

SB178 INTRODUCED



1 SB178
2 U9E1VXG-1
3 By Senator Barfoot
4 RFD: Judiciary
5 First Read: 20-Jan-26



SYNOPSIS:

Under existing law, a trustee can only adjust trust receipts and disbursements between principal and income if the terms of the trust explicitly grant the trustee that authority.

This bill would permit trustees to adjust receipts and disbursements between principal and income without requiring the trust terms to authorize the adjustments, aligning current law with the Uniform Principal and Income Act.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

A BILL
TO BE ENTITLED
AN ACT

Relating to trusts; to amend Section 19-3A-104, Code of Alabama 1975, to permit trustees to adjust trust receipts and disbursements between principal and income without express authority of the terms of the trust instrument; and to make nonsubstantive, technical revisions to update the existing code language to current style.



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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 19-3A-104, Code of Alabama 1975, is amended to read as follows:

"§19-3A-104

(a) A trustee may~~If the terms of the trust expressly provide by specific reference to this section, then a trustee may have the power to~~ adjust receipts and disbursements between principal and income to the extent the trustee considers necessary if ~~(1):~~ (i) the trustee invests and manages trust assets as a prudent investor; ~~(2)~~ (ii) the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income~~r;~~ and ~~(3)~~ (iii) the trustee determines, after applying the rules in Section 19-3A-103(a), that the trustee is unable to comply with Section 19-3A-103(b).

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

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

(2) The intent of the settlor;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity for the trust;

(5) The regularity of income to the trust;

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



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

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

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

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

(11) Whether and to what extent the terms of the trust ~~a.:~~ (i) give the trustee the power to invade principal or accumulate income, ~~or b.;~~ or (ii) prohibit the trustee from invading principal or accumulating income;

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

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

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

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

(1) That diminishes the income interest in a trust that



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requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

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

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

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

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

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

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

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



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

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

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

(f) ~~The trustee or any beneficiary of a trust covered by this chapter (or a trust to be created from a decedent's estate that is covered by this chapter) (1) may seek approval from a court of competent jurisdiction to be governed prospectively by this section, or (2) may at any time affirmatively elect to be governed prospectively by this~~



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~~section by obtaining the written consent of all of the current~~
~~income beneficiaries and the presumptive remainder~~
~~beneficiaries of the trust, and such written consent shall~~
~~conclusively bind all persons who may have any interest in the~~
~~affected trust, including all contingent remainder~~
~~beneficiaries and potential appointees of the trust.~~ Terms of
a trust which limit the power of a trustee to make an
adjustment between principal and income do not affect the
application of this section unless it is clear from the terms
of the trust that the terms are intended to deny the trustee
the power of adjustment conferred by subsection (a)."

Section 2. This act shall become effective on October
1, 2026.