

1 HB293
2 209389-1
3 By Representative Faulkner
4 RFD: Financial Services
5 First Read: 03-FEB-21

SYNOPSIS: This bill would create the Alabama Qualified Dispositions in Trust Act to govern certain transfers of trust property.

A BILL
TO BE ENTITLED
AN ACT

Relating to trusts; to create the Alabama Qualified Dispositions in Trust Act to govern certain transfers of trust property.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Short title.

This act shall be known and may be cited as the Alabama Qualified Dispositions in Trust Act.

Section 2. Definitions.

As used in this act, the following terms shall have the following meanings:

(1) ADVISOR. A person who is given authority by the terms of a trust instrument to remove or appoint, or both, one

1 or more trustees or to direct, consent to, approve, or veto a
2 trustee's actual or proposed investment or distribution
3 decisions. A person is considered an advisor even if the
4 person is denominated by another title, such as trust
5 protector. Any person may serve as an advisor.

6 (2) ASCERTAINABLE STANDARD. A standard relating to
7 an individual's health, education, support, or maintenance
8 within the meaning of 26 U.S.C. § 2041(b)(1)(A), as amended,
9 or 26 U.S.C. § 2514(c)(1), as amended, and any applicable
10 regulations.

11 (3) CLAIM. A right to payment, whether or not the
12 right is reduced to judgment, liquidated, unliquidated, fixed,
13 contingent, matured, unmatured, disputed, undisputed, legal,
14 equitable, secured, or unsecured.

15 (4) CREDITOR. With respect to a transferor, a person
16 who has a claim, whether directly or indirectly.

17 (5) DEBT. Liability on a claim.

18 (6) DISCRETIONARY TRUST PROVISION. A provision in a
19 trust, regardless of whether the terms of the trust provide a
20 standard for the exercise of the trustee's discretion and
21 regardless of whether the trust contains a spendthrift
22 provision, which provides that the trustee has discretion, or
23 words of similar import, to determine one or more of the
24 following:

25 a. Whether to distribute to or for the benefit of an
26 individual or a class of beneficiaries the income or
27 principal, or both, of the trust.

1 b. The amount, if any, of the income or principal,
2 or both, of the trust to distribute to or for the benefit of
3 an individual or a class of beneficiaries.

4 c. Who, if any, among a class of beneficiaries will
5 receive income or principal, or both, of the trust.

6 d. Whether the distribution of trust property is
7 from income or principal, or both, of the trust.

8 e. When to pay income or principal, except that a
9 power to determine when to distribute income or principal
10 within or with respect to a calendar or taxable year of the
11 trust is not a discretionary trust provision if the
12 distribution is required to be made.

13 (7) DISPOSITION. A transfer of property that either
14 creates a new fiduciary relationship between at least one
15 trustee and a trust beneficiary or subjects property to a
16 preexisting fiduciary relationship between at least one
17 trustee and a trust beneficiary. The term includes a transfer
18 by conveyance or assignment; by exercise of a power of
19 appointment, including a power to substitute a trustee for
20 another or to add one or more new trustees; by exercise of a
21 power of revocation or amendment; or, except as provided in
22 this subdivision, by disclaimer, release, or relinquishment.
23 The term does not include a disclaimer, release, or
24 relinquishment of property that was previously the subject of
25 a qualified disposition. For purposes of this subdivision, as
26 between a given trustee and a given beneficiary, a new
27 fiduciary relationship is created whenever the terms of the

1 governing trust instrument are materially altered, including
2 alteration by an irrevocable written election as described in
3 subsection (f) of Section 5 with respect to the trust
4 beneficiary in question.

5 (8) DISTRIBUTION DECISION. A decision regarding the
6 distribution of trust property to or for the benefit of a
7 trust beneficiary. The term includes a decision whether to
8 make or guarantee a loan to or for the benefit of a trust
9 beneficiary.

10 (9) FIDUCIARY DISPOSITION. A disposition made by a
11 trustee acting in a fiduciary capacity.

12 (10) FIDUCIARY QUALIFIED DISPOSITION. A qualified
13 disposition made by a trustee acting in a fiduciary capacity.

14 (11) GENERAL POWER OF APPOINTMENT. A power to
15 appoint trust property, the permissible appointees of which
16 include the power holder, his or her estate, his or her
17 creditors, or the creditors of his or her estate. The term
18 includes a power that is not expressly restricted as to
19 appointees. A power may be general as to some property and
20 special as to other property. The term does not include a
21 power exercisable in favor of the power holder, his or her
22 estate, his or her creditors, or the creditors of his or her
23 estate that is limited by an ascertainable standard.

24 (12) INVESTMENT DECISION. A decision regarding
25 whether to purchase, sell, exchange, tender, or pledge any
26 trust property. The term includes decisions regarding other
27 transactions affecting the ownership of or rights in any trust

1 property, other than distribution decisions. Unless otherwise
2 provided in the trust instrument, the term also includes a
3 decision regarding whether to make or guarantee a loan to or
4 on behalf of an entity in which the trust owns an interest,
5 directly or indirectly, in the entity's debt or equity.

6 (13) LIEN. A charge against or an interest in
7 property to secure payment of a debt or performance of an
8 obligation. The term includes a security interest created by
9 agreement, a judicial lien obtained by legal or equitable
10 process or proceedings, a common law lien, or a statutory
11 lien.

12 (14) ORGANIZATION. A person other than an
13 individual.

14 (15) PERSON. An individual, estate, partnership,
15 association, trust, business or nonprofit entity, public
16 corporation, government or governmental subdivision, agency,
17 or instrumentality, or other legal or commercial entity.

18 (16) PROPERTY. Anything that may be the subject of
19 ownership, whether real or personal, legal or equitable, or
20 any interest therein. The term includes choses in action,
21 claims, and interests created by a beneficiary designation
22 under policies of insurance, financial instruments, deferred
23 compensation, and other retirement arrangements, whether
24 revocable or irrevocable.

25 (17) QUALIFIED BENEFICIARY. A living trust
26 beneficiary to whom any of the following apply on the date of
27 the beneficiary's qualification:

1 a. The beneficiary is a distributee or permissible
2 distributee of trust income or principal.

3 b. The beneficiary would be a distributee or
4 permissible distributee of trust income or principal if the
5 interests of the distributees described in paragraph a.
6 terminated on that date, but the termination of those
7 interests would not cause the trust to terminate.

8 c. The beneficiary would be a distributee or
9 permissible distributee of trust income or principal if the
10 trust terminated on that date.

11 (18) QUALIFIED DISPOSITION. A disposition of
12 property to one or more trustees, at least one of whom is a
13 qualified trustee, which is governed by a trust instrument,
14 including, but not limited to, a trust instrument as modified
15 by an irrevocable written election described in subsection (f)
16 of Section 5, under which the transferor has no more rights,
17 powers, or interests than those permitted by Section 4. The
18 term does not include a disposition to the extent that, at the
19 time of the disposition, the transferor is in arrears on a
20 child support obligation by more than 30 days.

21 (19) QUALIFIED TRUSTEE. A person, other than the
22 transferor, who meets all of the following conditions:

23 a. Is an individual who is a resident of this state,
24 or is an organization that is authorized by the law of this
25 state to act as a trustee and whose activities are subject to
26 supervision by the Alabama State Banking Department, the

1 Federal Deposit Insurance Corporation, the Comptroller of the
2 Currency, or the Office of Thrift Supervision.

3 b. Maintains or arranges for custody in this state
4 of some or all of the property that is the subject of the
5 qualified disposition and administers all or part of the trust
6 in this state.

7 c. Whose usual place of business, where some of the
8 records pertaining to the trust are kept, is located in this
9 state or, if the person does not have such a place of
10 business, who is a resident of this state. For a corporate
11 trustee, the usual place of business is the business location
12 of the primary trust officer.

13 (20) RETIREMENT BENEFIT. An interest in one of the
14 following types of assets if payable to a trust as a
15 beneficiary or owned by the trust:

16 a. A qualified or nonqualified annuity.

17 b. A benefit under a qualified or nonqualified plan
18 of deferred compensation.

19 c. Any account in, or benefit payable under, any
20 pension, profit-sharing, stock bonus, or other qualified
21 retirement plan.

22 d. Any individual retirement account or trust.

23 e. Any benefit under a plan or arrangement
24 established under Section 401, 403, 408, 408A, or 457,
25 26 U.S.C §§ 401, 403, 408, 408A, and 457, or a similar
26 provision of the Internal Revenue Code of 1986.

1 (21) SETTLOR. A person, including a testator or
2 trustee, who creates a trust. If more than one person creates
3 a trust, each person is a settlor of the portion of the trust
4 property attributable to that person's contribution. The
5 lapse, release, or waiver of a power of appointment does not
6 cause the holder of the power to be treated as a settlor of
7 the trust.

8 (22) SPECIAL POWER OF APPOINTMENT. A power to
9 appoint trust property, the permissible appointees of which do
10 not include the power holder, his or her estate, his or her
11 creditors, or the creditors of his or her estate.

12 (23) SPENDTHRIFT PROVISION. A term of a trust which
13 restrains both voluntary and involuntary transfers of a
14 beneficiary's interest.

15 (24) SPOUSE or FORMER SPOUSE. An individual to whom
16 the transferor was married at or before the time a qualified
17 disposition is made.

18 (25) SUPPORT PROVISION. A provision in a trust that
19 requires the trustee to distribute income or principal, or
20 both, for the health, education, support, or maintenance of a
21 trust beneficiary, or language of similar meaning. The term
22 does not include a provision that provides that a trustee has
23 discretion whether to distribute income or principal, or both,
24 for these purposes or to select from among a class of
25 beneficiaries to receive distributions under the trust
26 provision.

1 (26) TRANSFEROR. Either of the following, as
2 applicable:

3 a. A person or, for more than one owner of undivided
4 interests, each of several persons who, as a beneficial owner
5 of certain property or as the holder of a general power of
6 appointment over certain property, directly or indirectly
7 makes a disposition of the property or causes a disposition to
8 be made.

9 b. For a fiduciary disposition, the person or
10 persons who, as of the time of the fiduciary disposition, most
11 recently fit the description in paragraph a. with respect to
12 the property subject to the fiduciary disposition.

13 (27) TRUST BENEFICIARY. The same meaning as the term
14 "beneficiary", as that term is defined in Section 19-3B-103,
15 Code of Alabama 1975.

16 (28) TRUST INSTRUMENT. An instrument appointing a
17 qualified trustee or qualified trustees for the property that
18 is the subject of a disposition to which all of the following
19 apply:

20 a. The instrument expressly incorporates the law of
21 this state to govern the validity, construction, and
22 administration of the trust.

23 b. The instrument is irrevocable.

24 c. The instrument provides that the interest of the
25 transferor or other trust beneficiary in trust property may
26 not be transferred, assigned, pledged, or mortgaged, whether
27 voluntarily or involuntarily, before the qualified trustee or

1 qualified trustees actually distribute trust property to the
2 trust beneficiary. Such a provision in a trust instrument is
3 considered a restriction on the transfer of the transferor's
4 beneficial interest in the trust that is enforceable under
5 applicable nonbankruptcy law within the meaning of 11 U.S.C. §
6 541(c)(2).

7 (29) VALID LIEN. A lien that is effective against
8 the holder of a judicial lien subsequently obtained by legal
9 or equitable process or proceedings.

10 Section 3. Jurisdiction and Venue.

11 (a) Except as provided in subsection (b), the
12 circuit court has exclusive jurisdiction over an action that
13 addresses either of the following questions:

14 (1) Whether a transfer is a qualified disposition.

15 (2) The extent of the transferor's interest in, or
16 the income from, a qualified disposition.

17 (b) A probate court granted statutory equitable
18 jurisdiction has concurrent jurisdiction with the circuit
19 court over questions described in subsection (a) and over an
20 action brought under subsection (b) of Section 5.

21 (c) Except to the extent otherwise provided by court
22 rule, venue for a proceeding under subsection (a) or (b) is in
23 the following order of priority:

24 (1) In any county where venue is proper for civil
25 actions generally, pursuant to Chapter 3 of Title 6.

1 (2) In a county in this state in which the current
2 qualified trustee has its usual place of business or
3 residence.

4 (3) In a county in this state in which the
5 immediately preceding qualified trustee had its usual place of
6 business or residence.

7 (4) In a county in this state in which any trust
8 property subject to the qualified disposition is located.

9 (5) In a county in this state in which a trust
10 beneficiary resides.

11 Section 4. Permitted Trust Powers of Transferor.

12 (a) A transferor has only the powers and rights that
13 are conferred by the trust instrument. Except as otherwise
14 provided in this act, a transferor does not have any power or
15 right with respect to property that is the subject of a
16 qualified disposition or income from the property and any
17 agreement or understanding that purports to grant or permit
18 the retention of any greater powers or rights is void.

19 (b) A trust instrument may provide for one or more
20 of the following rights, powers, or interests of a transferor:

21 (1) The power to direct the investment decisions of
22 the trust.

23 (2) The power to veto a distribution from the trust.

24 (3) A special power of appointment exercisable by
25 will or other written instrument of the transferor effective
26 only on the death of the transferor.

1 (4) The right to the potential or actual receipt of
2 income, including rights to income retained in the trust
3 instrument.

4 (5) The right to the potential or actual receipt of
5 income or principal from a charitable remainder unitrust or
6 charitable remainder annuity trust, as those terms are defined
7 in 26 U.S.C § 664; and the right, at any time by written
8 instrument delivered to the trustee, to release the
9 transferor's interest in the trust, in whole or in part, in
10 favor of a charitable organization that has a succeeding
11 beneficial interest in the trust.

12 (6) The right to the potential or actual receipt of
13 income or principal from a grantor-retained annuity trust or
14 grantor-retained unitrust as those terms are described in 26
15 U.S.C. § 2702, or the receipt each year of a percentage of the
16 value of the trust property, as provided in the trust
17 instrument. The amount may be described either as a
18 percentage, a fixed amount, or an amount determined from time
19 to time under the governing instrument and may not exceed five
20 percent of the value of the trust.

21 (7) The potential or actual receipt or use of
22 principal if the potential or actual receipt or use of
23 principal would be the result of a trustee acting under any of
24 the following:

- 25 a. A discretionary trust provision.
- 26 b. A support provision.

1 c. The direction of an advisor acting under a
2 discretionary trust provision or support provision.

3 (8) The right to remove a trustee or advisor and to
4 appoint a new trustee or advisor.

5 (9) The right to the potential or actual use of real
6 property held under a qualified personal residence trust
7 within the meaning of that term as described in 26 U.S.C. §
8 2702(c), or the possession and enjoyment of a qualified
9 annuity interest within the meaning of that term as described
10 in 26 C.F.R. § 25.2702-5(c) (8).

11 (10) The right to the potential or actual receipt of
12 income or principal to pay, in whole or in part, income taxes
13 due on income of the trust if the potential or actual receipt
14 of income or principal is under a provision in the trust
15 instrument that expressly provides for the payment of those
16 taxes and if the potential or actual receipt of income or
17 principal would be the result of a qualified trustee acting in
18 either of the following ways:

19 a. In the trustee's discretion or under a mandatory
20 direction in the trust instrument.

21 b. At the direction of an advisor who is acting in
22 the advisor's discretion.

23 (11) A trust instrument may authorize a qualified
24 trustee, after the death of the transferor, to pay the
25 transferor's debts, the expenses of administering the
26 transferor's estate, and any estate or inheritance tax imposed

1 on or with respect to the transferor's estate, without regard
2 to the source of the payment.

3 (12) The right to the actual or potential receipt of
4 a minimum required distribution, as defined in 26 U.S.C. §
5 4974(b), with respect to a retirement benefit.

6 (c) None of the powers described in subsection (b),
7 alone or in any combination, shall be deemed a power to
8 revoke.

9 Section 5. Right of action of creditor with respect
10 to a qualified disposition.

11 (a) Notwithstanding any other provision of this act,
12 with respect to any qualified disposition, a creditor has only
13 the rights provided in this section and Section 7.

14 (b) In an action brought by a creditor for an
15 attachment or other provisional remedy against property that
16 is the subject of a qualified disposition or for avoidance of
17 a qualified disposition, the following rules apply:

18 (1) Except for the limitation period provided under
19 subsection (c), the action may be brought only under Section
20 8-9B-5 or 8-9B-6, Code of Alabama 1975.

21 (2) For the claim of a creditor which arose after a
22 qualified disposition, the action may involve only a qualified
23 disposition that was made with actual intent to hinder, delay,
24 or defraud the creditor.

25 (3) The allegations in the action must be proven by
26 a preponderance of the evidence.

1 (c) A person may not bring or maintain an action
2 concerning a qualified disposition under subsection (b) unless
3 the action is commenced within either of the following
4 periods:

5 (1) If the claim arose before the qualified
6 disposition was made, or on the later of the following:

7 a. Two years after the qualified disposition was
8 made.

9 b. If the person who is or may be liable for any
10 claim fraudulently concealed the existence of the claim or the
11 identity of any person who is liable for the claim from the
12 knowledge of the person entitled to sue on the claim, the
13 earlier of one year after the qualified disposition was or
14 could reasonably have been discovered by the claimant, and the
15 time allowed under the application statute of limitations
16 under Section 8-9B-10, Code of Alabama 1975.

17 (2) If the claim arose concurrent with or after the
18 qualified disposition, two years after the qualified
19 disposition was made.

20 (d) If a trust beneficiary who has an interest in a
21 qualified disposition or in property that is subject to a
22 qualified disposition is a party to an action for annulment of
23 a marriage, divorce, or separate maintenance, the following
24 rules apply:

25 (1) If the trust beneficiary is not the transferor
26 of the qualified disposition, the interest of the trust
27 beneficiary in the qualified disposition or in property that

1 is the subject of the qualified disposition is not considered
2 marital property, is not considered, directly or indirectly,
3 part of the trust beneficiary's real or personal estate, and
4 may not be awarded to the trust beneficiary's spouse in a
5 judgment for annulment of a marriage, divorce, or separate
6 maintenance.

7 (2) If the trust beneficiary is the transferor of
8 the qualified disposition, the interest of the trust
9 beneficiary in the qualified disposition or in property that
10 is the subject of the qualified disposition is not considered
11 marital property, is not considered, directly or indirectly,
12 part of the trust beneficiary's real or personal estate, and
13 may not be awarded to the trust beneficiary's spouse in a
14 judgment for annulment of a marriage, divorce, or separate
15 maintenance if any of the following apply:

16 a. The trust beneficiary transferred the property
17 that is the subject of the qualified disposition more than 30
18 days before the commencement of the marriage that is the
19 subject of the action.

20 b. The parties to the marriage agree that this
21 subdivision applies to the qualified disposition.

22 c. The parties to the marriage agree that the
23 property is not considered marital property, is not
24 considered, directly or indirectly, part of the trust
25 beneficiary's real or personal estate, and may not be awarded
26 to the trust beneficiary's spouse in a judgment for annulment
27 of a marriage, divorce, or separate maintenance.

1 (3) If neither subdivision (1) nor (2) applies,
2 subsections (b) and (c) do not limit the transferor's spouse's
3 property division claims.

4 (e) Except as otherwise provided in subdivision (1),
5 a fiduciary qualified disposition is deemed made as of the
6 time the property that is subject to the disposition was first
7 transferred to the trustee who is making the disposition, or
8 any predecessor of that trustee in an unbroken succession of
9 fiduciary ownership of the property, in a form that meets
10 either of the following requirements:

11 (1) If the property that is subject to the qualified
12 disposition was first transferred to the trustee making the
13 disposition or the predecessor trustee before the effective
14 date of this act, in a form that would otherwise meet the
15 requirements of a qualified disposition, the qualified
16 disposition is deemed to have been made as of the effective
17 date of this act.

18 (2) The requirements to be considered a qualified
19 disposition or its equivalent under the laws of another state;
20 provided, that the transferor has no more rights, powers, or
21 interests than those permitted under Section 4, as modified by
22 an irrevocable written election described in subsection (f),
23 and, at the time of the disposition, the transferor was not in
24 arrears on a child support obligation by more than 30 days.

25 (f) If a trustee of an existing trust proposes to
26 make a disposition that, but for the exercise of authority
27 granted in this subsection, would not be a qualified

1 disposition because of a nonconforming power of appointment of
2 the transferor, the trustee may modify the trust instrument by
3 delivering to the qualified trustee an irrevocable written
4 election to modify the nonconforming power of appointment to
5 conform to the requirements of subdivision (3) or subdivision
6 (11) of subsection (b) of Section 4. An irrevocable written
7 election described in this subsection shall include both of
8 the following:

9 (1) A description of the modified power of
10 appointment.

11 (2) The transferor's written consent to the
12 modification. The transferor's consent is not a disposition.

13 (g) With respect to a qualified disposition, a
14 creditor does not have a claim or cause of action against any
15 of the following:

16 (1) The trustee of a trust that is the subject of a
17 qualified disposition.

18 (2) An advisor of a trust that is the subject of a
19 qualified disposition.

20 (3) A person involved in the counseling, drafting,
21 preparation, execution, or funding of a trust that is the
22 subject of a qualified disposition.

23 (h) If more than one qualified disposition is made
24 by means of the same trust instrument, the following rules
25 apply:

26 (1) With respect to a prior qualified disposition,
27 both of the following apply:

1 a. The making of a subsequent qualified disposition
2 is disregarded in determining whether a creditor's claim is
3 commenced within the time requirements specified in subsection
4 (c).

5 b. The making of a subsequent qualified disposition
6 is disregarded in determining pursuant to subsection (d)
7 whether a trust beneficiary's interest in a qualified
8 disposition or in property that is the subject of a qualified
9 disposition is considered marital property, is considered part
10 of a trust beneficiary's real or personal estate, or may be
11 awarded to the trust beneficiary's spouse in a judgment for
12 annulment of a marriage, divorce, or separate maintenance.

13 (2) A distribution to a trust beneficiary is
14 considered to have been made from the most recent qualified
15 disposition.

16 (i) In an action against a trustee who received
17 property in a qualified disposition, if a court takes any
18 action declining to apply the law of this state in determining
19 the validity, construction, or administration of the trust, or
20 the effect of a spendthrift provision in the trust instrument,
21 the trustee, without the further order of any court, shall
22 immediately cease to be trustee of the trust. The former
23 trustee does not have any power described in subsection (b) of
24 Section 4 except to convey the trust property to the successor
25 trustee, to petition the court for appointment of a successor
26 trustee, and to collect the former trustee's attorney fees,
27 costs, and expenses. If the trust instrument does not provide

1 for a successor trustee and the trust would otherwise be
2 without a trustee, the following rules apply:

3 (1) A court with jurisdiction over the trust under
4 Chapter 3B of Title 19 of the Code of Alabama 1975, on the
5 request of a qualified beneficiary of the trust, shall appoint
6 a successor trustee on the terms and conditions the court
7 determines to be consistent with the purposes of the trust and
8 this act.

9 (2) The former trustee may, but has no duty to,
10 petition the court to appoint a successor trustee if a
11 petition for appointment of a successor trustee is not brought
12 by a qualified beneficiary within 30 days after the date on
13 which the former trustee ceased to be a trustee of the trust.
14 If the former trustee elects to petition for the appointment
15 of a successor trustee, the former trustee shall be entitled
16 to reimbursement for all attorney fees, costs, and expenses
17 associated with the petition, and the amount of the attorney
18 fees, costs, and expenses shall be a lien against the trust's
19 property.

20 (j) A valid lien attaching to property before a
21 qualified disposition of the property survives the
22 disposition. The trustee takes title to the property subject
23 to the valid lien and is subject to any agreements that
24 created or perfected the valid lien.

25 (k) A written agreement between a transferor and a
26 creditor may provide for any of the following:

1 (1) The transferor will have a continuing or
2 periodic obligation to disclose to the creditor any qualified
3 dispositions.

4 (2) A qualified disposition requires the prior
5 written approval of the creditor.

6 (3) The transferor is under any other obligation as
7 the creditor may require with respect to a qualified
8 disposition of the property.

9 (1) If a transfer that would otherwise be a
10 qualified disposition violates an agreement with a creditor
11 described in subsection (k), with respect to the creditor
12 only, the transfer is not a qualified disposition and this act
13 does not affect the rights of the creditor.

14 Section 6. Qualified affidavit.

15 (a) Except as provided in subsection (f), for
16 purposes of this section, a "qualified affidavit" means an
17 affidavit in which the transferor states that at the time of
18 the transfer of the property to the trust, all of the
19 following apply:

20 (1) The transferor has full right, title, and
21 authority to transfer the property to the trust.

22 (2) The transfer of the property to the trust will
23 not render the transferor insolvent.

24 (3) The transferor does not intend to defraud a
25 creditor by transferring the property to the trust.

26 (4) The transferor does not know of or have reason
27 to know of any pending or threatened court actions against the

1 transferor, except for those court actions identified by the
2 transferor on an attachment to the affidavit.

3 (5) The transferor is not involved in any
4 administrative proceedings, except for those administrative
5 proceedings identified on an attachment to the affidavit.

6 (6) The transferor is not currently in arrears on a
7 child support obligation by more than 30 days.

8 (7) The transferor does not contemplate filing for
9 relief under the Bankruptcy Code, 11 U.S.C. §§ 101 to 1532,
10 inclusive.

11 (8) The property being transferred to the trust was
12 not derived from unlawful activities.

13 (b) The transferor shall sign a qualified affidavit
14 before a qualified disposition is made.

15 (c) A qualified affidavit is defective if it
16 materially fails to meet the criteria provided in subsection
17 (a), except that a qualified affidavit is not defective
18 because of any of the following:

19 (1) Nonsubstantive variances from the language
20 provided in subsection (a).

21 (2) Statements or representations in addition to
22 those provided in subsection (a) if the statements or
23 representations do not contradict those required by subsection
24 (a).

25 (3) Technical errors in administering an oath if the
26 errors were not the fault of the transferor and the transferor

1 reasonably relied on another person to prepare or administer
2 the oath.

3 (d) A qualified affidavit is not required in any of
4 the following circumstances:

5 (1) From the settlor for a fiduciary qualified
6 disposition.

7 (2) From a transferor who is not the settlor of the
8 qualified disposition, except to the extent the transferor is
9 a beneficiary of the qualified disposition and the property
10 subject to the qualified disposition was not previously
11 subject to a qualified disposition with respect to which the
12 transferor signed a qualified affidavit.

13 (3) In connection with a disposition that is part
14 of, required by, or the direct result of, a prior qualified
15 disposition supported by a qualified affidavit that otherwise
16 complies with the requirements of subsection (a).

17 (e) If a qualified affidavit is required by this
18 section and a transferor fails to sign timely a qualified
19 affidavit or signs a defective affidavit, the failure or
20 defect may be considered as evidence in an action described in
21 subsection (b) of Section 5 to the extent permitted by the
22 Alabama Rules of Evidence, but the validity of the qualified
23 disposition is not affected in any other way because of the
24 failure or defect.

25 (f) If subdivision (d)(2) applies, the required
26 affidavit shall omit the statements described in subdivisions
27 (1) and (3) of subsection (a), and include a statement that

1 the qualified disposition is not intended to defraud any
2 creditor.

3 Section 7. Rights of trustee and beneficiary in
4 regard to an avoided qualified disposition.

5 (a) A qualified disposition may be avoided only to
6 the extent necessary to satisfy or provide for the present
7 value, taking into consideration any uncertainty of the
8 transferor's debt to the creditor at whose instance the
9 disposition had been avoided.

10 (b) If all or any portion of a qualified disposition
11 is avoided, the following rules apply:

12 (1) If the court is satisfied that a trustee has
13 acted in good faith in accepting or administering the property
14 that is the subject of the qualified disposition, both of the
15 following apply:

16 a. The trustee has a lien against the property that
17 is the subject of the qualified disposition in an amount equal
18 to the entire cost, including attorney fees, incurred in
19 connection with an action dealing with the qualified
20 disposition. The lien has priority over all other liens
21 against the property, whether or not the other liens accrued
22 or were recorded before the accrual of the lien created by
23 this paragraph.

24 b. The qualified disposition is avoided subject to
25 the fees, costs, preexisting rights, claims, and interests of
26 the trustee who has acted in good faith and of any predecessor
27 trustee who has acted in good faith.

1 (2) If the court is satisfied that a trust
2 beneficiary acted in good faith, the avoidance of the
3 qualified disposition is subject to the right of the trust
4 beneficiary to retain any distribution received before the
5 creditor's commencement of an action to avoid the qualified
6 disposition. The mere creation of the trust or acceptance of a
7 distribution made under the terms of the trust by the trust
8 beneficiary, including a trust beneficiary who is also a
9 transferor of the trust, shall not be considered as evidence
10 that the trust beneficiary failed to act in good faith.

11 (3) For purposes of this subsection, the mere
12 acceptance of property with or without a qualified affidavit,
13 or the making of any distribution under the terms of the
14 trust, shall not be considered as evidence that a trustee
15 failed to act in good faith.

16 (c) A creditor has the burden of proving by a
17 preponderance of the evidence that a trustee or trust
18 beneficiary failed to act in good faith. This subsection
19 provides substantive, not procedural, rights.

20 (d) With respect to a qualified disposition, a levy,
21 attachment, garnishment, notice of lien, sequestration, or
22 other legal or equitable process is permitted only in those
23 circumstances permitted by this act.

24 (e) Notwithstanding any other provision of this act,
25 a creditor does not have a right against the interest of a
26 trust beneficiary in property in a trust or portion of a trust
27 that was the subject of qualified disposition solely because

1 the trust beneficiary has the right to authorize or direct the
2 trustee to pay all or part of the trust property in
3 satisfaction of estate or inheritance taxes imposed on or with
4 respect to the trust beneficiary's postdeath estate, the debts
5 of the trust beneficiary's postdeath estate, or the expenses
6 of administering the trust beneficiary's postdeath estate,
7 unless the trust beneficiary actually directs the payment of
8 the taxes, debts, or expenses, and then only to the extent of
9 the direction.

10 (f) (1) Except as otherwise provided in the trust
11 instrument, if a married couple makes a qualified disposition
12 of property and, immediately before the qualified disposition,
13 the property, any part of the property, or any accumulation to
14 the property, under applicable law, was owned by the married
15 couple as tenants in common for life with cross contingent
16 remainder to the survivor in fee, then notwithstanding the
17 qualified disposition, the property, any part of the property,
18 or any accumulation to the property, while held in trust
19 during the lifetime of both spouses, is treated as though it
20 is property held in tenancy in common for life with cross
21 contingent remainder to the survivor in fee.

22 (2) In an action concerning whether a creditor of
23 either or both spouses may recover the debt from the trust, on
24 avoidance of the qualified disposition, the sole remedy
25 available to the creditor with respect to trust property
26 treated as though it were tenancy in common for life with
27 cross contingent remainder to the survivor in fee property is

1 an order directing the trustee to transfer the property to
2 both spouses as tenants in common for life with cross
3 contingent remainder to the survivor in fee.

4 (g) Except as otherwise provided in subsection (f),
5 on avoidance of a qualified disposition to the extent
6 permitted under subsection (a), the sole remedy available to
7 the creditor is an order directing the trustee to transfer to
8 the transferor the amount necessary to satisfy the
9 transferor's debt to the creditor at whose instance the
10 disposition has been avoided.

11 Section 8. Cessation of a qualified trustee and
12 successor.

13 (a) (1) If a person serving as a qualified trustee
14 ceases to meet the requirements of a qualified trustee and
15 there remains no trustee that meets the requirements of a
16 qualified trustee, the person serving as qualified trustee is
17 considered to have resigned as of the time of the cessation
18 and the successor qualified trustee provided for in the trust
19 instrument becomes a qualified trustee of the trust on the
20 successor qualified trustee's acceptance of trusteeship.

21 (2) In the absence of a successor qualified trustee
22 provided for in the trust instrument, the court having
23 jurisdiction, on petition of a qualified beneficiary, shall
24 appoint a successor qualified trustee.

25 (b) A disposition that was a qualified disposition
26 does not cease to be a qualified disposition as a result of a
27 subsequent vacancy in the position of qualified trustee if a

1 successor qualified trustee is appointed or a proceeding for
2 the appointment of a successor qualified trustee is commenced
3 within a reasonable time after a person with authority to
4 appoint a qualified trustee or commence a proceeding to
5 appoint a qualified trustee knows of the vacancy.

6 Section 9. Rights of creditor of trust beneficiary
7 in a trust or a portion of a trust that is a qualified
8 distribution.

9 (a) A trust beneficiary does not have the power or
10 capacity to transfer any of the income from property of a
11 trust or portion of a trust which is the subject of a
12 qualified disposition by his or her order, voluntary or
13 involuntary, or by an order or direction of a court.

14 (b) Except as otherwise provided in this act, the
15 interest of a beneficiary in a trust or portion of a trust
16 that is a qualified disposition is not subject to a process of
17 attachment issued against the beneficiary and may not be taken
18 in execution under any form of legal process directed against
19 the beneficiary, trustee, trust estate, or any part of the
20 income of the trust estate. The whole of the trust estate and
21 the income of the trust estate shall go to and be applied by
22 the trustee solely for the benefit of the beneficiary, free,
23 clear, and discharged of all obligations of the beneficiary.

24 (c) The trustee of a qualified disposition shall
25 disregard and oppose an assignment or other act, voluntary or
26 involuntary, that is attempted contrary to this section. The
27 trustee is entitled to reimbursement for all attorneys fees,

1 costs, and expenses associated with carrying out this duty and
2 the amount of the attorneys fees, costs, and expenses is a
3 lien against the property that is the subject of the qualified
4 disposition. A trustee is not liable, and a trust beneficiary
5 or any successor trust beneficiary does not have a claim or
6 cause of action against a trustee, for a breach of this duty
7 unless the trustee's breach was not done in good faith or was
8 the result of reckless indifference to the purposes of the
9 trust or the interests of the trust beneficiaries.

10 (d) This section does not prohibit a beneficiary
11 from disclaiming an interest in a trust or portion of a trust
12 that is a qualified disposition or from exercising a power of
13 appointment.

14 Section 10. Application; relation to other laws.

15 (a) Subject to subsection (e) Section 5, this act
16 applies to qualified dispositions made on or after the
17 effective date of this act.

18 (b) If any provision of this act conflicts with any
19 provision of the Alabama Uniform Trust Code, Sections
20 19-3B-101 to 19-3B-1305, inclusive, Code of Alabama 1975, or
21 the Alabama Uniform Voidable Transactions Act, Sections 8-9B-1
22 to 8-9B-17, inclusive, Code of Alabama 1975, the provision of
23 this act prevails.

24 Section 11. Unless otherwise displaced by the
25 provisions of this act, the principles of law and equity,
26 including the law merchant and the law relating to principal
27 and agent, estoppel, laches, fraud, misrepresentation, duress,

1 coercion, mistake, insolvency, and other validating or
2 invalidating clauses, supplement its provisions.

3 Section 12. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.