who is a lineal descendant of the settlor is entitled to represent the minor child;

   c. If neither parent is a beneficiary of the trust that is the subject of the representation, the parent who is a lineal descendant of the settlor is entitled to represent the minor child; and

   d. If neither parent is a beneficiary or a lineal descendant of the settlor of the trust that is the subject of the representation, a guardian ad litem must be appointed to represent the minor child.

7. A person may represent and bind that person's unborn issue.

59-11-04. (304) Representation by person having substantially identical interest. Unless otherwise represented, a minor, incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented with respect to the particular question or dispute.

59-11-05. (305) Appointment of representative.

1. If the court determines that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated or unborn individual, or a person

whose identity or location is unknown and not reasonably ascertainable. A representative may be appointed to represent several persons or interests.

2. A representative may act on behalf of the individual represented with respect to any matter arising under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, whether or not a judicial proceeding concerning the trust is pending.

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

SECTION 18. Chapter 59-12 of the North Dakota Century Code is created and enacted as follows:

59-12-01. (401) Methods of creating trust. A trust may be created by transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death, declaration by the owner of property that the owner holds identifiable property as trustee, or exercise of a power of appointment in favor of a trustee.

59-12-02. (402) Requirements for creation.

1. A trust is created only if the settlor has capacity to create a trust, the settlor indicates an intention to create the trust, the trust has a definite beneficiary or is a charitable trust, a trust for the care of an animal, as provided in section 59-12-08, or a trust for a noncharitable purpose, as provided in section 59-12-09; the trustee has duties to perform; and the same person is not the sole trustee and sole beneficiary.

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

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

59-12-03. (403) Trusts created in other jurisdictions. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which at the time of creation the settlor

was domiciled, had a place of abode, or was a national; a trustee was domiciled or had a place of business; or any trust property was located.

59-12-04. (404) Trust purposes. A trust may be created only to the extent its purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

59-12-05. (405) Charitable purposes - Enforcement.

1. A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.
2. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.
3. The settlor of a charitable trust or the attorney general, among others, may maintain a proceeding to enforce the trust.
4. Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 do not impair the rights and powers of the attorney general with respect to any trust.
5. In all cases of charitable trusts, the attorney general and the state's attorney of the county in which the trust is located are interested persons with respect to the trust estate.

59-12-06. (406) Creation of trust induced by fraud, duress, or undue influence. A trust is void or subject to reformation by the court to the extent its creation was induced by fraud, duress, or undue influence.

59-12-07. (407) Evidence of oral trust. Except as required by section 47-11-02 or a statute other than chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms, or an amendment or revocation of an oral trust, may be established only by clear and convincing evidence.

59-12-08. (408) Trust for care of animal.

1. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.
2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.
3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

59-12-09. (409) Noncharitable trust without ascertainable beneficiary. Except as otherwise provided in section 59-12-08 or by another statute, the following rules apply:

1. A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee.
2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.
3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

59-12-10. (410) Modification or termination of trust - Proceedings for approval or disapproval.

1. In addition to the methods of termination prescribed by sections 59-12-11, 59-12-12, 59-12-13, and 59-12-14, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful or impossible to achieve.
2. A proceeding to approve or disapprove a proposed modification or termination under sections 59-12-11, 59-12-12, 59-12-13, 59-12-14, 59-12-15, and 59-12-16, or trust combination or division under section 59-12-17, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 59-12-13.

59-12-11. (411) Modification or termination of noncharitable irrevocable trust by consent.

1. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.
2. Upon termination of a trust under subsection 1, the trustee shall distribute the trust property as agreed by the beneficiaries.
3. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection 1, the modification or termination may be approved by the court if the court is satisfied that if all of the beneficiaries had consented, the trust could have been modified or terminated under this section and the interests of a beneficiary who does not consent will be adequately protected.

59-12-12. (412) Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

1. Upon petition by the trustee, the attorney general, or an interested party other than the settlor, the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent

practicable, the modification must be made in accordance with the settlor's probable intention.

2. The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

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

59-12-13. (413) Cy pres.

1. Except as otherwise provided in subsection 2, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful, the trust does not fail, in whole or in part; the trust property does not revert to the settlor or the settlor's successors in interest; and the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

2. A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection 1 to apply cy pres to modify or terminate the trust.

59-12-14. (414) Modification or termination of uneconomic trust.

1. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

2. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if the court determines that the value of the trust property is insufficient to justify the cost of administration.

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

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

59-12-15. (415) Reformation to correct mistakes. The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by

clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

59-12-16. (416) Modification to achieve settlor's tax objectives. To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

59-12-17. (417) Combination and division of trusts. After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. The terms of each new trust created by a division under this section do not have to be identical if the interest of each beneficiary is substantially the same under the terms of the trust prior to its division and the combined terms of all trusts after the division. Two or more trusts may be combined into a single trust if the interests of each beneficiary in the trust resulting from the combination are substantially the same as the combined interests of the beneficiary in the trusts prior to the combination. The trustee shall determine the terms controlling any trust after its combination as authorized by this section.

59-12-18. Requisites of trust relating to real property. A trust in relation to real property is not valid unless the trust is created or declared:

1. By a written instrument, subscribed by the trustee or by the trustee's agent thereto authorized in writing;
2. By the instrument under which the trustee claims the estate affected; or
3. By operation of law.

SECTION 19. Chapter 59-13 of the North Dakota Century Code is created and enacted as follows:

59-13-01. (501) Rights of beneficiary's creditor or assignee. To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

59-13-02. (502) Spendthrift provision.

1. A spendthrift provision is valid if it restrains either the voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's interest.
2. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.
3. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

59-13-03. (503) Exceptions to spendthrift provision.

1. In this section, "child" includes any person for whom an order or judgment for child support has been entered by a court of competent jurisdiction.
2. A spendthrift provision is unenforceable against:
   a. A beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance;
   b. A judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and
   c. A claim of this state or the United States to the extent a statute of this state or federal law so provides.
3. The exceptions contained in subsection 2 do not apply to a self-settled special needs trust or a third-party special needs trust under chapter 59-08 nor to any trust that meets the qualifications of 42 U.S.C. 1396p(d).
4. A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. If there is more than one permissible distributee, the court may grant such relief as is equitable.

59-13-04. (504) Discretionary trusts - Effect of standard.

1. In this section, "child" includes any person for whom an order or judgment for child support has been entered by a court of competent jurisdiction.

2. Except as otherwise provided in subsection 3, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if the discretion is expressed in the form of a standard of distribution, or the trustee has abused the discretion.

3. To the extent a trustee has not complied with a standard of distribution or has abused a discretion, a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse and the court shall direct the trustee to pay the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

4. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

5. If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim if the beneficiary was not acting as trustee or cotrustee.

59-13-05. (505) Creditor's claim against settlor.

1. The following rules apply whether or not the terms of a trust contain a spendthrift provision. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors to the extent that the property would be subject to creditors' claims if the property had not been placed in the trust. With respect to an irrevocable trust, other than a special needs trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. After the death of a settlor, and subject to the settlor's right to direct the source from which

liabilities will be paid, the property of a trust that was revocable immediately before the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. For purposes of this section, "statutory allowances" includes any homestead exception under chapter 47-18 and the allowances included in title 30.1.

2. For purposes of this section during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power and, upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or section 2503(b) of the Internal Revenue Code of 1986, or corresponding future provisions of federal tax law.

59-13-06. (506) Overdue distribution.

1. In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if:
   a. The discretion is expressed in the form of a standard of distribution; or
   b. The terms of the trust authorizing a distribution couple language of discretion with language of direction.
2. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

59-13-07. (507) Personal obligations of trustee. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

SECTION 20. Chapter 59-14 of the North Dakota Century Code is created and enacted as follows:

59-14-01. (601) Capacity of settlor of revocable trust. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

59-14-02. (602) Revocation or amendment of revocable trust.

1. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this section.
2. If a revocable trust is created or funded by more than one settlor to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.
3. The settlor may revoke or amend a revocable trust by substantial compliance with a method provided in the terms of the trust or, if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by a later will or codicil that expressly refers to the trust or any other method manifesting clear and convincing evidence of the settlor's intent.
4. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.
5. A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power, exercised in writing and delivered to the trustee.
6. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment,

or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

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

59-14-03. (603) Settlor's powers - Powers of withdrawal.

1. While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.
2. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

59-14-04. (604) Limitation on action contesting validity of revocable trust - Distribution of trust property.

1. A person shall commence a judicial proceeding to contest the validity of a trust that was revocable immediately before the settlor's death within the earlier of three years after the settlor's death or one hundred twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.
2. Upon the death of the settlor of a trust that was revocable immediately before the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless the trustee knows of a pending judicial proceeding contesting the validity of the trust or a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.
3. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.
4. This section does not impose a duty upon the trustee to give notice under this section unless the notice is expressly required in the trust agreement.

SECTION 21. Chapter 59-15 of the North Dakota Century Code is created and enacted as follows:

59-15-01. (701) Accepting or declining trusteeship.

1. Except as otherwise provided in subsection 3, a person designated as trustee accepts the trusteeship by substantially complying with a method of acceptance provided in the terms of the trust or, if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.
2. A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have declined the trusteeship.
3. A person designated as trustee, without accepting the trusteeship, may act to preserve the trust property if, within a reasonable time after acting, the person sends a declination of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary and inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

59-15-02. (702) Trustee's bond.

1. A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.
2. The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.
3. A bank or trust company qualified to act as a trustee in this state need not give bond, even if required by the terms of the trust.

59-15-03. (703) Cotrustees.

1. Cotrustees who are unable to reach a unanimous decision may act by majority decision.

2. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

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

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

5. A trustee may delegate to a cotrustee the performance of any function other than a function that the terms of the trust expressly require to be performed by the trustees jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

6. Except as otherwise provided in subsection 7, a trustee who does not join in an action of another trustee is not liable for the action.

7. Each trustee shall exercise reasonable care to prevent a cotrustee from committing a serious breach of trust and compel a cotrustee to redress a serious breach of trust.

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

59-15-04. (704) Vacancy in trusteeship - Appointment of successor.

1. A vacancy in a trusteeship occurs if a person designated as trustee declines the trusteeship, a person designated as trustee cannot be identified, cannot be located, or does not exist, a trustee resigns, a trustee is disqualified or removed, a trustee dies, or a guardian or conservator is appointed for an individual serving as trustee.

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

3. A vacancy in a trusteeship of a noncharitable trust which is required to be filled must be filled in the following order of priority. First, the vacancy must be filled by a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee. Second, the vacancy must be filled by a person appointed by unanimous agreement of the qualified beneficiaries. Finally, the vacancy must be filled by a person appointed by the court.

4. A vacancy in a trusteeship of a charitable trust which is required to be filled must be filled in the following order of priority. First, the vacancy must be filled by a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee. Second, the vacancy must be filled by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection. Finally, the vacancy must be filled by a person appointed by the court.

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

59-15-05. (705) Resignation of trustee.

1. A trustee may resign:

   a. Upon at least thirty days' notice to the settlor, if living, to all cotrustees, and the qualified beneficiaries, except those qualified beneficiaries under a revocable trust that the settlor has the capacity to revoke; or

   b. With the approval of the court.

2. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

3. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

59-15-06. (706) Removal of trustee.

1. The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.
2. The court may remove a trustee if the trustee has committed a serious breach of trust; if lack of cooperation among cotrustees substantially impairs the administration of the trust; if because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or if there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.
3. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection 2 of section 59-18-01 as may be necessary to protect the trust property or the interests of the beneficiaries.

59-15-07. (707) Delivery of property by former trustee.

1. Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.
2. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to the property.
3. Title to all trust property must be owned by and vested in any successor trustee without any conveyance, transfer, or assignment by the prior trustee.

59-15-08. (708) Compensation of trustee.

1. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.
2. If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if the duties of the trustee are substantially different from those contemplated when

the trust was created or the compensation specified by the terms of the trust would be unreasonably low or high.

59-15-09. (709) Reimbursement of expenses.

1. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for expenses that were properly incurred in the administration of the trust and, to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.
2. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest. The lien under this subsection does not apply to a common or collective fund that is exempt under 26 U.S.C. 584.

SECTION 22. Chapter 59-16 of the North Dakota Century Code is created and enacted as follows:

59-16-01. (801) Duty to administer trust. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its purposes and in accordance with chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

59-16-02. (802) Duty of loyalty.

1. A trustee shall administer the trust solely in the interests of the beneficiaries.
2. Subject to the rights of persons dealing with or assisting the trustee as provided in section 59-18-12, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless the transaction was authorized by the terms of the trust; the transaction was approved by the court; the beneficiary did not commence a judicial proceeding within the time allowed by section 59-18-05; the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 59-18-09; or the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

3. A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with the trustee's spouse; the trustee's descendants, siblings, parents, or their spouses; an agent or attorney of the trustee; or a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

4. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

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

6. An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 59-17. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee at least annually shall notify the persons entitled under section 59-16-13 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

7. In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of

enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

8. If fair to the beneficiaries, an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee; payment of reasonable compensation to the trustee; a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest; a deposit of trust money in a regulated financial service institution operated by the trustee; or an advance by the trustee of money for the protection of the trust is not precluded by this section.

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

59-16-03. (803) Impartiality. If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

59-16-04. (804) Prudent administration. A trustee shall administer the trust as a prudent person would by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

59-16-05. (805) Costs of administration. In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

59-16-06. (806) Trustee's skills. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

59-16-07. (807) Delegation by trustee.

1. A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in selecting an agent; establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

3. A trustee who complies with subsection 1 is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

4. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

59-16-08. (808) Powers to direct.

1. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

2. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

3. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

4. A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of fiduciary duty.

59-16-09. (809) Control and protection of trust property. A trustee shall take reasonable steps to take control of and protect the trust property.

59-16-10. (810) Recordkeeping and identification of trust property.

1. A trustee shall keep adequate records of the administration of the trust.

2. A trustee shall keep trust property separate from the trustee's own property.

3. Except as otherwise provided in subsection 4, a trustee, other than a trustee granted trust or fiduciary powers from a federal or state authority, shall cause the trust property to be designated so that the interest of the trust, to the extent

feasible, appears in records maintained by a party other than a trustee or beneficiary.

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

59-16-11. (811) Enforcement and defense of claims. A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

59-16-12. (812) Collecting trust property. A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee and to redress a breach of trust known to the trustee to have been committed by a former trustee or other fiduciary.

59-16-13. (813) Duty to inform and report.

1. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.
2. A trustee upon written request shall promptly furnish a copy of the trust instrument:
   a. To a qualified beneficiary of a revocable trust; and
   b. To a beneficiary of a trust that is not revocable.
3. A trustee within sixty days after accepting a trusteeship shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number.
4. A trustee within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection 6.
5. A trustee shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

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

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

8. The duties of a trustee specified in this section are not subject to section 59-14-03.

9. Subsections 3 and 4 do not apply to a trustee that accepts a trusteeship before August 1, 2007, to an irrevocable trust created before August 1, 2007, or to a revocable trust that becomes irrevocable before August 1, 2007.

59-16-14. (814) Discretionary powers - Tax savings.

1. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the purposes of the trust.

2. Subject to subsection 4, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

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

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

3. A power whose exercise is limited or prohibited by subsection 2 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

4. Subsection 2 does not apply to:

a. A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code was previously allowed;

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

c. A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

59-16-15. (815) General powers of trustee. A trustee, without authorization by the court, may exercise powers conferred by the terms of the trust and, except as limited by the terms of the trust, all powers over the trust property which an unmarried owner, who is not an incapacitated person, has over individually owned property, any other powers appropriate to achieve the proper investment, management, and distribution of the trust property, and any other powers conferred by chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19. The exercise of a power is subject to the fiduciary duties prescribed by this chapter.

59-16-16. (816) Specific powers of trustee. Without limiting the authority conferred by section 59-16-15, a trustee may:

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

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

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

4. Deposit or invest trust money in a regulated financial institution, including one operated by the trustee or an affiliate of the trustee.

5. Borrow money, with or without security from any financial institution, including a financial institution that is serving as a trustee or one of its affiliates, and mortgage

or pledge trust property for a period within or extending beyond the duration of the trust.

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

7. With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement; hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery; pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and deposit the securities with a depository or other regulated financial service institution.

8. With respect to an interest in real property, construct or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries.

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

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

11. Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability.

12. Abandon, distribute, or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

13. With respect to possible liability for violation of environmental law, inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest for the purpose of determining the application of environmental law with respect to the property; take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement; decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law; compromise claims against the trust which may be asserted for an alleged violation of environmental law; and pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.

14. Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust.

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

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

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

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

19. Pledge trust property to guarantee loans made by others to the beneficiary.

20. Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and

duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed.

21. Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian; paying it to the beneficiary's custodian under chapter 47-24.1 and for that purpose, creating a custodianship or custodial trust; if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

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

23. Resolve a dispute concerning the interpretation of the trust of the trust's administration by mediation, arbitration, or other procedure for alternative dispute resolution.

24. Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties.

25. Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers.

26. Purchase and pay from trust principal the premiums on life insurance.

27. Allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral or timber properties.

28. a. With respect to the administration of trust assets as one or more trusts to:

(1) Receive and administer additional property as part of the trust estate or as a separate trust having terms identical to the terms of the existing trust;

(2) Sever any trust estate on a fractional basis, before or after a trust is funded, into two or more separate trusts for any reason;

(3) Segregate by allocation to a separate account or trust a specific amount or gift made from any trust to reflect a partial disclaimer, to reflect or result in differences in federal tax attributes, to satisfy any federal tax requirements or elections, or to reduce potential generation, skipping transfer tax liability, in a manner consistent with the rules governing disclaimers, such federal tax attributes, such requirements or elections, or any applicable tax rules or regulations, and any income earned on a segregated amount or gift after segregation occurs passes to the designated taker of such amount or gift; and

(4) Consolidate two or more trusts having substantially similar terms into a single trust.

b. In managing, investing, administering, and distributing the trust property of any separate account or trust and in making applicable tax elections, consider the differences in federal tax attributes and all other factors the trustee believes pertinent and may make disproportionate distributions from the separate trusts created. A separate account or trust created by severance or segregation must be treated as a separate trust for all purposes from and after the date on which the severance or segregation is effective. The trustee shall hold such separate account or trust on terms and conditions that are substantially equivalent to the terms of the trust from which it was severed or segregated so that the aggregate interests of each beneficiary in the several trusts are substantially equivalent to the beneficiary's interests in the trust before severance or segregation; provided, however, that any terms of the trust before severance that would affect qualification of the trust for any federal tax deduction, exclusion, election, exemption, or other special federal tax status must remain identical in each of the separate trusts created.

29. Employ persons, including attorneys, auditors, investment advisors or agents, to advise or assist the trustee in the performance of administrative duties. A trustee may act based on the recommendations of professionals without independently investigating the recommendations.

30. Deal with the personal representative, trustee, or other representative of any other trust or estate in which a beneficiary of the trust estate has an interest, notwithstanding the fact that the trustee is a personal representative, trustee, or other representative of the other trust or estate.

31. On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to the property.

59-16-17. (817) Distribution upon termination.

1. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries, and the attorney general in the case of a charitable trust, a proposal for distribution. The right of any beneficiary, or the attorney general in the case of a charitable trust, to object to the proposed distribution terminates if the beneficiary, or the attorney general in the case of a charitable trust, does not notify the trustee of an objection within thirty days after the proposal was sent, but only if the proposal informed the beneficiary, or the attorney general in the case of a charitable trust, of the right to object and of the time allowed for objection.

2. Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

3. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent it was induced by improper conduct of the trustee or the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

SECTION 23. Chapter 59-17 of the North Dakota Century Code is created and enacted as follows:

59-17-01. Prudent investor rule.

1. Except as otherwise provided in subsection 2, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in sections 59-16-02, 59-16-03, 59-16-05, 59-16-06, and 59-16-07 and in this chapter.
2. The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

59-17-02. Standard of care - Portfolio strategy - Risk and return objectives.

1. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
2. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
3. Among circumstances a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:
   a. General economic conditions;
   b. The possible effect of inflation or deflation;
   c. The expected tax consequences of investment decisions or strategies;
   d. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
   e. The expected total return from income and the appreciation of capital;
   f. Other resources of the beneficiaries;
   g. Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
   h. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

4. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

5. A trustee may invest in any kind of property or type of investment consistent with the standards of this title.

59-17-03. Diversification. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

59-17-04. Duties at inception of trusteeship. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of this chapter.

59-17-05. Reviewing compliance. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

59-17-06. Language invoking standard. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under sections 59-16-02, 59-16-03, 59-16-05, 59-16-06, and 59-16-07 and under this chapter: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

SECTION 24. Chapter 59-18 of the North Dakota Century Code is created and enacted as follows:

59-18-01. (1001) Remedies for breach of trust.

1. A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

2. To remedy a breach of trust that has occurred or may occur, the court may compel the trustee to perform the trustee's duties; enjoin the trustee from committing a breach of trust; compel the trustee to redress a breach of trust by paying money, restoring property, or other means; order a trustee to account; appoint a special fiduciary to take possession of the trust property and administer the trust; suspend the trustee; remove the trustee as provided in section 59-15-06; reduce or deny compensation to the trustee; subject to section 59-18-12, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or order any other appropriate relief.

59-18-02. (1002) Damages for breach of trust.

1. A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred or the profit the trustee made by reason of the breach.
2. Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

59-18-03. (1003) Damages in absence of breach. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

59-18-04. Reserved.

59-18-05. (1005) Limitation of action against trustee.

1. A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential

claim for breach of trust and informed the beneficiary in the report or in a separate notice accompanying the report of the time allowed for commencing a proceeding.

2. A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

3. If subsection 1 does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within five years after whichever occurs first: the removal, resignation, or death of the trustee; the termination of the beneficiary's interest in the trust; or the termination of the trust.

59-18-06. (1006) Reliance on trust instrument. A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

59-18-07. (1007) Event affecting administration or distribution. If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

59-18-08. (1008) Exculpation of trustee.

1. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that the term relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

2. Unless the settlor was represented by an attorney not employed by the trustee with respect to the trust containing the exculpatory term, an exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

59-18-09. (1009) Beneficiary's consent, release, or ratification. A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting

the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee or at the time of the consent, release, or ratification, the beneficiary lacked capacity or did not know of the beneficiary's rights or of the material facts relating to the breach.

59-18-10. (1010) Limitation on personal liability of trustee.

1. Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity. The addition of the phrase "trustee" or "as trustee" or a similar designation to the signature of a trustee on a written contract is considered prima facie evidence of a disclosure of a fiduciary capacity.
2. A trustee is personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.
3. A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.
4. Whenever a trust instrument reserves to the settlor, or vests in an advisory or investment committee, or in any other person, including one or more cotrustees to the exclusion of the trustee or to the exclusion of one or more of several trustees, authority to direct the making or retention of any investment, the excluded trustee or trustees are not liable, either individually or as a fiduciary, for any loss resulting from the making or retention of any investment pursuant to such direction.
5. In the absence of actual knowledge or information that would cause a reasonable trustee to inquire further, a trustee may not be held liable for failure to take necessary steps to compel the redress of any breach of trust or fiduciary duty by any predecessor personal representative, trustee, or other fiduciary. This section

may not be construed to limit the fiduciary liability of any trustee for the acts or omissions of the trustee with respect to the trust estate.

59-18-11. (1011) Interest as general partner.

1. Except as otherwise provided in subsection 3 or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed:
   a. In the contract;
   b. In a registration of the partnership as a limited liability partnership filed pursuant to chapter 45-22 in which the trustee is listed as a managing partner; or
   c. In a certificate of limited liability limited partnership filed pursuant to chapter 45-23 in which the trustee is listed as a general partner.
2. Except as otherwise provided in subsection 3, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.
3. The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.
4. If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

59-18-12. (1012) Protection of person dealing with trustee.

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

2. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.
3. A person who in good faith delivers assets to a trustee need not ensure their proper application.
4. A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.
5. Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

59-18-13. (1013) Certification of trust.

1. Unless otherwise required by chapter 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, or 59-19, the trustee may furnish to the person a certification of trust containing information that includes that the trust exists and the effective date of the trust instrument, the name of the trust, if a name is given, the identity of each settlor, the identity and address of the currently acting trustee, the applicable powers of the trustee, which may make reference to the powers set forth in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust, and the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee.
2. A certification of trust may be signed or otherwise authenticated by any trustee.
3. A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.
4. A certification of trust need not contain the dispositive terms of a trust.
5. A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which

designate the trustee and confer upon the trustee the power to act in the pending transaction.

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

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

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

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

SECTION 25. Chapter 59-19 of the North Dakota Century Code is created and enacted as follows:

59-19-01. (1102) Electronic records and signatures. The provisions of chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7002] and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

59-19-02. (1106) Application to existing relationships.

1. Except as otherwise provided in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, effective August 1, 2007, these chapters:

   a. Apply to all trusts created after July 31, 2007; and

b. Apply to all judicial proceedings concerning trusts which are commenced after July 31, 2007.

2. Except as otherwise provided in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, from August 1, 2007, through July 31, 2009:

a. A trust created before August 1, 2007, may elect to be subject to chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19; however, that trust must be in compliance with those chapters by August 1, 2009;

b. Any rule of construction or presumption provided in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 applies to trust instruments executed before August 1, 2009, unless there is a clear indication of a contrary intent in the terms of the trust;

c. Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 do not apply to judicial proceedings concerning trusts which are commenced before that date unless the court finds that application of a particular provision of these chapters would not substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of these chapters applies and the superseded law does not apply; and

d. An act done before August 1, 2009, is not affected by chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

3. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before August 1, 2007, for those trusts that are subject to subsection 1, or before August 1, 2009, for those trusts that are subject to subsection 2, that statute continues to apply to the right even if it has been repealed or superseded.

SECTION 26. Chapter 59-20 of the North Dakota Century Code is created and enacted as follows:

59-20-01. Private foundations - Charitable trusts - Split-interest trusts.

1. Any will or trust instrument creating a trust that is a "private foundation", as defined in section 509(a) of the Internal Revenue Code of 1954, or a "charitable trust", as defined in section 4947(a)(1) of the Internal Revenue Code of 1954, or a "split-interest trust", as defined in section 4947(a)(2) of the Internal Revenue Code of 1954, and any other instrument governing the trustee of any such trust, or the use, retention, or disposition of any of the income or property of such trust, may be deemed to have incorporated within the will, trust instrument, or other governing instrument, with the same effect as though such language were included in the will, trust instrument, or other governing instrument, the following provisions with respect to the trust and the trustee thereof, and, except as the contrary is provided in subsection 2, such provisions govern the administration and distribution of any such trust, irrespective of any provisions of any applicable will, trust instrument, or other governing instrument, statute, or law of this state to the contrary:

a. The trustee shall distribute for each taxable year of the trust amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954, as now enacted or as hereafter amended.

b. The trustee may not engage in any act of "self-dealing", as defined in section 4941(d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954.

c. The trustee may not retain any "excess business holdings", as defined in section 4943(c) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954.

d. The trustee may not make any investments that would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954.

e. The trustee may not make any "taxable expenditure", as defined in section 4945(d) of the Internal Revenue Code of 1954, which would give rise

to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954.

2. Subsection 1 does not apply to the extent that a court of competent jurisdiction determines that application would be contrary to the terms of the will, trust instrument, or other governing instrument described in subsection 1 and that such will, trust instrument, or other governing instrument may not be changed to conform to subsection 1.

3. As used in this section, "trustee" means a corporation, individual, or other legal entity acting as an original, added, or successor trustee of a testamentary or inter vivos trust estate. Any reference to a particular section of the Internal Revenue Code of 1954 includes, as now enacted or as hereafter amended, such section and any provision of federal law as is or may hereafter be applicable, cognate to such section.

4. This section does not impair the rights and powers of the attorney general or the courts of this state with respect to any trust.

SECTION 27. REPEAL. Chapters 30.1-32, 30.1-33, 30.1-34, 59-01, 59-02, 59-03, 59-04, and 59-05 of the North Dakota Century Code are repealed.