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

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

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

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

7 (5) DEBT. Liability on a claim.

8 (6) DISCRETIONARY TRUST PROVISION. A provision in a
9 trust, regardless of whether the terms of the trust provide a
10 standard for the exercise of the trustee's discretion and
11 regardless of whether the trust contains a spendthrift
12 provision, which provides that the trustee has discretion, or
13 words of similar import, to determine one or more of the
14 following:

15 a. Whether to distribute to or for the benefit of an
16 individual or a class of beneficiaries the income or
17 principal, or both, of the trust.

18 b. The amount, if any, of the income or principal,
19 or both, of the trust to distribute to or for the benefit of
20 an individual or a class of beneficiaries.

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

23 d. Whether the distribution of trust property is
24 from income or principal, or both, of the trust.

1 e. When to pay income or principal, except that a
2 power to determine when to distribute income or principal
3 within or with respect to a calendar or taxable year of the
4 trust is not a discretionary trust provision if the
5 distribution is required to be made.

6 (7) DISPOSITION. A transfer of property that either
7 creates a new fiduciary relationship between at least one
8 trustee and a trust beneficiary or subjects property to a
9 preexisting fiduciary relationship between at least one
10 trustee and a trust beneficiary. The term includes a transfer
11 by conveyance or assignment; by exercise of a power of
12 appointment, including a power to substitute a trustee for
13 another or to add one or more new trustees; by exercise of a
14 power of revocation or amendment; or, except as provided in
15 this subdivision, by disclaimer, release, or relinquishment.
16 The term does not include a disclaimer, release, or
17 relinquishment of property that was previously the subject of
18 a qualified disposition. For purposes of this subdivision, as
19 between a given trustee and a given beneficiary, a new
20 fiduciary relationship is created whenever the terms of the
21 governing trust instrument are materially altered, including
22 alteration by an irrevocable written election as described in
23 subsection (f) of Section 5 with respect to the trust
24 beneficiary in question.

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

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

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

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

20 (12) INVESTMENT DECISION. A decision regarding
 21 whether to purchase, sell, exchange, tender, or pledge any
 22 trust property. The term includes decisions regarding other
 23 transactions affecting the ownership of or rights in any trust
 24 property, other than distribution decisions. Unless otherwise
 25 provided in the trust instrument, the term also includes a

1 decision regarding whether to make or guarantee a loan to or
2 on behalf of an entity in which the trust owns an interest,
3 directly or indirectly, in the entity's debt or equity.

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

10 (14) ORGANIZATION. A person other than an
11 individual.

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

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

23 (17) QUALIFIED BENEFICIARY. A living trust
24 beneficiary to whom any of the following apply on the date of
25 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

1 supervision by the Alabama State Banking Department, the
2 Federal Deposit Insurance Corporation, the Comptroller of the
3 Currency, or the Office of Thrift Supervision.

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

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

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

17 a. A qualified or nonqualified annuity.

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

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

23 d. Any individual retirement account or trust.

24 e. Any benefit under a plan or arrangement
25 established under Section 401, 403, 408, 408A, or 457,

1 26 U.S.C §§ 401, 403, 408, 408A, and 457, or a similar
2 provision of the Internal Revenue Code of 1986.

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

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

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

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

20 (25) SUPPORT PROVISION. A provision in a trust that
21 requires the trustee to distribute income or principal, or
22 both, for the health, education, support, or maintenance of a
23 trust beneficiary, or language of similar meaning. The term
24 does not include a provision that provides that a trustee has
25 discretion whether to distribute income or principal, or both,

1 for these purposes or to select from among a class of
2 beneficiaries to receive distributions under the trust
3 provision.

4 (26) TRANSFEROR. Either of the following, as
5 applicable:

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

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

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

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

23 a. The instrument expressly incorporates the law of
24 this state to govern the validity, construction, and
25 administration of the trust.

1 b. The instrument is irrevocable.

2 c. The instrument provides that the interest of the
3 transferor or other trust beneficiary in trust property may
4 not be transferred, assigned, pledged, or mortgaged, whether
5 voluntarily or involuntarily, before the qualified trustee or
6 qualified trustees actually distribute trust property to the
7 trust beneficiary. Such a provision in a trust instrument is
8 considered a restriction on the transfer of the transferor's
9 beneficial interest in the trust that is enforceable under
10 applicable nonbankruptcy law within the meaning of 11 U.S.C. §
11 541(c) (2).

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

15 Section 3. Jurisdiction and Venue.

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

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

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

22 (b) A probate court granted statutory equitable
23 jurisdiction has concurrent jurisdiction with the circuit
24 court over questions described in subsection (a) and over an
25 action brought under subsection (b) of Section 5.

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

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

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

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

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

14 (5) In a county in this state in which a trust
15 beneficiary resides.

16 Section 4. Permitted Trust Powers of Transferor.

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

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

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

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

4 (3) A special power of appointment exercisable by
5 will or other written instrument of the transferor effective
6 only on the death of the transferor.

7 (4) The right to the potential or actual receipt of
8 income, including rights to income retained in the trust
9 instrument.

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

18 (6) The right to the potential or actual receipt of
19 income or principal from a grantor-retained annuity trust or
20 grantor-retained unitrust as those terms are described in 26
21 U.S.C. § 2702, or the receipt each year of a percentage of the
22 value of the trust property, as provided in the trust
23 instrument. The amount may be described either as a
24 percentage, a fixed amount, or an amount determined from time

1 to time under the governing instrument and may not exceed five
2 percent of the value of the trust.

3 (7) The potential or actual receipt or use of
4 principal if the potential or actual receipt or use of
5 principal would be the result of a trustee acting under any of
6 the following:

7 a. A discretionary trust provision.

8 b. A support provision.

9 c. The direction of an advisor acting under a
10 discretionary trust provision or support provision.

11 (8) The right to remove a trustee or advisor and to
12 appoint a new trustee or advisor.

13 (9) The right to the potential or actual use of real
14 property held under a qualified personal residence trust
15 within the meaning of that term as described in 26 U.S.C. §
16 2702(c), or the possession and enjoyment of a qualified
17 annuity interest within the meaning of that term as described
18 in 26 C.F.R. § 25.2702-5(c)(8).

19 (10) The right to the potential or actual receipt of
20 income or principal to pay, in whole or in part, income taxes
21 due on income of the trust if the potential or actual receipt
22 of income or principal is under a provision in the trust
23 instrument that expressly provides for the payment of those
24 taxes and if the potential or actual receipt of income or

1 principal would be the result of a qualified trustee acting in
2 either of the following ways:

3 a. In the trustee's discretion or under a mandatory
4 direction in the trust instrument.

5 b. At the direction of an advisor who is acting in
6 the advisor's discretion.

7 (11) A trust instrument may authorize a qualified
8 trustee, after the death of the transferor, to pay the
9 transferor's debts, the expenses of administering the
10 transferor's estate, and any estate or inheritance tax imposed
11 on or with respect to the transferor's estate, without regard
12 to the source of the payment.

13 (12) The right to the actual or potential receipt of
14 a minimum required distribution, as defined in 26 U.S.C. §
15 4974(b), with respect to a retirement benefit.

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

19 Section 5. Right of action of creditor with respect
20 to a qualified disposition.

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

24 (b) In an action brought by a creditor for an
25 attachment or other provisional remedy against property that

1 is the subject of a qualified disposition or for avoidance of
2 a qualified disposition, the following rules apply:

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

6 (2) For the claim of a creditor which arose after a
7 qualified disposition, the action may involve only a qualified
8 disposition that was made with actual intent to hinder, delay,
9 or defraud the creditor.

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

12 (c) A person may not bring or maintain an action
13 concerning a qualified disposition under subsection (b) unless
14 the action is commenced within either of the following
15 periods:

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

18 a. Two years after the qualified disposition was
19 made.

20 b. If the person who is or may be liable for any
21 claim fraudulently concealed the existence of the claim or the
22 identity of any person who is liable for the claim from the
23 knowledge of the person entitled to sue on the claim, the
24 earlier of one year after the qualified disposition was or
25 could reasonably have been discovered by the claimant, and the

1 time allowed under the application statute of limitations
2 under Section 8-9B-10, Code of Alabama 1975.

3 (2) If the claim arose concurrent with or after the
4 qualified disposition, two years after the qualified
5 disposition was made.

6 (d) If a trust beneficiary who has an interest in a
7 qualified disposition or in property that is subject to a
8 qualified disposition is a party to an action for annulment of
9 a marriage, divorce, or separate maintenance, the following
10 rules apply:

11 (1) If the trust beneficiary is not the transferor
12 of the qualified disposition, the interest of the trust
13 beneficiary in the qualified disposition or in property that
14 is the subject of the qualified disposition is not considered
15 marital property, is not considered, directly or indirectly,
16 part of the trust beneficiary's real or personal estate, and
17 may not be awarded to the trust beneficiary's spouse in a
18 judgment for annulment of a marriage, divorce, or separate
19 maintenance.

20 (2) If the trust beneficiary is the transferor of
21 the qualified disposition, the interest of the trust
22 beneficiary in the qualified disposition or in property that
23 is the subject of the qualified disposition is not considered
24 marital property, is not considered, directly or indirectly,
25 part of the trust beneficiary's real or personal estate, and

1 may not be awarded to the trust beneficiary's spouse in a
2 judgment for annulment of a marriage, divorce, or separate
3 maintenance if any of the following apply:

4 a. The trust beneficiary transferred the property
5 that is the subject of the qualified disposition more than 30
6 days before the commencement of the marriage that is the
7 subject of the action.

8 b. The parties to the marriage agree that this
9 subdivision applies to the qualified disposition.

10 c. The parties to the marriage agree that the
11 property is not considered marital property, is not
12 considered, directly or indirectly, part of the trust
13 beneficiary's real or personal estate, and may not be awarded
14 to the trust beneficiary's spouse in a judgment for annulment
15 of a marriage, divorce, or separate maintenance.

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

19 (e) Except as otherwise provided in subdivision (1),
20 a fiduciary qualified disposition is deemed made as of the
21 time the property that is subject to the disposition was first
22 transferred to the trustee who is making the disposition, or
23 any predecessor of that trustee in an unbroken succession of
24 fiduciary ownership of the property, in a form that meets
25 either of the following requirements:

1 (1) If the property that is subject to the qualified
2 disposition was first transferred to the trustee making the
3 disposition or the predecessor trustee before the effective
4 date of this act, in a form that would otherwise meet the
5 requirements of a qualified disposition, the qualified
6 disposition is deemed to have been made as of the effective
7 date of this act.

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

15 (f) If a trustee of an existing trust proposes to
16 make a disposition that, but for the exercise of authority
17 granted in this subsection, would not be a qualified
18 disposition because of a nonconforming power of appointment of
19 the transferor, the trustee may modify the trust instrument by
20 delivering to the qualified trustee an irrevocable written
21 election to modify the nonconforming power of appointment to
22 conform to the requirements of subdivision (3) or subdivision
23 (11) of subsection (b) of Section 4. An irrevocable written
24 election described in this subsection shall include both of
25 the following:

1 (1) A description of the modified power of
2 appointment.

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

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

8 (1) The trustee of a trust that is the subject of a
9 qualified disposition.

10 (2) An advisor of a trust that is the subject of a
11 qualified disposition.

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

15 (h) If more than one qualified disposition is made
16 by means of the same trust instrument, the following rules
17 apply:

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

20 a. The making of a subsequent qualified disposition
21 is disregarded in determining whether a creditor's claim is
22 commenced within the time requirements specified in subsection
23 (c).

24 b. The making of a subsequent qualified disposition
25 is disregarded in determining pursuant to subsection (d)

1 whether a trust beneficiary's interest in a qualified
2 disposition or in property that is the subject of a qualified
3 disposition is considered marital property, is considered part
4 of a trust beneficiary's real or personal estate, or may be
5 awarded to the trust beneficiary's spouse in a judgment for
6 annulment of a marriage, divorce, or separate maintenance.

7 (2) A distribution to a trust beneficiary is
8 considered to have been made from the most recent qualified
9 disposition.

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

24 (1) A court with jurisdiction over the trust under
25 Chapter 3B of Title 19 of the Code of Alabama 1975, on the

1 request of a qualified beneficiary of the trust, shall appoint
2 a successor trustee on the terms and conditions the court
3 determines to be consistent with the purposes of the trust and
4 this act.

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

16 (j) A valid lien attaching to property before a
17 qualified disposition of the property survives the
18 disposition. The trustee takes title to the property subject
19 to the valid lien and is subject to any agreements that
20 created or perfected the valid lien.

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

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

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

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

6 (4) In the event the transferor made an express or
7 implied representation regarding an asset in order to create a
8 debt to a creditor prior to December 31, 2021, the transferor
9 is deemed to have entered into an agreement with the creditor,
10 which as to the debt, a disposition of the asset would not be
11 a qualified disposition as to the creditor, unless the
12 disposition had the written approval of the creditor as to the
13 disposition.

14 (1) If a transfer that would otherwise be a
15 qualified disposition violates an agreement with a creditor
16 described in subsection (k), with respect to the creditor
17 only, the transfer is not a qualified disposition and this act
18 does not affect the rights of the creditor.

19 Section 6. Qualified affidavit.

20 (a) Except as provided in subsection (f), for
21 purposes of this section, a "qualified affidavit" means an
22 affidavit in which the transferor states that at the time of
23 the transfer of the property to the trust, all of the
24 following apply:

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

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

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

7 (4) The transferor does not know of or have reason
8 to know of any pending or threatened court actions against the
9 transferor, except for those court actions identified by the
10 transferor on an attachment to the affidavit.

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

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

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

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

21 (b) The transferor shall sign a qualified affidavit
22 before a qualified disposition is made.

23 (c) A qualified affidavit is defective if it
24 materially fails to meet the criteria provided in subsection

1 (a), except that a qualified affidavit is not defective
2 because of any of the following:

3 (1) Nonsubstantive variances from the language
4 provided in subsection (a).

5 (2) Statements or representations in addition to
6 those provided in subsection (a) if the statements or
7 representations do not contradict those required by subsection
8 (a).

9 (3) Technical errors in administering an oath if the
10 errors were not the fault of the transferor and the transferor
11 reasonably relied on another person to prepare or administer
12 the oath.

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

15 (1) From the settlor for a fiduciary qualified
16 disposition.

17 (2) From a transferor who is not the settlor of the
18 qualified disposition, except to the extent the transferor is
19 a beneficiary of the qualified disposition and the property
20 subject to the qualified disposition was not previously
21 subject to a qualified disposition with respect to which the
22 transferor signed a qualified affidavit.

23 (3) In connection with a disposition that is part
24 of, required by, or the direct result of, a prior qualified

1 disposition supported by a qualified affidavit that otherwise
 2 complies with the requirements of subsection (a).

3 (e) If a qualified affidavit is required by this
 4 section and a transferor fails to sign timely a qualified
 5 affidavit or signs a defective affidavit, the failure or
 6 defect may be considered as evidence in an action described in
 7 subsection (b) of Section 5 to the extent permitted by the
 8 Alabama Rules of Evidence, but the validity of the qualified
 9 disposition is not affected in any other way because of the
 10 failure or defect.

11 (f) If subdivision (d)(2) applies, the required
 12 affidavit shall omit the statements described in subdivisions
 13 (1) and (3) of subsection (a), and include a statement that
 14 the qualified disposition is not intended to defraud any
 15 creditor.

16 Section 7. Rights of trustee and beneficiary in
 17 regard to an avoided qualified disposition.

18 (a) A qualified disposition may be avoided only to
 19 the extent necessary to satisfy or provide for the present
 20 value, taking into consideration any uncertainty of the
 21 transferor's debt to the creditor at whose instance the
 22 disposition had been avoided.

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

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

5 a. The trustee has a lien against the property that
6 is the subject of the qualified disposition in an amount equal
7 to the entire cost, including attorney fees, incurred in
8 connection with an action dealing with the qualified
9 disposition. The lien has priority over all other liens
10 against the property, whether or not the other liens accrued
11 or were recorded before the accrual of the lien created by
12 this paragraph.

13 b. The qualified disposition is avoided subject to
14 the fees, costs, preexisting rights, claims, and interests of
15 the trustee who has acted in good faith and of any predecessor
16 trustee who has acted in good faith.

17 (2) If the court is satisfied that a trust
18 beneficiary acted in good faith, the avoidance of the
19 qualified disposition is subject to the right of the trust
20 beneficiary to retain any distribution received before the
21 creditor's commencement of an action to avoid the qualified
22 disposition. The mere creation of the trust or acceptance of a
23 distribution made under the terms of the trust by the trust
24 beneficiary, including a trust beneficiary who is also a

1 transferor of the trust, shall not be considered as evidence
2 that the trust beneficiary failed to act in good faith.

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

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

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

16 (e) Notwithstanding any other provision of this act,
17 a creditor does not have a right against the interest of a
18 trust beneficiary in property in a trust or portion of a trust
19 that was the subject of qualified disposition solely because
20 the trust beneficiary has the right to authorize or direct the
21 trustee to pay all or part of the trust property in
22 satisfaction of estate or inheritance taxes imposed on or with
23 respect to the trust beneficiary's postdeath estate, the debts
24 of the trust beneficiary's postdeath estate, or the expenses
25 of administering the trust beneficiary's postdeath estate,

1 unless the trust beneficiary actually directs the payment of
2 the taxes, debts, or expenses, and then only to the extent of
3 the direction.

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

16 (2) In an action concerning whether a creditor of
17 either or both spouses may recover the debt from the trust, on
18 avoidance of the qualified disposition, the sole remedy
19 available to the creditor with respect to trust property
20 treated as though it were tenancy in common for life with
21 cross contingent remainder to the survivor in fee property is
22 an order directing the trustee to transfer the property to
23 both spouses as tenants in common for life with cross
24 contingent remainder to the survivor in fee.

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

8 Section 8. Cessation of a qualified trustee and
9 successor.

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

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

22 (b) A disposition that was a qualified disposition
23 does not cease to be a qualified disposition as a result of a
24 subsequent vacancy in the position of qualified trustee if a
25 successor qualified trustee is appointed or a proceeding for

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

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

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

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

23 (c) The trustee of a qualified disposition shall
24 disregard and oppose an assignment or other act, voluntary or
25 involuntary, that is attempted contrary to this section. The

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

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

15 Section 10. Application; relation to other laws.

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

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

1 Section 11. Unless otherwise displaced by the
2 provisions of this act, the principles of law and equity,
3 including the law merchant and the law relating to principal
4 and agent, estoppel, laches, fraud, misrepresentation, duress,
5 coercion, mistake, insolvency, and other validating or
6 invalidating clauses, supplement its provisions.

7 Section 12. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.

