

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

S

3

SENATE BILL 336  
Judiciary I Committee Substitute Adopted 4/21/15  
Third Edition Engrossed 4/27/15

Short Title: Estate Planning/Uniform Trust Code.

(Public)

Sponsors:

Referred to:

March 19, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW GOVERNING ESTATE PLANNING AND  
3 FIDUCIARIES, TO AMEND THE UNIFORM TRUST CODE, AND TO ESTABLISH A  
4 UNIFORM POWERS OF APPOINTMENT ACT.

5 The General Assembly of North Carolina enacts:

6  
7 **PART I. AMEND STANDBY GUARDIAN STATUTE TO PROVIDE FOR**  
8 **APPOINTMENT OF STANDBY AND SUCCESSOR GUARDIANS FOR**  
9 **INCOMPETENT ADULTS**

10 **SECTION 1.** Subchapter IV of Chapter 35A of the General Statutes reads as  
11 rewritten:

12 **~~"SUBCHAPTER IV. STANDBY GUARDIANS FOR MINOR~~**  
13 **~~CHILDREN. GUARDIANS.~~**

14 "Article 21.

15 "Standby Guardianship.

16 **"§ 35A-1370. Definitions.**

17 For purposes of this Article:

- 18 (1) "Alternate standby guardian" means a person identified in either a petition or  
19 designation to become the guardian of the person or, when appropriate, the  
20 general guardian of a minor ~~child, child or incompetent adult,~~ pursuant to  
21 G.S. 35A-1373 or to G.S. 35A-1374, when the person identified as the  
22 standby guardian and the designator or petitioner has identified an alternate  
23 standby guardian.
- 24 (2) "Attending physician" means the physician who has primary responsibility  
25 for the treatment and care of the parent or legal guardian. When more than  
26 one physician shares this responsibility, or when a physician is acting on the  
27 primary physician's behalf, any such physician may act as the attending  
28 physician pursuant to this section. When no physician has this responsibility,  
29 a physician who is familiar with the petitioner's medical condition may act as  
30 the attending physician pursuant to this Article.
- 31 (3) "Debilitation" means a chronic and substantial inability, as a result of a  
32 physically debilitating illness, disease, or injury, to care for one's minor  
33 ~~child, child or to satisfy his or her duties as guardian of the person or as~~  
34 general guardian of an incompetent adult.



\* S 3 3 6 - V - 3 \*

- 1 (4) "Designation" means a written document voluntarily executed by the  
2 designator pursuant to this Article.
- 3 (5) "Designator" means a person who suffers from a progressive chronic illness  
4 or an irreversible fatal illness and who is (i) the biological or adoptive  
5 parent, the guardian of the person, or the general guardian of a minor ~~child-~~  
6 child, or (ii) the guardian of the person or the general guardian of an  
7 incompetent adult. A designation under this Article may be made on behalf  
8 of a designator by the guardian of the person or the general guardian of the  
9 designator.
- 10 (6) "Determination of debilitation" means a written determination made by the  
11 attending physician which contains the physician's opinion to a reasonable  
12 degree of medical certainty regarding the nature, cause, extent, and probable  
13 duration of the debilitation of the petitioner or designator.
- 14 (7) "Determination of incapacity" means a written determination made by the  
15 attending physician which contains the physician's opinion to a reasonable  
16 degree of medical certainty regarding the nature, cause, extent, and probable  
17 duration of the incapacity of the petitioner or designator.
- 18 (8) "Incapacity" means a chronic and substantial inability, as a result of mental  
19 or organic impairment, to understand the nature and consequences of  
20 decisions concerning the care of one's minor ~~child,~~ child or of an  
21 incompetent adult, and a consequent inability to make these decisions.
- 22 (8a) "Incompetent adult" means an adult or emancipated minor who is subject to  
23 a guardianship of the person or a general guardianship.
- 24 (9) "Minor child" means an unemancipated child or children under the age of 18  
25 years.
- 26 (10) "Petitioner" means a person who suffers from a progressive chronic illness  
27 or an irreversible fatal illness and who is (i) the biological parent, the  
28 adoptive parent, the guardian of the person, or the general guardian of a  
29 minor ~~child-~~child, or (ii) the guardian of the person or the general guardian  
30 of an incompetent adult. A proceeding under this Article may be initiated  
31 and pursued on behalf of a petitioner by the guardian of the person, the  
32 general guardian of the petitioner, or by a person appointed by the clerk of  
33 superior court pursuant to Rule 17 of the Rules of Civil Procedure as  
34 guardian ad litem for the purpose of initiating and pursuing a proceeding  
35 under this Article on behalf of a petitioner.
- 36 (11) "Standby guardian" means a person appointed pursuant to G.S. 35A-1373 or  
37 designated pursuant to G.S. 35A-1374 to become the guardian of the person  
38 or, when appropriate, the general guardian of a minor child or incompetent  
39 adult upon the death of a petitioner or designator, upon a determination of  
40 debilitation or incapacity of a petitioner or designator, or with the consent of  
41 a petitioner or designator.
- 42 (12) "Triggering event" means an event stated in the designation executed or  
43 order entered under this Article which empowers the standby guardian, or  
44 the alternate standby guardian, if one is identified and the standby guardian  
45 is unwilling or unable to serve, to assume the duties of the office, which  
46 event may be the death of a petitioner or designator, incapacity of a  
47 petitioner or designator, debilitation of a petitioner or designator with the  
48 petitioner's or designator's consent, or the consent of the petitioner or  
49 designator, whichever occurs first.
- 50 ...

1 "§ 35A-1373. Appointment by petition of standby guardian; petition, notice, hearing,  
2 order.

3 (a) A petitioner shall commence a proceeding under this Article for the appointment of  
4 a standby guardian (i) in the case of a minor ~~child-child~~, by filing a petition with the clerk of  
5 superior court of the county in which the minor child resides or is domiciled at the time of  
6 ~~filing-filing~~ or (ii) in the case of an incompetent adult, by filing a petition with the clerk of  
7 superior court in the county where the guardianship is docketed. A petition filed by a guardian  
8 of the person or a general guardian of the minor child who was appointed under this Chapter  
9 shall be treated as a motion in the cause in the original guardianship, but the provisions of this  
10 section shall otherwise apply.

11 (b) A petition for the judicial appointment of a standby guardian ~~of a minor child~~ shall:

- 12 (1) Identify the petitioner, the minor ~~child-child~~ or incompetent adult, the  
13 person designated to be the standby guardian, and the person designated to  
14 be the alternate standby guardian, if any;
- 15 (2) State that the authority of the standby guardian is to become effective upon  
16 the death of the petitioner, upon the incapacity of the petitioner, upon the  
17 debilitation of the petitioner with the consent of the petitioner, or upon the  
18 petitioner's signing of a written consent stating that the standby guardian's  
19 authority is in effect, whichever occurs first;
- 20 (3) State that the petitioner suffers from a progressively chronic illness or an  
21 irreversible fatal illness, and the basis for such a statement, such as the date  
22 and source of a medical diagnosis, without requiring the identification of the  
23 illness in question;
- 24 (4) State whether there are any lawsuits, in this or any other jurisdiction,  
25 involving the minor child or incompetent adult and, if so, identify the  
26 parties, the case numbers, and the states and counties where filed; and
- 27 (5) Be verified by the petitioner in front of a notary public or another person  
28 authorized to administer oaths.

29 (c) A copy of the petition and written notice of the time, date, and place set for a  
30 hearing shall be served upon any biological or adoptive parent of the minor child who is not a  
31 ~~petitioner~~, petitioner (if the petition concerns a minor child) or on such as would be required if  
32 the petition was filed as a motion in the cause under G.S. 35A-1207 (if the petition concerns an  
33 incompetent adult), and on any other person the clerk may direct, including the minor ~~child-~~  
34 Service-child or incompetent adult. If the petition concerns a minor child, service shall be made  
35 pursuant to Rule 4 of the Rules of Civil Procedure, unless the clerk directs otherwise. If the  
36 petition concerns an incompetent adult, service shall be made pursuant to Rule 5 of the Rules of  
37 Civil Procedure, unless the clerk directs otherwise. When service is made by the sheriff, the  
38 sheriff shall make such service without demanding his fees in advance. Parties may waive their  
39 right to notice of the hearing and the clerk may proceed to consider the petition upon  
40 determining that all necessary parties are before the court and agree to have the petition  
41 considered.

42 (d) If at or before the hearing any parent entitled to notice under subsection (c) of this  
43 section presents to the clerk a written claim for custody of the minor child, the clerk shall stay  
44 further proceedings under this Article pending the filing of a complaint for custody of the  
45 minor child under Chapter 50 of the General Statutes and, upon the filing of such a complaint,  
46 shall dismiss the petition. If no such complaint is filed within 30 days after the claim is  
47 presented, the clerk shall conduct a hearing and enter an order as provided for in this section.

48 (e) The petitioner's appearance at the hearing shall not be required if the petitioner is  
49 medically unable to appear, unless the clerk determines that the petitioner is able with  
50 reasonable accommodation to appear and that the interests of justice require that the petitioner  
51 be present at the hearing.

1 (f) At the hearing, the clerk shall receive evidence necessary to determine whether the  
2 requirements of this Article for the appointment of a standby guardian have been satisfied. If  
3 the clerk finds that the petitioner suffers from a progressive chronic illness or an irreversible  
4 fatal illness, that the best interests of the minor child or incompetent adult will be promoted by  
5 the appointment of a standby guardian of the person or general guardian, and that the standby  
6 guardian and the alternate standby guardian, if any, are fit to serve as guardian of the person or  
7 general guardian of the minor ~~child, child or incompetent adult~~, the clerk shall enter an order  
8 appointing the standby guardian named in the petition as standby guardian of the person or  
9 standby general guardian of the minor child or incompetent adult and shall issue letters of  
10 appointment to the standby guardian. The order may also appoint the alternate standby guardian  
11 named in the petition as the alternate standby guardian of the person or alternate general  
12 guardian of the minor child or incompetent adult in the event that the person named as standby  
13 guardian is unwilling or unable to serve as standby guardian and shall provide that, upon a  
14 showing of that unwillingness or inability, letters of appointment will be issued to the alternate  
15 standby guardian.

16 ...  
17 **"§ 35A-1374. Appointment by written designation; form.**

18 (a) A designator may designate a standby guardian by means of a written designation,  
19 signed by the designator in the presence of two witnesses at least 18 years of age, other than the  
20 standby guardian or alternate standby guardian, who shall also sign the writing. Another person  
21 may sign the written designation on the behalf of and at the direction of the designator if the  
22 designator is physically unable to do so, provided that the designation is signed in the presence  
23 of the designator and the two witnesses.

24 (b) A designation of a standby guardian shall identify the designator, the minor ~~child,~~  
25 child or incompetent adult, the person designated to be the standby guardian, and the person  
26 designated to be the alternate standby guardian, if any, and shall indicate that the designator  
27 intends for the standby guardian or the alternate standby guardian to become the ~~minor child's~~  
28 guardian of the minor child or incompetent adult in the event that the designator either:

- 29 (1) Becomes incapacitated;
- 30 (2) Becomes debilitated and consents to the commencement of the standby  
31 guardian's authority;
- 32 (3) Dies prior to the commencement of a judicial proceeding to appoint a  
33 guardian of the person or general guardian of a minor child; or
- 34 (4) Consents to the commencement of the standby guardian's authority.

35 (c) The authority of the standby guardian under a designation shall commence upon the  
36 same conditions as set forth in G.S. 35A-1373(i) through ~~(l)~~, as if the order referred to  
37 therein was a written description under this section.

38 (d) The standby guardian or, if the standby guardian is unable or unwilling to serve, the  
39 alternate standby guardian shall commence a proceeding under this Article to be appointed  
40 guardian of the person or general guardian of the minor child ~~by or incompetent adult by, in the~~  
41 case of a minor child, filing a petition with the clerk of superior court of the county in which  
42 the minor child resides or is domiciled at the time of filing. filing or, in the case of an  
43 incompetent adult, filing a petition with the clerk of superior court in the county where the  
44 guardianship is docketed. The petition shall be filed after receipt of either:

- 45 (1) A copy of a determination of incapacity made pursuant to G.S. 35A-1375;
- 46 (2) A copy of a determination of debilitation made pursuant to G.S. 35A-1375  
47 and a copy of the designator's written consent to such commencement;
- 48 (3) A copy of the designator's written consent to such commencement, made  
49 pursuant to G.S. 35A-1373(l); or
- 50 (4) Proof of death of the designator, such as a copy of a death certificate or a  
51 funeral home receipt.

1 (e) The standby guardian shall file a petition pursuant to subsection (d) of this section  
2 within 90 days of the date of the commencement of the standby guardian's authority under this  
3 section, or the standby guardian's authority shall lapse after the expiration of those 90 days, to  
4 recommence only upon filing of the petition.

5 (f) A petition filed pursuant to subsection (d) of this section shall:

6 (1) Append the written designation of such person as standby guardian; and

7 (2) Append a copy of either (i) the determination of incapacity of the designator;  
8 (ii) the determination of debilitation of the designator and the written  
9 consent of the designator; (iii) the designator's consent; or (iv) proof of death  
10 of the designator, such as a copy of a death certificate or a funeral home  
11 receipt; and

12 (3) If the petition is by a person designated as an alternate standby guardian,  
13 state that the person designated as the standby guardian is unwilling or  
14 unable to act as standby guardian, and the basis for that statement; and

15 (4) State whether there are any lawsuits, in this State or any other jurisdiction,  
16 involving the minor child or incompetent adult and, if so, identify the  
17 parties, the case numbers, and the states and counties where filed; and

18 (5) Be verified by the standby guardian or alternate standby guardian in front of  
19 a notary public or another person authorized to administer oaths.

20 (g) A copy of the petition and written notice of the time, date, and place set for a  
21 hearing shall be served upon any biological or adoptive parent of the minor child who is not a  
22 ~~designator, designator~~ (if the petition concerns a minor child), on such persons as would be  
23 required if the petition was filed as a motion in the cause under G.S. 35A-1207 (if the petition  
24 concerns an incompetent adult), and on any other person the clerk may direct, including the  
25 minor child. Service—child or incompetent adult. If the petition concerns a minor child, service  
26 shall be made pursuant to Rule 4 of the Rules of Civil Procedure, unless the clerk directs  
27 otherwise. If the petition concerns an incompetent adult, service shall be made pursuant to Rule  
28 5 of the Rules of Civil Procedure, unless the clerk directs otherwise. When service is made by  
29 the sheriff, the sheriff shall make such service without demanding his fees in advance. Parties  
30 may waive their right to notice of the hearing and the clerk may proceed to consider the petition  
31 upon determining that all necessary parties are before the court and agree to have the petition  
32 considered.

33 (h) If at or before the hearing any parent entitled to notice under subsection (c) of this  
34 section presents to the clerk a written claim for custody of the minor child, the clerk shall stay  
35 further proceedings under this Article pending the filing of a complaint for custody of the  
36 minor child under Chapter 50 of the General Statutes and, upon the filing of such a complaint,  
37 shall dismiss the petition. If no such complaint is filed within 30 days after the claim is  
38 presented, the clerk shall conduct a hearing and enter an order as provided for in this section.

39 (i) At the hearing, the clerk shall receive evidence necessary to determine whether the  
40 requirements of this section have been satisfied. The clerk shall enter an order appointing the  
41 standby guardian or alternate standby guardian as guardian of the person or general guardian of  
42 the minor child or incompetent adult if the clerk finds that:

43 (1) The person was duly designated as a standby guardian or alternate standby  
44 guardian;

45 (2) That (i) there has been a determination of ~~incapacity;—incapacity of the~~  
46 designator; (ii) there has been a determination of debilitation and the  
47 designator has consented to the commencement of the standby guardian's  
48 authority; (iii) the designator has consented to that commencement; or (iv)  
49 the designator has died, such information coming from a document, such as  
50 a copy of a death certificate or a funeral home receipt;

- 1 (3) That the best interests of the minor child or incompetent adult will be  
2 promoted by the appointment of the person designated as standby guardian  
3 or alternate standby guardian as guardian of the person or general guardian  
4 of the minor ~~child;~~child or incompetent adult;
- 5 (4) That the standby guardian or alternate standby guardian is fit to serve as  
6 guardian of the person or general guardian of the minor ~~child;~~child or  
7 incompetent adult; and
- 8 (5) That, if the petition is by a person designated as an alternate standby  
9 guardian, the person designated as standby guardian is unwilling or unable to  
10 serve as standby guardian.
- 11 (j) The designator may revoke a standby guardianship created under this section by:
- 12 (1) Notifying the standby guardian in writing of the intent to revoke the standby  
13 guardianship prior to the filing of the petition under this section; or
- 14 (2) Where the petition has already been filed, by executing a written revocation,  
15 filing it in the office of the clerk with whom the petition was filed, and  
16 promptly providing the standby guardian with a copy of the written  
17 revocation.

18 ...

19 **"§ 35A-1376. Restoration of capacity or ability; suspension of guardianship.**

20 In the event that the authority of the standby guardian becomes effective upon the receipt of  
21 a determination of incapacity or debilitation and the petitioner or designator is subsequently  
22 restored to capacity or ability to care for the child, the authority of the standby guardian based  
23 on that incapacity or debilitation shall be suspended. The attending physician shall provide a  
24 copy of the determination of restored capacity or ability to the standby guardian, if the identity  
25 of the standby guardian is known to the attending physician. If an order appointing the standby  
26 guardian as guardian of the person or general guardian of the minor child or incompetent adult  
27 has been entered, the standby guardian shall, and the petitioner or designator may, file a copy  
28 of the determination of restored capacity or ability in the office of the clerk who entered the  
29 order. A determination of restored capacity or ability shall:

- 30 (1) Be made by the attending physician to a reasonable degree of medical  
31 certainty;
- 32 (2) Be in writing; and
- 33 (3) Contain the attending physician's opinion regarding the cause and nature of  
34 the parent's or legal guardian's restoration to capacity or ability.

35 Any order appointing the standby guardian as guardian of the person or general guardian of  
36 the minor child or incompetent adult shall remain in full force and effect, and the authority of  
37 the standby guardian shall recommence upon the standby guardian's receipt of a subsequent  
38 determination of the petitioner's or designator's incapacity, pursuant to G.S. 35A-1373(j), or  
39 upon the standby guardian's receipt of a subsequent determination of debilitation pursuant to  
40 G.S. 35A-1373(k), or upon the receipt of proof of death of the petitioner or designator, or upon  
41 the written consent of the petitioner or designator, pursuant to G.S. 35A-1373(l).

42 ...

43 **"§ 35A-1379. Appointment of guardian ad litem.**

44 (a) The clerk may appoint a volunteer guardian ad litem, if available, to represent the  
45 best interests of the minor child or incompetent adult and, where appropriate, express the  
46 wishes of the minor ~~child.~~child or incompetent adult.

47 (b) The duties of the guardian ad litem, when appointed, shall be to make an  
48 investigation to determine the facts, the needs of the minor child or incompetent adult and the  
49 available resources within the family to meet those needs, and to protect and promote the best  
50 interests of the minor child or incompetent adult until formally relieved of the responsibility by  
51 the clerk.

1 (c) The court may order the guardian ad litem to conduct an investigation to determine  
 2 the fitness of the intended standby guardian and alternate standby guardian, if any, to perform  
 3 the duties of standby guardian.

4 ...

5 **"§ 35A-1382. Termination.**

6 (a) Any standby guardianship created under this Article shall continue ~~until~~until:

7 (1) If the ward is a minor child, the child reaches 18 years of age unless sooner  
 8 terminated by order of the clerk who entered the order appointing the  
 9 standby guardian, by revocation pursuant to this Article, or by renunciation  
 10 pursuant to this Article.

11 (2) Revocation pursuant to this Article.

12 (3) Renunciation pursuant to this Article.

13 (b) A standby guardianship shall terminate, and the authority of the standby guardian  
 14 designated pursuant to G.S. 35A-1374 or of a guardian of the person or general guardian  
 15 appointed pursuant to this Article shall cease, upon the entry of an order of the district court  
 16 granting custody of the minor child to any other person."

17  
 18 **PART II. AUTHORIZE LIVING PROBATE PROCEDURE ALLOWING A PERSON**  
 19 **TO PETITION THE PROBATE COURT FOR AN ORDER CONFIRMING THE**  
 20 **VALIDITY OF THAT PERSON'S WILL**

21 **SECTION 2.** Chapter 28A of the General Statutes is amended by adding a new  
 22 Article to read:

23 "Article 2B.

24 "Living Probate.

25 **"§ 28A-2B-1. Establishment before death that a will or codicil is valid.**

26 (a) Any individual who is a resident of North Carolina and who has executed a will or  
 27 codicil may file a petition seeking a judicial declaration that the will or codicil is valid.

28 (b) The petition shall be filed with the clerk of superior court and the matter shall  
 29 proceed as a contested estate proceeding governed by Article 2 of Chapter 28A of the General  
 30 Statutes. At the hearing before the clerk of superior court, the petitioner shall produce the  
 31 evidence necessary to establish that the will or codicil would be admitted to probate if the  
 32 individual were deceased.

33 If an interested party contests the validity of the will or codicil, that person shall file a  
 34 written challenge to the will or codicil before the hearing or make an objection to the validity of  
 35 the will or codicil at the hearing. Upon the filing of a challenge or the raising of an issue  
 36 contesting the validity of the will or codicil, the clerk shall transfer the cause to the superior  
 37 court. The matter shall be heard as if it were a caveat proceeding, and the court shall make a  
 38 determination as to the validity of the will or codicil and enter judgment accordingly.

39 If no interested party contests the validity of the will or codicil and if the clerk of superior  
 40 court determines that the will or codicil would be admitted to probate if the individual were  
 41 deceased, the clerk of superior court shall enter an order adjudging the will or codicil to be  
 42 valid.

43 **"§ 28A-2B-2. Venue.**

44 The venue for a petition under G.S. 28A-2B-1 is the county of this State in which the  
 45 individual whose will or codicil is the subject of the petition is domiciled.

46 **"§ 28A-2B-3. Contents of petition for will validity.**

47 (a) Petition. – A petition requesting an order declaring that an individual's will or  
 48 codicil is valid shall be verified and shall contain the following information:

49 (1) A statement that the individual is a resident of North Carolina and specifying  
 50 the county of the individual's residence.

1           (2)    Allegations that the will was prepared and executed in accordance with  
2           North Carolina law and a statement that the will was executed with  
3           testamentary intent.

4           (3)    A statement that the individual had testamentary capacity at the time the will  
5           was executed.

6           (4)    A statement that the individual was free from undue influence and duress  
7           and executed the will in the exercise of the individual's free will.

8           (5)    A statement identifying the individual, and all persons believed by the  
9           petitioner to have an interest in the proceeding, including, for any interested  
10          parties who are minors, information regarding the minor's appropriate  
11          representative.

12          (b)    The petitioner shall file the original will or codicil with the petition. If an order is  
13          entered declaring the will or codicil to be valid, the court shall affix a certificate of validity to  
14          the will or codicil.

15          **"§ 28A-2B-4. Declaration by court; bar to caveat.**

16          (a)    If the court enters a judgment declaring a will or codicil to be valid, such judgment  
17          shall be binding upon all parties to the proceeding, including any persons represented in the  
18          proceeding pursuant to the provisions of G.S. 28A-2-7, and no party bound by the judgment  
19          shall have any further right to, and shall be barred from filing, a caveat to the will or codicil  
20          once that will or codicil is entered into probate following the individual's death.

21          (b)    If the court declares a will or codicil to be valid, upon the motion of the petitioner or  
22          the court, the court may order that the will or codicil cannot be revoked and that no subsequent  
23          will or codicil will be valid unless the revocation or the subsequent will or codicil is declared  
24          valid in a proceeding under this Article. If the court enters such an order, any subsequent  
25          revocation of the will or codicil not declared valid in a proceeding under this Article shall be  
26          void and any subsequent will or codicil not declared valid in a proceeding under this Article  
27          shall be void and shall not be admitted to probate.

28          (c)    If a will or codicil judicially declared valid is revoked or modified by a subsequent  
29          will or codicil, nothing in this section shall bar an interested person from contesting the validity  
30          of that subsequent will or codicil, unless that subsequent will or codicil is also declared valid in  
31          a proceeding under this Article in which the interested person was a party. If a will or codicil  
32          judicially declared valid is revoked by a method other than the execution of a subsequent will  
33          or codicil, nothing in this section shall bar an interested person from contesting the validity of  
34          that revocation, unless that revocation is also declared valid in a proceeding under this Article  
35          in which the interested person was a party.

36          **"§ 28A-2B-5. Confidentiality.**

37          (a)    Following the entry of a judgment, a party to the proceeding may move that the  
38          contents of the file be sealed and kept confidential, and upon such motion, the clerk shall seal  
39          the contents of the file from public inspection. The contents of the file shall not be released  
40          except by order of the clerk to any person other than:

41               (1)    The petitioner named in the petition.

42               (2)    The testator of the will.

43               (3)    Interested persons who appeared in the proceedings, interested persons who  
44               have otherwise submitted to the jurisdiction of the court, and the attorneys  
45               and guardians of the interested persons.

46               (4)    The attorney for the petitioner.

47               (5)    The judge hearing or reviewing the matter.

48          For good cause shown, the court may order the records that are confidential under this section  
49          to be made available to a person who is not listed in this section.

50          **"§ 28A-2B-6. Costs and attorneys' fees.**



1 Costs, including reasonable attorneys' fees, incurred by a party in a proceeding under this  
2 Article shall be taxed against any party, or apportioned among the parties, in the discretion of  
3 the court, except that the court shall allow attorneys' fees for the attorneys of a party contesting  
4 the proceeding only if the court finds that the party had reasonable grounds for contesting the  
5 proceeding."

6  
7 **PART III. ENACT THE UNIFORM POWERS OF APPOINTMENT ACT**

8 **SECTION 3.(a)** The General Statutes are amended by adding a new Chapter to  
9 read:

10 **"Chapter 31D.**

11 **"North Carolina Uniform Powers of Appointment Act.**

12 **"Article 1.**

13 **"General Provisions and Definitions.**

14 **"§ 31D-1-101. Short title.**

15 This Chapter may be cited as the North Carolina Uniform Powers of Appointment Act.

16 **"§ 31D-1-102. Definitions.**

17 The following definitions apply in this Chapter:

- 18 (1) "Appointee" means a person to whom a power holder makes an appointment  
19 of appointive property.
- 20 (2) "Appointive property" means the property or property interest subject to a  
21 power of appointment.
- 22 (3) "Blanket-exercise clause" means a clause in an instrument which exercises a  
23 power of appointment and is not a specific-exercise clause. The term  
24 includes a clause that:
- 25 a. Expressly uses the words "any power" in exercising any power of  
26 appointment the power holder has.
- 27 b. Expressly uses the words "any property" in appointing any property  
28 over which the power holder has a power of appointment.
- 29 c. Disposes of all property subject to disposition by the power holder.
- 30 (4) "Donor" means a person who creates a power of appointment.
- 31 (5) "Exclusionary power of appointment" means a power of appointment  
32 exercisable in favor of any one or more of the permissible appointees to the  
33 exclusion of the other permissible appointees.
- 34 (6) "General power of appointment" means a power of appointment exercisable  
35 in favor of the power holder, the power holder's estate, a creditor of the  
36 power holder, or a creditor of the power holder's estate.
- 37 (7) "Gift-in-default clause" means a clause identifying a taker in default of  
38 appointment.
- 39 (8) "Impermissible appointee" means a person that is not a permissible  
40 appointee.
- 41 (9) "Instrument" means a writing.
- 42 (10) "Nongeneral power of appointment" means a power of appointment that is  
43 not a general power of appointment.
- 44 (11) "Permissible appointee" means a person in whose favor a power holder may  
45 exercise a power of appointment.
- 46 (12) "Person" means an individual, estate, trust, business or nonprofit entity,  
47 public corporation, government or governmental subdivision, agency,  
48 instrumentality, or other legal entity.
- 49 (13) "Power of appointment" means a power that enables a power holder acting  
50 in a nonfiduciary capacity to designate a recipient of an ownership interest in  
51 or another power of appointment over the appointive property. The power of

1 appointment may be general or nongeneral and presently exercisable or not  
2 presently exercisable. The term does not include a power of attorney.

3 (14) "Power holder" means a person in whom a donor creates a power of  
4 appointment.

5 (15) "Presently exercisable power of appointment" means a power of  
6 appointment exercisable by the power holder at the relevant time. The term:

7 a. Includes a power of appointment not exercisable until the occurrence  
8 of a specified event, the satisfaction of an ascertainable standard  
9 relating to an individual's health, education, and support or  
10 maintenance within the meaning of section 2041(b)(1)(A) or section  
11 2514(c)(1) of the Internal Revenue Code, as amended, or the passage  
12 of a specified time only after one of the following:

13 1. The occurrence of the specified event.

14 2. The satisfaction of the ascertainable standard.

15 3. The passage of the specified time.

16 b. Does not include a power exercisable only at the power holder's  
17 death.

18 (16) "Specific-exercise clause" means a clause in an instrument which  
19 specifically refers to and exercises a particular power of appointment.

20 (17) "Taker in default of appointment" means a person who takes all or part of  
21 the appointive property to the extent the power holder does not effectively  
22 exercise the power of appointment.

23 (18) "Terms of the instrument" means the manifestation of the intent of the maker  
24 of the instrument regarding the instrument's provisions as expressed in the  
25 instrument or as may be established in a judicial proceeding.

26 **"§ 31D-1-103. Governing law.**

27 (a) The creation, revocation, or amendment of the power of appointment is governed by  
28 either of the following:

29 (1) The law of the jurisdiction designated in the terms of the instrument creating  
30 the power.

31 (2) If no jurisdiction's law is designated in the terms of the instrument creating  
32 the power or if the jurisdiction's law so designated is contrary to a strong  
33 public policy of the law of the jurisdiction of the donor's domicile at the  
34 relevant time, then the law of the jurisdiction of the donor's domicile at the  
35 relevant time.

36 (b) The exercise, release, or disclaimer of the power, or the revocation or amendment of  
37 the exercise, release, or disclaimer of the power, is governed by either of the following:

38 (1) The law of the jurisdiction designated in the terms of the instrument creating  
39 the power.

40 (2) If no jurisdiction's law is designated in the terms of the instrument creating  
41 the power or if the jurisdiction's law so designated is contrary to a strong  
42 public policy of the law of the jurisdiction of the power holder's domicile at  
43 the relevant time, then the law of the jurisdiction of the power holder's  
44 domicile at the relevant time.

45 **"§ 31D-1-104. Common law and principles of equity.**

46 The common law and principles of equity supplement this Chapter, except to the extent  
47 modified by this Chapter or another statute of this State.

48 "Article 2.

49 "Creation, Revocation, and Amendment of Power of Appointment.

50 **"§ 31D-2-201. Creation of power of appointment.**

51 (a) A power of appointment is created only if all of the following apply:

- 1           (1)    The instrument creating the power is valid under applicable law.  
2           (2)    Except as otherwise provided in subsection (b) of this section, the instrument  
3           creating the power transfers the appointive property.  
4           (3)    The terms of the instrument creating the power manifest the donor's intent to  
5           create in a power holder a power of appointment over the appointive  
6           property exercisable in favor of a permissible appointee.  
7       (b)    Subdivision (1) of subsection (a) of this section does not apply to the creation of a  
8       power of appointment by the exercise of a power of appointment.  
9       (c)    A power of appointment may not be created in a deceased individual.  
10       (d)    Subject to an applicable rule against perpetuities or restraint on alienation, a power  
11       of appointment may be created in an unborn or unascertained power holder.

12    **"§ 31D-2-202. Nontransferability.**

13       A power holder may not transfer a power of appointment. If a power holder dies without  
14       exercising or releasing a power, the power lapses.

15    **"§ 31D-2-203. Presumption of unlimited authority.**

16       Subject to the provisions of G.S. 31D-2-205, and unless the terms of the instrument creating  
17       a power of appointment manifest a contrary intent, the power is all of the following:

- 18           (1)    Presently exercisable.  
19           (2)    Exclusionary.  
20           (3)    Except as otherwise provided in G.S. 31D-2-204, general.

21    **"§ 31D-2-204. Exception to presumption of unlimited authority.**

22       Unless the terms of the instrument creating a power of appointment manifest a contrary  
23       intent, the power is nongeneral if both of the following apply:

- 24           (1)    The power is exercisable only at the power holder's death.  
25           (2)    The permissible appointees of the power are a defined and limited class that  
26           does not include the power holder's estate, the power holder's creditors, or  
27           the creditors of the power holder's estate.

28    **"§ 31D-2-205. Rules of classification.**

29       (a)    In this section, the term "adverse party" means a person with a substantial beneficial  
30       interest in property who would be affected adversely by a power holder's exercise or  
31       nonexercise of a power of appointment in favor of the power holder, the power holder's estate,  
32       a creditor of the power holder, or a creditor of the power holder's estate.

33       (b)    If a power holder may exercise a power of appointment only with the consent or  
34       joinder of an adverse party, the power is nongeneral.

35       (c)    If the permissible appointees of a power of appointment are not defined and limited,  
36       the power is exclusionary.

37    **"§ 31D-2-206. Power to revoke or amend.**

38       A donor may revoke or amend a power of appointment only to the extent that either of the  
39       following apply:

- 40           (1)    The instrument creating the power is revocable by the donor.  
41           (2)    The donor reserves a power of revocation or amendment in the instrument  
42           creating the power of appointment.

43                            "Article 3.

44                            "Exercise of Power of Appointment.

45    **"§ 31D-3-301. Requisites for exercise of power of appointment.**

46       A power of appointment is exercised only to the extent that the appointment is a  
47       permissible exercise of the power, and only if all of the following apply:

- 48           (1)    The instrument exercising the power is valid under applicable law.  
49           (2)    The terms of the instrument exercising the power manifest the power  
50           holder's intent to exercise the power.

- 1           (3)    Subject to the provisions of G.S. 31D-3-304, the terms of the instrument  
2                    exercising the power satisfy the requirements of exercise, if any, imposed by  
3                    the donor.

4    **"§ 31D-3-302. Intent to exercise; determining intent from residuary clause.**

5            A residuary clause that does not contain a blanket-exercisable clause or specific-exercise  
6    clause manifests the power holder's intent to exercise a power of appointment only if all of the  
7    following apply:

- 8            (1)    The terms of the instrument containing the residuary clause (including any  
9                    valid codicil or amendment to the instrument) do not manifest a contrary  
10                   intent.  
11           (2)    The power is a general power exercisable in favor of the power holder's  
12                    estate.  
13           (3)    There is no gift-in-default clause or the clause is ineffective.  
14           (4)    The power holder did not release the power.

15    **"§ 31D-3-303. Intent to exercise after acquired power.**

16            Unless the terms of an instrument exercising a power of appointment manifest a contrary  
17    intent:

- 18           (1)    If the power holder is not also the donor of the power, a blanket-exercise  
19                    clause in the instrument extends to a power acquired by the power holder  
20                    after executing the instrument containing the clause.  
21           (2)    If the power holder is also the donor of the power, the blanket-exercise  
22                    clause extends to the power acquired by the power holder after executing the  
23                    instrument only if there is no gift-in-default clause or the gift-in-default  
24                    clause is ineffective. The blanket-exercise clause does not extend to the  
25                    power if there is a gift-in-default clause that is effective.

26    **"§ 31D-3-304. Substantial compliance with donor-imposed formal requirement.**

27            A power holder's substantial compliance with a formal requirement of appointment  
28    imposed by the donor, including a requirement that the instrument exercising the power of  
29    appointment make reference or specific reference to the power, is sufficient if both of the  
30    following apply:

- 31           (1)    The power holder knows of and intends to exercise the power.  
32           (2)    The power holder's manner of attempted exercise of the power does not  
33                    impair a material purpose of the donor in imposing the requirement.

34    **"§ 31D-3-305. Permissible appointment.**

35           (a)    If a power holder of a general power of appointment permits appointment to the  
36                    power holder or the power holder's estate, the power holder may make any appointment,  
37                    including an appointment in trust or an appointment that creates a new power of appointment  
38                    that the power holder could make in disposing of the power holder's own property.

39           (b)    If a power holder of a general power of appointment permits appointment only to  
40                    the creditors of the power holder or the creditors of the power holder's estate, or both, the  
41                    power holder may appoint only to those creditors.

42           (c)    Unless the terms of the instrument creating a power of appointment manifest a  
43                    contrary intent, the power holder of a nongeneral power may:

- 44            (1)    Make an appointment in any form, including an appointment in trust, in  
45                    favor of a permissible appointee.  
46            (2)    Create a general power in a permissible appointee.

47           (d)    The terms of the instrument may permit the power holder of a nongeneral power to  
48                    create a nongeneral power in any person to appoint to one or more of the permissible  
49                    appointees of the original nongeneral power.

50    **"§ 31D-3-306. Appointment to deceased appointee.**

51            An appointment to a deceased appointee is ineffective.

1 **"§ 31D-3-307. Impermissible appointment.**

2 (a) An exercise of a power of appointment in favor of an impermissible appointee is  
3 ineffective.

4 (b) An exercise of a power of appointment in favor of a permissible appointee is  
5 ineffective to the extent that the appointment is a fraud on the power.

6 **"§ 31D-3-308. Selective allocation doctrine.**

7 If a power holder exercises a power of appointment in a disposition that also disposes of  
8 property the power holder owns, the owned property and the appointive property must be  
9 allocated in the permissible manner that best carries out the power holder's intent.

10 **"§ 31D-3-309. Capture doctrine; disposition of ineffectively appointed property under**  
11 **general power.**

12 To the extent a power holder of a general power of appointment, other than a power to  
13 withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

14 (1) The gift-in-default clause controls the disposition of the ineffectively  
15 appointed property.

16 (2) If there is no gift-in-default clause or to the extent the clause is ineffective,  
17 the ineffectively appointed property passes as follows:

18 a. To the power holder if the power holder is a permissible appointee  
19 and living.

20 b. If the power holder is an impermissible appointee or deceased, to the  
21 power holder's estate if the estate is a permissible appointee.

22 c. If the power holder is an impermissible appointee or deceased and if  
23 the estate is not a permissible appointee, under a reversionary interest  
24 to the donor or the donor's transferee or successor in interest.

25 **"§ 31D-3-310. Disposition of unappointed property under released or unexercised general**  
26 **power.**

27 (a) To the extent that a power holder releases a general power of appointment other  
28 than a power to withdraw property from, revoke, or amend a trust, the gift-in-default clause  
29 controls the disposition of the unappointed property. If there is no gift-in-default clause or to  
30 the extent that the clause is ineffective, the unappointed property passes under a reversionary  
31 interest to the donor or the donor's transferee or successor in interest.

32 (b) To the extent a power holder fails to exercise a general power of appointment other  
33 than a power to withdraw property from, revoke, or amend a trust, the gift-in-default clause  
34 controls the disposition of the unappointed property. If there is no gift-in-default clause or to  
35 the extent the clause is ineffective, the unappointed property passes as follows:

36 (1) To the power holder if the power holder is a permissible appointee and  
37 living.

38 (2) If the power holder is an impermissible appointee or deceased, to the power  
39 holder's estate if the estate is a permissible appointee.

40 (3) If the power holder is an impermissible appointee or deceased and if the  
41 estate is not a permissible appointee, under a reversionary interest to the  
42 donor or the donor's transferee or successor in interest.

43 **"§ 31D-3-311. Disposition of unappointed property under released or unexercised**  
44 **nongeneral power.**

45 To the extent that a power holder releases, ineffectively exercises, or fails to exercise a  
46 nongeneral power of appointment:

47 (1) The gift-in-default clause controls the disposition of the unappointed  
48 property.

49 (2) If there is no gift-in-default clause, or to the extent that the clause is  
50 ineffective, the unappointed property:

51 a. Passes to the permissible appointees, if both of the following apply:

1           1. The permissible appointees are defined and limited.

2           2. The terms of the instrument creating the power do not  
3           manifest a contrary intent.

4           b. If there is no taker under sub-subdivision a. of this subdivision,  
5           passes under a reversionary interest to the donor or the donor's  
6           transferee or successor in interest.

7   **"§ 31D-3-312. Disposition of unappointed property if partial appointment to taker in**  
8   **default.**

9           Unless the terms of the instrument creating or exercising a power of appointment manifest a  
10          contrary intent, if the power holder makes a valid partial appointment to a taker in default of  
11          appointment, then the taker in default of appointment may share fully in unappointed property.

12   **"§ 31D-3-313. Appointment to taker in default.**

13          If a power holder makes an appointment to a taker in default of appointment and the  
14          appointee would have taken the property under a gift-in-default clause had the property not  
15          been appointed, then the power of appointment is deemed not to have been exercised and the  
16          appointee takes under the clause.

17   **"§ 31D-3-314. Power holder's authority to revoke or amend exercise.**

18          If the terms of an instrument creating a power of appointment do not prohibit the power  
19          holder from revoking or amending an exercise of the power, a power holder may revoke or  
20          amend the exercise of a power only if one of the following apply:

21           (1)   The instrument creating the exercise of the power of appointment may be  
22           revoked or amended.

23           (2)   The power holder reserves a power of revocation or amendment in the  
24           instrument exercising the power of appointment.

25                   "Article 4.

26                   "Disclaimer or Release; Contract to Appoint or Not to Appoint.

27   **"§ 31D-4-401. Disclaimer.**

28          Consistent with Chapter 31B of the General Statutes:

29           (1)   A power holder may disclaim all or part of a power of appointment.

30           (2)   A permissible appointee, appointee, or taker in default of appointment may  
31           disclaim all or part of an interest in appointive property.

32   **"§ 31D-4-402. Authority to release.**

33          A power holder may release a power of appointment, in whole or in part, except to the  
34          extent that the terms of the instrument creating the power prevent the release.

35   **"§ 31D-4-403. Method of release.**

36          A power holder of a releasable power of appointment may release the power in whole or in  
37          part as follows:

38           (1)   By substantial compliance with a method provided in the terms of the  
39           instrument creating the power.

40           (2)   If the terms of the instrument creating the power do not provide a method or  
41           the method provided in the terms of the instrument is not expressly made  
42           exclusive, by an instrument manifesting the power holder's intent by clear  
43           and convincing evidence.

44   **"§ 31D-4-404. Revocation or amendment of release.**

45          A power holder may revoke or amend a release of a power of appointment only to the  
46          extent that one of the following applies:

47           (1)   The instrument of release is revocable by the power holder.

48           (2)   The power holder reserves a power of revocation or amendment in the  
49           instrument of release.

50   **"§ 31D-4-405. Power to contract; presently exercisable power of appointment.**

51          A power holder of a presently exercisable power of appointment may contract:

1           (1)     Not to exercise the power.

2           (2)     To exercise the power if the contract when made does not confer a benefit on  
 3                 an impermissible appointee.

4   **"§ 31D-4-406. Power to contract; power of appointment not presently exercisable.**

5     A power holder of a power of appointment that is not presently exercisable may contract to  
 6     exercise or not to exercise the power only if the power holder both:

7           (1)     Is also the donor of the power.

8           (2)     Has reserved the power in a revocable trust.

9   **"§ 31D-4-407. Remedy for breach of contract to appoint or not to appoint.**

10    The remedy for a power holder's breach of a contract to appoint or not to appoint appointive  
 11    property is limited to damages payable out of the appointive property or, if appropriate, specific  
 12    performance of the contract.

13                                         "Article 5.

14                                 "Rights of Power Holder's Creditors in Appointive Property.

15   **"§ 31D-5-501. Creditor claim; general power created by power holder.**

16    (a)    In this section, "power of appointment created by the power holder" includes a  
 17    power of appointment created in a transfer by another person to the extent the power holder  
 18    contributed value to the transfer.

19    (b)    Appointive property subject to a general power of appointment created by the power  
 20    holder is subject to a claim of a creditor of the power holder or of the power holder's estate to  
 21    the extent provided in the Uniform Fraudulent Transfer Act, Chapter 39 of the General Statutes.

22    (c)    Subject to subsection (b) of this section, appointive property subject to a general  
 23    power of appointment created by the power holder is not subject to a claim of a creditor of the  
 24    power holder or the power holder's estate to the extent the power holder irrevocably appointed  
 25    the property in favor of a person other than the power holder or the power holder's estate.

26    (d)    Subject to subsections (b) and (c) of this section, and notwithstanding the presence  
 27    of a spendthrift provision or whether the claim arose before or after the creation of the power of  
 28    appointment, appointive property subject to a general power of appointment created by the  
 29    power holder is subject to a claim of a creditor of:

30           (1)     The power holder, to the same extent as if the power holder owned the  
 31                 appointive property, if the power is presently exercisable.

32           (2)     The power holder's estate, to the extent that the estate is insufficient to  
 33                 satisfy the claim and subject to the right of a decedent to direct the source  
 34                 from which liabilities are paid, if the power is exercisable at the power  
 35                 holder's death.

36   **"§ 31D-5-502. Creditor claim; general power not created by power holder.**

37    (a)    Except as otherwise provided in subsection (b) of this section, and only when and to  
 38    the extent that the power holder exercises the power, appointive property subject to a general  
 39    power of appointment created by a person other than the power holder is subject to a claim of a  
 40    creditor of:

41           (1)     The power holder, to the extent the power holder's property is insufficient, if  
 42                 the power is presently exercisable.

43           (2)     The power holder's estate, to the extent the estate is insufficient, subject to  
 44                 the right of a decedent to direct the source from which liabilities are paid.

45    (b)    Subject to the provisions of G.S. 31D-5-504(c), a power of appointment created by a  
 46    person other than the power holder which is subject to an ascertainable standard relating to an  
 47    individual's health, education, support, or maintenance within the meaning of section  
 48    2041(b)(1)(A) or section 2514(c)(1) of the Internal Revenue Code, as amended, is treated for  
 49    purposes of this Article as a nongeneral power.

50   **"§ 31D-5-503. Power to withdraw.**

1 (a) For purposes of this Article, a power to withdraw property from a trust is treated as  
2 a presently exercisable general power of appointment to the extent of the property subject to the  
3 power to withdraw.

4 (b) The lapse, release, or waiver of a power to withdraw property from a trust shall not  
5 be deemed to be an exercise of the power.

6 **"§ 31D-5-504. Creditor claim; nongeneral power.**

7 (a) Except as otherwise provided in subsections (b) and (c) of this section, appointive  
8 property subject to a nongeneral power of appointment is exempt from a claim of a creditor of  
9 the power holder or the power holder's estate.

10 (b) Appointive property subject to a nongeneral power of appointment is subject to a  
11 claim of a creditor of the power holder or the power holder's estate to the extent that the power  
12 holder owned the property and, reserving the nongeneral power, transferred the property in  
13 violation of the Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the General  
14 Statutes.

15 (c) If the initial gift in default of appointment is to the power holder or the power  
16 holder's estate, a nongeneral power of appointment is treated for purposes of this Article as a  
17 general power.

18 "Article 6.

19 "Miscellaneous Provisions.

20 **"§ 31D-6-601. Uniformity of application and construction.**

21 In applying and construing this Chapter, consideration shall be given to the need to promote  
22 uniformity of the law with respect to its subject matter among states that enact it.

23 **"§ 31D-6-602. Relation to Electronic Signatures in Global and National Commerce Act.**

24 This Chapter modifies, limits, or supersedes the Electronic Signatures in Global and  
25 National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede  
26 section 101(c) of 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices  
27 described in section 103(b) of 15 U.S.C. § 7003(b).

28 **"§ 31D-6-603. Application to existing relationships.**

29 (a) Except as otherwise provided in this Chapter, on or after the effective date of this  
30 Chapter:

- 31 (1) This Chapter applies to a power of appointment created before, on or after  
32 the effective date of this Chapter.
- 33 (2) This Chapter applies to a judicial proceeding concerning a power of  
34 appointment commenced on or after the effective date of this Chapter.
- 35 (3) This Chapter applies to a judicial proceeding concerning a power of  
36 appointment commenced before the effective date of this Chapter unless the  
37 court finds that application of a particular provision of this Chapter would  
38 interfere substantially with the effective conduct of the judicial proceeding  
39 or prejudice a right of a party, in which case the particular provision of this  
40 Chapter does not apply and the superseded law applies.
- 41 (4) A rule of construction or presumption provided in this Chapter applies to an  
42 instrument executed before the effective date of this Chapter unless there is a  
43 clear indication of a contrary intent in the terms of the instrument or unless  
44 application of that rule of construction or presumption would impair  
45 substantial rights of a party created under North Carolina law in effect prior  
46 to the effective date of this Chapter, in which case that rule of construction  
47 or presumption does not apply and the superseded rule of construction or  
48 presumption applies.
- 49 (5) Except as otherwise provided in subdivisions (1) through (4) of this  
50 subsection, an action taken before the effective date of this Chapter is not  
51 affected by this Chapter.



1       (b) If a right is acquired, extinguished, or barred on the expiration of a prescribed period  
2 that commenced under law of this State other than this Chapter before the effective date of this  
3 Chapter, the law continues to apply to the right."

4               **SECTION 3.(b)** G.S. 31-4 and G.S. 31-43 are repealed.

5  
6 **PART IV. AMEND THE ELECTIVE SHARE STATUTES REGARDING VALUATION**  
7 **OF PARTIAL OR CONTINGENT INTEREST PROPERTY.**

8               **SECTION 4.** G.S. 30-3.3A(e) reads as rewritten:

9       "(e) Partial or Contingent Interest Property. – The valuation of partial and contingent  
10 property interests, outright or in trust, which are limited to commence or terminate upon the  
11 death of one or more persons, upon the expiration of a period of time, or upon the occurrence of  
12 one or more contingencies, shall be determined by computations based upon the mortality and  
13 annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of  
14 six percent (6%) of the value of the underlying property in which those interests are ~~limited.~~  
15 limited, unless upon good cause shown by one of the parties, the clerk determines that the use  
16 of such tables or rate of return is not appropriate, then the value of such interests shall be  
17 determined under subsection (f) of this section. However, in valuing partial and contingent  
18 interests passing to the surviving spouse, the following special rules apply:

19           (1) The value of the beneficial interest of a spouse shall be the entire fair market  
20 value of any property held in trust if the decedent was the settlor of the trust,  
21 if the trust is held for the exclusive benefit of the surviving spouse during the  
22 surviving spouse's lifetime, and if the terms of the trust meet the following  
23 requirements:

- 24           a. During the lifetime of the surviving spouse, the trust is controlled by  
25 one or more nonadverse trustees.  
26           b. The trustee shall distribute to or for the benefit of the surviving  
27 spouse either (i) the entire net income of the trust at least annually or  
28 (ii) the income of the trust in such amounts and at such times as the  
29 trustee, in its discretion, determines necessary for the health,  
30 maintenance, and support of the surviving spouse.  
31           c. The trustee shall distribute to or for the benefit of the surviving  
32 spouse out of the principal of the trust such amounts and at such  
33 times as the trustee, in its discretion, determines necessary for the  
34 health, maintenance, and support of the surviving spouse.  
35           d. In exercising discretion, the trustee may be authorized or required to  
36 take into consideration all other income assets and other means of  
37 support available to the surviving spouse.

38           (2) To the extent that the partial or contingent interest is dependent upon the  
39 occurrence of any contingency that is not subject to the control of the  
40 surviving spouse and that is not subject to valuation by reference to the  
41 mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the  
42 contingency will be conclusively presumed to result in the lowest possible  
43 value passing to the surviving spouse. However, a life estate or income  
44 interest that will terminate upon the surviving spouse's death or remarriage  
45 will be valued without regard to the possibility of termination upon  
46 remarriage.

47           ~~(3) To the extent that the valuation of a partial or contingent interest is~~  
48 ~~dependent upon the life expectancy of the surviving spouse, that life~~  
49 ~~expectancy shall be conclusively presumed to be no less than 10 years,~~  
50 ~~regardless of the actual attained age of the surviving spouse at the decedent's~~  
51 ~~death."~~

1  
2 **PART V. AMEND THE LAW PROVIDING FOR CONVEYANCE OF TENANCY BY**  
3 **THE ENTIRETIES TO A TRUST**

4 **SECTION 5.** G.S. 39-13.7 reads as rewritten:

5 "**§ 39-13.7. Tenancy by the entireties trusts in real property.**

6 (a) Any real property held by a husband and wife as a tenancy by the entireties and  
7 conveyed to ~~their joint revocable or irrevocable trust, or to their separate revocable or~~  
8 ~~irrevocable trusts, shall have the same immunity from the claims of the spouses' separate~~  
9 ~~creditors as would exist if the spouses had continued to hold the property as a tenancy by the~~  
10 ~~entireties, so long as (i) the spouses remain husband and wife, (ii) the real property continues to~~  
11 ~~be held in the trust or trusts, and (iii) the spouses remain the beneficial owners of the real~~  
12 ~~property to (i) a joint trust or (ii) in equal shares to two separate trusts; shall no longer be held~~  
13 ~~by the husband and wife as tenants by the entirety and shall be disposed of by the terms of the~~  
14 ~~trust or trusts, but, subject to the provisions of subsection (b) of this section, the real property~~  
15 ~~shall have the same immunity from the claims of the separate creditors of the husband and wife~~  
16 ~~as would exist if the spouses had continued to hold the property as tenants by the entireties.~~

17 (b) The immunity from the claims of separate creditors provided by subsection (a) of  
18 this section shall apply as long as all of the following apply:

19 (1) The husband and wife remain married.

20 (2) The real property continues to be held in the trust or trusts as provided in  
21 subsection (a) of this section.

22 (3) Both husband and wife are current beneficiaries of the joint trust if the real  
23 property is conveyed to that trust or of each separate trust if the real property  
24 is conveyed in equal shares to their separate trusts.

25 (c) After the death of the first of the husband and wife to die, all property held in trust  
26 that was immune from the claims of their separate creditors under subsection (a) of this section  
27 immediately prior to the individual's death shall continue to have immunity from the claims of  
28 the decedent's separate creditors as would have existed if the husband and wife continued to  
29 hold the property conveyed in trust as tenants by the entirety.

30 (d) The trustee acting under the express provisions of a trust instrument or with the  
31 written consent of both the husband and wife may waive the immunity from the claims of  
32 separate creditors provided under this section as to any specific creditor or any specifically  
33 described property including all separate creditors of a husband and wife or all former tenancy  
34 by the entirety property conveyed to the trustee.

35 (e) For purposes of this section:

36 (1) The reference to the real property conveyed to or held in the trust shall be  
37 deemed to include the proceeds arising from the involuntary conversion of  
38 the real property.

39 (2) The reference to a "joint trust" means a revocable or irrevocable trust of  
40 which both the husband and wife are the settlors, and the reference to  
41 "separate trusts" means revocable or irrevocable trusts of which the husband  
42 is the settlor of one trust and the wife is the settlor of the other trust.

43 (3) The husband and wife are "beneficiaries" of a trust if they are distributees or  
44 permissible distributees of the income or principal of the trust whether or not  
45 other persons are also current or future beneficiaries of the trust."

46  
47 **PART VI. UNIFORM TRUST CODE; AMEND THE STATUTE OF LIMITATIONS**  
48 **AGAINST A TRUSTEE**

49 **SECTION 6.** G.S. 36C-10-1005(b) reads as rewritten:

1       "(b) Except as provided in subsection (a) of this section, Chapter 1 of the General  
2 Statutes governs the limitations of actions on judicial proceedings involving trusts. However,  
3 for purposes of those limitations both of the following apply:

4           (1) On the date that any limitation starts running as to a person with respect to a  
5 claim held by the person involving a trust, the limitation also shall start  
6 running as to all other persons the person would be entitled to represent  
7 under Article 3 of this Chapter, whether or not the person consented to serve  
8 as a representative.

9           (2) G.S. 1-17 of the General Statutes shall not apply to toll the running of the  
10 limitation as to the persons described in subdivision (1) of this subsection.  
11 Those persons shall be treated as if they were under no disability on the date  
12 that the limitation starts running."

## 14 **PART VII. UNIFORM TRUST CODE; CLARIFY APPLICABILITY OF DEFAULT** 15 **AND MANDATORY RULES GOVERNING POWER HOLDERS**

16       **SECTION 7.** G.S. 36C-1-105 reads as rewritten:

### 17 **"§ 36C-1-105. Default and mandatory rules.**

18       (a) Except as otherwise provided in the terms of the trust, this Chapter governs the  
19 duties and powers of a ~~trustee,~~ trustee and a power holder under Article 8A of this Chapter,  
20 relations among ~~trustees,~~ trustees and those power holders, and the rights and interests of a  
21 beneficiary.

22       (b) The terms of a trust prevail over any provision of this Chapter except:

23           (1) The requirements for creating a trust.

24           (2) The duty of a trustee or a power holder under Article 8A of this Chapter to  
25 act in good faith and in accordance with the terms and purposes of the trust  
26 and the interests of the ~~beneficiaries.~~ beneficiaries, except as otherwise  
27 provided in subsection (c) of this section.

28           (3) The requirement that a trust and its terms be for the benefit of its  
29 beneficiaries, and that the trust have a purpose that is lawful, not contrary to  
30 public policy, and possible to achieve.

31           (4) The power of the court to modify or terminate a trust under G.S. 36C-4-410  
32 through G.S. 36C-4-416.

33           (5) The effect of a spendthrift provision and the rights of certain creditors and  
34 assignees to reach a trust as provided in Article 5 of this Chapter.

35           (6) The effect of an exculpatory term under  
36 ~~G.S. 36C-10-1008.~~ G.S. 36C-10-1008, except as otherwise provided in  
37 subsection (c) of this section.

38           (7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person  
39 other than a trustee or beneficiary.

40           (8) Periods of limitation for commencing a judicial proceeding.

41           (9) The power of the court to take any action and exercise any jurisdiction as  
42 may be necessary in the interests of justice.

43           (10) The subject-matter jurisdiction of the court and venue for commencing a  
44 proceeding as provided in G.S. 36C-2-203 and G.S. 36C-2-204.

45           (11) The requirement that the exercise of the powers described in  
46 G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive  
47 property on the settlor's death under that settlor's existing estate plan.

48           (12) The power of a trustee to renounce an interest in or power over property  
49 under G.S. 36C-8-816(32).

50       (c) The provisions of subdivisions (2) and (6) of subsection (b) of this section shall not  
51 apply to a power holder described in Article 8A of this Chapter with respect to powers

1 conferred upon the power holder in a nonfiduciary capacity under G.S. 36C-8A-3(a) or under  
2 the terms of the trust."

3  
4 **PART VIII. UNIFORM TRUST CODE; AMEND THE LAW GOVERNING**  
5 **DECANTING FROM A TRADITIONAL TRUST TO A SUPPLEMENTAL NEEDS**  
6 **TRUST**

7 **SECTION 8.** G.S. 36C-8-816.1 reads as rewritten:

8 **"§ 36C-8-816.1. Trustee's special power to appoint to a second trust.**

9 (a) For purposes of this section, the following definitions apply:

- 10 (1) Current beneficiary. – A person who is a permissible distributee of trust  
11 income or principal.  
12 (2) Original trust. – A trust established under an irrevocable trust instrument  
13 pursuant to the terms of which a trustee has a discretionary power to  
14 distribute principal or income of the trust to or for the benefit of one or more  
15 current beneficiaries of the trust.  
16 (3) Second trust. – A trust established under an irrevocable trust instrument, the  
17 current beneficiaries of which are one or more of the current beneficiaries of  
18 the original trust. The second trust may be a trust created under the same  
19 trust instrument as the original trust or under a different trust instrument.

20 (b) A trustee of an original trust may, without authorization by the court, exercise the  
21 discretionary power to distribute principal or income to or for the benefit of one or more current  
22 beneficiaries of the original trust by appointing all or part of the principal or income of the  
23 original trust subject to the power in favor of a trustee of a second trust. The trustee of the  
24 original trust may exercise this power whether or not there is a current need to distribute  
25 principal or income under any standard provided in the terms of the original trust. The trustee's  
26 special power to appoint trust principal or income in further trust under this section includes the  
27 power to create the second trust. The second trust may have a duration that is longer than the  
28 duration of the first trust.

29 (c) The terms of the second trust shall be subject to all of the following:

- 30 (1) The beneficiaries of the second trust may include only beneficiaries of the  
31 original trust.  
32 (2) A beneficiary who has only a future beneficial interest, vested or contingent,  
33 in the original trust cannot have the future beneficial interest accelerated to a  
34 present interest in the second trust.  
35 (3) The terms of the second trust may not reduce any fixed income, annuity, or  
36 unitrust interest of a beneficiary in the assets of the original trust if that  
37 interest has come into effect with respect to the beneficiary.  
38 (4) If any contribution to the original trust qualified for a marital or charitable  
39 deduction for federal income, gift, or estate tax purposes under the Internal  
40 Revenue Code, then the second trust shall not contain any provision that, if  
41 included in the original trust, would have prevented the original trust from  
42 qualifying for the deduction or that would have reduced the amount of the  
43 deduction.  
44 (5) If contributions to the original trust have been excluded from the gift tax by  
45 the application of section 2503(b) and section 2503(c) of the Internal  
46 Revenue Code, then the second trust shall provide that the beneficiary's  
47 remainder interest in the contributions shall vest and become distributable no  
48 later than the date upon which the interest would have vested and become  
49 distributable under the terms of the original trust.  
50 (6) If any beneficiary of the original trust has a power of withdrawal over trust  
51 property, then either:

- 1 a. The terms of the second trust must provide a power of withdrawal in  
2 the second trust identical to the power of withdrawal in the original  
3 trust; or  
4 b. Sufficient trust property must remain in the original trust to satisfy  
5 the outstanding power of withdrawal.
- 6 (7) If a trustee of an original trust exercises a power to distribute principal or  
7 income that is subject to an ascertainable standard by appointing property to  
8 a second trust, then the power to distribute income or principal in the second  
9 trust must be subject to the same ascertainable standard as in the original  
10 trust and must be exercisable in favor of the same current beneficiaries to  
11 whom such distribution could be made in the original trust.
- 12 (8) The second trust may confer a power of appointment upon a beneficiary of  
13 the original trust to whom or for the benefit of whom the trustee has the  
14 power to distribute principal or income of the original trust. The permissible  
15 appointees of the power of appointment conferred upon a beneficiary may  
16 include persons who are not beneficiaries of the original or second trust. The  
17 power of appointment conferred upon a beneficiary shall be subject to the  
18 provisions of G.S. 41-23 specifying the permissible period allowed for the  
19 suspension of the power of alienation of the original trust and the time from  
20 which that permissible period is computed.
- 21 (9) The terms of the second trust shall not contain any provisions that would  
22 jeopardize (i) the qualification of a transfer as a direct skip under section  
23 2642(c) of the Code, (ii) if the first trust owns subchapter S Corporation  
24 stock, the election to treat a corporation as a subchapter S Corporation under  
25 section 1362 of the Code, (iii) if the first trust owns an interest in property  
26 subject to the minimum distribution rules of section 401(a)(9) of the Code, a  
27 favorable distribution period by shortening the minimum distribution period,  
28 or (iv) any other specific tax benefit for which a contribution originally  
29 qualified for income, gift, estate, or generation-skipping transfer tax  
30 purposes. In this subdivision, "tax benefit" means a federal or State tax  
31 deduction, exemption, exclusion, or other benefit not otherwise listed in this  
32 section, except for the benefit from having the settlor considered the owner  
33 under sections 671 through 679 of the Code. Subject to clause (ii) above, the  
34 second trust may be a trust as to which the settlor is not considered the  
35 owner under sections 671 through 679 of the Code even if the settlor is  
36 considered the owner of the first trust, and the second trust may be a trust as  
37 to which the settlor of the first trust is considered the owner under sections  
38 671 through 679 of the Code, even if the settlor is not considered the owner  
39 of the first trust.
- 40 (10) Notwithstanding any other provision of this section, but subject to the  
41 limitations of subdivisions (1), (2), (4), (5), and (9) of this subsection, a  
42 trustee may exercise the power to appoint principal and income under  
43 subsection (b) of this section with respect to a disabled beneficiary's interest  
44 in the original trust to a second trust that is a supplemental needs trust that  
45 does not have (i) an ascertainable standard (or has a different ascertainable  
46 standard); (ii) a fixed income, annuity, or unitrust interest in the assets of the  
47 original trust; or (iii) a right of withdrawal, if the trustee determines that it  
48 would be in the best interest of the disabled beneficiary. For purposes of this  
49 subsection, the following apply:

- 50 a. A "supplemental needs trust" means a trust that is a discretionary  
51 trust under G.S. 36C-5-504 and relative to the original trust contains

1 either lesser or greater restrictions on the trustee's power to distribute  
 2 income or principal, and which the trustee believes would, if  
 3 implemented, allow the disabled beneficiary to receive greater  
 4 governmental benefits than the disabled beneficiary would receive if  
 5 the power to appoint principal and income had not been exercised.

6 b. "Governmental benefits" means medical assistance, financial aid, or  
 7 services from any local, State, or federal agency or department.

8 c. A "disabled beneficiary" means a current beneficiary of the original  
 9 trust who the trustee determines has a condition that substantially  
 10 impairs the beneficiary's ability to provide for his or her own support,  
 11 care, or custody whether or not the beneficiary has been adjudicated  
 12 a "disabled person" by any government agency or department.

13 d. The second supplemental needs trust shall not be liable to pay or  
 14 reimburse the State or any government or public agency for medical  
 15 assistance, financial aid, or services provided to the disabled  
 16 beneficiary except as provided in the second supplemental needs  
 17 trust.

18 ...."

19  
 20 **PART IX. UNIFORM TRUST CODE; PROVIDE PERMISSIBLE BENEFICIARIES**  
 21 **FOR CERTAIN IRREVOCABLE INTER VIVOS TRUSTS**

22 **SECTION 9. G.S. 36C-5-505(c) reads as rewritten:**

23 "(c) Subject to the Uniform Fraudulent Transfer Act, Article 3A of Chapter 39 of the  
 24 General Statutes, for purposes of this section, if the settlor is a beneficiary of the following  
 25 trusts after the death of the settlor's spouse, the property of the trusts shall, after the death of the  
 26 settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the  
 27 settlor; section, property contributed to the following trusts is not considered to have been  
 28 contributed by the settlor and a person who would otherwise be treated as a settlor or a deemed  
 29 settlor of the following trusts may not be treated as a settlor:

30 (1) If the settlor is a beneficiary after the death of the settlor's spouse:

31 a. An irrevocable intervivos marital trust that is treated as a general  
 32 power of appointment trust described in section 2523(e) of the  
 33 Internal Revenue Code.

34 (2)b. An irrevocable intervivos marital trust that is treated as a qualified  
 35 terminable interest ~~property trust~~ under section 2523(f) of the  
 36 Internal Revenue Code.

37 (3)c. An irrevocable intervivos trust of which the settlor's spouse is the  
 38 sole ~~a~~ beneficiary during the spouse's lifetime of the settlor's spouse  
 39 but which does not qualify for the federal gift tax marital  
 40 ~~deduction deduction~~, and during the lifetime of the settlor's spouse (i)  
 41 the settlor's spouse is the only beneficiary or (ii) the settlor's spouse  
 42 and the settlor's issue are the only beneficiaries.

43 (4)d. Another trust, to the extent that the property of the other trust is  
 44 attributable to property passing from a trust described in ~~subdivision~~  
 45 (1), (2), or (3) of this subsection, ~~sub-subdivisions a., b., c., and d. of~~  
 46 this subdivision.

47 For purposes of this ~~subsection, subdivision,~~ notwithstanding the  
 48 provisions of G.S. 36C-1-103(3), the settlor is a beneficiary whether so  
 49 named under the initial trust instrument or through the exercise of a limited  
 50 or general power of ~~appointment, and appointment.~~

1           (2) An irrevocable inter vivos trust for the benefit of a person if the settlor is the  
2           person's spouse, regardless of whether or when that person was a settlor of  
3           an irrevocable inter vivos trust for the benefit of the person's spouse.

4           For purposes of this subsection, the "settlor's spouse" refers to the person to whom the  
5 settlor was married at the time the irrevocable inter vivos trust was created, notwithstanding a  
6 subsequent dissolution of the marriage."  
7

8 **PART X. UNIFORM TRUST CODE; CLARIFY STANDARD OF LIABILITY OF**  
9 **DIRECTED COTRUSTEE**

10           **SECTION 10.** G.S. 36C-7-703 reads as rewritten:

11 **"§ 36C-7-703. Cotrustees.**

12           ...

13           ~~(e1) If the terms of a trust confer upon a cotrustee, to the exclusion of another cotrustee,~~  
14 ~~the power to take certain actions with respect to the trust, including the power to direct or~~  
15 ~~prevent certain actions of the trustees, the following apply:~~

16           (1) ~~The duty and liability of the excluded trustee is as follows:~~

17           a. ~~If the terms of a trust confer upon the cotrustee the power to direct~~  
18 ~~certain actions of the excluded trustee, the excluded trustee must act~~  
19 ~~in accordance with the direction and is not liable, individually or as a~~  
20 ~~fiduciary, for any loss resulting directly or indirectly from~~  
21 ~~compliance with the direction unless compliance with the direction~~  
22 ~~constitutes intentional misconduct on the part of the directed~~  
23 ~~cotrustee.~~

24           b. ~~If the terms of the trust confer upon the cotrustee any other power,~~  
25 ~~the excluded trustee is not liable, individually or as a fiduciary, for~~  
26 ~~any loss resulting directly or indirectly from the action taken by the~~  
27 ~~cotrustee.~~

28           c. ~~The excluded trustee has no duty to monitor the conduct of the~~  
29 ~~cotrustee, provide advice to the cotrustee, or consult with or request~~  
30 ~~directions from the cotrustee. The excluded trustee is not required to~~  
31 ~~give notice to any beneficiary of any action taken or not taken by the~~  
32 ~~cotrustee whether or not the excluded trustee agrees with the result.~~  
33 ~~Administrative actions taken by the excluded trustee for the purpose~~  
34 ~~of implementing directions of the cotrustee, including confirming~~  
35 ~~that the directions of the cotrustee have been carried out, do not~~  
36 ~~constitute monitoring of the cotrustee nor do they constitute~~  
37 ~~participation in decisions within the scope of the cotrustee's~~  
38 ~~authority.~~

39           (2) ~~Except as otherwise provided in sub-subdivision a. of subdivision (1) of this~~  
40 ~~subsection, the cotrustee holding the power to take certain actions with~~  
41 ~~respect to the trust shall be liable to the beneficiaries with respect to the~~  
42 ~~exercise of the power as if the excluded trustee were not in office and has the~~  
43 ~~exclusive obligation to account to the beneficiaries and defend any action~~  
44 ~~brought by the beneficiaries with respect to the exercise of the power.~~

45           (f) Repealed by Session Laws 2007-106, s. 27, effective October 1, 2007.

46           (g) ~~A trustee~~ Except as provided in subsection (g1) and (h) of this section, each  
47 cotrustee shall exercise reasonable care in connection with matters for which the trustee is  
48 given authority under the terms of a trust to:

49           (1) Avoid enabling a cotrustee to commit a serious breach of trust; and

50           (2) Compel a cotrustee to redress a serious breach of trust.

1 (g1) If the terms of the trust confer upon a cotrustee, to the exclusion of another  
 2 cotrustee, the power to take certain actions with respect to the trust:

3 (1) The excluded cotrustee is not liable, directly or indirectly, for the action  
 4 taken by the cotrustee holding the exclusive power.

5 (2) The excluded cotrustee has no duty to monitor the conduct of the cotrustee  
 6 holding the exclusive power, provide advice to that cotrustee, or consult with  
 7 or request directions from that cotrustee. The excluded trustee is not required  
 8 to give notice to any beneficiary of any action taken or not taken by that  
 9 cotrustee.

10 (3) The cotrustee holding the exclusive power to take certain actions with  
 11 respect to the trust:

12 a. Shall be liable to the beneficiaries with respect to the exercise of the  
 13 power as if the excluded trustee were not in office.

14 b. Has the exclusive obligation to account to the beneficiaries and  
 15 defend any action brought by the beneficiaries with respect to the  
 16 exercise of the power.

17 ~~(h) Notwithstanding subsection (g) of this section, a cotrustee is not liable for the action~~  
 18 ~~of a majority of the other trustees if either of the following apply:~~If the terms of the trust confer  
 19 the power to take actions on both or all cotrustees but under the terms of the trust or this  
 20 Chapter the decision of one or more of the cotrustees controls in the event of a disagreement,  
 21 then, unless the dissenting cotrustee had actual knowledge that the action constituted a serious  
 22 breach of trust, a cotrustee who dissents from the action taken by one or more of the other  
 23 cotrustees is not liable for the action if either of the following apply:

24 (1) The ~~trustee-dissenting cotrustee~~ does not join in an ~~action approved by a~~  
 25 majority of the other trustees.~~the action.~~

26 (2) The dissenting ~~trustee-cotrustee~~ joins in an ~~the~~ action necessary to carry out  
 27 the decision of the majority of the trustees and notifies in writing the other  
 28 cotrustee or cotrustees and gives notice of the dissent to the other cotrustee  
 29 or cotrustees at or before joining in the action, unless the trustee had  
 30 knowledge that the action taken involved intentional misconduct or was  
 31 taken with an intention to directly or indirectly provide an improper personal  
 32 benefit to one or more trustees approving the action.

33 ...."

## 34 **PART XI. COMMENTS AND EFFECTIVE DATES**

35 **SECTION 11.(a)** The Revisor of Statutes shall cause to be printed, as annotations  
 36 to the published General Statutes, all relevant portions of the Official Commentary to the  
 37 Uniform Powers of Appointment Act and of the Official Commentary to the Uniform Trust  
 38 Code and all explanatory comments of the drafters of those acts, as the Revisor may deem  
 39 appropriate.

40 **SECTION 11.(b)** Sections 6, 7, 8, 9, and 10 of this act become effective October 1,  
 41 2015, and apply to (i) all trusts created before, on, or after that date; (ii) all judicial proceedings  
 42 concerning trusts or transfers to or by trusts commenced on or after that date; and (iii) all  
 43 judicial proceedings concerning trusts or transfers to or by trusts commenced before that date,  
 44 unless the court finds that application of a particular provision of these sections would  
 45 substantially interfere with the effective conduct of the judicial proceedings or prejudice the  
 46 rights of the parties, in which case the law as it existed on September 30, 2015, applies. The  
 47 remainder of this act is effective when it becomes law.  
 48