

CHAPTER.....

AN ACT relating to trusts; adapting the Uniform Prudent Investor Act and the Uniform Principal and Income Act (1997) to each other and the structure of Nevada Revised Statutes; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 164 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 44, inclusive, of this act.

**Sec. 2.** *As used in sections 2 to 44, inclusive, of this act:*

*1. “Fiduciary” means a trustee or, to the extent that sections 15 to 44, inclusive, of this act apply to an estate, a personal representative.*

*2. “Terms of a trust” means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.*

**Sec. 3.** *In performing his duties under sections 2 to 44, inclusive, of this act, a fiduciary:*

*1. Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in sections 2 to 44, inclusive, of this act;*

*2. May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by sections 2 to 44, inclusive, of this act; and*

*3. Shall administer a trust or estate in accordance with sections 2 to 44, inclusive, of this act if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.*

**Sec. 4.** *A trustee shall invest and manage the trust property solely in the interest of the beneficiaries.*

**Sec. 5.** *1. If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust property, taking into account any differing interests of the beneficiaries.*

*2. In exercising the power to adjust under section 18 of this act or a discretionary power of administration regarding a matter within the scope of sections 15 to 44, inclusive, of this act, whether granted by the terms of a trust, a will or sections 15 to 44, inclusive, of this act, a fiduciary shall administer a trust or estate*

*impartially, based on what is fair and reasonable to all the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with sections 15 to 44, inclusive, of this act is presumed to be fair and reasonable to all the beneficiaries.*

**Sec. 5.3.** *1. As used in this section, "action" includes a course of action and a decision on whether or not to take action.*

*2. A trustee may provide a notice of proposed action regarding any matter governed by sections 2 to 44, inclusive, of this act.*

*3. If a trustee provides a notice of proposed action, the trustee shall mail the notice of proposed action to every adult beneficiary who, at the time the notice is provided, receives, or is entitled to receive, income under the trust or who would be entitled to receive a distribution of principal if the trust were terminated. A notice of proposed action need not be provided to a person who consents in writing to the proposed action. A consent to a proposed action may be executed before or after the proposed action is taken.*

*4. The notice of proposed action must state:*

*(a) That the notice is provided pursuant to this section;*

*(b) The name and mailing address of the trustee;*

*(c) The name and telephone number of a person with whom to communicate for additional information regarding the proposed action;*

*(d) A description of the proposed action and an explanation of the reason for taking the action;*

*(e) The time within which objection to the proposed action may be made, which must be not less than 30 days after the notice of proposed action is mailed; and*

*(f) The date on or after which the proposed action is to be taken or is to be effective.*

*5. A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address and within the time stated in the notice.*

*6. If no beneficiary entitled to receive notice of a proposed action objects to the proposed action and the other requirements of this section are met, the trustee is not liable to any present or future beneficiary with respect to that proposed action.*

*7. If the trustee received a written objection to the proposed action within the period specified in the notice, the trustee or a beneficiary may petition the court for an order to take the action as proposed, take the action with modification or deny the proposed action. A beneficiary who failed to object to the proposed action is not estopped from opposing the proposed action. The*

*burden is on a beneficiary to prove that the proposed action should not be taken or should be modified.*

*8. If the trustee decides not to take a proposed action for which notice has been provided, the trustee shall notify the beneficiaries of his decision not to take the proposed action and the reasons for his decision. The trustee is not liable to any present or future beneficiary with respect to the decision not to take the proposed action. A beneficiary may petition the court for an order to take the action as proposed. The burden is on the beneficiary to prove that the proposed action should be taken.*

*9. If the proposed action for which notice has been proved is an adjustment to principal and income pursuant to section 18 of this act, the sole remedy a court may order, pursuant to subsections 7 and 8, is to make the adjustment, to make the adjustment with a modification or to order the adjustment not to be made.*

**Sec. 5.5.** *1. The provisions of sections 2 to 44, inclusive, of this act do not impose or create a duty of a trustee to make an adjustment between principal and income pursuant to the provisions of section 18 of this act.*

*2. A trustee shall not be liable for:*

- (a) Not considering whether to make such an adjustment; or*
- (b) Deciding not to make such an adjustment.*

**Sec. 5.7.** *Except as specifically provided in a trust instrument, a will or sections 2 to 44, inclusive, the provisions of sections 2 to 44, inclusive, apply to any trust or estate of a decedent existing on or after October 1, 2003.*

**Sec. 6.** *Sections 2 to 14, inclusive, of this act may be cited as the Uniform Prudent Investor Act.*

**Sec. 7.** *A trustee who invests and manages trust property owes a duty to the beneficiaries of the trust to comply with the prudent investor rule as set forth in sections 2 to 14, inclusive, of this act but a trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the terms of the trust.*

**Sec. 8.** *1. A trustee shall invest and manage trust property as a prudent investor would, considering the terms, purposes, requirements for distribution, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.*

*2. A trustee's decisions concerning investment and management as applied to individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as part of an overall strategy of investment having objectives for risk and return reasonably suited to the trust.*

3. *Among circumstances that a trustee shall consider in investing and managing trust property are such of the following as 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 decisions or strategies;*
- (d) The role that each investment or course of action plays within the overall trust portfolio;*
- (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 property.*

5. *A trustee may invest in any kind of property or type of investment consistent with the standards of sections 2 to 14, inclusive, of this act, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property.*

6. *A trustee who has special skills or expertise, or is named trustee in reliance upon his representation that he has special skills or expertise, has a duty to use those special skills or expertise.*

**Sec. 9.** *A trustee shall diversify the investments of the trust unless he reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.*

**Sec. 10.** *Within a reasonable time after accepting a trusteeship or receiving trust property, a trustee shall review the trust property and make and carry out decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, requirements for distribution and other circumstances of the trust, and with the requirements of sections 2 to 14, inclusive, of this act.*

**Sec. 11.** *In investing and managing trust property, a trustee may only incur costs that are appropriate and reasonable in relation to the property, the purposes of the trust and the skills of the trustee.*

**Sec. 12.** *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.*

**Sec. 13.** 1. *A trustee may delegate functions of investment and management that a prudent trustee of comparable skills could*

*properly delegate under the circumstances. He shall exercise reasonable care, skill and caution in:*

- (a) Selecting an agent;*
- (b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and*
- (c) Periodically reviewing the agent's actions in order to verify 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 the requirements of subsection 1 is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.*

*4. By accepting the delegation of a function 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.*

**Sec. 14.** *The following terms or comparable language in the terms of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under sections 2 to 14, inclusive, of this act: "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."*

**Sec. 15.** *Section 2, subsection 2 of section 5 and sections 15 to 44, inclusive, of this act may be cited as the Uniform Principal and Income Act (1997).*

**Sec. 16.** *As used in sections 15 to 44, inclusive, of this act:*

*1. "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.*

*2. "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.*

*3. "Fiduciary" includes an executor, administrator, successor personal representative, special administrator and a person performing substantially the same function.*

4. *“Income” means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset, to the extent provided in sections 24 to 38, inclusive, of this act.*

5. *“Income beneficiary” means a person to whom net income of a trust is or may be payable.*

6. *“Income interest” means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee’s discretion.*

7. *“Mandatory income interest” means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.*

8. *“Net income” means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under sections 15 to 44, inclusive, of this act to or from income during the period.*

9. *“Principal” means property held in trust for distribution to a remainder beneficiary when the trust terminates.*

10. *“Remainder beneficiary” means a person entitled to receive principal when an income interest ends.*

**Sec. 17.** *In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of sections 19 to 23, inclusive, of this act, a fiduciary shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and sections 15 to 44, inclusive, of this act do not provide a rule for allocating the receipt or disbursement to or between principal and income.*

**Sec. 18.** 1. *A trustee may adjust between principal and income to the extent he considers necessary if he invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust’s income, and he determines, after applying the rules in sections 3 and 17 of this act, that he is unable to comply with subsection 2 of section 5 of this act.*

2. *In deciding whether and to what extent to exercise the power conferred by subsection 1, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:*

- (a) The nature, purpose and expected duration of the trust;*
- (b) The intent of the settlor;*
- (c) The identity and circumstances of the beneficiaries;*
- (d) The needs for liquidity, regularity of income, and preservation and appreciation of capital;*

(e) *The assets held in the trust, the extent to which the assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property, the extent to which an asset is used by a beneficiary, and whether an asset was purchased by the trustee or received from the settlor;*

(f) *The net amount allocated to income under the other provisions of sections 15 to 44, inclusive, of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;*

(g) *Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit him from invading principal or accumulating income, and the extent to which he has exercised a power from time to time to invade principal or accumulate income;*

(h) *The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and*

(i) *The anticipated tax consequences of an adjustment.*

3. *A trustee may not make an adjustment:*

(a) *That diminishes the income interest in a trust that requires all the income to be paid at least annually to a surviving spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;*

(b) *That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;*

(c) *That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;*

(d) *From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;*

(e) *If possessing or exercising the power to make an adjustment causes a natural person to be treated as the owner of all or part of the trust for income tax purposes, and the natural person would not be treated as the owner if the trustee did not possess the power to make an adjustment;*

(f) *If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of a natural person who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the natural person if the trustee did not possess the power to make an adjustment;*

(g) *If the trustee is a beneficiary of the trust; or*



*(h) If the trustee is not a beneficiary, but the adjustment would benefit him directly or indirectly.*

*4. If paragraph (e), (f), (g) or (h) of subsection 3 applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.*

*5. A trustee may release the entire power conferred by subsection 1 or may release only the power to adjust from income to principal or the power to adjust from principal to income if he is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (a) to (f), inclusive, or (h) of subsection 3 or if he determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection 3. The release may be permanent or for a specified period, including a period measured by the life of a natural person.*

*6. Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection 1.*

**Sec. 19.** *After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:*

*1. A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in sections 21 to 44, inclusive, of this act which apply to trustees and the rules in subsection 5. He shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.*

*2. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in sections 21 to 44, inclusive, of this act which apply to trustees and by:*

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

*(b) Paying from income or principal, in his discretion, fees of attorneys, accountants and fiduciaries, court costs and other expenses of administration, and interest on death taxes, but he may pay those expenses from income of property passing to a trust for which he claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and*

*(c) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate*



*or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.*

*3. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subsection 2 or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.*

*4. A fiduciary shall distribute the net income remaining after distributions required by subsection 3 in the manner described in section 20 of this act to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if he holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.*

*5. A fiduciary may not reduce principal or income receipts from property described in subsection 1 because of a payment described in section 39 or 40 of this act to the extent that the will, the terms of the trust, or applicable law requires him to make the payment from assets other than the property or to the extent he recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that he believes the estate or terminating income interest may become obligated to pay after the property is distributed.*

**Sec. 20.** *1. Each beneficiary described in subsection 4 of section 19 of this act is entitled to receive a portion of the net income equal to his fractional interest in undistributed principal assets, using values as of the date of distribution. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each date of distribution, to the net income the fiduciary has received after the date of death or terminating event or earlier date of*

*distribution but has not distributed as of the current date of distribution.*

*2. In determining a beneficiary's share of net income, the following rules apply:*

*(a) He is entitled to receive a portion of the net income equal to his fractional interest in the undistributed principal assets immediately before the date of distribution, including assets that later may be sold to meet principal obligations.*

*(b) His fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.*

*(c) His fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the date of distribution without reducing the value by any unpaid principal obligation.*

*(d) The date of distribution for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.*

*3. If a fiduciary does not distribute all the collected but undistributed net income to each person as of a date of distribution, he shall maintain appropriate records showing the interest of each beneficiary in that net income.*

*4. A trustee may apply the rules in this section, to the extent that he considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier date of distribution from the disposition of a principal asset if this section applies to the income from the asset.*

**Sec. 21.** *1. An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.*

*2. An asset becomes subject to a trust:*

*(a) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;*

*(b) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or*

*(c) On the date of the death of a natural person in the case of an asset that is transferred to a fiduciary by a third party because of the death of the natural person.*

*3. An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined*

*under subsection 4, even if there is an intervening period of administration to wind up the preceding income interest.*

*4. An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.*

**Sec. 22.** *1. A trustee shall allocate an income receipt or disbursement other than one to which subsection 1 of section 19 of this act applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.*

*2. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.*

*3. An item of income or an obligation is due on the date the payor is required to make a payment. If a date for payment is not stated, there is no due date for the purposes of sections 15 to 44, inclusive, of this act. Distributions to shareholders or other owners from an entity to which section 24 of this act applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the date of declaration of the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.*

**Sec. 23.** *1. As used in this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.*

*2. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, his share of the undistributed income that is not disposed of under the terms of the trust unless he has an unqualified power to revoke more than 5 percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.*

3. When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, he shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate or other tax requirements.

**Sec. 24.** 1. As used in this section, "entity" means a corporation, partnership, limited-liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which section 25 of this act applies, a business or activity to which section 26 of this act applies or an asset-backed security to which section 38 of this act applies.

2. Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

3. A trustee shall allocate the following receipts from an entity to principal:

(a) Property other than money;

(b) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(c) Money received in total or partial liquidation of the entity; and

(d) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

4. Money is received in partial liquidation:

(a) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(b) If the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

5. Money is not received in partial liquidation, nor may it be taken into account under paragraph (b) of subsection 4, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

6. A trustee may rely upon a statement made by an entity about the source of character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

**Sec. 25.** *A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and a trustee shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 24 or 38 of this act applies to a receipt from the trust.*

**Sec. 26.** *1. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, he may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.*

*2. A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, he shall account for the net amount received as principal in the trust's general accounting records to the extent he determines that the amount received is no longer required in the conduct of the business.*

*3. Activities for which a trustee may maintain separate accounting records include:*

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

*(b) Farming;*

*(c) Raising and selling livestock and other animals;*

*(d) Management of rental properties;*

*(e) Extraction of minerals and other natural resources;*

*(f) Timber operations; and*

*(g) Activities to which section 37 of this act applies.*

**Sec. 27.** *A trustee shall allocate to principal:*

*1. To the extent not allocated to income under sections 15 to 44, inclusive, of this act, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payor under a contract naming the trust or its trustee as beneficiary;*

*2. Money or other property received from the sale, exchange, liquidation or change in form of a principal asset, including realized profit, subject to sections 15 to 44, inclusive, of this act;*

3. *Amounts recovered from third parties to reimburse the trust because of disbursements described in paragraph (g) of subsection 1 of section 40 of this act or for other reasons to the extent not based on the loss of income;*

4. *Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;*

5. *Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and*

6. *Other receipts as provided in sections 21, 22 and 23 of this act.*

**Sec. 28.** *To the extent that a trustee accounts for receipts from rental property pursuant to this section, he shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.*

**Sec. 29.** 1. *An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.*

2. *A trustee shall allocate to principal an amount received from the sale, redemption or other disposition of an obligation to pay money to him more than 1 year after it is purchased or acquired by him, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within 1 year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.*

3. *This section does not apply to an obligation to which section 32, 33, 34, 35, 37 or 38 of this act applies.*

**Sec. 30.** 1. *Except as otherwise provided in this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. He shall allocate dividends on an insurance policy*

*to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.*

*2. A trustee shall allocate to income proceeds of a contract that insures him against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 26 of this act, loss of profits from a business.*

*3. This section does not apply to a contract to which section 32 of this act applies.*

**Sec. 31.** *If a trustee determines that an allocation between principal and income required by section 32, 33, 34, 35 or 38 of this act is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in subsection 3 of section 18 of this act applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in subsection 4 of section 18 of this act and may be released for the reasons and in the manner described in subsection 5 of section 18 of this act. An allocation is presumed to be insubstantial if:*

*1. The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or*

*2. The value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.*

**Sec. 32.** *1. As used in this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more natural persons because of services rendered or property transferred to the payor in exchange for future payments. The term includes a payment made in money or property from the payor's general assets or from a separate fund created by the payor, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus or stock-ownership plan.*

*2. To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. He shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.*

*3. If no part of a payment is characterized as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, he shall allocate the*



*entire payment to principal. For purposes of this subsection, a payment is not “required to be made” to the extent that it is made because the trustee exercises a right of withdrawal.*

*4. If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, he shall allocate to income the additional amount necessary to obtain the marital deduction.*

*5. This section does not apply to payments to which section 33 of this act applies.*

**Sec. 33.** *1. As used in this section, “liquidating asset” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than 1 year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 32 of this act, resources subject to section 34 of this act, timber subject to section 35 of this act, an activity subject to section 37 of this act, an asset subject to section 38 of this act, or any asset for which the trustee establishes a reserve for depreciation under section 41 of this act.*

*2. A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.*

**Sec. 34.** *1. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:*

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

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

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

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

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

3. Sections 15 to 44, inclusive, of this act apply whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

4. If a trust owns an interest in minerals, water or other natural resources on October 1, 2003, the trustee may allocate receipts from the interest as provided in sections 15 to 44, inclusive, of this act or in the manner used by the trustee before October 1, 2003. If the trust acquires an interest in minerals, water or other natural resources after October 1, 2003, the trustee shall allocate receipts from the interest as provided in sections 15 to 44, inclusive, of this act.

**Sec. 35.** 1. To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(a) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

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

(c) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease of contract and applying the rules in paragraphs (a) and (b); or

(d) To principal to the extent that advance payments, bonuses and other payments are not allocated pursuant to paragraph (a), (b) or (c).

2. In determining net receipts to be allocated pursuant to subsection 1, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

3. Sections 15 to 44, inclusive, of this act apply whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

4. If a trust owns an interest in timberland on October 1, 2003, the trustee may allocate net receipts from the sale of timber and related products as provided in sections 15 to 44, inclusive, of this act or in the manner used by the trustee before October 1, 2003. If the trust acquires an interest in timberland after October 1, 2003, the trustee shall allocate net receipts from the sale of timber and related products as provided in sections 15 to 44, inclusive, of this act.

**Sec. 36.** 1. If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the surviving spouse with sufficient income from or

*use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 18 of this act and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by subsection 1 of section 18 of this act. The trustee may decide which action or combination of actions to take.*

*2. In cases not governed by subsection 1, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.*

**Sec. 37.** *1. As used in this section, “derivative” means a contract of financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.*

*2. To the extent that a trustee accounts for transactions in derivatives pursuant to this section, he shall allocate to principal receipts from and disbursements made in connection with those transactions.*

*3. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.*

**Sec. 38.** *1. As used in this section, “asset-backed security” means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 24 or 32 of this act applies.*

*2. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment*

*which the payor identifies as being from interest or other current return and shall allocate the balance of the payment to principal.*

*3. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.*

**Sec. 39.** *A trustee shall make the following disbursements from income to the extent that they are not disbursements to which paragraph (b) or (c) of subsection 2 of section 19 of this act applies:*

*1. One-half of the regular compensation of the trustee and of any person providing advisory or custodial services to the trustee concerning investment;*

*2. One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;*

*3. All the other ordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and*

*4. Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.*

**Sec. 40.** *1. A trustee shall make the following disbursements from principal:*

*(a) The remaining one-half of the disbursements described in subsections 1 and 2 of section 39 of this act;*

*(b) All the trustee's compensation calculated on principal as a fee for acceptance, distribution or termination, and disbursements made to prepare property for sale;*

*(c) Payments on the principal of a trust debt;*

*(d) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;*

*(e) Premiums paid on a policy of insurance not described in subsection 4 of section 39 of this act of which the trust is the owner and beneficiary;*

*(f) Estate, inheritance and other transfer taxes, including penalties, apportioned to the trust; and*

*(g) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial*

*activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.*

*2. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.*

**Sec. 41.** *1. As used in this section, “depreciation” means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than 1 year.*

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

*(a) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;*

*(b) During the administration of a decedent’s estate; or*

*(c) Under this section if a trustee is accounting under section 26 of this act for the business or activity in which the asset is used.*

*3. An amount transferred to principal need not be held as a separate fund.*

**Sec. 42.** *1. If a trustee makes or expects to make a principal disbursement described in this section, he may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.*

*2. Principal disbursements to which subsection 1 applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:*

*(a) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;*

*(b) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;*

*(c) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements and broker’s commissions;*

*(d) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and*

*(e) Disbursements described in paragraph (g) of subsection 1 of section 40 of this act.*

*3. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection 1.*

**Sec. 43.** *1. A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.*

*2. A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.*

*3. A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:*

*(a) From income to the extent that receipts from the entity are allocated to income; and*

*(b) From principal to the extent that:*

*(1) Receipts from the entity are allocated to principal; and*

*(2) The trust's share of the entity's taxable income exceeds the total receipts described in paragraph (a) and subparagraph (1).*

*4. For the purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.*

**Sec. 44.** *1. A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:*

*(a) Elections and decisions, other than those described in subsection 2, that the fiduciary makes from time to time regarding tax matters;*

*(b) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or the trust; or*

*(c) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, the trust, or a beneficiary.*

*2. If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust or beneficiary are decreased, each estate,*

*trust or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.*

**Sec. 45.** NRS 423.235 is hereby amended to read as follows:

423.235 1. Except as otherwise provided in NRS 423.230, all money received by a child in the Northern Nevada Children's Home or the Southern Nevada Children's Home, including, but not limited to, social security benefits, benefits paid to heirs of United States employees and payments payable by the United States through the Department of Veterans Affairs, must be held by the Superintendent in trust for the child.

2. The Superintendent as trustee shall accumulate such money during the period the child is a ward of the State under the provisions of ~~[chapter 423 of NRS,]~~ *this chapter* and shall invest such money subject to the provisions of ~~[NRS 164.050, 164.060 and 164.065,]~~ *sections 2 to 14, inclusive, of this act.*

3. The Superintendent shall:

(a) Keep a separate account for each child who receives money.

(b) Deduct from the account the costs for the care and support of the child that are provided by the State, excluding any amount for which a county is responsible. If the child is placed in foster care, money in the account may be used for payments to a foster parent. Any surplus remaining may be expended for extraordinary items deemed beneficial to the child.

(c) Remit any surplus balance to the child or his parent or legal guardian upon release from the school.

4. The Superintendent may be removed as trustee of such money only upon application to the district court for the county in which the children's home is located. The district court may, for good cause shown and upon notice to the beneficiary, relieve the Superintendent from his duties as trustee.

**Sec. 46.** NRS 452.160 is hereby amended to read as follows:

452.160 1. Endowment care funds must not be used for any purpose other than to provide, through income only, for the reserves authorized by law and for the endowment care of the cemetery in accordance with the resolutions, bylaws, rules and regulations or other actions or instruments of the cemetery authority.

2. The funds must be invested and reinvested in:

(a) Bonds of the United States;



- (b) Bonds of this state or the bonds of other states;
- (c) Bonds of counties or municipalities of any state;
- (d) With the approval of the Administrator, first mortgages or first trust deeds on improved real estate;

(e) Deposits in any bank, credit union or savings and loan association that is federally insured or insured by a private insurer approved pursuant to NRS 678.755; or

(f) With the written approval of the Administrator, any investment which would be proper under the provisions of ~~NRS 164.050~~ *sections 2 to 14, inclusive, of this act.*

Pending investment as provided in this subsection, such funds may be deposited in an account in any savings bank, credit union or savings and loan association which is qualified to do business in the State of Nevada and which is federally insured or insured by a private insurer approved pursuant to NRS 678.755.

3. Each cemetery authority operating an endowment care cemetery shall submit to the Administrator annually, on a form prescribed and adopted by the Administrator, a financial statement of the condition of its endowment care fund. The statement must be accompanied by a fee of \$10. If the statement is not received by the Administrator, he may, after giving 10 days' notice, revoke the cemetery authority's certificate of authority.

**Sec. 47.** NRS 452.720 is hereby amended to read as follows:

452.720 1. Money held in trust for the endowment care of a cemetery for pets must not be used for any purpose other than to provide, through income only, for the reserves authorized by law and for the endowment care of the cemetery in accordance with the resolutions, bylaws, rules and regulations or other actions or instruments of the cemetery authority.

2. The money must be invested and reinvested in:

- (a) Bonds of the United States;
- (b) Bonds of this state or the bonds of other states;
- (c) Bonds of counties or municipalities of any state;
- (d) With the approval of the Administrator, first mortgages or first trust deeds on improved real estate;

(e) Deposits in any bank, credit union or savings and loan association that is federally insured or insured by a private insurer approved pursuant to NRS 678.755; or

(f) With the written approval of the Administrator, any investment which would be proper under the provisions of ~~NRS 164.050~~ *sections 2 to 14, inclusive, of this act.*

Pending investment as provided in this subsection, such money may be deposited in an account in any savings bank, credit union or savings and loan association which is qualified to do business in this state and which is federally insured or insured by a private insurer approved pursuant to NRS 678.755.

3. Each cemetery authority shall annually submit to the Administrator, on a form prescribed and adopted by the Administrator, a financial statement of the condition of its trust fund for the endowment care of the cemetery. The statement must be accompanied by a fee of \$10. If the statement is not received by the Administrator, he may, after giving 10 days' notice, revoke the cemetery authority's certificate of authority.

**Sec. 48.** NRS 150.235, 164.050, 164.060, 164.065, 164.140, 164.150, 164.160, 164.170, 164.180, 164.190, 164.200, 164.210, 164.220, 164.230, 164.240, 164.250, 164.260, 164.270, 164.280, 164.290, 164.300, 164.310, 164.320, 164.330, 164.340, 164.350, 164.360 and 164.370 are hereby repealed.