

1           HB394  
2        149428-3  
3        By Representative England  
4        RFD: Financial Services  
5        First Read: 07-MAR-13

ENGROSSED

A BILL

TO BE ENTITLED

## AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§19-3A-102.

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

"(1) ACCOUNTING PERIOD. A calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period

1 that begins when an income interest begins or ends when an  
2 income interest ends.

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

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

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

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

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

22                     "(7) INVENTORY VALUE. a. The cost of an asset that  
23 is purchased by the fiduciary, or b. the market value of an  
24 asset at the time the asset becomes subject to the trust;  
25 except that in the case of a testamentary trust, the fiduciary  
26 may use any value finally determined for the purposes of an  
27 estate or inheritance tax.

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

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

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

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

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

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

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

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

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

"§19-3A-103.

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

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

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

"(3) Subject to the provisions of Section 19-3A-104, shall administer a trust or decedent's estate in accordance with this chapter if the terms of the trust or the will do not

1 contain a different provision or do not give the fiduciary a  
2 discretionary power of administration; and

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

7                 "(b) In exercising the power to adjust under Section  
8 19-3A-104(a) or the power to convert to a unitrust under  
9 Section 19-3A-106, if applicable, or a discretionary power of  
10 administration regarding a matter within the scope of this  
11 chapter, whether granted by the terms of a trust, a will, or  
12 this chapter, a fiduciary shall administer a trust or  
13 decedent's estate impartially, based on what is fair and  
14 reasonable to all of the beneficiaries, except to the extent  
15 that the terms of the trust or the will clearly manifest an  
16 intention that the fiduciary shall or may favor one or more of  
17 the beneficiaries. The exercise of discretion in accordance  
18 with this chapter is presumed to be fair and reasonable to all  
19 of the beneficiaries.

20                 "§19-3A-104.

21                 "(a) If the terms of the trust expressly provide by  
22 specific reference to this section, then a trustee may have  
23 the power to adjust between principal and income to the extent  
24 the trustee considers necessary if (1) the trustee invests and  
25 manages trust assets as a prudent investor; (2) the terms of  
26 the trust describe the amount that may or must be distributed  
27 to a beneficiary by referring to the trust's income, and (3)

1 the trustee determines, after applying the rules in Section  
2 19-3A-103(a), that the trustee is unable to comply with  
3 Section 19-3A-103(b).

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

8 "(1) The nature, purpose, and expected duration of  
9 the trust;

10 "(2) The intent of the settlor;

11 "(3) The identity and circumstances of the  
12 beneficiaries;

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

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

15 "(6) The need for preservation and appreciation of  
16 capital;

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

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

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

25 "(10) The net amount allocated to income under the  
26 other sections of this chapter and the increase or decrease in  
27 the value of the principal assets, which the trustee may

1 estimate as to assets for which market values are not readily  
2 available;

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

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

10 "(13) The actual and anticipated effect of economic  
11 conditions, inflation, and deflation upon principal and  
12 income; and

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

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

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

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

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

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

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

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

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

18                         or

19                         "(8) If the trustee is a beneficiary of the trust.;  
20                         or

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

25                         "(d) If subsection (c) (5), subsection (c) (6),  
26 subsection (c) (7), or subsection (c) (8) applies to a trustee  
27 and there is more than one trustee, then the co-trustee to

1 whom the provision does not apply may make the adjustment,  
2 unless the exercise of the power by the remaining trustee or  
3 trustees is not permitted by the terms of the trust.

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

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

27 "§19-3A-409.

"(a) In this section:

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

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

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

"(c) To the extent that a payment is not allocated between income and principal pursuant to subsection (b), a fiduciary shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or if the payment received by the

1 fiduciary is the entire amount to which the fiduciary is  
2 entitled, then the fiduciary shall allocate the entire payment  
3 to principal. For purposes of this subsection, a payment is  
4 not "required to be made" to the extent that it is made  
5 because the fiduciary exercises a right of withdrawal.

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

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

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

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

24 "(f) A fiduciary shall make a reasonable effort to  
25 determine the internal income of each separate fund for the  
26 accounting period as if the separate fund were a trust subject  
27 to this chapter. Upon request of the surviving spouse, the

1 fiduciary shall make a demand on the person administering the  
2 separate fund to distribute the internal income to the trust.  
3 The fiduciary shall allocate a payment from the separate fund  
4 to income to the extent of the internal income of the separate  
5 fund and distribute that amount to the surviving spouse. The  
6 fiduciary shall allocate the balance of the payment to  
7 principal. Upon request of the surviving spouse, the fiduciary  
8 shall allocate principal to income to the extent the internal  
9 income of the separate fund exceeds payments made from the  
10 separate fund to the trust during the accounting period.

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

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

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

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

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

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

24                         Section 2. Sections 19-3A-105, 19-3A-106, and  
25                         19-3A-608 are added to the Code of Alabama 1975, to read as  
26                         follows:

27                         §19-3A-105. Express Unitrusts.

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

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

16                    (2) Expenses which would be deducted from income if  
17 the trust were not an express unitrust shall not be deducted  
18 from the unitrust amount.

19                    (3) The trustee, from time to time, may determine  
20 the following:

21                    a. The frequency of payment of the unitrust amount  
22 during the year;

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

25                    c. The valuation dates to use;

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

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

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

§19-3A-106. Conversion to unitrust.

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

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

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

- a. An explanation of how the unitrust will operate;
- b. The effective date of the conversion to a unitrust;
- c. The unitrust percentage to be used;

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

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

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

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

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

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

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

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

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

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

a. A representation by the qualified beneficiaries that they have concluded that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust;

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

c. The unitrust percentage to be used;

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

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

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

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

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

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

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

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

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

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

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

c. The trustee does not consent.

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

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

b. all qualified beneficiaries have consented to the conversion.

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

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

b. The unitrust percentage to be used;

c. The provisions for prorating a unitrust

distribution for a short year in which a beneficiary's right to payments commences or ceases;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The valuation dates to use;

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

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

(6) Any other matters necessary for the proper functioning of the unitrust that are not inconsistent with the written notice referenced in subsection (a), the written

agreement referenced in subsection (b), or the order of the court referenced in subsection (c).

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

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

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

(3) Reversions from a unitrust, in which case the trust shall be administered in accordance with its provisions prior to its conversion to a unitrust. Upon reconversion, the

1 power to adjust under Section 19-3A-104, if any, shall be  
2 revived.

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

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

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

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

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

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

26 (6) If possessing or exercising the power to convert  
27 would cause all or part of the trust assets to be subject to

1       federal estate or gift tax with respect to an individual, and  
2       the assets would not be subject to federal estate or gift tax  
3       with respect to the individual if the trustee did not possess  
4       the power to convert; or

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

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

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

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

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

25               b. The trustee determines that possessing or  
26      exercising the power will or may deprive the trust of a tax

1 benefit or impose a tax burden not described in subsection  
2 (i).

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

6 §19-3A-608. Application of Alabama Uniform Trust  
7 Code.

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

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

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House of Representatives

4 Read for the first time and re-  
5 ferred to the House of Representa-  
6 tives committee on Financial Ser-  
7 vices..... . . . . . 07-MAR-13

8

9 Read for the second time and placed  
10 on the calendar 1 amendment ..... . . . . . 20-MAR-13

11

12 Read for the third time and passed  
13 as amended..... . . . . . 25-APR-13

14

Yea 98, Nays 0, Abstains 0

15

16

17

18

Jeff Woodard  
Clerk