

1 SB343
2 149428-1
3 By Senator Irons
4 RFD: Fiscal Responsibility and Accountability
5 First Read: 14-MAR-13

2
3
4
5
6
7
8 SYNOPSIS: Under federal Treasury Regulations Section
9 1.643(b)-1, a state law is allowed to provide that
10 a trust may provide for an alternative for
11 reasonable apportionment between the income and
12 remainder beneficiaries of the total return of the
13 trust. It offers as an example "a state statute
14 providing that income is a unitrust amount of no
15 less than 3 percent and no more than 5 percent of
16 the fair market value of the trust assets, whether
17 determined annually or averaged on a multiple year
18 basis. . . ." This type of provisions is commonly
19 referred to as a "unitrust."

20 Under existing law in this state, the
21 Alabama Principal and Income Act does not
22 specifically define a "unitrust amount," provide
23 that an express trust has the power to convert to a
24 unitrust, or provide that the Alabama Trust Code
25 applies to the Principal and Income Act.

26 This bill would amend the Alabama Principal
27 and Income Act to acknowledge trusts that are

1 established initially as unitrusts and also to
2 provide procedures for existing trusts to be
3 converted into unitrusts. An additional provision
4 is added to make clear that the Alabama Trust Code
5 applies to the Alabama Principal and Income Act.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to trusts; to amend Sections 19-3A-102,
12 19-3A-103, 19-3A-104, and 19-3A-409 of the Code of Alabama
13 1975, relating to the Alabama Principal and Income Act, to
14 make such provisions consistent with new federal law
15 authorizing unitrusts; and to add Sections 19-3A-105,
16 19-3A-106, and 19-3A-608 to the Code of Alabama 1975, to
17 address trusts created as express unitrusts, to authorize the
18 conversion of trusts to unitrusts and to clarify that the
19 Alabama Trust Code applies to the Alabama Principal and Income
20 Act.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 19-3A-102, 19-3A-103, 19-3A-104,
23 and 19-3A-409 of the Code of Alabama 1975, are amended to read
24 as follows:

25 "§19-3A-102.

26 "As used in this chapter, the following terms are
27 defined as follows:

1 "(1) ACCOUNTING PERIOD. A calendar year unless
2 another 12-month period is selected by a fiduciary. The term
3 includes a portion of a calendar year or other 12-month period
4 that begins when an income interest begins or ends when an
5 income interest ends.

6 "(2) BENEFICIARY. Includes, in the case of a
7 decedent's estate, an heir, legatee, and devisee and, in the
8 case of a trust, an income beneficiary and a remainder
9 beneficiary.

10 "(3) FIDUCIARY. A personal representative or a
11 trustee. The term includes an executor, administrator,
12 successor personal representative, special administrator, and
13 a person performing substantially the same function.

14 "(4) INCOME. Money or property that a fiduciary
15 receives as current return from a principal asset. The term
16 also includes a portion of receipts from a sale, exchange, or
17 liquidation of a principal asset, to the extent provided in
18 Article 4.

19 "(5) INCOME BENEFICIARY. A person to whom net income
20 of a trust is or may be payable.

21 "(6) INCOME INTEREST. The right of an income
22 beneficiary to receive all or part of net income, whether the
23 terms of the trust require it to be distributed or authorize
24 it to be distributed in the trustee's discretion.

25 "(7) INVENTORY VALUE. a. The cost of an asset that
26 is purchased by the fiduciary, or b. the market value of an
27 asset at the time the asset becomes subject to the trust;

1 except that in the case of a testamentary trust, the fiduciary
2 may use any value finally determined for the purposes of an
3 estate or inheritance tax.

4 "(8) MANDATORY INCOME INTEREST. The right of an
5 income beneficiary to receive net income that the terms of the
6 trust require the fiduciary to distribute.

7 "(9) NET INCOME. The total receipts allocated to
8 income during an accounting period minus the disbursements
9 made from income during the period, plus or minus transfers
10 under this chapter to or from income during the period.

11 "(10) PERSON. An individual, corporation, business
12 trust, estate, trust, partnership, limited liability company,
13 association, joint venture, government, governmental
14 subdivision, agency, or instrumentality, public corporation,
15 or any other legal or commercial entity.

16 "(11) PRESUMPTIVE REMAINDER BENEFICIARY. Those
17 persons who would be entitled to the principal of a trust if
18 the income interest were immediately terminated, and if a
19 trust contains a power of appointment, the holder of such
20 power of appointment shall also be a presumptive remainder
21 beneficiary.

22 "(12) PRINCIPAL. Property transferred to or acquired
23 by a fiduciary and held in trust for distribution to a
24 remainder beneficiary when an income interest ends.

25 "(13) REMAINDER BENEFICIARY. A person entitled to
26 receive principal when an income interest ends.

1 "(14) TERMS OF A TRUST. The manifestation of the
2 intent of a settlor or decedent with respect to the trust,
3 expressed in a manner that admits of its proof in a judicial
4 proceeding, whether by written or spoken words or by conduct.

5 "(15) TRUSTEE. An original, additional, or successor
6 trustee, whether or not appointed or confirmed by a court.

7 "(16) UNITRUST AMOUNT. An amount determined annually
8 equal to a percentage (specified by the provisions of the
9 governing instrument, the written notice referenced in
10 subsection 19-3A-106(a), the written instrument referenced in
11 subsection 19-3A-106(b), or the order of the court referenced
12 in subsection 19-3A-106(c), whichever is applicable) of the
13 net fair market value of the trust assets, whether determined
14 annually or averaged over a designated multiple year smoothing
15 period.

16 "§19-3A-103.

17 "(a) In allocating receipts and disbursements to or
18 between principal and income, and with respect to any matter
19 within the scope of Article 2 and Article 3, a fiduciary:

20 "(1) Shall administer a trust or decedent's estate
21 in accordance with the terms of the trust or the will, even if
22 there is a different provision in this chapter;

23 "(2) May administer a trust or decedent's estate by
24 the exercise of a discretionary power of administration given
25 to the fiduciary by the terms of the trust or the will, even
26 if the exercise of the power produces a result different from
27 a result required or permitted by this chapter;

1 "(3) Subject to the provisions of Section 19-3A-104,
2 shall administer a trust or decedent's estate in accordance
3 with this chapter if the terms of the trust or the will do not
4 contain a different provision or do not give the fiduciary a
5 discretionary power of administration; and

6 "(4) Shall add a receipt or charge a disbursement to
7 principal to the extent that the terms of the trust and this
8 chapter do not provide a rule for allocating the receipt or
9 disbursement to or between principal and income.

10 "(b) In exercising the power to adjust under Section
11 19-3A-104(a) or the power to convert to a unitrust under
12 Section 19-3A-106, if applicable, or a discretionary power of
13 administration regarding a matter within the scope of this
14 chapter, whether granted by the terms of a trust, a will, or
15 this chapter, a fiduciary shall administer a trust or
16 decedent's estate impartially, based on what is fair and
17 reasonable to all of the beneficiaries, except to the extent
18 that the terms of the trust or the will clearly manifest an
19 intention that the fiduciary shall or may favor one or more of
20 the beneficiaries. The exercise of discretion in accordance
21 with this chapter is presumed to be fair and reasonable to all
22 of the beneficiaries.

23 "§19-3A-104.

24 "(a) If the terms of the trust expressly provide by
25 specific reference to this section, then a trustee may have
26 the power to adjust between principal and income to the extent
27 the trustee considers necessary if (1) the trustee invests and

1 manages trust assets as a prudent investor; (2) the terms of
2 the trust describe the amount that may or must be distributed
3 to a beneficiary by referring to the trust's income, and (3)
4 the trustee determines, after applying the rules in Section
5 19-3A-103(a), that the trustee is unable to comply with
6 Section 19-3A-103(b).

7 "(b) In deciding whether and to what extent to
8 exercise the power conferred by subsection (a), a trustee
9 shall consider all factors relevant to the trust and its
10 beneficiaries, including, but not limited to:

11 "(1) The nature, purpose, and expected duration of
12 the trust;

13 "(2) The intent of the settlor;

14 "(3) The identity and circumstances of the
15 beneficiaries;

16 "(4) The needs for liquidity for the trust;

17 "(5) The regularity of income to the trust;

18 "(6) The need for preservation and appreciation of
19 capital;

20 "(7) The nature of the assets held in the trust and
21 the extent to which they consist of financial assets,
22 interests in closely held enterprises, tangible and intangible
23 personal property, or real property;

24 "(8) The extent to which an asset is used by a
25 beneficiary;

26 "(9) Whether an asset was purchased by the trustee
27 or received from the settlor;

1 "(10) The net amount allocated to income under the
2 other sections of this chapter and the increase or decrease in
3 the value of the principal assets, which the trustee may
4 estimate as to assets for which market values are not readily
5 available;

6 "(11) Whether and to what extent the terms of the
7 trust a. give the trustee the power to invade principal or
8 accumulate income, or b. prohibit the trustee from invading
9 principal or accumulating income;

10 "(12) The extent to which the trustee has exercised
11 a power from time to time to invade principal or accumulate
12 income;

13 "(13) The actual and anticipated effect of economic
14 conditions, inflation, and deflation upon principal and
15 income; and

16 "(14) The anticipated income and transfer tax
17 consequences of an adjustment.

18 "(c) Notwithstanding the power conferred by
19 subsection (a), a trustee may not make an adjustment:

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

25 "(2) That reduces the actuarial value of the income
26 interest in a trust to which a person transfers property with
27 the intent to qualify the transfer for a gift tax exclusion;

1 "(3) That changes the amount payable to a
2 beneficiary as a fixed annuity or a fixed fraction of the
3 value of the trust assets;

4 "(4) That changes the amount that is permanently set
5 aside for charitable purposes under a will or the terms of a
6 trust, unless both income and principal are so set aside;

7 "(5) If possessing or exercising the power to make
8 an adjustment causes an individual to be treated as the owner
9 of all or part of the trust for income tax purposes, and the
10 individual would not be treated as the owner if the trustee
11 did not possess the power to make an adjustment;

12 "(6) If possessing or exercising the power to make
13 an adjustment causes all or part of the trust assets to be
14 included for estate tax purposes in the estate of an
15 individual who has the power to remove a trustee or appoint a
16 trustee, or both, and the assets would not be included in the
17 estate of the individual if the trustee did not possess the
18 power to make an adjustment;

19 "(7) If the trustee is not a beneficiary, but the
20 adjustment would benefit the trustee directly or indirectly;

21 ~~or~~

22 "(8) If the trustee is a beneficiary of the trust;

23 or

24 "(9) If the trust is an express unitrust under
25 Section 19-3A-105 (relating to express unitrusts) or is a
26 unitrust by reason of a conversion under Section 19-3A-106
27 (relating to power to convert to unitrust).

1 "(d) If subsection (c) (5), subsection (c) (6),
2 subsection (c) (7), or subsection (c) (8) applies to a trustee
3 and there is more than one trustee, then the co-trustee to
4 whom the provision does not apply may make the adjustment,
5 unless the exercise of the power by the remaining trustee or
6 trustees is not permitted by the terms of the trust.

7 "(e) A trustee may release the entire power
8 conferred by subsection (a) or may release only the power to
9 adjust from income to principal or the power to adjust from
10 principal to income if the trustee is uncertain about whether
11 possessing or exercising the power will cause a result
12 described in subsection (c) (1) through subsection (c) (7) or if
13 the trustee determines that possessing or exercising the power
14 will or may deprive the trust of a tax benefit or impose a tax
15 burden not described in subsection (c). The release may be
16 permanent or for a specified period, including a period
17 measured by the life of an individual.

18 "(f) The trustee or any beneficiary of a trust
19 covered by this chapter (or a trust to be created from a
20 decedent's estate that is covered by this chapter) (1) may
21 seek approval from a court of competent jurisdiction to be
22 governed prospectively by this section, or (2) may at any time
23 affirmatively elect to be governed prospectively by this
24 section by obtaining the written consent of all of the current
25 income beneficiaries and the presumptive remainder
26 beneficiaries of the trust, and such written consent shall
27 conclusively bind all persons who may have any interest in the

1 affected trust, including all contingent remainder
2 beneficiaries and potential appointees of the trust.

3 "§19-3A-409.

4 "(a) In this section:

5 "(1) "Payment" means a payment that a fiduciary may
6 receive over a fixed number of years or during the life of one
7 or more individuals because of services rendered or property
8 transferred to the payer in exchange for future payments. The
9 term includes a payment made in money or property from the
10 payer's general assets or from a separate fund created by the
11 payer. For purposes of subsections (d), (e), (f), and (g), the
12 term also includes any payment from any separate fund,
13 regardless of the reason for the payment.

14 "(2) "Separate fund" includes a private or
15 commercial annuity, an individual retirement account, and a
16 pension, profit-sharing, stock-bonus, or stock-ownership plan.

17 "(b) To the extent that a payment or portion thereof
18 is characterized by other sections of this chapter as income
19 in the hands of the payer, a fiduciary shall allocate such
20 payment or portion thereof to income. The fiduciary shall
21 allocate to principal the balance of the payment and any other
22 payment received in the same accounting period that is not
23 characterized as income to the payer by other sections of this
24 chapter.

25 "(c) To the extent that a payment is not allocated
26 between income and principal pursuant to subsection (b), a
27 fiduciary shall allocate to income ten percent (10%) of the

1 part that is required to be made during the accounting period
2 and the balance to principal. If no part of a payment is
3 required to be made or if the payment received by the
4 fiduciary is the entire amount to which the fiduciary is
5 entitled, then the fiduciary shall allocate the entire payment
6 to principal. For purposes of this subsection, a payment is
7 not "required to be made" to the extent that it is made
8 because the fiduciary exercises a right of withdrawal.

9 "(d) Except as otherwise provided in subsection (e),
10 subsections (f) and (g) apply and subsections (b) and (c) do
11 not apply in determining the allocation of a payment made from
12 a separate fund to:

13 "(1) A trust to which an election to qualify for a
14 marital deduction under Section 2056(b) (7) of the Internal
15 Revenue Code of 1986, as amended, 26 U.S.C. Section
16 2056(b) (7), as amended, has been made; or

17 "(2) A trust that qualifies for the marital
18 deduction under Section 2056(b) (5) of the Internal Revenue
19 Code of 1986, as amended, 26 U.S.C. Section 2056(b) (5), as
20 amended.

21 "(e) Subsections (d), (f), and (g) do not apply if
22 and to the extent that the series of payments would, without
23 the application of subsection (d), qualify for the marital
24 deduction under Section 2056(b) (7) (C) of the Internal Revenue
25 Code of 1986, as amended, 26 U.S.C. Section 2056(b) (7) (C), as
26 amended.

1 "(f) A fiduciary shall make a reasonable effort to
2 determine the internal income of each separate fund for the
3 accounting period as if the separate fund were a trust subject
4 to this chapter. Upon request of the surviving spouse, the
5 fiduciary shall make a demand on the person administering the
6 separate fund to distribute the internal income to the trust.
7 The fiduciary shall allocate a payment from the separate fund
8 to income to the extent of the internal income of the separate
9 fund and distribute that amount to the surviving spouse. The
10 fiduciary shall allocate the balance of the payment to
11 principal. Upon request of the surviving spouse, the fiduciary
12 shall allocate principal to income to the extent the internal
13 income of the separate fund exceeds payments made from the
14 separate fund to the trust during the accounting period.

15 "(g) If a fiduciary cannot determine the internal
16 income of a separate fund pursuant to subsection (f) but can
17 determine the value of the separate fund, the internal income
18 of the separate fund for the accounting period is deemed to
19 equal four percent of the fund's value, according to the most
20 recent statement of value preceding the beginning of the
21 accounting period. If the fiduciary can determine neither the
22 internal income of the separate fund nor the fund's value, the
23 internal income of the fund for the accounting period is
24 deemed to equal the product of the interest rate and the
25 present value of the expected future payments, as determined
26 under Section 7520 of the Internal Revenue Code of 1986, as
27 amended, 26 U.S.C. Section 7520, as amended, for the month

1 preceding the accounting period for which the computation is
2 made.

3 "(h) This section does not apply to a payment to
4 which Section 19-3A-410 applies.

5 "(i) If a trust holds one or more separate funds and
6 is an express unitrust under Section 19-3A-105, or is a
7 unitrust by reason of conversion under Section 19-3A-106
8 (relating to power to convert to unitrust), the following
9 rules shall apply:

10 "(1) Income or net income from the separate funds
11 shall be determined as provided in the governing instrument in
12 the case of an express unitrust under 19-3A-105, or the
13 written notice referenced in Section 19-3A-106(a), the written
14 instrument referenced in Section 19-3A-106(b), or the order of
15 the court referenced in Section 19-3A-106(c) in the case of a
16 trust converted to a unitrust.

17 "(2) If subdivision (1) does not apply and the
18 fiduciary can determine the value of the separate fund, income
19 or net income with respect to such separate fund shall be an
20 amount equal to the unitrust percentage multiplied by the
21 value in the manner applied pursuant to Section 19-3A-105 or
22 Section 19-3A-106, as the case may be.

23 "(3) If subdivision (1) does not apply and the
24 fiduciary cannot determine the value of the separate fund,
25 income or net income with respect to such separate fund shall
26 be determined in the manner provided in the foregoing
27 provisions of this section."

1 Section 2. Sections 19-3A-105, 19-3A-106, and
2 19-3A-608 are added to the Code of Alabama 1975, to read as
3 follows:

4 §19-3A-105. Express Unitrusts.

5 Except to the extent otherwise provided in the
6 governing instrument, the following provisions shall apply to
7 a trust which by its governing instrument requires
8 distribution of a unitrust amount (whether payable in a single
9 sum or in installments), such trust to be referred to as an
10 "express unitrust":

11 (1) The income and net income of an express unitrust
12 is the unitrust amount, but only if the unitrust amount is not
13 less than three percent and not more than five percent of the
14 net fair market value of the trust assets. If the unitrust
15 amount is more than five percent of the net fair market value
16 of the trust assets, the income and net income shall be five
17 percent of the net fair market value of the trust assets, and
18 the excess over five percent shall be considered to be
19 principal of the trust.

20 (2) Expenses which would be deducted from income if
21 the trust were not an express unitrust shall not be deducted
22 from the unitrust amount.

23 (3) The trustee, from time to time, may determine
24 the following:

25 a. The frequency of payment of the unitrust amount
26 during the year;

1 b. Any adjustments to be made to the unitrust amount
2 due to other payments from or contributions to the trust;

3 c. The valuation dates to use;

4 d. How nonliquid or hard to value assets shall be
5 valued, how frequently to value them and whether to estimate
6 their value;

7 e. Whether to omit from the calculations the value
8 of trust property occupied, used, or possessed by a
9 beneficiary; and

10 f. Any other matters necessary for the proper
11 functioning of the unitrust that are not inconsistent with the
12 governing instrument.

13 §19-3A-106. Conversion to unitrust.

14 (a) Unless expressly prohibited by the governing
15 instrument, a trustee may convert a trust into a unitrust as
16 described in this section if all of the following apply:

17 (1) The trustee determines that the conversion will
18 enable the trustee to better carry out the intent of the
19 settlor or testator and the purposes of the trust.

20 (2) The trustee gives written notice of the
21 trustee's intention to convert the trust into a unitrust,
22 including the trustee's initial decisions as set forth below,
23 to all the qualified beneficiaries. The written notice shall
24 include the following:

25 a. An explanation of how the unitrust will operate;

26 b. The effective date of the conversion to a
27 unitrust;

1 c. The unitrust percentage to be used;

2 d. The provisions for prorating a unitrust
3 distribution for a short year in which a beneficiary's right
4 to payments commences or ceases;

5 e. Whether the net fair market value of the trust
6 assets will be determined annually or averaged over a
7 designated multiple year smoothing period; and

8 f. Such other matters as the trustee deems
9 appropriate for the proper functioning of the unitrust, which
10 may include such matters as:

11 1. Whether to omit from the calculations trust
12 property occupied, used, or possessed by a beneficiary,

13 2. How nonliquid or hard to value assets shall be
14 valued, how frequently to value them, and whether to estimate
15 their value, or

16 3. Whether the trust assets will be valued annually
17 or more frequently.

18 (3) There is at least one sui juris income
19 beneficiary and at least one sui juris presumptive remainder
20 beneficiary.

21 (4) No beneficiary, or a person who may represent
22 and bind a beneficiary who is not sui juris, objects to the
23 conversion to a unitrust in a writing delivered to the trustee
24 within 60 days of the mailing of the notice under subdivision
25 (2).

26 (5) If the trustee requests, the trustee receives
27 consents from such beneficiaries as determined by the trustee.

1 (b) (1) Unless expressly prohibited by the governing
2 instrument, the qualified beneficiaries of a trust may convert
3 the trust into a unitrust as described in this section by a
4 written instrument delivered to the trustee that sets forth
5 all of the following:

6 a. A representation by the qualified beneficiaries
7 that the conversion will enable the trustee to better carry
8 out the intent of the settlor or testator and the purposes of
9 the trust;

10 b. The effective date of the conversion to a
11 unitrust, which shall not be earlier than 60 days after the
12 date the written instrument is delivered to the trustee,
13 unless the trustee consents to an earlier date, provided that
14 such earlier date is not earlier than the date the written
15 instrument is delivered to the trustee;

16 c. The unitrust percentage to be used;

17 d. The provisions for prorating a unitrust
18 distribution for a short year in which a beneficiary's right
19 to payments commences or ceases;

20 e. Whether the net fair market value of the trust
21 assets will be determined annually or averaged over a
22 designated multiple year smoothing period; and

23 f. Such other matters as the beneficiaries deem
24 appropriate for the proper functioning of the unitrust, which
25 may include such matters as:

26 1. Whether to omit from the calculations trust
27 property occupied, used, or possessed by a beneficiary,

1 2. How nonliquid or hard to value assets shall be
2 valued, how frequently to value them, and whether to estimate
3 their value, or

4 3. Whether the trust's assets will be valued
5 annually or more frequently.

6 (2) A trust may not convert into a unitrust unless
7 the written instrument is executed by all qualified
8 beneficiaries, whether directly or by representation.

9 (3) Notwithstanding the foregoing, a trustee, prior
10 to the effective date of the conversion, may seek court
11 confirmation that the foregoing requirements have been
12 satisfied, in which case the conversion will not be effective
13 before the conversion is confirmed by the court.

14 (c) (1) The trustee or a qualified beneficiary may
15 petition the court to order the conversion to a unitrust, even
16 if any of the following apply:

17 a. A beneficiary timely objects to the conversion to
18 a unitrust, or

19 b. There are no sui juris income beneficiaries or
20 sui juris presumptive remainder beneficiaries.

21 (2) Unless expressly prohibited by the governing
22 instrument, the court shall order the conversion if the court
23 concludes:

24 a. that the conversion will enable the trustee to
25 better carry out the intent of the settlor or testator and the
26 purposes of the trust; or

1 b. all qualified beneficiaries have consented to the
2 conversion.

3 (3) The court shall make the following decisions
4 which shall be set forth in the order of the court approving
5 the conversion:

6 a. The effective date of the conversion to a
7 unitrust;

8 b. The unitrust percentage to be used;

9 c. The provisions for prorating a unitrust
10 distribution for a short year in which a beneficiary's right
11 to payments commences or ceases;

12 d. Whether the net fair market value of the trust
13 assets will be determined annually or averaged over a
14 designated multiple year smoothing period; and

15 e. Such other matters as the court deems appropriate
16 for the proper functioning of the unitrust, which may include
17 such matters as:

18 1. Whether to omit from the calculations trust
19 property occupied, used, or possessed by a beneficiary;

20 2. How nonliquid or hard to value assets shall be
21 valued, how frequently to value them, and whether to estimate
22 their value; or

23 3. Whether the trust assets will be valued annually
24 or more frequently.

25 (4) Court costs shall be charged to the trust or as
26 otherwise determined by the court.

1 (d) The unitrust percentage with respect to a
2 converted unitrust to be used in determining the unitrust
3 amount shall be not less than three percent nor more than five
4 percent, unless otherwise ordered by the court.

5 (e) During the period of time that the trust is a
6 converted unitrust, all of the following apply:

7 (1) Notwithstanding any provision of this chapter to
8 the contrary, the term "income" or "net income" in the
9 governing instrument shall mean the unitrust amount.

10 (2) The frequency of distributions shall be
11 determined in accordance with the governing instrument.

12 (3) If the written notice referenced in subsection
13 (a), the written instrument referenced in subsection (b), or
14 the order of the court referenced in subsection (c) provides
15 that the net fair market value of the trust assets will be
16 averaged over a designated smoothing period, the net fair
17 market value of the trust assets for purposes of determining
18 the unitrust amount shall be the average of the net fair
19 market value of the trust assets over the designated smoothing
20 period.

21 (4) Any distribution in excess of the unitrust
22 amount shall be deemed to have been paid out of the principal
23 of the trust.

24 (5) Expenses which would be deducted from income if
25 the trust were not a unitrust may not be deducted from the
26 unitrust amount.

1 (f) A conversion to a unitrust does not affect a
2 provision in the governing instrument directing or authorizing
3 the trustee to distribute principal or authorizing a
4 beneficiary to withdraw a portion or all of the principal.

5 (g) Except to the extent otherwise provided in the
6 governing instrument, the written notice referenced in
7 subsection (a), the written agreement referenced in subsection
8 (b), or the order of the court referenced in subsection (c),
9 the trustee, from time to time, may determine the following:

10 (1) The frequency of payment of the unitrust amount
11 during the year;

12 (2) Any adjustments to be made to the unitrust
13 amount due to other payments from or contributions to the
14 trust;

15 (3) The valuation dates to use;

16 (4) How nonliquid or hard to value assets shall be
17 valued, how frequently to value them, and whether to estimate
18 their value;

19 (5) Whether to omit from the calculations the value
20 of trust property occupied, used, or possessed by a
21 beneficiary; and

22 (6) Any other matters necessary for the proper
23 functioning of the unitrust that are not inconsistent with the
24 written notice referenced in subsection (a), the written
25 agreement referenced in subsection (b), or the order of the
26 court referenced in subsection (c).

1 (h) Modification of the unitrust provisions of a
2 converted unitrust may be implemented by the trustee following
3 the same procedures as in subsection (a) for converting a
4 trust into a unitrust with the exception that the written
5 notice shall state the modifications, by the qualified
6 beneficiaries following the same procedures as in subsection
7 (b) for converting a trust into a unitrust with the exception
8 that the written instrument shall state the modifications, or
9 by the court pursuant to the petition of a beneficiary or the
10 trustee. Modifications shall be set forth in the notice,
11 written instrument, or court order, as the case may be, that
12 makes the modification. Modification may include any of the
13 following:

14 (1) Changes or additions to any of the matters set
15 forth in, or that could have been set forth in, the original
16 notice, written instrument or court order, as the case may be,
17 or any subsequent modifications thereto;

18 (2) Provisions for a distribution of net income, as
19 would be determined if the trust were not a unitrust, in
20 excess of the unitrust distribution if such distribution is
21 necessary to preserve a tax benefit; or

22 (3) Reversions from a unitrust, in which case the
23 trust shall be administered in accordance with its provisions
24 prior to its conversion to a unitrust. Upon reconversion, the
25 power to adjust under Section 19-3A-104, if any, shall be
26 revived.

1 (i) A trust may not be converted into a unitrust in
2 any of the following circumstances:

3 (1) If payment of the unitrust amount would change
4 the aggregate annual amount payable to a beneficiary as a
5 fixed annuity;

6 (2) If the trust is an "Institutional Fund" governed
7 by the provisions of Section 19-3C-1, et seq.;

8 (3) If the conversion would reduce any amount
9 permanently set aside for charitable purposes under the
10 governing instrument which is not expressed under the
11 governing instrument as "income" or "net income" or determined
12 pursuant to the terms of the governing instrument by reference
13 to "income" or "net income";

14 (4) If the conversion would reduce the value of any
15 interest for which a federal estate or gift tax charitable
16 deduction has been taken, or would cause the reduction of an
17 amount being disbursed or to be disbursed to a charity for
18 which an income, estate, or gift tax deduction has been taken;

19 (5) If possessing or exercising the power to convert
20 would cause an individual to be treated as the owner of all or
21 part of the trust for federal income tax purposes, and the
22 individual would not be treated as the owner if the trustee
23 did not possess the power to convert;

24 (6) If possessing or exercising the power to convert
25 would cause all or part of the trust assets to be subject to
26 federal estate or gift tax with respect to an individual, and
27 the assets would not be subject to federal estate or gift tax

1 with respect to the individual if the trustee did not possess
2 the power to convert; or

3 (7) If the conversion would result in the
4 disallowance of a federal estate or gift tax marital or
5 charitable deduction which would be allowed if the trustee did
6 not have the power to convert.

7 (j) (1) If subsection (i) (5) or subsection (i) (6)
8 applies because a trustee is a beneficiary and there is more
9 than one trustee, a co-trustee to whom the provision does not
10 apply may convert the trust unless the exercise of the power
11 by the remaining trustee or trustees is prohibited by the
12 governing instrument.

13 (2) If subsection (i) (5) or subsection (i) (6)
14 applies to all the trustees, the trustees may petition the
15 court to direct a conversion or the beneficiaries may convert
16 under subsection (b).

17 (1) (1) A trustee may release the power conferred by
18 subsection (a) to convert to a unitrust if any of the
19 following apply:

20 a. The trustee is uncertain about whether possessing
21 or exercising the power will cause a result described in
22 subsection (i) (5), subsection (i) (6), or subsection (i) (7).

23 b. The trustee determines that possessing or
24 exercising the power will or may deprive the trust of a tax
25 benefit or impose a tax burden not described in subsection
26 (i).

1 (2) The release may be permanent or for a specified
2 period, including a period measured by the life of an
3 individual.

4 §19-3A-608. Application of Alabama Uniform Trust
5 Code.

6 The provisions of the Alabama Uniform Trust Code
7 apply to the Alabama Principal and Income Act, except to the
8 extent the provisions are inconsistent with the provisions of
9 this chapter.

10 Section 3. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.