

SB178 INTRODUCED



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



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4 SYNOPSIS:

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

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

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

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19 A BILL
20 TO BE ENTITLED
21 AN ACT

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



29 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

32 "§19-3A-104

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

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

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

50 (2) The intent of the settlor;

51 (3) The identity and circumstances of the
52 beneficiaries;

53 (4) The needs for liquidity for the trust;

54 (5) The regularity of income to the trust;

55 (6) The need for preservation and appreciation of
56 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
~~or:~~ (i) give the trustee the power to invade principal or
accumulate income, ~~or b.~~; (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



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

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

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

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

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

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

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

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



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113 (9) If the trust is an express unitrust under Section
114 19-3A-105 ~~(relating to express unitrusts)~~ or is a unitrust by
115 reason of a conversion under Section 19-3A-106 ~~(relating to~~
116 ~~power to convert to unitrust)~~.

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

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

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



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

152 Section 2. This act shall become effective on October
153 1, 2026.