

House Bill 327

By: Representatives Leverett of the 123<sup>rd</sup>, Efstration of the 104<sup>th</sup>, Gunter of the 8<sup>th</sup>, Reeves of the 99<sup>th</sup>, Oliver of the 84<sup>th</sup>, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to  
2 financial institutions, so as to provide for the appointment of a trust director regarding certain  
3 estates; to update certain fiduciary provisions; to amend Chapter 6B of Title 10 of the  
4 Official Code of Georgia Annotated, relating to Georgia power of attorney, so as to provide  
5 for certain delegations to powers of attorney; to amend Code Section 15-9-127 of the Official  
6 Code of Georgia Annotated, relating to concurrent jurisdiction with superior courts and  
7 probate court jurisdiction, so as to provide for service of process regarding probate  
8 proceedings; to amend Title 19 of the Official Code of Georgia Annotated, relating to  
9 domestic relations, so as to provide for parental powers and rights regarding children born  
10 out of wedlock or from methods of assisted reproduction; to provide for superior court  
11 jurisdiction regarding support orders; to amend Code Section 24-12-21 of the Official Code  
12 of Georgia Annotated, relating to disclosure of AIDS confidential information, so as to  
13 provide for the dissemination of certain information regarding the estate of a person with  
14 AIDS; to amend Title 29 of the Official Code of Georgia Annotated, relating to guardian and  
15 ward, so as to increase the amount of moneys distributed under probate court jurisdiction in  
16 cases of minors and incapacitated persons; to revise provisions regarding the compensation  
17 for legal counsel or guardian ad litem; to amend Code Section 31-10-9 of the Official Code  
18 of Georgia Annotated, relating to registration of births, so as to provide for children born

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19 from methods of assisted reproduction; to amend Code Section 43-34-37 of the Official Code  
20 of Georgia Annotated, relating to persons authorized to perform artificial insemination and  
21 civil liability of physician or surgeon, so as to provide for the authorization of performing  
22 methods of assisted reproduction; to amend Title 44 of the Official Code of Georgia  
23 Annotated, relating to property, so as to provide for petitions of trustees and trust directors  
24 regarding nonvested property interests; to provide for certain institutional gifts and funds; to  
25 amend Code Section 51-4-2 of the Official Code of Georgia Annotated, relating to wrongful  
26 death of spouse or parent, so as to provide for recovery for children born out of wedlock; to  
27 amend Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and  
28 administration of estates, so as to provide for the decree of adoption; to provide for estate  
29 interests of children born out of wedlock or from methods of assisted reproduction; to  
30 provide for procedures when heirship distribution is in question regarding estate property  
31 interests; to provide for certain fiduciary powers for estate personal representatives; to  
32 provide that creditors give personal representatives timely notice of claims against the estate;  
33 to provide for the filing and service of estate annual return documentation; to revise certain  
34 definitions relating to trusts; to provide for DNA testing with regard to kinship; to provide  
35 for the survival of common law and equity regarding trusts; to provide for interested parties  
36 in nonjudicial settlement agreements; to provide for conditions in *terrorem* trust instruments;  
37 to provide for trustee duties to the settlor; to provide for certain trustee powers regarding trust  
38 modifications; to provide for charitable trusts; to provide for the capacity, appointment, and  
39 removal of trustees; to provide for trustee duties to the beneficiary; to provide for trustee  
40 powers; to repeal a provision relating to granting powers by qualified beneficiaries; to  
41 provide for limitations of actions against a trustee; to provide for nonresidents acting as  
42 trustees; to revise provisions regarding trust instrument delegation and unitrusts; to revise  
43 provisions relating to trust directors; to provide for electronic trust administration records and  
44 electronic signatures with respect to trusts; to provide for definitions; to provide for

45 conformity to federal law; to provide for related matters; to repeal conflicting laws; and for  
46 other purposes.

47 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

48 **SECTION 1.**

49 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial  
50 institutions, is amended by revising subsection (b) of Code Section 7-1-223, relating to  
51 substituted trustee or manager for trust and pooled assets, as follows:

52 "(b) Nothing in this Code section or Code Section 7-1-222 shall be construed to impair any  
53 right of the grantor or beneficiaries of trust or pooled assets, a trust director acting as  
54 authorized by and in compliance with Article 18 of Chapter 12 of Title 53 with respect to  
55 trust or pooled assets, or any person acting as authorized by and in compliance with Code  
56 Section 53-12-201 with respect to trust or pooled assets under applicable instruments or  
57 otherwise to secure or provide for the appointment of a substituted trustee or manager."

58 **SECTION 2.**

59 Said chapter is further amended by revising subsection (b) of Code Section 7-1-242, relating  
60 to restriction on corporate fiduciaries, as follows:

61 "(b) Acting as a fiduciary for purposes of this Code section includes, but is not limited to:  
62 (1) Accepting or executing trusts or otherwise acting as a trustee;  
63 (2) Administering real or tangible personal property located in Georgia or elsewhere.  
64 ~~For the purposes of~~ As used in this paragraph, the term 'administer' means to possess,  
65 purchase, sell, lease, insure, safekeep, manage, or otherwise oversee; and  
66 (3) Acting pursuant to a court order as personal representative, ~~executor,~~ or temporary  
67 administrator of the estate of a deceased person or as guardian or conservator for a minor  
68 or incapacitated person."

69 **SECTION 3.**

70 Said chapter is further amended by revising subsection (d) of Code Section 7-1-322, relating  
71 to effect of affiliate transfer on bank, abandonment of transfer, and substituted fiduciary, as  
72 follows:

73 "(d) Nothing in this Code section shall be construed to impair any right of the grantor or  
74 beneficiaries of any fiduciary relationship or a trust director acting as authorized by and in  
75 compliance with Article 18 of Chapter 12 of Title 53 with respect to such fiduciary  
76 relationship under applicable instruments or otherwise to secure or provide for the  
77 appointment of a substituted fiduciary."

78 **SECTION 4.**

79 Said chapter is further amended by revising Code Section 7-1-324, relating to designation  
80 of affiliate trust company as successor fiduciary, as follows:

81 "7-1-324.

82 Upon any affiliate transfer, the affiliate trust company may be designated in any deed, trust  
83 instrument, agreement, filing, instrument, notice, certificate, pleading, or other document  
84 as successor fiduciary pursuant to this part."

85 **SECTION 5.**

86 Said chapter is further amended by revising Code Section 7-1-333, relating to limitations on  
87 investments, as follows:

88 "7-1-333.

89 Trust institutions and foreign trust institutions, as defined by this part, acting in a fiduciary  
90 capacity and for fiduciary purposes, if exercising due care as a prudent investor, and with  
91 the consent of any cofiduciary, may invest and reinvest funds held in such fiduciary  
92 capacity in the shares of stock of one or more fiduciary investment companies, except  
93 where the will, trust instrument or indenture, or other instrument under which such trust

94 institution or foreign trust institution acts prohibits such investment, provided that the  
95 fiduciary investment company, by its articles of incorporation issued and granted in  
96 conformity with Chapter 2 of Title 14, the 'Georgia Business Corporation Code,' shall have  
97 and possess the corporate powers required by this part and be subject to the limitations set  
98 forth by this part; provided, further, that no such trust institution or foreign trust institution  
99 shall invest in the stock of a fiduciary investment company on behalf of any estate, trust,  
100 or fund administered by such trust institution or foreign trust institution a sum or amount  
101 ~~which~~ that would result in such estate, trust, or fund having a total investment in such stock  
102 in excess of the maximum amount or percentage that might be invested by such estate,  
103 trust, or fund, under the regulations of the department in effect at the time of such  
104 investment, in any common trust fund having total assets equal to the total assets of the  
105 fiduciary investment company as increased by the proposed investment; and no trust  
106 institution or foreign trust institution shall invest in the stock of a fiduciary investment  
107 company if, immediately after such investment and as a consequence thereof, it would own  
108 more than 25 percent of the voting securities of such fiduciary investment company ~~which~~  
109 that would then be outstanding."

110

**SECTION 6.**

111 Said chapter is further amended by revising Code Section 7-1-334, relating to corporate  
112 powers and limitations and restrictions, as follows:

113 "7-1-334.

114 Every fiduciary investment company in which a trust institution or foreign trust institution  
115 is authorized by this part to own and hold corporate stock or shares, in order to qualify for  
116 such investments, shall have such corporate powers as may be granted by Chapter 2 of  
117 Title 14, the 'Georgia Business Corporation Code,' by virtue of its incorporation under  
118 those chapters and shall, in addition, have the following corporate powers under its articles

119 of incorporation and, by its articles of incorporation or its bylaws, be subject to the  
120 limitations and restrictions set forth in this Code section:

121 (1) The stock of any such fiduciary investment company shall be owned and held only  
122 by trust institutions and foreign trust institutions acting as fiduciaries or cofiduciaries but  
123 may be registered in the name of the nominee or nominees of any such trust institution  
124 or foreign trust institution. Such stock shall not be subject to transfer or assignment  
125 except to the trust institution or foreign trust institution on whose behalf the stock is held  
126 by any such nominee or nominees or to a fiduciary or cofiduciary ~~which~~ that becomes  
127 successor to the shareholder and ~~which~~ that is also a trust institution or foreign trust  
128 institution qualified to hold such stock;

129 (2) A fiduciary investment company shall have no ~~less~~ fewer than five directors, who  
130 need not be shareholders but shall be officers or directors of trust institutions or foreign  
131 trust institutions holding stock in such fiduciary investment company; provided, however,  
132 that no more than two directors shall be officers or directors of any one trust institution  
133 or foreign trust institution if the fiduciary investment company has been organized and  
134 incorporated by three or more trust institutions;

135 (3) In acquiring, investing, reinvesting, exchanging, selling, and managing its assets,  
136 every fiduciary investment company shall exercise the judgment and care under the  
137 circumstances then ~~existing which men~~ prevailing that persons of prudence, discretion,  
138 and intelligence exercise in the management of their own affairs, not in regard to  
139 speculation but in regard to the permanent disposition of their funds, considering the  
140 probable income as well as the safety of their capital. Within the foregoing limitations,  
141 a fiduciary investment company may acquire and retain every kind of investment,  
142 specifically including, but not limited to, ~~(but not by way of limitation)~~ bonds,  
143 debentures, and other corporate obligations and corporate stocks, preferred or common,  
144 ~~which men~~ that persons of prudence, discretion, and intelligence acquire or retain for  
145 their own account, provided that a fiduciary investment company shall not at any time:

- 146 (A) Invest in real estate, commodities, or commodity contracts;
- 147 (B) Participate on a joint or joint and several basis in any securities trading account;
- 148 (C) Invest in companies for the purpose of exercising control or management;
- 149 (D) Make loans to any person or persons, except that the purchase of a portion of an
- 150 issue of debt securities, convertible debt securities, debt securities with warrants, rights,
- 151 or options attached, or other similar securities when originally issued or thereafter, of
- 152 a character commonly distributed publicly, shall not be considered the making of a
- 153 loan;
- 154 (E) Purchase or retain the securities of any issuer if immediately after such acquisition
- 155 and as a result thereof the following requirements would not be met: at least 75 percent
- 156 of the total assets in the fiduciary investment company taken at market value are
- 157 represented by cash and cash items, securities issued or guaranteed by the United States
- 158 or an instrumentality thereof, and other securities ~~which~~ that, as to any one issuer, do
- 159 not represent more than 10 percent of the value of the total assets of the fiduciary
- 160 investment company;
- 161 (F) Purchase or otherwise acquire the securities of any other investment company as
- 162 ~~that~~ such term is defined in ~~the act of Congress entitled 'Investment~~ the federal
- 163 Investment Company Act of ~~1940~~ 1940;
- 164 (G) Act as underwriter of the securities of other issuers;
- 165 (H) Borrow money; or
- 166 (I) Engage in margin transactions or short sales or write put or call options for the
- 167 purchase or sale of securities;
- 168 (4) A fiduciary investment company may acquire, purchase, or redeem its own stock and
- 169 may, by means of contract or by its bylaws, bind itself to acquire, purchase, or redeem
- 170 its own stock; but it shall not vote shares of its own stock theretofore redeemed;
- 171 (5) A fiduciary investment company shall not be responsible for ascertaining the
- 172 investment powers of any fiduciary who may purchase its stock, shall not be liable for

173 accepting funds from a fiduciary in violation of restrictions of the will, trust instrument  
174 or indenture, or other instrument under which such fiduciary is acting in absence of actual  
175 knowledge of such violation, and shall be accountable only to the department and the  
176 fiduciaries who are the owners of its stock; and  
177 (6) Every fiduciary investment company subject to the supervision and regulation of the  
178 comptroller of the currency of the United States shall comply with all applicable rules and  
179 regulations of that agency to the extent that such rules and regulations are in addition to  
180 or in conflict with rules and regulations promulgated by the department."

181 **SECTION 7.**

182 Chapter 6B of Title 10 of the Official Code of Georgia Annotated, relating to Georgia power  
183 of attorney, is amended in Code Section 10-6B-3, relating to applicability of chapter, by  
184 revising paragraphs (9) and (10) and by adding a new paragraph to read as follows:

185 "(9) Any delegation of authority by a personal representative, trustee, or trust director  
186 that is expressly provided for under a will or trust instrument or under Title 53, including,  
187 but not limited to, paragraph (2) of subsection (a) of Code Section 53-7-5, paragraph (1)  
188 of Code Section 53-12-204, Code Section 53-12-345, and subsection (f) of Code Section  
189 53-12-503;

190 (10) Powers of attorney provided for under Titles 19 and 33; and

191 ~~(10)~~(11) As set forth in Code Section 10-6B-81."

192 **SECTION 8.**

193 Said chapter is further amended by revising Code Section 10-6B-81, relating to application  
194 of Chapter 6B, as follows:



195 "10-6B-81.

196 (a) This Code section and Code Section 10-6B-19 shall apply retroactively to powers of  
 197 attorney created before July 1, 2018. The remainder of this chapter shall not apply to a  
 198 power of attorney executed before July 1, 2017.

199 (b) When ~~Code Section 10-6B-3~~ this chapter applies to a power of attorney pursuant to  
 200 Code Section 10-6B-3, Chapter 6 of this title shall not apply to such power of attorney.

201 (c) When, other than this Code section and Code Section 10-6B-19, this chapter does not  
 202 apply to a power of attorney:

203 (1) It shall not affect the application of Chapter 6 of this title; and

204 (2) The former provisions of Article 7 of Chapter 6 of this title, as such existed on June  
 205 30, 2017, shall remain applicable."

206 **SECTION 9.**

207 Code Section 15-9-127 of the Official Code of Georgia Annotated, relating to concurrent  
 208 jurisdiction with superior courts and probate court jurisdiction, is amended by adding a new  
 209 subsection to read as follows:

210 "(d) In a proceeding in the probate court under subsection (a) of this Code section, service  
 211 of summons, notice, or process may be made pursuant to Chapter 11 of Title 53."

212 **SECTION 10.**

213 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is  
 214 amended by revising paragraph (9) of subsection (b) of Code Section 19-7-1, relating to in  
 215 whom parental power lies, how such power lost, and recovery for homicide of child or  
 216 unborn child, as follows:

217 "(9) A superior court order terminating parental rights of the legal father or the biological  
 218 father who is not the legal father of the child in a petition for legitimation, a petition to  
 219 establish paternity, a divorce proceeding, or a custody proceeding pursuant to this chapter

220 or Chapter 5, 8, or 9 of this title, provided that such termination is in the best interest of  
 221 such child; and provided, further, that this paragraph shall not apply to such termination  
 222 when a child has been adopted or is conceived by artificial insemination, in vitro  
 223 fertilization, or other similar method of assisted reproduction as set forth in subsection  
 224 (a) of Code Section 19-7-21 or when an embryo is adopted as set forth in Article 2 of  
 225 Chapter 8 of this title."

226 **SECTION 11.**

227 Said title is further amended by revising Code Section 19-7-21, relating to when children  
 228 conceived by artificial insemination legitimate, as follows:

229 "19-7-21.

230 (a) All children born within wedlock or within the usual period of gestation thereafter who  
 231 have been conceived by means of artificial insemination, in vitro fertilization, or other  
 232 similar method of assisted reproduction are irrebuttably presumed legitimate if both  
 233 spouses have consented in writing to the use and administration of artificial insemination,  
 234 in vitro fertilization, or other similar method of assisted reproduction.

235 (b) Subsection (a) of this Code section shall be subject to Article 2 of Chapter 8 of this  
 236 title, and, in the event of a conflict, the provisions of such article shall prevail."

237 **SECTION 12.**

238 Said title is further amended by revising subsection (d) of Code Section 19-7-22, relating to  
 239 petition for legitimation of child, requirement that mother be named as a party, court order,  
 240 effect, claims for custody or visitation, and third-party action for legitimation in response to  
 241 petition to establish paternity, as follows:

242 "(d)(1) Upon the presentation and filing of a legitimation petition, and after a hearing for  
 243 which notice was provided to all interested parties, the court may issue an order declaring  
 244 the biological father's relationship with the child to be legitimate, provided that such order

245 is in the best interests of the child. If such order is issued, the biological father and child  
246 shall be capable of inheriting from each other in the same manner as if the child was born  
247 in lawful wedlock, pursuant to division (2)(A)(i) of Code Section 53-2-3 and  
248 paragraph (1) of subsection (b) of Code Section 53-2-4. Such order shall specify the  
249 name by which the child shall be known.

250 (2)(A) If the court determines by clear and convincing evidence that the father caused  
251 his child to be conceived as a result of having nonconsensual sexual intercourse with  
252 the mother of his child or an offense that consists of the same or similar elements under  
253 federal law or the laws of another state or territory of the United States, or when the  
254 mother is less than ten years of age, ~~or an offense which consists of the same or similar~~  
255 ~~elements under federal law or the laws of another state or territory of the United States,~~  
256 it shall create a presumption against legitimation.

257 (B)(i) Notwithstanding division (2)(A)(i) of Code Section 53-2-3, if the court denies  
258 a legitimation petition under this paragraph, the child shall be capable of inheriting  
259 from or through his or her father under divisions (2)(A)(ii) through (vi) of Code  
260 Section 53-2-3 or subparagraph (B) of paragraph (2) of Code Section 53-2-3.

261 (ii) Notwithstanding Code Section 53-2-4, if the court denies a legitimation petition  
262 under this paragraph, the father shall not be capable of inheriting from or through his  
263 child.

264 (C) If there is a pending criminal proceeding in connection with an allegation made  
265 pursuant to subparagraph (A) of this paragraph, the court shall stay discovery in the  
266 legitimation action until the completion of such criminal proceeding.

267 (D) Except as provided in this paragraph, nothing in this article shall be applied or  
268 construed to abrogate or limit:

269 (i) The jurisdiction of a probate court or a superior court under Code Section 53-2-20  
270 to resolve judicially the identity or interest of any heir in accordance with Article 2  
271 of Chapter 2 of Title 53; or

272 (ii) The effect of the findings of such a court in such a proceeding pursuant to Code  
273 Section 53-2-26."

274 **SECTION 13.**

275 Said title is further amended by adding a new subsection to Code Section 19-7-40, relating  
276 to jurisdiction and administrative determination of paternity, to read as follows:

277 "(c) Nothing in this article shall be applied or construed to abrogate or limit:

278 (1) The jurisdiction of a probate court or a superior court under Code Section 53-2-20  
279 to resolve judicially the identity or interest of any heir in accordance with Article 2 of  
280 Chapter 2 of Title 53; or

281 (2) The effect of the findings of such a court in such a proceeding pursuant to Code  
282 Section 53-2-26."

283 **SECTION 14.**

284 Said title is further amended by revising subsection (e) of Code Section 19-7-43, relating to  
285 petition, by whom brought, effect of agreement on right to bring petition, stay pending birth  
286 of child, court order for blood tests, and genetic tests, as follows:

287 "(e) In any case for the collection of child support involving the Department of Human  
288 Services in which the paternity of a child or children has not been established or in which  
289 the individual receiving services alleges that paternity rests in a person other than the  
290 previously established father, the Department of Human Services shall order genetic testing  
291 of the mother, the alleged father, and the child or children as specified in Code Section  
292 19-7-45. No genetic testing shall be undertaken by the Department of Human Services if  
293 the child was adopted either by the applicant for services or other alleged parent or if the  
294 child was conceived by means of artificial insemination, in vitro fertilization, or other  
295 similar method of assisted reproduction. The need for genetic testing shall be supported  
296 by a sworn statement alleging paternity and setting forth facts establishing a reasonable

297 possibility of the requisite sexual contact between the parties. The parties shall be given  
298 notice and an opportunity to contest the order before the Department of Human Services  
299 prior to the testing or the imposition of any noncooperation sanction."

300 **SECTION 15.**

301 Said title is further amended by revising paragraph (3) of subsection (b) and subparagraph  
302 (d)(1)(C) of Code Section 19-7-54, relating to motion to set aside determination of paternity,  
303 as follows:

304 "(3) The child was not conceived by artificial insemination, in vitro fertilization, or other  
305 similar method of assisted reproduction while the male ordered to pay child support and  
306 the child's mother were in wedlock;"

307 "(C) The child was conceived by means of artificial insemination, in vitro fertilization,  
308 or other similar method of assisted reproduction; or"

309 **SECTION 16.**

310 Said title is further amended by adding a new Code section to Article 2 of Chapter 11, the  
311 "Uniform Reciprocal Enforcement of Support Act," to read as follows:

312 "19-11-82.

313 Nothing in this article shall be applied or construed to abrogate or limit:

314 (1) The jurisdiction of a probate court or a superior court under Code Section 53-2-20  
315 to resolve judicially the identity or interest of any heir in accordance with Article 2 of  
316 Chapter 2 of Title 53; or

317 (2) The effect of the findings of such a court in such a proceeding pursuant to Code  
318 Section 53-2-26."

319 **SECTION 17.**

320 Said title is further amended by adding a new Code section to Article 3 of Chapter 11, the  
 321 "Uniform Interstate Family Support Act," to read as follows:

322 "19-11-192.

323 Nothing in this article shall be applied or construed to abrogate or limit:

324 (1) The jurisdiction of a probate court or a superior court under Code Section 53-2-20  
 325 to resolve judicially the identity or interest of any heir in accordance with Article 2 of  
 326 Chapter 2 of Title 53; or

327 (2) The effect of the findings of such a court in such a proceeding pursuant to Code  
 328 Section 53-2-26."

329 **SECTION 18.**

330 Code Section 24-12-21 of the Official Code of Georgia Annotated, relating to disclosure of  
 331 AIDS confidential information, is amended by revising subsections (y) and (bb) as follows:

332 "(y) The protection against disclosure provided by Code Section 24-12-20 shall be waived,  
 333 and AIDS confidential information may be disclosed, to the extent that the person  
 334 identified by such information, ~~his or her~~, such person's heirs, successors, or assigns, ~~or~~;  
 335 a beneficiary of such ~~person, including, but not limited to, an executor, administrator,~~  
 336 person's estate; or the personal representative of such person's estate:

337 (1) Files a claim or claims other entitlements under any insurance policy or benefit plan  
 338 or is involved in any civil proceeding regarding such claim;

339 (2) Places such person's care and treatment, the nature and extent of his or her injuries,  
 340 the extent of his or her damages, his or her medical condition, or the reasons for his or her  
 341 death at issue in any judicial proceeding; or

342 (3) Is involved in a dispute regarding coverage under any insurance policy or benefit  
 343 plan."

344 "(bb) AIDS confidential information may be disclosed as a part of any proceeding or  
345 procedure authorized or required pursuant to Chapter 3, 4, or 7 of Title 37; regarding a  
346 person who is alleged to be or who is mentally ill, developmentally disabled, or alcoholic  
347 or drug dependent; ~~or~~ as a part of any proceeding or procedure authorized or required  
348 pursuant to Title 29; regarding the guardianship of a person or ~~that~~ the conservatorship of  
349 a person's estate; or as a part of any proceeding or procedure authorized or required  
350 pursuant to Title 53 regarding the estate of a deceased person, as follows:

351 (1) Any person who files or transmits a petition or other document ~~which~~ that discloses  
352 AIDS confidential information in connection with any such proceeding or procedure shall  
353 provide a cover page ~~which~~ that contains only the type of proceeding or procedure, the  
354 court in which the proceeding or procedure is or will be pending, and the words  
355 'CONFIDENTIAL INFORMATION' without in any way otherwise disclosing thereon  
356 the name of any individual or that such petition or other document specifically contains  
357 AIDS confidential information;

358 (2) AIDS confidential information shall only be disclosed pursuant to this subsection  
359 after disclosure to and with the written consent of the person identified by that  
360 information; ~~or that person's parent or guardian if that person is a minor; or has that~~  
361 person's guardian, if that person previously has been adjudicated as being incompetent,  
362 in need of a guardian; the personal representative of that person's estate, if that person is  
363 deceased; or by order of court obtained in accordance with subparagraph (C) of paragraph

364 (3) of this subsection;

365 (3) If any person files or transmits a petition or other document in connection with any  
366 such proceeding or procedure ~~which~~ that discloses AIDS confidential information without  
367 obtaining consent as provided in paragraph (2) of this subsection, the court receiving such  
368 information shall either obtain written consent as set forth in that paragraph (2) for any  
369 further use or disclosure of such information or:

370 (A) Return such petition or other document to the person who filed or transmitted  
371 same, with directions against further filing or ~~transmittal~~ transmitting of such  
372 information in connection with such proceeding or procedure except in compliance with  
373 this subsection;

374 (B) Delete or expunge all references to such AIDS confidential information from the  
375 particular petition or other document; or

376 (C)(i) If the court determines there is a compelling need for such information in  
377 connection with the particular proceeding or procedure, petition a superior court of  
378 competent jurisdiction for permission to obtain or disclose that information. If the  
379 person identified by the information is not yet represented by an attorney in the  
380 proceeding or procedure in connection with which the information is sought, the  
381 petitioning court shall appoint an attorney for such person. The petitioning court shall  
382 have both that person and that person's attorney personally served with notice of the  
383 petition and of the date, time, and place of the superior court hearing thereon. Such  
384 hearing shall not be held sooner than 72 hours after service, unless the information is  
385 to be used in connection with an emergency guardianship proceeding under Code  
386 Section 29-4-14, in which event the hearing shall not be held sooner than 48 hours  
387 after service.

388 (ii) The superior court in which a petition is filed pursuant to division (i) of this  
389 subparagraph shall hold an in camera hearing on such petition. The purpose of the  
390 hearing shall be to determine whether there is clear and convincing evidence of a  
391 compelling need for the AIDS confidential information sought in connection with the  
392 particular proceeding or procedure ~~which~~ that cannot be accommodated by other  
393 means. In assessing compelling need, the superior court shall weigh the public health,  
394 safety, or welfare needs or any other public or private need for the disclosure against  
395 the privacy interest of the person identified by the information and the public interest  
396 ~~which~~ that may be disserved by disclosures ~~which~~ that may deter voluntary HIV tests.



397 If the court determines that disclosure of ~~that~~ such information is authorized under  
 398 this subparagraph, the court shall order ~~that~~ such disclosure and shall impose  
 399 appropriate safeguards against any unauthorized disclosure. The records of that  
 400 hearing otherwise shall be under seal; and

401 (4) The court having jurisdiction over such proceeding or procedure, when it becomes  
 402 apparent that AIDS confidential information will likely be or has been disclosed in  
 403 connection with such proceeding or procedure, shall take such measures as the court  
 404 determines appropriate to preserve the confidentiality of the disclosed information to the  
 405 maximum extent possible. Such measures shall include, ~~without being~~ but shall not be  
 406 limited to, closing the proceeding or procedure to the public and sealing all or any part  
 407 of the records of the proceeding or procedure containing AIDS confidential information.  
 408 The records of any appeals taken from any such proceeding or procedure shall also be  
 409 sealed. Furthermore, the court may consult with and obtain the advice of medical experts  
 410 or other counsel or advisers as to the relevance and materiality of such information in  
 411 such proceedings or procedures, provided that the identity of the person identified by  
 412 such information is not thereby revealed."

413

#### SECTION 19.

414 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is  
 415 amended by revising Code Section 29-6-1, relating to judges of probate courts as custodians  
 416 of certain funds and authority to collect debts, as follows:

417 "29-6-1.

418 The judges of the probate courts are, in their discretion, made the legal custodians and  
 419 distributors of all moneys up to ~~\$15,000.00~~ \$25,000.00 due and owing to any minor or  
 420 ~~incapacitated~~ adult who is in need of a conservator but who has no legal and qualified  
 421 conservator; and the judges are authorized to receive and collect all such moneys arising  
 422 from insurance policies, benefit societies, legacies, inheritances, or any other source.

423 Without any appointment or qualifying order, the judge is authorized to take charge of the  
424 moneys or funds of the minor or adult by virtue of the judge's office as judge of the probate  
425 court in the county of residence of the minor or adult; provided, however, that notice shall  
426 be given to the living parents of a minor, if any, or the guardian of an adult, if any. The  
427 certificate of the judge that no legally qualified conservator has been appointed shall be  
428 conclusive and shall be sufficient authority to justify any debtor in making payment on  
429 claims made by the judge."

430 **SECTION 20.**

431 Said title is further amended by revising subsection (b) of Code Section 29-9-15, relating to  
432 compensation for legal counsel or guardian ad litem, as follows:

433 "(b) In connection with any proceeding brought pursuant to the provisions of Chapter 2,  
434 3, 4, 5, 7, or 11 of this title, unless voluntarily waived, the court may award reasonable fees  
435 and expenses, commensurate with the tasks performed and time devoted to the proceeding,  
436 including any appeals, to any legal counsel who is retained by or on behalf of a minor, a  
437 proposed ward, a ward, the petitioner or petitioners, or any other party to any proceeding  
438 brought pursuant to the provisions of said chapters.—~~As~~ as directed by the court in the  
439 exercise of its sound discretion and as the court may deem to be in the best interest of the  
440 minor, proposed ward, or ward who is the subject of the particular proceeding."

441 **SECTION 21.**

442 Code Section 31-10-9 of the Official Code of Georgia Annotated, relating to registration of  
443 births, is amended by revising subsections (d) and (f) as follows:

444 "(d) When a birth occurs on a moving conveyance within the United States and the child  
445 is first removed from the conveyance in this state, the birth shall be registered in this state  
446 and the place where it the child is first removed shall be considered the place of birth.  
447 When a birth occurs on a moving conveyance while in international waters or airspace or

448 in a foreign country or its airspace and the child is first removed from the conveyance in  
449 this state, the birth shall be registered in this state but the certificate shall show the actual  
450 place of birth insofar as such place can be determined."

451 "(f) The birth certificate of a child born to a married woman as a result of artificial  
452 insemination, in vitro fertilization, or other similar method of assisted reproduction, with  
453 consent of her husband, shall be completed in accordance with the provisions of subsection  
454 (e) of this Code section."

455 **SECTION 22.**

456 Code Section 43-34-37 of the Official Code of Georgia Annotated, relating to persons  
457 authorized to perform artificial insemination and civil liability of physician or surgeon, is  
458 amended by revising said Code section as follows:

459 "43-34-37.

460 (a) Physicians and surgeons licensed to practice medicine in accordance with and under  
461 this article shall be the only persons authorized to administer or perform artificial  
462 insemination, in vitro fertilization, or other similar method of assisted reproduction upon  
463 any female human being. Any other person or persons who shall attempt to administer or  
464 perform or who shall actually administer or perform artificial insemination, in vitro  
465 fertilization, or other similar method of assisted reproduction upon any female human being  
466 shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment  
467 in the penitentiary for not less than one year nor more than five years.

468 (b) Any physician or surgeon who obtains written authorization signed by both the  
469 husband and the wife authorizing him or her to perform or administer artificial  
470 insemination, in vitro fertilization, or other similar method of assisted reproduction shall  
471 be relieved of civil liability to the husband and wife or to any child conceived by artificial  
472 insemination, in vitro fertilization, or other similar method of assisted reproduction for the  
473 result or results of said artificial insemination, in vitro fertilization, or other similar method

474 of assisted reproduction, provided that the written authorization ~~provided for in this Code~~  
 475 ~~section~~ obtained shall not relieve any physician or surgeon from any civil liability arising  
 476 from his or her own negligent administration or performance of artificial insemination, in  
 477 vitro fertilization, or other similar method of assisted reproduction."

478 **SECTION 23.**

479 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by  
 480 revising Code Section 44-5-37, relating to applicability of Code Sections 53-2-112 through  
 481 53-2-114 to elections under or against deed, as follows:

482 "44-5-37.

483 The principles of Code Sections ~~53-2-112 through 53-2-114~~ 53-4-70 and 53-4-71 relating  
 484 to elections shall also apply to deeds."

485 **SECTION 24.**

486 Said title is further amended by revising Code Section 44-6-203, relating to reform of  
 487 disposition by court to approximate transferor's plan of distribution, as follows:

488 "44-6-203.

489 Upon the petition of ~~an interested person~~ a trustee, trust director, or other person whose  
 490 interests would be affected, a court shall reform a disposition in the manner that most  
 491 closely approximates the transferor's manifested plan of distribution and is within the  
 492 number of years allowed by paragraph (2) of subsection (a), (b), or (c) of Code Section  
 493 44-6-201 if:

494 (1) A nonvested property interest or a power of appointment becomes invalid under Code  
 495 Section 44-6-201;

496 (2) A class gift is not but might still become invalid under Code Section 44-6-201 and  
 497 the time has arrived when the share of any class member is to take effect in possession  
 498 or enjoyment; or

499 (3) A nonvested property interest that is not validated by paragraph (1) of subsection (a)  
500 of Code Section 44-6-201 can vest, but not within 360 years after its creation."

501 **SECTION 25.**

502 Said title is further amended by revising paragraphs (1), (2), and (4) of Code Section  
503 44-6-204, relating to exceptions to applicability of article, as follows:

504 "(1) A nonvested property interest or a power of appointment arising out of a  
505 nondonative transfer, except a nonvested property interest or a power of appointment  
506 arising out of:

507 (A) A premarital or postmarital agreement;

508 (B) A separation or divorce settlement;

509 (C) A spouse's election;

510 (D) A similar arrangement arising out of a prospective, existing, or previous marital  
511 relationship between the parties;

512 (E) A contract to make or not to revoke a will or trust, including, but not necessarily  
513 limited to, a contract made pursuant to Code Section 53-4-30;

514 (F) A contract to exercise or not to exercise a power of appointment;

515 (G) A transfer in satisfaction of a duty of support; or

516 (H) A reciprocal transfer;

517 (2) A fiduciary's power relating to the administration or management of assets, including:

518 (A) The ~~the~~ power of a fiduciary to sell, lease, or mortgage property;

519 (B) The ~~and the~~ power of a fiduciary to determine principal and income; and

520 (C) A power of direction, as such term is defined in Code Section 53-12-500;"

521 "(4) A discretionary power of a trustee to distribute or of a trust director to direct the  
522 distribution of principal before termination of a trust to a beneficiary having an  
523 indefeasibly vested interest in the income and principal. ~~Nothing; provided, however,~~  
524 that nothing contained in paragraphs (2) and (3) of this Code section and this paragraph

525 shall be construed to permit the fiduciary to continue the administration or management  
526 of assets once the nonvested property interest becomes invalid as described in subsection  
527 (a) of Code Section 44-6-201;"

528 **SECTION 26.**

529 Said title is further amended by revising subsection (b) of Code Section 44-6-205, relating  
530 to applicability of article and court reform of nonvested dispositions created before article  
531 became effective, as follows:

532 "(b) With respect to a nonvested property interest or a power of appointment that was  
533 created before July 1, 2018, and that violates this state's rule against perpetuities as that rule  
534 existed before July 1, 2018, a court, upon the petition of ~~an interested party~~ a trustee, trust  
535 director, or other person whose interests would be affected, may:

536 (1) Subject to Code Section 23-1-4, exercise its equitable power;

537 (2) Approve a nonjudicial settlement agreement or make any related determination under  
538 subsection (c) of Code Section 53-12-9;

539 (3) Approve a petition to modify or terminate an irrevocable trust under Code Section  
540 53-12-61; or

541 (4) Declare that the exercise of the power to invade the principal of the original trust  
542 under subsection (b) of Code Section 53-12-62 is appropriate and effective

543 so that the nonvested property interest is within the limits of the rule against perpetuities  
544 applicable when the nonvested property interest or power of appointment was created to  
545 reform the disposition in the manner that most closely approximates the transferor's  
546 manifested plan of distribution and is within the limits of the rule against perpetuities  
547 applicable when the nonvested property interest or power of appointment was created."

548 **SECTION 27.**

549 Said title is further amended by adding a new Code section to Article 9 of Chapter 6, the  
 550 "Uniform Statutory Rule Against Perpetuities," to read as follows:

551 "44-6-207.

552 As used in this article, the term:

553 (1) 'Court' means a court of competent jurisdiction as determined in accordance with  
 554 Code Section 53-12-6.

555 (2) 'Power of appointment' shall have the same meaning as set forth in Code Section  
 556 53-12-500.

557 (3) 'Power of direction' shall have the same meaning as set forth in Code Section  
 558 53-12-500.

559 (4) 'Trust' means an express trust, as such term is defined in Code Section 53-12-2."

560 **SECTION 28.**

561 Said title is further amended by revising subsections (b) and (e) of Code Section 44-15-3,  
 562 relating to considerations and standard of conduct for institutions receiving gifts, as follows:

563 "(b) In addition to complying with the duty of loyalty imposed by law other than this  
 564 chapter, each person responsible for managing and investing an institutional fund shall  
 565 manage and invest such fund in good faith and with the care, skill, and caution an  
 566 ordinarily prudent person in a like position would exercise under similar circumstances,  
 567 considering the purposes, terms, distribution requirements, and other circumstances of the  
 568 institutional fund."

569 "(e) Except as otherwise provided by a gift instrument, the following rules shall apply:

570 (1) In managing and investing an institutional fund, the following factors, if relevant,  
 571 shall be considered:

572 (A) General economic conditions;

573 (B) The possible effect of inflation or deflation;

- 574 (C) The expected tax consequences, if any, of investment decisions or strategies;
- 575 (D) The role that each investment or course of action plays within the overall  
576 investment portfolio of such fund;
- 577 (E) The expected total return from income and the appreciation of investments;
- 578 (F) Other resources of the institution;
- 579 (G) The needs of the institution and such fund to make distributions and to preserve  
580 capital; ~~and~~
- 581 (H) An asset's special relationship or special value, if any, to the charitable purposes  
582 of the institution or to the donor; and
- 583 (I) Any special circumstances;
- 584 (2) Management and investment decisions about an individual asset shall not be made  
585 in isolation but rather in the context of the institutional fund's portfolio of investments as  
586 a whole and as a part of an overall investment strategy having risk and return objectives  
587 reasonably suited to the institutional fund and to the institution;
- 588 (3) An institution may invest in any kind of property or type of investment consistent  
589 with the provisions of this Code section;
- 590 (4) An institution shall reasonably manage the risk of concentrated holdings of assets by  
591 diversifying the investments of the institutional fund or by using some other appropriate  
592 mechanism, except as provided in this paragraph, as follows:
- 593 (A) The duty imposed by this paragraph shall not apply if the institution reasonably  
594 determines that, because of special circumstances, or because of the specific purposes,  
595 terms, distribution requirements, and other circumstances of the institutional fund, the  
596 purposes of such fund are better served without complying with the duty. For purposes  
597 of this paragraph, special circumstances shall include an asset's special relationship or  
598 special value, if any, to the charitable purposes of the institution or to the donor;
- 599 (B) No person responsible for managing and investing an institutional fund shall be  
600 liable for failing to comply with the duty imposed by this paragraph to the extent that



601 the terms of the gift instrument or express written agreement between the donor and the  
 602 institution limits or waives the duty; and

603 (C) The governing board of an institution may retain property contributed by a donor  
 604 to an institutional fund for as long as the governing board deems advisable;

605 (5) Within a reasonable time after receiving property, an institution shall make and carry  
 606 out decisions concerning the retention or disposition of the property or to the rebalancing  
 607 of a portfolio, in order to bring the institutional fund into compliance with the purposes,  
 608 terms, and distribution requirements of the institution or the institutional fund as  
 609 necessary to meet other circumstances of the institution or the institutional fund and the  
 610 requirements of this chapter; ~~and~~

611 (6) A person that has special skills or expertise, or is selected in reliance upon the  
 612 person's representation that such person has special skills or expertise, has a duty to use  
 613 those skills or expertise in managing and investing institutional funds; and

614 (7) In investing and managing institutional funds, an institution may consider the  
 615 personal values of the donor, including, but not limited to, a desire to engage in investing  
 616 strategies that align with social, political, religious, philosophical, environmental,  
 617 governance, or other values or beliefs of the donor; provided, however, that nothing in  
 618 this paragraph shall allow an institutional fund to be used for a purpose other than a  
 619 charitable purpose of the institution."

620 **SECTION 29.**

621 Said title is further amended by revising subsection (a) of Code Section 44-15-4, relating to  
 622 management of institutional funds for endowment, as follows:

623 "(a) Subject to the intent of a donor expressed in the gift instrument or to any express  
 624 written agreement between a donor and an institution, an institution may appropriate for  
 625 expenditure or accumulate assets of an endowment fund as the institution determines shall  
 626 be prudent for the uses, benefits, purposes, and duration for which the endowment fund is

627 established. Unless stated otherwise in the gift instrument, the assets in an endowment  
628 fund shall be donor restricted assets until appropriated for expenditure by the institution.  
629 In making a determination to appropriate or accumulate assets, the institution shall act in  
630 good faith, with the care that an ordinarily prudent person in a like position would exercise  
631 under similar circumstances; shall exercise reasonable care, skill, and caution; and shall  
632 consider, if relevant, the following factors:

- 633 (1) The duration and preservation of the endowment fund;
- 634 (2) The purposes of the institution and the endowment fund;
- 635 (3) General economic conditions;
- 636 (4) The possible effect of inflation or deflation;
- 637 (5) The expected total return from income and the appreciation of investments;
- 638 (6) Other resources of the institution; ~~and~~
- 639 (7) The investment policy of the institution; and
- 640 (8) Any special circumstances."

641 **SECTION 30.**

642 Said title is further amended by adding new subsections to Code Section 44-15-6, relating  
643 to modification of restrictions, to read as follows:

644 "(e) For purposes of subsection (a) of this Code section, a donor's designee includes, but  
645 is not limited to, an agent under a power of attorney to the extent authorized by the power  
646 of attorney and the duly constituted conservator of a donor who is a protected person, as  
647 such term is defined in Code Section 29-11-2, to the extent such conservator is so  
648 empowered pursuant to Code Section 29-5-23 or other applicable law.

649 (f) For purposes of subsection (b) of this Code section, if the gift instrument establishes  
650 an express trust, as such term is defined in Code Section 53-12-2, a court shall include a  
651 probate court or superior court as provided in Code Section 15-9-127 or 53-12-6."

652 **SECTION 31.**

653 Code Section 51-4-2 of the Official Code of Georgia Annotated, relating to wrongful death  
654 of spouse or parent, is amended by revising subsection (f) as follows:

655 "(f) In actions for recovery under this Code section, the fact that a child has been born out  
656 of wedlock shall be no bar to recovery, provided that such child born out of wedlock had  
657 rights of inheritance from or through the child's deceased parent under Code Section  
658 53-2-3."

659 **SECTION 32.**

660 Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and  
661 administration of estates, is amended by revising Code Section 53-1-9, relating to survival  
662 of common law and equity, as follows:

663 "53-1-9.

664 Except to the extent that the principles of common law and equity governing wills, trusts,  
665 and the administration of estates are modified by this title or another provision of law,  
666 those principles remain the law of this state. Without limitation:

667 (1) No provision of this title shall be construed to imply that any other Code section or  
668 the common law did not, prior to the enactment of such provision, impose, permit, or  
669 otherwise address a duty, power, relationship, or any other matter governed by such  
670 provision; and

671 (2) The failure of the General Assembly to codify an established principle of common  
672 law or equity governing wills, trusts, and the administration of estates shall not be  
673 construed as evidence that the General Assembly intended to reject that principle unless  
674 this title or another provision of law is inconsistent with that principle or there is other  
675 evidence the General Assembly intended that such principle should no longer apply."

676 **SECTION 33.**

677 Said title is further amended by revising Code Section 53-2-2, which is reserved, as follows:

678 "53-2-2.

679 (a) Code Sections 53-2-3 and 53-2-4 shall be subject to the provisions of subparagraph  
680 (d)(2)(B) of Code Section 19-7-22.681 (b) Nothing in this chapter shall be applied or construed to expand or extend the  
682 jurisdiction of the probate courts for purposes of Article 2 of Chapter 11 of Title 19, the  
683 'Uniform Reciprocal Enforcement of Support Act,' or Article 3 of Chapter 11 of Title 19,  
684 the 'Uniform Interstate Family Support Act.' Reserved."685 **SECTION 34.**686 Said title is further amended by revising Code Section 53-2-3, relating to inheritance by  
687 children born out of wedlock, as follows:

688 "53-2-3.

689 The rights of inheritance of a child born out of wedlock shall be as follows:

690 (1) A child born out of wedlock may inherit in the same manner as though legitimate  
691 from or through the child's mother, the other children of the mother, and any other  
692 maternal kin;693 (2)(A) A child born out of wedlock may not inherit from or through the child's father,  
694 the other children of the father, or any paternal kin by reason of the paternal kinship,  
695 unless:696 (i) A court of competent jurisdiction has entered an order declaring the child to be  
697 legitimate, under the authority of Code Section 19-7-22 or such other authority as may  
698 be provided by law;699 (ii) A court of competent jurisdiction has otherwise entered a court order establishing  
700 paternity; that has not been set aside as provided in Code Section 19-7-54; provided,  
701 however, that:

702 (I) A temporary order of support entered under subsection (a) of Code Section  
703 19-7-46.2 or an order of support entered under subsection (a) of Code Section  
704 19-7-49 shall not be conclusive under this division unless such order also satisfies  
705 division (i) of this subparagraph or unless the court before which proceedings on the  
706 estate are pending determines, in its discretion, that such order also satisfies division  
707 (vi) of this subparagraph;

708 (II) A support order, as such term is defined in Code Section 19-11-42, shall not be  
709 conclusive under this division unless such order also satisfies division (i) of this  
710 subparagraph or unless the court before which proceedings on the estate are pending  
711 determines, in its discretion, that such order also satisfies division (vi) of this  
712 subparagraph;

713 (III) A temporary order of support entered under subsection (e) of Code Section  
714 19-11-48 or a temporary order under Code Section 19-11-74 shall not be conclusive  
715 under this division unless such order also satisfies division (i) of this subparagraph  
716 or unless the court before which proceedings on the estate are pending determines,  
717 in its discretion, that such order also satisfies division (vi) of this subparagraph;

718 (IV) A support order, as such term is defined in Code Section 19-11-101, shall not  
719 be conclusive under this division unless such order also satisfies division (i) of this  
720 subparagraph or unless the court before which proceedings on the estate are pending  
721 determines, in its discretion, that such order also satisfies division (vi) of this  
722 subparagraph;

723 (V) A temporary child support order entered under paragraph (3) of subsection (b)  
724 of Code Section 19-11-140 shall be conclusive under this division. A temporary  
725 child support order entered under paragraph (5) of subsection (b) of Code Section  
726 19-11-140 shall satisfy division (vi) of this subparagraph. Any other temporary  
727 child support order entered under subsection (b) of Code Section 19-11-140 shall  
728 not be conclusive under this division unless such order also satisfies division (i) of

729 this subparagraph or unless the court before which proceedings on the estate are  
730 pending determines, in its discretion, that such order also satisfies division (vi) of  
731 this subparagraph;

732 (VI) For purposes of this division, an administrative determination of paternity  
733 made pursuant to subsection (b) of Code Section 19-7-40 shall have the same force  
734 and effect as a judicial decree;

735 (VII) For purposes of this division, a court order for child support, as such term is  
736 defined in Code Section 19-11-3, issued by an administrative or quasi-judicial entity  
737 of this state or another state shall have the same force and effect as a judicial decree;

738 (VIII) For purposes of this division, a judgment determining parentage of a child  
739 issued by a tribunal or a foreign tribunal, as such terms are defined in Code Section  
740 19-11-101, shall be given the same force and effect by the court before which  
741 proceedings on the estate are pending as such judgment would be given in the  
742 tribunals of Georgia, as designated by subsection (a) of Code Section 19-11-102;  
743 and

744 (IX) Nothing in this division shall be applied or construed to make available to the  
745 probate courts the information contained in the state case registry pursuant to  
746 subsection (e) of Code Section 19-11-39;

747 (iii) The father has executed a sworn statement signed by him attesting to the  
748 parent-child relationship, including, but not limited to:

749 (I) A voluntary acknowledgment of legitimation that was valid under the former  
750 provisions of Code Section 19-7-21.1 and was executed on or before June 30, 2016;

751 (II) A voluntary acknowledgment of paternity that satisfies the requirements of  
752 subsection (b) of Code Section 19-7-46.1 and is neither timely rescinded nor  
753 successfully challenged as provided by subsection (b) or (c) of Code  
754 Section 19-7-46.1;

755 (III) An acknowledgment of paternity made under oath pursuant to Code Section  
756 19-11-13; or  
757 (IV) A voluntary acknowledgment of paternity that is admissible to establish  
758 parentage of the child under subsection (j) of Code Section 19-11-135;  
759 (iv)(I) The father has signed the birth certificate of the child.  
760 (II) The name or social security account number of the father appears on the birth  
761 certificate of the child or on a certified copy of such birth certificate with the written  
762 consent of the father in the manner provided by subsection (a) of Code Section  
763 19-7-46.1 or paragraph (2) of subsection (e) of Code Section 31-10-9.  
764 (III) The father has acknowledged paternity and the social security account  
765 information of the father is entered on the birth certificate of the child in the manner  
766 provided by subsection (a) of Code Section 31-10-9.1; or  
767 (v) The father has otherwise acknowledged paternity under oath in any manner  
768 satisfying the definition set forth in paragraph (14) of Code Section 19-11-3 or the  
769 requirements of subsection (a) of Code Section 19-11-14; or  
770 (vi) There is other clear and convincing evidence that the child is the child of the  
771 father.  
772 (B)(i) Subparagraph (A) of this paragraph notwithstanding, a child born out of  
773 wedlock may inherit from or through the father, other children of the father, or any  
774 paternal kin by reason of the paternal kinship if evidence of the rebuttable  
775 presumption of paternity described in this subparagraph is filed with the court before  
776 which proceedings on the estate are pending and the presumption is not overcome to  
777 the satisfaction of the trier of fact by clear and convincing evidence.  
778 (ii) There shall exist a rebuttable presumption of paternity of a child born out of  
779 wedlock if:  
780 (I) The child was born to a mother who was a recipient intended parent as the result  
781 of an embryo relinquishment pursuant to Article 2 of Chapter 8 of Title 19, the

782 child's mother was not married to the presumptive father at the time of the birth of  
783 the child, the child's mother and presumptive father each, as a recipient intended  
784 parent, executed a written contract satisfying the requirements of subsection (a) of  
785 Code Section 19-8-41, the child is presumed to be the legal child of the presumptive  
786 father under subsection (d) of Code Section 19-8-41, and no expedited order of  
787 adoption or parentage complying with the requirements of Code Section 19-8-43  
788 has been entered by a court of competent jurisdiction as a final order vesting  
789 parental rights and responsibilities in the child's presumptive father as a recipient  
790 intended parent; or  
791 (II) Scientifically credible parentage-determination genetic testing establishes at  
792 least a 97 percent probability of paternity. ~~Parentage-determination~~ Scientifically  
793 credible parentage-determination genetic testing shall include, but not necessarily  
794 be limited to, red cell antigen, human leucocyte antigen (HLA), red cell enzyme,  
795 and serum protein electrophoresis tests or testing by deoxyribonucleic acid (DNA)  
796 probes. ~~Parentage-determination genetic testing shall be of a type reasonably relied~~  
797 upon by experts in the field of genetic testing; shall be conducted by a laboratory  
798 accredited by the AABB, formerly known as the American Association of Blood  
799 Banks, or a successor to its functions, or by an accrediting body designated by the  
800 secretary of the United States Department of Health and Human Services; and shall  
801 be performed by a duly qualified licensed practicing physician, duly qualified  
802 immunologist, or other duly qualified person; provided, however, that in all cases  
803 the court before which proceedings on the estate are pending shall determine the  
804 number and qualifications of the experts.  
805 (C) If any one of the requirements of divisions (i) through ~~(v)~~ (vi) of subparagraph (A)  
806 of this paragraph is fulfilled, or if the presumption of paternity set forth in subparagraph  
807 (B) of this paragraph shall have been established and shall not have been rebutted by  
808 the presentation of clear and convincing evidence as determined by the trier of fact, a



809 child born out of wedlock may inherit in the same manner as though legitimate from  
 810 and through the child's father, the other children of his or her father, and any other  
 811 paternal kin;

812 (D) In determining whether clear and convincing evidence has been presented under  
 813 this paragraph, the trier of fact may consider and determine the relevance, materiality,  
 814 and weight of any admissible evidence; provided, however, that:

815 (i) The requirement of reasonable certainty only, as provided by subsection (a) of  
 816 Code Section 24-14-40, shall not apply to such determination; and

817 (ii) The party bearing the burden of proof that the child is the child of the father by  
 818 the presentation of clear and convincing evidence under division (vi) of subparagraph  
 819 (A) of this paragraph shall not be relieved from the onus of proving identity, as  
 820 provided by subsection (b) of Code Section 24-14-40.

821 (E) Except as provided by division (d)(2)(B)(i) of Code Section 19-7-22, nothing in  
 822 this paragraph shall be applied or construed to abrogate or limit:

823 (i) The jurisdiction of a probate court or a superior court under Code Section 53-2-20  
 824 to resolve judicially the identity or interest of any heir in accordance with Article 2  
 825 of this chapter; or

826 (ii) The effect of the findings of such a court in such a proceeding pursuant to Code  
 827 Section 53-2-26;

828 (3) In distributions under this Code section, the children of a deceased child born out of  
 829 wedlock shall represent that deceased child in the manner provided by Code Section  
 830 53-2-1; and

831 (4) The limitation imposed by subsection (b) of Code Section 19-11-14 upon the full  
 832 faith and credit to be given by the courts of this state to a determination of paternity made  
 833 by another state shall not affect the rights of inheritance of a child under a voluntary  
 834 acknowledgment or an administrative or judicial determination otherwise satisfying the  
 835 requirements of this Code section."

836 **SECTION 35.**

837 Said title is further amended by revising Code Section 53-2-4, relating to inheritance from  
838 children born out of wedlock, as follows:

839 "53-2-4.

840 (a) The mother of a child born out of wedlock, the other children of the mother, and other  
841 maternal kin may inherit from and through the child born out of wedlock in the same  
842 manner as though the child were legitimate.

843 (b) The father of a child born out of wedlock, the other children of the father, and other  
844 paternal kin may inherit from and through the child born out of wedlock in the same  
845 manner as if the child were legitimate if:

846 (1) A court of competent jurisdiction has entered an order declaring the child to be  
847 legitimate under the authority of Code Section 19-7-22 or such other authority as may be  
848 provided by law;

849 (2) A court of competent jurisdiction has otherwise entered a court order establishing  
850 paternity that has not been set aside as provided in Code Section 19-7-54; provided,  
851 however, that:

852 (A) A temporary order of support entered under subsection (a) of Code Section  
853 19-7-46.2 or an order of support entered under subsection (a) of Code Section 19-7-49  
854 shall not be conclusive under this paragraph unless such order also satisfies paragraph  
855 (1) of this subsection;

856 (B) A support order, as such term is defined in Code Section 19-11-42, shall not be  
857 conclusive under this paragraph unless such order also satisfies paragraph (1) of this  
858 subsection;

859 (C) A temporary order of support entered under subsection (e) of Code Section  
860 19-11-48 or a temporary order under Code Section 19-11-74 shall not be conclusive  
861 under this paragraph unless such order also satisfies paragraph (1) of this subsection;

862 (D) A support order, as such term is defined in Code Section 19-11-101, shall not be  
863 conclusive under this paragraph unless such order also satisfies paragraph (1) of this  
864 subsection;

865 (E) A temporary child support order entered under paragraph (3) of subsection (b) of  
866 Code Section 19-11-140 shall be conclusive under this paragraph. Any other temporary  
867 child support order entered under subsection (b) of Code Section 19-11-140 shall not  
868 be conclusive under this paragraph unless such order also satisfies paragraph (1) of this  
869 subsection;

870 (F) For purposes of this paragraph, an administrative determination of paternity made  
871 pursuant to subsection (b) of Code Section 19-7-40 shall have the same force and effect  
872 as a judicial decree;

873 (G) For purposes of this paragraph, a court order for child support, as such term is  
874 defined in Code Section 19-11-3, issued by an administrative or quasi-judicial entity  
875 of this state or another state shall have the same force and effect as a judicial decree;

876 (H) For purposes of this paragraph, a judgment determining parentage of a child issued  
877 by a tribunal or a foreign tribunal, as such terms are defined in Code Section 19-11-101,  
878 shall be given the same force and effect as such judgment would be given in the  
879 tribunals of Georgia, as designated by subsection (a) of Code Section 19-11-102; and

880 (I) Nothing in this paragraph shall be applied or construed to make available to the  
881 probate courts the information contained in the state case registry pursuant to  
882 subsection (e) of Code Section 19-11-39;

883 (3)(A) The father has, during the lifetime of the child, executed a sworn statement  
884 signed by the father attesting to the parent-child relationship, including, but not limited  
885 to:

886 (i) A voluntary acknowledgment of legitimation that was valid under the former  
887 provisions of Code Section 19-7-21.1 and was executed on or before June 30, 2016;

888 (ii) A voluntary acknowledgment of paternity that satisfies the requirements of  
889 subsection (b) of Code Section 19-7-46.1 and is neither timely rescinded nor  
890 successfully challenged as provided by subsection (b) or (c) of Code Section  
891 19-7-46.1;

892 (iii) An acknowledgment of paternity made under oath pursuant to Code Section  
893 19-11-13; or

894 (iv) A voluntary acknowledgment of paternity that is admissible to establish  
895 parentage of the child under subsection (j) of Code Section 19-11-135.;

896 (B) However, provided, however, that when the court determines by clear and  
897 convincing evidence that the father caused his child to be conceived as a result of  
898 having nonconsensual sexual intercourse with the mother of his child or when the  
899 mother is less than ten years of age, such sworn statement shall be insufficient for  
900 purposes of this subsection;

901 (4) During The father has, during the lifetime of the child.;

902 (A) The father has signed the birth certificate of the child; or

903 (B) The name or social security account number of the father appears on the birth  
904 certificate of the child or on a certified copy of such birth certificate with the written  
905 consent of the father in the manner provided by subsection (a) of Code Section  
906 19-7-46.1 or paragraph (2) of subsection (e) of Code Section 31-10-9; or

907 (C) The father has acknowledged paternity and the social security account information  
908 of the father has been entered on the birth certificate of the child in the manner provided  
909 by subsection (a) of Code Section 31-10-9.1;

910 (5) During the lifetime of the child, the father has otherwise acknowledged paternity  
911 under oath in any manner satisfying the definition set forth in paragraph (14) of Code  
912 Section 19-11-3 or the requirements of subsection (a) of Code Section 19-11-14;  
913 provided, however, that, when the court determines by clear and convincing evidence that  
914 the father caused his child to be conceived as a result of having nonconsensual sexual

915 intercourse with the mother of his child or when the mother is less than ten years of age,  
 916 such acknowledgment under oath shall be insufficient for purposes of this subsection; or  
 917 (5)(6) The presumption of paternity described in division (2)(B)(ii) of Code Section  
 918 53-2-3 has been established and has not been rebutted by the presentation of clear and  
 919 convincing evidence as determined by the trier of fact.

920 (c) In determining whether clear and convincing evidence has been presented under  
 921 paragraph (6) of subsection (b) of this Code section, the trier of fact may consider and  
 922 determine the relevance, materiality, and weight of any admissible evidence; provided,  
 923 however, that the requirement of reasonable certainty only, as provided by subsection (a)  
 924 of Code Section 24-14-40, shall not apply to such determination.

925 (d) Except as provided by division (d)(2)(B)(ii) of Code Section 19-7-22, nothing in  
 926 subsection (b) of this Code section shall be applied or construed to abrogate or limit:

927 (1) The jurisdiction of a probate court or a superior court under Code Section 53-2-20  
 928 to resolve judicially the identity or interest of any heir in accordance with Article 2 of this  
 929 chapter; or

930 (2) The effect of the findings of such a court in such a proceeding pursuant to Code  
 931 Section 53-2-26.

932 (e) The limitation imposed by subsection (b) of Code Section 19-11-14 upon the full faith  
 933 and credit to be given by the courts of this state to a determination of paternity made by  
 934 another state shall not affect the rights of inheritance of the father of a child born out of  
 935 wedlock, the other children of the father, and other paternal kin under a voluntary  
 936 acknowledgment or an administrative or judicial determination otherwise satisfying the  
 937 requirements of subsection (b) of this Code section."

938 **SECTION 36.**

939 Said title is further amended by revising Code Section 53-2-5, relating to inheritance from  
 940 children conceived by artificial insemination, as follows:

941 "53-2-5.

942 (a) An individual conceived by artificial insemination, in vitro fertilization, or other similar  
943 method of assisted reproduction and presumed legitimate in accordance with Code Section  
944 19-7-21 shall be considered a child of the parents and entitled to inherit under the laws of  
945 intestacy from the parents and from relatives of the parents, and the parents and relatives  
946 of the parents shall likewise be entitled to inherit as heirs from and through such individual.

947 (b) Subsection (a) of this Code section shall be subject to Article 2 of Chapter 8 of Title  
948 19, and, in the event of a conflict, the provisions of such article shall prevail."

949 **SECTION 37.**

950 Said title is further amended by adding a new Code section to Article 1 of Chapter 2, relating  
951 to descent and distribution, to read as follows:

952 "53-2-9.

953 As used in this article, the term 'child born out of wedlock' shall have the same meaning  
954 as set forth in Code Section 19-7-23."

955 **SECTION 38.**

956 Said title is further amended by revising Code Section 53-2-20, relating to jurisdiction of  
957 probate or superior court, as follows:

958 "53-2-20.

959 (a) The identity or interest of any heir may be resolved judicially upon application to the  
960 probate court that has jurisdiction by virtue of a pending administration or that would have  
961 jurisdiction in the event of an administration of the estate of the decedent. Alternatively,  
962 the petition may be filed in the superior court of the county where the probate court having  
963 jurisdiction, as defined in this Code section, is located; provided, however, that, if the  
964 petition is filed in connection with a contested proceeding to determine a purported heir's

965 entitlement to a year's support from the decedent's estate pursuant to Chapter 3 of this title,  
 966 such petition must be filed in the probate court having jurisdiction.

967 (b) The proceedings for the determination of such questions shall conform to the  
 968 requirements set forth in this article.

969 (c) Regardless of its terms, an agreement, other than an agreement approved in accordance  
 970 with Article 3 of Chapter 7 of Title 19 by a court having jurisdiction under Code Section  
 971 19-7-40, between an alleged or presumed father of an individual claiming to be an heir and  
 972 such individual claiming to be an heir or the mother of such individual claiming to be an  
 973 heir shall not bar a petition under this article."

974 **SECTION 39.**

975 Said title is further amended by revising Code Section 53-2-21, relating to filing of petition,  
 976 as follows:

977 "53-2-21.

978 (a) Any personal representative, guardian, conservator, ~~committee~~, trustee, trust director,  
 979 other fiduciary, or other person having a status ~~which~~ that either by operation of law or  
 980 pursuant to written instrument devolves upon such person a duty of distributing property  
 981 to heirs may file a petition for determination of heirship as provided in Code Section  
 982 53-2-20. The petition shall allege:

983 (1) ~~The~~ the names, addresses, ages, and relationship, so far as known to the petitioner,  
 984 of all parties at in interest, other than creditors, and the nature and character of such  
 985 interests; and

986 (2) ~~Whether~~ The petition shall further allege ~~whether~~ the petitioner has reason to  
 987 apprehend that there may be others entitled to participate in the distribution whose names  
 988 are unknown to the petitioner.

989 (b) With respect to the estate of a decedent who the petitioner knows or has reason to  
 990 apprehend is an obligor within the meaning of subparagraph (B) of paragraph (17) of Code

991 Section 19-11-101, an individual who is an obligee within the meaning of subparagraph (C)  
 992 of paragraph (16) of Code Section 19-11-101 is a party in interest for purposes of  
 993 subsection (a) of this Code section."

994 **SECTION 40.**

995 Said title is further amended by revising Code Section 53-2-22, relating to petition by person  
 996 claiming to be heir or distributee, as follows:

997 "53-2-22.

998 (a) Any individual claiming to be an heir or any person in any way interested as a  
 999 distributee in any property under the laws of intestacy may apply to either the probate court  
 1000 or the superior court specified in Code Section 53-2-20 to have the claim of heirship and  
 1001 quantity of interest established. The petition in such a case shall contain the same  
 1002 averments as to all parties at in interest required of persons filing under Code Section  
 1003 53-2-21 with the person charged with the duty of distribution being named as a party.

1004 (b) With respect to the estate of a decedent who is an obligor within the meaning of  
 1005 subparagraph (B) of paragraph (17) of Code Section 19-11-101, an individual who is an  
 1006 obligee within the meaning of subparagraph (C) of paragraph (16) of Code Section  
 1007 19-11-101 is a party in interest who may file a petition for determination of heirship under  
 1008 subsection (a) of this Code section."

1009 **SECTION 41.**

1010 Said title is further amended by revising Code Section 53-2-23, relating to superior court  
 1011 procedure, as follows:

1012 "53-2-23.

1013 (a) Upon the filing in a superior court of a petition described in Code Section 53-2-21 or  
 1014 53-2-22, service on the parties in interest shall be effected in the same manner as prescribed  
 1015 in cases in which equitable relief is sought; and the provided, however, that the superior



1016 court additionally may order service in the manner provided by Code Section 19-7-41. The  
1017 case shall thereafter proceed to judgment in the manner provided for such cases by the rules  
1018 of practice in the superior courts.

1019 (b) With respect to a direct request seeking determination of parentage of a child pursuant  
1020 to Part 7 of Article 3 of Chapter 11 of Title 19 that is filed by a petitioner in the superior  
1021 court as a designated tribunal under subsection (a) of Code Section 19-11-102, this article  
1022 shall apply in the proceeding, as provided by subsection (a) of Code Section 19-11-184, to  
1023 the extent the petitioner seeks such determination of parentage for the purpose of  
1024 establishing the identity or interest of such child as an heir of the decedent; provided,  
1025 however, that nothing in this subsection shall be applied or construed to expand or extend  
1026 the jurisdiction of the probate courts for purposes of Article 3 of Chapter 11 of Title 19, the  
1027 'Uniform Interstate Family Support Act,' or to expand or extend the jurisdiction of the  
1028 Office of State Administrative Hearings and the Department of Human Services for  
1029 purposes of this article."

1030 **SECTION 42.**

1031 Said title is further amended by revising Code Section 53-2-24, relating to probate court  
1032 procedure, as follows:

1033 "53-2-24.

1034 Upon the filing in a probate court of a petition described in Code Section 53-2-21 or  
1035 53-2-22, a citation shall be issued and parties in interest shall be served as provided in  
1036 Chapter 11 of this title; provided, however, that the probate court additionally may order  
1037 service in the manner provided by Code Section 19-7-41."

1038 **SECTION 43.**

1039 Said title is further amended by revising Code Section 53-2-25, relating to intervention by  
1040 person claiming to be heir or distributee, as follows:

1041 "53-2-25.

1042 Any individual claiming to be an heir or any person in any way interested as a distributee  
1043 and who is not named as such in any petition filed and pending under this article may file  
1044 a motion to intervene in the proceeding pursuant to Code Section 9-11-24."

1045 **SECTION 44.**

1046 Said title is further amended by revising Code Section 53-2-26, relating to effect of findings  
1047 of court, as follows:

1048 "53-2-26.

1049 (a) In the absence of fraud, the findings of the superior court or the probate court in a  
1050 proceeding brought under this article shall be binding and conclusive as to every person  
1051 and as to every issue decided.

1052 (b) With respect to the judgment of the superior court or the probate court in a proceeding  
1053 brought under this article, nothing in subsection (a) of this Code section shall be applied  
1054 or construed to abrogate or infringe:

1055 (1) Any right of appeal provided by Title 5; or

1056 (2) Any right to relief provided by Code Section 9-11-60."

1057 **SECTION 45.**

1058 Said title is further amended by revising Code Section 53-2-27, relating to DNA testing for  
1059 kinship, procedure, and costs, as follows:

1060 "53-2-27.

1061 (a)(1) When the kinship of any party in interest to a decedent is in controversy in any  
1062 proceeding under this article, a probate court or superior court may order the removal and  
1063 testing of deoxyribonucleic acid (DNA) samples from the remains of the decedent and  
1064 from any party in interest whose kinship to the decedent is in controversy for purposes  
1065 of comparison and determination of the statistical likelihood of such kinship; provided,

1066 however, that no DNA testing shall be ordered with respect to any party in interest whose  
1067 kinship to the decedent was created or terminated by a decree of adoption, pursuant to  
1068 subsection (a) of Code Section 19-8-19, unless the right of inheritance of such party in  
1069 interest was not affected by the adoption, pursuant to subsection (b) of Code Section  
1070 19-8-19, or if such party in interest was conceived by means of artificial insemination,  
1071 in vitro fertilization, or other similar method of assisted reproduction; and provided,  
1072 further, that, for purposes of this subsection, a decree of adoption shall include:

1073 (A) Any such decree entered pursuant to Article 1 of Chapter 8 of Title 19;

1074 (B) Any such decree recognized in this state pursuant to Code Section 19-8-22; or

1075 (C) A final order entered pursuant to Code Section 19-8-43.

1076 (2) The court may order the disinterment of the decedent's remains if reasonably  
1077 necessary to obtain such DNA samples for testing under this subsection.

1078 (b) The An order pursuant to subsection (a) of this Code section may be made entered only  
1079 on motion for good cause shown and upon notice to all parties in interest, and such order  
1080 shall specify the time, place, manner, conditions, and scope of the removal and testing of  
1081 samples, and the person or persons by whom it is such removal and testing of DNA  
1082 samples are to be made. When such motion is made prior to the birth of a child whose  
1083 kinship to the decedent is in controversy, such order shall direct that the DNA testing be  
1084 conducted as soon as medically feasible after the birth of such child and may stay the  
1085 proceedings until after the child's birth except service of notice; provided, however, that  
1086 the requirements of paragraph (1) of subsection (b) of Code Section 53-2-1 shall remain  
1087 applicable to such child. Such motion, when made by a party in interest, shall be supported  
1088 by affidavit setting forth:

1089 (1) The factual basis for a reasonable belief that the party in interest whose kinship to the  
1090 decedent is in controversy is or is not so related; and

1091 (2) If disinterment of the decedent's remains is sought, the factual basis for a reasonable  
1092 belief that reliable DNA samples from the decedent are not otherwise reasonably  
1093 available from any other source.

1094 (c) Upon request of a party in interest to a proceeding under this article or as ordered by  
1095 the court on its own motion in the exercise of its discretion, the movant shall, within ten  
1096 days after such request is made or such order is entered, but in no event later than ten days  
1097 prior to the date of a hearing at which such report may be introduced into evidence, deliver  
1098 to all parties in interest a copy of a detailed written report of the tester and of any other  
1099 expert or other qualified person involved in the determination of such statistical likelihood  
1100 setting out his or her findings, including the results of all tests made and conclusions or  
1101 opinions based thereon. Unless a party in interest objects in writing within seven days after  
1102 receiving such report and prior to the date of such hearing, such report shall be admitted  
1103 in evidence without the need for foundation testimony or other proof of authenticity or  
1104 accuracy. When a timely objection is filed, such report shall be admitted in evidence when  
1105 offered by a duly qualified licensed practicing physician, duly qualified immunologist, or  
1106 other duly qualified person; provided, however, that in all cases the court shall determine  
1107 the number and qualifications of the experts. Other relevant evidence shall be admitted as  
1108 is deemed appropriate by the court. To provide any party in interest an adequate  
1109 opportunity to be heard or as otherwise appears reasonably necessary to a just  
1110 determination in a proceeding under this article, the court shall grant a continuance of any  
1111 such hearing. Upon motion of any party in interest or on the court's own motion, any  
1112 hearing or trial held in a proceeding under this article may be held in closed court without  
1113 any person other than those necessary to the proceeding being admitted.

1114 (d)(1) The costs of obtaining and testing of ~~such~~ DNA samples, including the costs of  
1115 disinterment and reinterment of the remains of the decedent, if necessary, as well as the  
1116 costs of providing the report, shall be assessed against and paid by the moving party, and  
1117 the court may award such costs as part of its final decree; provided, however, that the

1118 court may, in its discretion after all parties in interest have been given reasonable  
1119 opportunity to be heard, cast all or part of such costs against one or more parties in  
1120 interest upon entering a finding of fact that any such party has asserted in bad faith a  
1121 position with respect to the kinship in controversy in a proceeding under this article or  
1122 has failed unreasonably to cooperate with an order for DNA testing entered pursuant to  
1123 this Code section. The costs of disinterment may include a reasonable fee for services  
1124 provided by a cemetery company in connection therewith, subject to the limitation upon  
1125 such charges imposed by subsection (d) of Code Section 10-14-17.

1126 (2) Except as otherwise provided by paragraph (1) of this subsection, the court may, in  
1127 its discretion after all parties in interest have been given reasonable opportunity to be  
1128 heard, order reasonable fees of counsel, experts, and guardians ad litem and other costs  
1129 of the proceeding, including pretrial proceedings, to be paid by the parties in interest in  
1130 proportions and at times determined by the court.

1131 (3) The trier of fact shall receive without foundation or the need for third-party testimony  
1132 evidence of the costs and fees provided for by this subsection, and the evidence so  
1133 presented shall constitute prima-facie evidence of the amounts of the costs so incurred.  
1134 Copies of bills for the obtaining and testing of DNA samples, including the costs of  
1135 disinterment and reinterment of the remains of the decedent, if necessary, furnished to all  
1136 parties in interest at least ten days prior to the date of a hearing at which such copies of  
1137 bills may be introduced into evidence, are admissible in evidence to prove that the  
1138 charges billed were reasonable, necessary, and customary; provided, however, that  
1139 nothing in this paragraph shall be construed to limit the right of a thorough and sifting  
1140 cross-examination as to such evidence.

1141 (e) DNA testing performed pursuant to this Code section shall be conducted by a  
1142 laboratory certified by the American Association of Blood Banks, shall be conducted so  
1143 that the results meet the standards the American Association of Blood Banks requires in  
1144 order for such results to be admitted as evidence in a court of law, and shall be performed

1145 by a duly qualified licensed practicing physician, duly qualified immunologist, or other  
1146 duly qualified person; provided, however, that in all cases the court before which  
1147 proceedings on the estate are pending shall determine the number and qualifications of the  
1148 experts.

1149 (f) An order for DNA testing entered pursuant to this Code section shall be enforceable by  
1150 contempt; provided, however, that, if the movant refuses to submit to such an order, the  
1151 court may, in its discretion after all parties in interest have been given reasonable  
1152 opportunity to be heard, dismiss or strike the movant's pleadings upon motion by any party  
1153 in interest or on the court's own motion.

1154 (g) Except as ordered by the court for good cause shown pursuant to subsection (b) of this  
1155 Code section, the genetic material collected for DNA testing performed pursuant to this  
1156 Code section:

1157 (1) If collected through the disinterment of the decedent's remains, shall be destroyed  
1158 within a reasonable time as determined by the court;

1159 (2) If made available from a source other than through the disinterment of the decedent's  
1160 remains, shall be destroyed or returned in the manner reasonably directed by such source  
1161 or in accordance with such source's standard rules and regulations; and

1162 (3) Shall not be shared with any other person or entity except to the extent reasonably  
1163 necessary for compliance with paragraphs (1) and (2) of this subsection.

1164 (h) The disinterment and reinterment of the decedent's remains in accordance with a court  
1165 order entered pursuant to subsection (a) of this Code section:

1166 (1) Shall not require a permit under Code Section 12-3-52, 12-3-82, or 36-72-4 as a  
1167 condition precedent to such disinterment;

1168 (2) Shall not require authorization under subsection (f) of Code Section 31-10-20 as a  
1169 condition precedent to such disinterment or reinterment;

1170 (3) Shall not constitute a disturbance, destruction, defacing, mutilation, removal, or  
1171 exposure of interred human remains under Code Section 31-21-6;

- 1172 (4) Shall not constitute a violation of any provision of Code Section 31-21-44;  
1173 (5) Shall be supervised, monitored, or carried out as provided in Code Section 36-72-15  
1174 when such disinterment or reinterment is in an abandoned cemetery or burial ground, as  
1175 defined in Code Section 36-72-2; provided, however, that nothing in Code Section  
1176 36-72-15 shall affect the assessment, allocation, or payment of costs ordered by the court  
1177 pursuant to subsection (d) of this Code section; and  
1178 (6) May be done by any person who is or is able to be authorized to disinter the remains  
1179 of a human body under Code Section 45-16-45 or subsection (b) of Code Section  
1180 45-16-51; provided, however, that nothing in this paragraph shall limit the persons whom  
1181 the court may designate to perform such disinterment pursuant to subsection (b) of this  
1182 Code section.
- 1183 (i) Any person disinterring or reintering a decedent's remains in accordance with a court  
1184 order entered pursuant to subsection (a) of this Code section shall be deemed to be a person  
1185 having duties imposed upon that person relating to the possession or disposition of dead  
1186 bodies while in the performance of said duties within the meaning of subsection (b) of  
1187 Code Section 31-21-44.
- 1188 (j) DNA testing performed pursuant to this Code section shall be deemed to be genetic  
1189 testing conducted to obtain information for therapeutic or diagnostic purposes within the  
1190 meaning of subsection (a) of Code Section 33-54-3; provided, however, that DNA testing  
1191 performed pursuant to this Code section may be conducted without written consent prior  
1192 to the decedent's death.
- 1193 (k) Any court issuing an order with respect to a determination of heirship under this article  
1194 shall not, insofar as possible, attach the written results from DNA testing to any pleading  
1195 or court order."

1196

**SECTION 46.**

1197 Said title is further amended by adding a new Code section to Article 2 of Chapter 2, relating  
 1198 to judicial determination of heirs and interests, to read as follows:

1199 "53-2-28.

1200 (a) Any proceeding brought under this article is a civil action, which shall be governed by  
 1201 the rules of civil procedure except as otherwise expressly provided in this article. Except  
 1202 to the extent otherwise provided in Code Section 53-2-27, expressly provided in this Code  
 1203 section, or modified by another applicable statute, the common law as expounded by  
 1204 Georgia courts shall continue to be applied to the admission and exclusion of evidence and  
 1205 to procedures at trial in proceedings brought under this article.

1206 (b) If in any proceeding brought under this article no answer or objection has been filed  
 1207 within the time required by Chapter 11 of this title or by Chapter 11 of Title 9, the 'Georgia  
 1208 Civil Practice Act,' as applicable, the case shall automatically become in default unless the  
 1209 time for filing such answer or objection has been extended as provided by law. In any  
 1210 proceeding brought under this article that has become in default:

1211 (1) In the probate court, the default thereafter shall be governed by Code Section  
 1212 15-9-47; and

1213 (2) In the superior court, the default thereafter shall be governed by Code Section  
 1214 9-11-55.

1215 (c) In proceedings under this article, the provisions of Title 19 shall be supplemental to the  
 1216 provisions of this title, and the provisions of this title shall be construed and applied in para  
 1217 materia with the provisions of Title 19, except to the extent that the provisions of Title 19  
 1218 are in conflict with or are incompatible with the provisions of this title."

1219

**SECTION 47.**

1220 Said title is further amended by revising subsection (c) of Code Section 53-2-40, relating to  
 1221 petition, as follows:



1222 "(c) The personal representative of the estate of a deceased heir is authorized to agree to  
 1223 the division on behalf of ~~that~~ such heir. If the estate of a deceased heir has no personal  
 1224 representative, such deceased heir's estate may be represented in the proceeding by a  
 1225 guardian, pursuant to Code Section 53-11-2, and such guardian is authorized to agree to the  
 1226 division on behalf of such heir."

1227 **SECTION 48.**

1228 Said title is further amended by revising subsection (b) of Code Section 53-2-51, relating to  
 1229 procedure, as follows:

1230 "(b) Upon filing of the petition, the probate court:

1231 (1) Shall ~~shall~~ issue a citation as provided in Chapter 11 of this title, requiring the heirs;  
 1232 ~~if any~~, to file any objection to the petition by a date that is at least 60 days from the date  
 1233 of the citation;

1234 (2) Shall ~~and shall~~ order notice by publication to all heirs of the decedent as provided in  
 1235 Code Section 53-11-4; and

1236 (3) May direct any additional service, as provided in Code Section 53-11-5."

1237 **SECTION 49.**

1238 Said title is further amended by revising paragraph (2) of subsection (b) of and by adding a  
 1239 new subsection to Code Section 53-4-5, relating to written statement or list disposing of  
 1240 items of tangible personal property, to read as follows:

1241 "(2) Describes the items and the ~~beneficiaries~~ recipients thereof with reasonable  
 1242 certainty; and"

1243 "(c) A written statement or list meeting the requirements of subsection (b) of this Code  
 1244 section shall not be deemed to be the testator's will or a part of such testator's will."

1245 **SECTION 50.**

1246 Said title is further amended by adding a new subsection to Code Section 53-4-20, relating  
 1247 to required writing, signing, witnesses, and codicil, to read as follows:

1248 "(d) A will or codicil that was executed or attested pursuant to the authority of the  
 1249 Governor's Executive Order 04.09.20.01 shall not be treated as invalid solely because it  
 1250 was not executed or attested in the testator's physical presence."

1251 **SECTION 51.**

1252 Said title is further amended by revising Code Section 53-5-8, relating to notice to  
 1253 beneficiary provided by personal representative and representation for beneficiaries, as  
 1254 follows:

1255 "53-5-8.

1256 (a) ~~As used in this Code section, the term 'beneficiary' means a person, including a trust,~~  
 1257 ~~that is designated in a will to take an interest in real or personal property; that has a present~~  
 1258 ~~interest, including, but not limited to, a vested remainder interest, but not including a trust~~  
 1259 ~~beneficiary where there is a trustee who is not also the personal representative required to~~  
 1260 ~~give notice; and whose identity and whereabouts are known or may be determined by~~  
 1261 ~~reasonable diligence.~~ The personal representative shall have a duty to notify the  
 1262 beneficiaries of a testate estate of the probate of the will and the name and mailing address  
 1263 of such personal representative; provided, however, that notice shall not be required to be  
 1264 given to any beneficiary who:

1265 (1) Has waived such right to notification in writing;

1266 (2) Acknowledged service of and assented to the petition to probate the will, if such  
 1267 personal representative was a petitioner; or

1268 (3) Is such personal representative.

1269 Such notification shall be given within six months from the date of qualification of the first  
 1270 personal representative of a testate estate to serve.

1271 ~~(b) Within 30 days following the issuance of letters testamentary or letters of~~  
1272 ~~administration with the will annexed to the personal representative of a testate estate, such~~  
1273 ~~personal representative shall send to all beneficiaries by certified or registered mail or~~  
1274 ~~statutory overnight delivery, with return receipt requested, to his or her last known address~~  
1275 ~~a notice informing such beneficiaries of the issuance of such letters to the personal~~  
1276 ~~representative and providing the name, mailing address, and telephone number of such~~  
1277 ~~personal representative. Provided, however, that notice shall not be required to any~~  
1278 ~~beneficiary who has waived such right to notification in writing. Within 60 days following~~  
1279 ~~the issuance of such letters, such personal representative shall file with the probate court~~  
1280 ~~true and correct copies of such waivers and notices, the return receipts for each, and, with~~  
1281 ~~respect to any such beneficiary whose identity and whereabouts are unknown, an affidavit~~  
1282 ~~of diligent search attesting under oath to the efforts of such personal representative to~~  
1283 ~~identify and locate such beneficiary.~~

1284 ~~(c)~~ A personal representative who, without sufficient cause, either fails to provide accurate  
1285 information regarding such personal representative's name, mailing address, and telephone  
1286 number within five business days of a request for such information by a beneficiary or by  
1287 the probate court or otherwise fails to comply with the requirements of subsection ~~(b)~~ (a)  
1288 of this Code section, may be cited to appear and show cause as to why the personal  
1289 representative's letters should not be revoked in the same manner as pursuant to Code  
1290 Section 53-6-53.

1291 (c) Where there is a trust that is a beneficiary of a testate estate and there is not a trustee  
1292 who is not the personal representative, any notice or citation required by this Code section  
1293 shall be given to and may be waived by each beneficiary of such trust to whom income or  
1294 principal is required or authorized in the trustee's discretion to be distributed currently. For  
1295 purposes of this Code section, a trust beneficiary may be represented as provided in Code  
1296 Section 53-12-8.

1297 (d) ~~For purposes of this Code section, a trust beneficiary may be represented as provided~~  
1298 ~~in paragraph (3) of subsection (b) of Code Section 53-7-50. Nothing in this Code section~~  
1299 ~~shall alter or affect any time period established by Code Section 53-7-42, subsection (d)~~  
1300 ~~of Code Section 53-8-15, or other applicable law.~~"

1301 **SECTION 52.**

1302 Said title is further amended by revising Code Section 53-6-1, relating to eligibility, as  
1303 follows:

1304 "53-6-1.

1305 Any individual who is sui juris, regardless of citizenship or residency, is eligible to serve  
1306 as a personal representative or temporary administrator of the estate of a decedent who dies  
1307 domiciled in this state, subject to the requirements for qualification set forth in this chapter.

1308 Any other person is eligible to serve as a personal representative or temporary  
1309 administrator of the estate of a decedent who dies domiciled in this state, subject to the  
1310 requirements set forth in this chapter, provided ~~the~~ that such person is otherwise qualified  
1311 to act as a fiduciary in this state pursuant to Code Section 7-1-242, Article 15 of Chapter  
1312 12 of this title, or other applicable law."

1313 **SECTION 53.**

1314 Said title is further amended by revising subsections (b) and (c) of Code Section 53-6-50,  
1315 relating to persons required to give and determination of amounts, as follows:

1316 "(b) A national banking association having the power to act as a fiduciary in Georgia  
1317 pursuant to Code Section 7-1-242, Article 15 of Chapter 12 of this title, or other applicable  
1318 law or a bank or trust company organized under the laws of this state that seeks to qualify  
1319 as a personal representative of an intestate estate or temporary administrator shall not be  
1320 required to give bond for the faithful performance of its duties unless its combined capital,  
1321 surplus, and undivided profits are less than \$400,000.00 as reflected in its last statement

1322 filed with the comptroller of the currency of the United States or the commissioner of  
 1323 banking and finance or unless the instrument under which it seeks to qualify expressly  
 1324 provides that it shall give bond.

1325 (c) A person petitioning to qualify as a personal representative of an intestate estate may  
 1326 be relieved from the requirement for giving bond by the unanimous consent of the heirs of  
 1327 the estate in the same manner as provided in subsection (b) of Code Section 53-7-1 for the  
 1328 granting of powers to a personal representative. With respect to any heir who is not sui  
 1329 juris, consent may be given by the guardian of the individual, pursuant to Code Section  
 1330 53-11-2. The personal representative of the estate of a deceased heir is authorized to  
 1331 consent for that heir. If the estate of a deceased heir has no personal representative, such  
 1332 deceased heir's estate may be represented in the proceeding by a guardian, pursuant to Code  
 1333 Section 53-11-2, and such guardian is authorized to consent for that heir. In no case may  
 1334 consent on behalf of an heir who is not sui juris or a deceased heir whose estate has no  
 1335 personal representative be effective if the person consenting is the person petitioning to  
 1336 serve as personal representative."

1337 **SECTION 54.**

1338 Said title is further amended by revising subsection (a) of Code Section 53-6-60, relating to  
 1339 amount, as follows:

1340 "(a)(1) As used in this subsection, the terms 'beneficiary' and 'heir' shall apply as set forth  
 1341 in Code Section 53-7-68.

1342 (2) A personal representative ~~Personal representatives~~ shall be compensated as specified  
 1343 in either ~~the will or any~~ a written agreement entered into by the decedent and the personal  
 1344 representative prior to the decedent's death or a written agreement signed by all the  
 1345 beneficiaries of a testate estate affected by the personal representative's compensation or  
 1346 by all the heirs of an intestate estate. In the absence of such a written agreement, a  
 1347 personal representative shall be compensated as specified in the will. A written

1348 agreement between a testator and a personal representative shall be valid and binding  
 1349 upon the estate of the testator as fully and completely as if set forth in and made a part  
 1350 of the will.

1351 (3) If a beneficiary of a testate estate or an heir of an intestate estate is not sui juris, the  
 1352 duly acting guardian or conservator of such heir or beneficiary shall be authorized to sign  
 1353 an agreement specifying the compensation of the personal representative."

1354 **SECTION 55.**

1355 Said title is further amended by revising paragraph (2) of subsection (b) of Code Section  
 1356 53-7-1, relating to general powers and duties of personal representative and additional  
 1357 powers, as follows:

1358 "(2) With respect to any beneficiary of a testate estate or heir of an intestate estate who  
 1359 is not sui juris, the consent required by paragraph (1) of this subsection may be given by  
 1360 such beneficiary's or heir's duly acting conservator or guardian. The personal  
 1361 representative of the estate of a deceased beneficiary or heir shall be authorized to  
 1362 consent on behalf of such deceased beneficiary or heir. If the estate of a deceased  
 1363 beneficiary or heir has no personal representative, such deceased beneficiary's or heir's  
 1364 estate may be represented in the proceeding by a guardian, pursuant to Code Section  
 1365 53-11-2, and such guardian shall be authorized to consent on behalf of such deceased  
 1366 beneficiary or heir."

1367 **SECTION 56.**

1368 Said title is further amended by revising subsection (a) of Code Section 53-7-5, relating to  
 1369 powers, duties, and liabilities if more than one personal representative and safe deposit boxes  
 1370 or receptacles, as follows:

1371 "(a) If more than one personal representative is qualified and unless the will provides  
 1372 otherwise:

1373 (1) The personal representatives ~~must~~ shall act by their unanimous action; provided,  
 1374 however, that, while a personal representative is unable to act because of inaccessibility,  
 1375 illness, or other incapacity, or when a vacancy occurs for any other reason, the remaining  
 1376 personal representatives may act as if they were the only personal representatives if  
 1377 necessary to administer the estate; and

1378 (2) The personal representatives may delegate in writing to one or more of them the  
 1379 authority to act for all of them; provided, however, ~~that such delegation must satisfy the~~  
 1380 ~~requirements of Code Sections 10-6B-5 and 10-6B-40, and that all the personal~~  
 1381 ~~representatives remain liable for the actions of the personal representative who is~~  
 1382 ~~authorized to act."~~

1383 **SECTION 57.**

1384 Said title is further amended by revising subsection (b) of Code Section 53-7-32, relating to  
 1385 waiver of right to receive and relieving personal representative of duty to make, as follows:

1386 "(b) By unanimous written consent, the beneficiaries of a testate estate or the heirs of an  
 1387 intestate estate may authorize the probate court to relieve the personal representative of the  
 1388 duty to make inventory in the same manner as ~~described~~ provided in subsection (b) of Code  
 1389 Section 53-7-1 for the granting of powers to a personal representative. Any such  
 1390 unanimous written consent, regardless of the date of execution, ~~which~~ that relieves the  
 1391 personal representative from making inventory shall also relieve the personal representative  
 1392 from sending a copy of the inventory to the heirs or beneficiaries."

1393 **SECTION 58.**

1394 Said title is further amended by revising subsections (b) and (d) of Code Section 53-7-41,  
 1395 relating to notice for creditors to render accounts, notification of creditors' claims,  
 1396 requirement of reasonable additional proof or accounting, and failure of creditors to give  
 1397 notice of claims, as follows:

1398 "(b) ~~The~~ Every personal representative shall, within 60 days from the date of qualification,  
1399 publish a notice directed generally to all of the creditors of the estate to notify the personal  
1400 representative of their claims and render an account of their demands for payment thereon.  
1401 The personal representative's notice shall be published once a week for four weeks in the  
1402 official newspaper of the county in which the personal representative qualified. No  
1403 particular form shall be required for creditors to notify the personal representative of their  
1404 claims, and such notification of a creditor's claim shall be sufficient for purposes of this  
1405 Code section if given in writing, providing an account number or other identifying  
1406 information or itemization adequate to establish the indebtedness as an obligation of the  
1407 estate, and stating the principal balance and any applicable interest or other additional  
1408 charges lawfully owed. An invoice or account statement satisfying the requirements of the  
1409 preceding sentence of this subsection and generated by a creditor in the ordinary course of  
1410 such creditor's business shall constitute sufficient notification to the personal representative  
1411 of such creditor's claim if the personal representative actually receives such notification of  
1412 the claim or if such creditor files such notification with the probate court having  
1413 jurisdiction over the decedent's estate or sends such notification of the claim by electronic  
1414 transmission, other form of wire or wireless communication, or by first-class mail or  
1415 private carrier to the address of the decedent, the personal representative, or the attorney  
1416 representing the personal representative; provided, however, that a notification of a claim  
1417 sent by a creditor by electronic communication to an account for which the decedent is the  
1418 user shall constitute sufficient notification to the personal representative of such creditor's  
1419 claim only if the content of such electronic communication lawfully is disclosed to the  
1420 personal representative pursuant to Chapter 13 of this title. As used in this subsection, the  
1421 terms 'account', 'content of an electronic communication', 'electronic communication', and  
1422 'user' shall have the meaning provided by Code Section 53-13-2."

1423 "(d) Creditors who fail to notify the personal representative of their claims in the manner  
1424 provided by subsection (b) of this Code section within three months from the date of



1425 publication of the personal representative's last notice shall lose all rights to an equal  
 1426 participation with creditors of equal priority to whom distribution is made before sufficient  
 1427 notification of such claims is given to the personal representative, and they may not hold  
 1428 the personal representative liable for a misappropriation of the funds. If, however, there  
 1429 are assets in the hands of the personal representative sufficient to pay such debts and if no  
 1430 claims of greater priority are unpaid, the assets shall be thus appropriated notwithstanding  
 1431 the failure of such creditors to timely notify the personal representative of their claims in  
 1432 a timely manner."

1433 **SECTION 59.**

1434 Said title is further amended by revising subsection (a) of Code Section 53-7-50, relating to  
 1435 petition by personal representative for discharge, citation and publication, hearing, and  
 1436 subsequently discovered estate, as follows:

1437 "(a) A personal representative who has fully performed all duties or who has been allowed  
 1438 to resign may petition the probate court for discharge from the office and from all liability.  
 1439 The petition shall:

1440 (1) State state that the personal representative has fully administered the estate of the  
 1441 decedent;

1442 (2) Set and shall set forth the names and addresses of all known heirs of an intestate  
 1443 decedent or beneficiaries of a testate decedent, including, as applicable, the personal  
 1444 representative of the estate of or any persons who succeeded to the interest of any heir or  
 1445 beneficiary who died after the decedent died;

1446 (3) Name, and shall name which of the heirs or beneficiaries is or should be represented  
 1447 by a guardian. The petition shall state as provided in Code Section 53-11-2, including,  
 1448 as applicable, any heir or beneficiary who died after the decedent died whose estate has  
 1449 no personal representative;

1450 (4) State that the personal representative has paid all claims against the estate or shall  
 1451 enumerate which claims of the estate have not been paid and the reason for such  
 1452 nonpayment; and  
 1453 (5) State ~~The petition shall also state~~ that the personal representative has filed all  
 1454 necessary inventory and returns or, alternatively, has been relieved of such filings by the  
 1455 testator, the heirs or beneficiaries, or the probate court."

### 1456 SECTION 60.

1457 Said title is further amended by revising Code Section 53-7-68, relating to mailing of return  
 1458 to heirs and beneficiaries and relieving personal representative of duty to file return, as  
 1459 follows:

1460 "53-7-68.

1461 (a) As used in this Code section, the term:

1462 (1) 'Beneficiary' shall not apply to a person who is designated in a will to take an interest  
 1463 in real or personal property after such person's interest in the estate has been satisfied.

1464 (2) 'Heir' shall not apply to an individual who survives the decedent and is determined  
 1465 under the rules of inheritance to take the property of the decedent that is not disposed of  
 1466 by will after such individual's interest in the estate has been satisfied.

1467 (b) Upon filing the annual return with the probate court, the personal representative shall  
 1468 mail send by first-class mail:

1469 (1) To each heir of an intestate estate or each beneficiary of the residue of a testate estate,  
 1470 a copy of the return, but not the vouchers; ~~and, to each heir of an intestate estate or each~~  
 1471 beneficiary of a testate estate. It

1472 (2) To each beneficiary of a specific, demonstrative, or general testamentary gift of a  
 1473 testate estate, a copy of the portion of the return relevant to the beneficiary's interest in  
 1474 the estate or other written statement containing such information, but not the vouchers;

1475 provided, however, that it shall not be necessary to mail a copy of the return to any heir  
1476 or beneficiary who is not sui juris or for the court to appoint a guardian for such person.  
1477 (c) The personal representative shall file with the probate court a verified statement with  
1478 the probate court stating that all required mailings of the return to heirs or beneficiaries  
1479 have been made that the requirements of subsection (b) of this Code section have been  
1480 satisfied.  
1481 (d) In the case of a testamentary gift to a trustee of a trust, including, without limitation,  
1482 a trust created by the will, the term 'beneficiary' shall apply to the trustee and shall not  
1483 apply to the beneficiaries of the trust, provided that:  
1484 (1) If each trustee of the trust is also a personal representative of the estate, the term  
1485 'beneficiary' shall apply to those persons who, if the trust were funded, would be entitled  
1486 to annual reports from the trustee under subsection (b) of Code Section 53-12-243, taking  
1487 into account the provisions of the trust instrument and subsections (c) and (d) of Code  
1488 Section 53-12-243; and  
1489 (2) A beneficiary may be represented as provided in Code Section 53-12-8.  
1490 (e) In the case of a deceased heir or beneficiary, the term 'heir' or 'beneficiary' shall apply  
1491 to the personal representative of such heir's or beneficiary's estate.  
1492 (f) The determination of the persons to whom paragraphs (1) and (2) of subsection (b) of  
1493 this Code section apply, including, without limitation, the application of subsection (a), (d),  
1494 (e), or (h), shall be made as of the date the annual return was filed with the probate court.  
1495 (g) The determination of the persons who are required to constitute unanimous consent  
1496 under subsection (j) of this Code section, including, without limitation, the application of  
1497 subsection (a), (d), (e), or (h), shall be made as of the date of the petition is filed.  
1498 (h) If an heir or beneficiary is not sui juris, such heir's or beneficiary's duly acting  
1499 conservator or guardian shall:  
1500 (1) After a written request delivered to the personal representative, be entitled to receive  
1501 any report or written statement that would be required to be sent to such heir or

1502 beneficiary under subsection (b) of this Code section if such heir or beneficiary were sui  
 1503 juris; and

1504 (2) Be authorized to give the consent required under subsection (j) of this Code section.  
 1505 ~~(b)(i)~~ Any heir or beneficiary may waive individually the right to receive a copy of the  
 1506 annual return or of the portion of the annual return to which such heir or beneficiary would  
 1507 be entitled under subsection (b) of this Code section by a written statement that is delivered  
 1508 to the personal representative. Such waiver may be revoked in writing at any time.

1509 ~~(c)(j)~~ As part of a petition, including, but not limited to, the petition for letters  
 1510 testamentary, letters of administration with the will annexed, or letters of administration  
 1511 ~~By unanimous written consent,~~ the heirs of an intestate estate or the beneficiaries of a  
 1512 testate estate may, by unanimous written consent, authorize the probate court to relieve the  
 1513 personal representative from filing annual returns ~~with them or with the court, the~~  
 1514 requirements of subsection (b) of this Code section, or both, ~~in the same manner as~~  
 1515 ~~provided in subsection (b) of Code Section 53-7-1 for the granting of powers to a personal~~  
 1516 ~~representative.~~ Any such unanimous written consent, regardless of the date of execution,  
 1517 that relieves the personal representative from filing annual returns with the court shall also  
 1518 relieve the personal representative from ~~sending a copy of the return to the heirs or~~  
 1519 ~~beneficiaries~~ the requirements of subsection (b) of this Code section."

1520 **SECTION 61.**

1521 Said title is further amended by revising Code Section 53-7-69.1, relating to annual statement  
 1522 of receipts and disbursements, as follows:

1523 "53-7-69.1.

1524 ~~(a) Except as provided in subsection (b) of this Code section, a~~ A personal representative  
 1525 ~~shall furnish to the heirs of an intestate estate or the beneficiaries of the residuum of a~~  
 1526 ~~testate estate, at least annually, a statement of receipts and disbursements~~ send, at least  
 1527 annually:

- 1528 (1) To each heir of an intestate estate or each beneficiary of the residue of a testate estate,  
1529 a statement of receipts and disbursements; and
- 1530 (2) To each beneficiary of a specific, demonstrative, or general testamentary gift of the  
1531 testate estate, a statement of any receipts and disbursements relevant to the beneficiary's  
1532 interest in the estate.
- 1533 (b) Any heir or beneficiary may waive individually the right to receive a statement of  
1534 receipts and disbursements ~~in the same manner as provided in subsection (b) of Code~~  
1535 ~~Section 53-7-68 for waiving the right to receive a copy of an annual return~~ by a written  
1536 statement that is delivered to the personal representative. Such waiver may be revoked in  
1537 writing at any time.
- 1538 (c) The heirs or beneficiaries may authorize the probate court to relieve the personal  
1539 representative from furnishing statements of receipts and disbursements in the same  
1540 manner as provided in ~~subsection (c) of Code Section 53-7-68~~ for relieving the personal  
1541 representative from filing annual returns. A testator may, by will, dispense with the  
1542 necessity of the personal representative's furnishing a statement of receipts and  
1543 disbursements in the same manner as provided in Code Section 53-7-69 for dispensing with  
1544 the necessity of the personal representative's filing an annual return; provided, however,  
1545 that such dispensation does not work any injury to creditors or persons other than  
1546 beneficiaries under the will. It shall not be necessary to furnish a statement of receipts and  
1547 disbursements to any heir or beneficiary who is not sui juris or for the probate court to  
1548 appoint a guardian for such person.
- 1549 (d) When a personal representative has been relieved from furnishing statements of  
1550 receipts and disbursements, the probate court, on its own motion or on the representation  
1551 of any party in interest that the personal representative is mismanaging the estate, shall  
1552 order the personal representative to appear and show cause as to why statements of receipts  
1553 and disbursements should not be furnished or the personal representative's letters revoked.  
1554 Such order shall be served in person on the personal representative at least ten days prior

1555 to the hearing. Failure to show cause shall authorize the court to require statements of  
1556 receipts and disbursements to be furnished or to revoke the letters or to take any other  
1557 action as may be necessary under the circumstances.

1558 (e) For purposes of this Code section:

1559 (1) The statement provided under subsection (a) of this Code section shall contain the  
1560 receipts and disbursements of principal and income that have occurred during the last  
1561 complete fiscal year of the estate or since the last accounting to that heir or beneficiary  
1562 and a statement of the assets and liabilities of the estate as of the end of the accounting  
1563 period, provided that the information in any statement required under paragraph (2) of  
1564 subsection (a) of this Code section shall be limited as provided in that paragraph;

1565 (2) The terms 'heir' and 'beneficiary' shall apply as provided in Code Section 53-7-68;

1566 (3) The determination of the persons entitled to receive statements under subsection (a)  
1567 of this Code section and the application of this subsection shall be made as of the final  
1568 day of the period covered by the statement;

1569 (4) The determination of the persons who may authorize the probate court under  
1570 subsection (c) of this Code section and the application of this subsection shall be made  
1571 as of the date of the authorization; and

1572 (5) If an heir or beneficiary is not sui juris, such heir's or beneficiary's duly acting  
1573 conservator or guardian shall:

1574 (A) After a written request delivered to the personal representative, be entitled to  
1575 receive any statement of receipts and disbursements that would be required to be sent  
1576 to such heir or beneficiary under subsection (a) of this Code section if such heir or  
1577 beneficiary were sui juris; and

1578 (B) Be authorized to give the consent required under subsection (b) of this Code  
1579 section.

1580 (f) Nothing in this Code section shall affect the power of the probate court to require or  
1581 excuse an accounting under this part, Part 1 of this article, or other applicable law."

1582 **SECTION 62.**

1583 Said title is further amended by revising Code Section 53-7-72, relating to docket of persons  
1584 liable to make returns and failure to make returns, as follows:

1585 "53-7-72.

1586 ~~To ensure annual returns from every personal representative, it~~ It shall be the duty of the  
1587 probate court to keep a docket of all ~~those~~ personal representatives who are liable to make  
1588 returns and, immediately after the ceasing of the January term or as soon thereafter as the  
1589 court deems practical in each year, to cite all defaulters to show cause for their neglect. A  
1590 willful and continued failure to make a return shall be good cause for removal."

1591 **SECTION 63.**

1592 Said title is further amended by revising paragraphs (10) and (14) of and by adding a new  
1593 paragraph to Code Section 53-12-2, relating to definitions regarding trusts, to read as  
1594 follows:

1595 "(2.1)(A) 'Donor' means a person, including a testator, who contributes property to the  
1596 trust, provided that:

1597 (i) If another person makes a transfer of property to the trust, other than as a bona  
1598 fide sale for an adequate and full consideration in money or money's worth, for  
1599 purposes of Sections 2036 through 2038 of the federal Internal Revenue Code, or if  
1600 the value of the property held in the trust is included in the gross estate of another  
1601 person under Chapter 11 of the federal Internal Revenue Code, then such other person  
1602 shall be the donor; and

1603 (ii) Notwithstanding division (i) of this subparagraph, if a person has the power to  
1604 revoke the trust, such term means the person who has the power to revoke the trust.

1605 (B) If a trust has more than one donor, each such person is the donor of the portion of  
1606 the trust attributable to the property of which such person is the donor."

1607 ~~“(10)(A) 'Qualified beneficiary' means a living individual or other existing person who,~~  
 1608 ~~on the date of determination of beneficiary status:~~

1609 ~~(A)(i) Is a distributee or permissible distributee of trust income or principal;~~

1610 ~~(B)(ii) Would be a distributee or permissible distributee of trust income or principal~~  
 1611 ~~if the interests of the distributees described in subparagraph (A) of this paragraph~~  
 1612 ~~division (i) of this subparagraph terminated on that date without causing the trust to~~  
 1613 ~~terminate; or~~

1614 ~~(C)(iii) Would be a distributee or permissible distributee of trust income or principal~~  
 1615 ~~if the trust terminated on that date.~~

1616 ~~(B) The Attorney General has the rights of a qualified beneficiary with respect to a~~  
 1617 ~~charitable trust as defined in Code Section 53-12-170, and a With respect to a charitable~~  
 1618 ~~trust as defined in Code Section 53-12-170, the Attorney General has the rights of a~~  
 1619 ~~qualified beneficiary. With respect to any trust, including, but not limited to, a~~  
 1620 ~~charitable trust, a charitable organization that is expressly designated as a distributee~~  
 1621 ~~or permissible distributee of trust income or principal has the rights of a qualified~~  
 1622 ~~beneficiary if, on the date of determination, such charitable organization is described~~  
 1623 ~~in division (i), (ii), or (iii) of subparagraph (A) of this paragraph. With respect to a trust~~  
 1624 ~~that is not a charitable trust and designates a class of unascertainable charitable~~  
 1625 ~~beneficiaries as distributees or permissible distributees of trust income or principal, the~~  
 1626 ~~Attorney General has the rights of a qualified beneficiary if, on the date of~~  
 1627 ~~determination, such unascertainable charitable beneficiaries are described in division~~  
 1628 ~~(i), (ii), or (iii) of subparagraph (A) of this paragraph. A person appointed to enforce~~  
 1629 ~~a trust created for the care of an animal under Code Section 53-12-28 also has the rights~~  
 1630 ~~of a qualified beneficiary.”~~

1631 ~~“(14) 'Trust instrument' means the document, including any testamentary instrument, an~~  
 1632 ~~instrument that contains the trust provisions. The trust instrument includes any trust~~  
 1633 ~~provisions established, determined, or amended by a trustee or other person in accordance~~



1634 with the provisions of the trust, a court order, a nonjudicial settlement agreement under  
 1635 Code Section 53-12-9, or other applicable law."

1636 **SECTION 64.**

1637 Said title is further amended by revising Code Section 53-12-3, relating to survival of  
 1638 common law and equity, as follows:

1639 "53-12-3.

1640 Except to the extent that the principles of common law and equity governing trusts are  
 1641 modified by this chapter or another provision of law, those principles remain the law of this  
 1642 state. Without limitation:

1643 (1) No provision of this chapter shall be construed to imply that any other Code section  
 1644 or the common law did not, prior to the enactment of such provision, impose, permit, or  
 1645 otherwise address a duty, power, relationship, or any other matter governed by such  
 1646 provision; and

1647 (2) The failure of the General Assembly to codify an established principle of common  
 1648 law or equity governing trusts shall not be construed as evidence that the General  
 1649 Assembly intended to reject that principle unless this chapter or another provision of law  
 1650 is inconsistent with that principle or there is other evidence the General Assembly  
 1651 intended that such principle should no longer apply."

1652 **SECTION 65.**

1653 Said title is further amended by revising subsections (d), (h), and (k) of and by adding a new  
 1654 subsection to Code Section 53-12-8, relating to notice to person permitted to bind another  
 1655 person, consent on behalf of another person, and representation of others, to read as follows:

1656 "(d) Notwithstanding any other provision of this Code section, a donor ~~A settlor~~ may not  
 1657 represent and bind a beneficiary under this Code section with respect to the termination or  
 1658 modification of a trust under Article 4 of this chapter."

1659 "~~(h) A person who on the date of determination would be eligible to receive distributions~~  
1660 ~~of income or principal from the trust upon the termination of the interests of all persons~~  
1661 ~~then currently eligible to receive distributions of income or principal~~ is a qualified  
1662 beneficiary under division (10)(A)(iii) of Code Section 53-12-2 may represent and bind  
1663 contingent successor beneficiaries with respect to matters in which there is no conflict of  
1664 interest between the representative and the persons represented with respect to a particular  
1665 question or dispute."

1666 "(k) Any person whose interests would be affected or who reasonably claims to represent  
1667 or bind a person whose interests would be affected may request that the court determine  
1668 whether an interest is represented under this Code section or whether the representation is  
1669 adequate. If the court determines that an interest is not represented under this Code section,  
1670 or that the otherwise available representation might be inadequate, the court may appoint  
1671 a representative to receive notice, give consent, and otherwise represent, bind, and act on  
1672 behalf of a minor, incapacitated, or unborn individual, or a person whose identity or  
1673 location is unknown and not reasonably ascertainable. A representative may be appointed  
1674 to represent several persons or interests. A representative may act on behalf of the  
1675 individual represented with respect to any matter arising under this chapter, regardless of  
1676 whether a judicial proceeding concerning the trust is pending. In making decisions, a  
1677 representative may consider the general benefit accruing to the living members of the  
1678 individual's family."

1679 "(m) Representation under this Code section is effective for purposes of this chapter, the  
1680 trust provisions, or any matter involving a trust."

1681 **SECTION 66.**

1682 Said title is further amended by revising Code Section 53-12-9, relating to binding  
1683 nonjudicial settlement agreement, as follows:

1684 "53-12-9.

1685 (a) Except as provided in subsection (b) of this Code section, the trustee, any trust director,  
1686 and all other persons whose interests would be affected may enter into a binding  
1687 nonjudicial settlement agreement with respect to any matter involving the trust.

1688 (b) A nonjudicial settlement agreement:

1689 (1) Shall be valid only to the extent it does not violate a material purpose of the trust and  
1690 includes terms and conditions that could be properly approved by the court under this  
1691 ~~Code section~~ chapter or other applicable law; and

1692 (2) During the settlor's lifetime, shall ~~Shall~~ not be valid with respect to any modification  
1693 or termination of an irrevocable trust when ~~the settlor's consent would be required in a~~  
1694 ~~proceeding to approve~~ such modification could be properly approved by  
1695 the court only in a proceeding under subsection (b) of Code Section 53-12-61.

1696 (c) The trustee, trust director, and any person whose interests would be affected by a  
1697 nonjudicial settlement agreement may request that the court approve such agreement,  
1698 determine whether the representation as provided in Code Section 53-12-8 was adequate,  
1699 determine whether such agreement violates a material purpose of the trust, determine  
1700 whether such agreement contains terms and conditions the court could have properly  
1701 approved, or make any other similar determination.

1702 (d) A nonjudicial settlement agreement entered into in accordance with this Code section  
1703 shall be final and binding on all parties to such agreement, including ~~individuals not sui~~  
1704 ~~juris, unborn beneficiaries, and persons unknown~~ parties who are represented by a person  
1705 who may represent and bind such parties under Code Section 53-12-8, as if ordered by a  
1706 court with competent jurisdiction over the trust, the trust property, and the parties.

1707 (e) Entering into or petitioning a court regarding a nonjudicial settlement agreement under  
1708 this Code section shall not constitute a violation of a condition in terrorem under Code  
1709 Section ~~53-12-22~~ 53-12-29."

1710 **SECTION 67.**

1711 Said title is further amended by revising Code Section 53-12-22, relating to trust purposes  
 1712 and conditions in terrorem, as follows:

1713 "53-12-22.

1714 (a) A trust may be created for any lawful purpose.

1715 ~~(b) A condition in terrorem shall be void unless there is a direction in the trust instrument~~  
 1716 ~~as to the disposition of the property if the condition in terrorem is violated, in which event~~  
 1717 ~~the direction in the trust instrument shall be carried out, except as otherwise provided in~~  
 1718 ~~subsection (c) of this Code section.~~

1719 ~~(c) A condition in terrorem shall not be enforceable against an individual for:~~

1720 ~~(1) Bringing an action for interpretation or enforcement of a trust instrument;~~

1721 ~~(2) Bringing an action for an accounting, for removal, or for other relief against a trustee;~~

1722 ~~or~~

1723 ~~(3) Entering into a settlement agreement."~~

1724 **SECTION 68.**

1725 Said title is further amended by adding a new Code section to Article 2 of Chapter 12,  
 1726 relating to creation and validity of express trusts, to read as follows:

1727 "53-12-29.

1728 A condition in terrorem shall be void unless there is a direction in the trust instrument as  
 1729 to the disposition of the property if the condition in terrorem is violated, in which event the  
 1730 direction in the trust instrument shall be carried out, except that a condition in terrorem  
 1731 shall not be enforceable against an individual for:

1732 (1) Bringing an action for interpretation or enforcement of a trust instrument;

1733 (2) Bringing an action for an accounting, for removal, or for other relief against a trustee;

1734 or

1735 (3) Entering into a settlement agreement."

**SECTION 69.**

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Said title is further amended by adding a new Code section to Article 3 of Chapter 12, relating to revocable trusts, to read as follows:

"53-12-46.

(a)(1) Notwithstanding any other provision of this chapter, if the settlor reserved a power of revocation over a trust, the settlor is alive, and the power of revocation has not been released:

(A) The duties of the trustee are owed exclusively to the settlor; and

(B) With respect to any trust property held for personal use or enjoyment by a beneficiary or any other trust property designated as being subject to this paragraph pursuant to paragraph (3) of subsection (c) of this Code section:

(i) The settlor shall have the power to direct the trustee in the management of such property and the provisions of Article 18 of this chapter shall apply so that the trustee is a directed trustee who, without limitation, is relieved from the duties from which trustees are relieved under subsection (f) of Code Section 53-12-504; and

(ii) The trustee shall not have any duty to account at least annually to the beneficiaries under paragraph (1) of subsection (b) of Code Section 53-12-243, to keep the beneficiaries reasonably informed of the trust and its administration under the common law, or to provide information to the trust director under paragraph (1) of subsection (c) of Code Section 53-12-504.

(2) Unless the trust instrument provides otherwise, if the trustee is required or authorized in the trustee's discretion to make distributions of trust property to other beneficiaries while the settlor is alive, the settlor has not released the power to revoke the trust, and the settlor lacks capacity to revoke the trust, then the trustee owes duties to the beneficiaries to whom income or principal is required or authorized in the trustee's discretion to be distributed currently and the office of trust director created pursuant to this subsection is governed by Code Section 53-12-506.

- 1763 (b) If subsection (a) of this Code section applies to a trust:
- 1764 (1) In addition to any persons who may seek to enforce the trust under any other Code
- 1765 section or the common law, the following persons may seek to enforce the trust:
- 1766 (A) The settlor's guardian or conservator;
- 1767 (B) The settlor's agent under a power of attorney granting general authority with
- 1768 respect to estates, trusts, and other beneficial interests under Code Section 10-6B-50,
- 1769 general authority with respect to claims and litigation under Code Section 10-6B-51,
- 1770 or substantially similar authority that would make it appropriate for the agent to enforce
- 1771 the trustee's duties to the settlor;
- 1772 (C) The settlor's parent, spouse, or descendant; or
- 1773 (D) Any qualified beneficiary of the trust;
- 1774 (2) Upon a motion by the settlor, the court shall dismiss any action seeking to enforce
- 1775 the trust unless the court finds that the settlor lacks capacity to revoke the trust; and
- 1776 (3) Upon a motion by a person described in subparagraph (A) or (B) of paragraph (1) of
- 1777 this subsection, the court shall dismiss any action seeking to enforce the trust filed by a
- 1778 person described in subparagraph (C) or (D) of paragraph (1) of this subsection, unless
- 1779 the court finds that the settlor's interests in the trust are not adequately represented by the
- 1780 person moving to dismiss the action.
- 1781 (c) For purposes of this Code section:
- 1782 (1) 'Property held for personal use or enjoyment' means property held for purposes other
- 1783 than, or in addition to, monetary value, and shall include, but not be limited to:
- 1784 (A) All personal effects, including, but not limited to, clothing, jewelry, firearms, and
- 1785 equipment;
- 1786 (B) All household goods and equipment, including, but not limited to, furniture and
- 1787 furnishings, works of art, and collectibles;
- 1788 (C) All automobiles, aircraft, watercraft, and other vehicles; and

1789 (D) All dwellings and other real property that are used or enjoyed by a beneficiary,  
 1790 regardless of whether rented, leased, or otherwise held out for use or enjoyment by  
 1791 other persons.

1792 (2) If trust property includes an indirect interest in property, including, but not limited  
 1793 to, an interest in an entity, the entire indirect interest is held for personal use or enjoyment  
 1794 if any portion of the property in which the trustee holds an indirect interest is held for  
 1795 personal use or enjoyment.

1796 (3)(A) The trust instrument, or a majority of the persons to whom the trustee owes  
 1797 duties under subsection (a) of this Code section in a writing delivered to the trustee,  
 1798 may designate trust property as:

1799 (i) Being held or not being held for personal use or enjoyment; or

1800 (ii) Property subject to or not subject to subparagraph (a)(1)(B) of this Code section.

1801 (B) A designation of trust property made pursuant to subparagraph (A) of this  
 1802 paragraph shall control; provided, however, that a failure to make a designation of trust  
 1803 property pursuant to subparagraph (A) of this paragraph shall not constitute evidence  
 1804 that such property is not held for personal use or enjoyment.

1805 (4) 'Management' of property means the exercise of all powers over such property that  
 1806 an unmarried competent owner has over individually owned property."

1807 **SECTION 70.**

1808 Said title is further amended by revising subsections (b), (c), and (k) of and by adding a new  
 1809 subsection to Code Section 53-12-61, relating to power to direct modification or termination,  
 1810 petition to modify or terminate irrevocable trust, proceeding to approve proposed  
 1811 modification or termination, distribution of trust property under order for termination, and  
 1812 waiver of notice, to read as follows:

1813 "(b) During the settlor's lifetime, the court shall approve a petition to modify or terminate  
 1814 an irrevocable trust, even if the modification or termination is inconsistent with a material

1815 purpose of the trust, if the settlor and all qualified beneficiaries consent to such  
1816 modification or termination and the trustee has ~~received~~ been given notice of the proposed  
1817 modification or termination. A settlor's power to consent to such trust's modification or  
1818 termination may be exercised by:

1819 (1) An agent under a power of attorney only to the extent expressly authorized by the  
1820 power of attorney and the provisions of the trust;

1821 (2) The settlor's conservator with the approval of the court supervising the  
1822 conservatorship if an agent is not so authorized; or

1823 (3) The settlor's guardian with the approval of the court supervising the guardianship if  
1824 an agent is not so authorized and a conservator has not been appointed.

1825 (c) Following the settlor's death the court shall approve a petition to:

1826 (1) Modify an irrevocable trust if all qualified beneficiaries consent, the trustee has  
1827 ~~received~~ been given notice of the proposed modification, and the court concludes that  
1828 modification is not inconsistent with any material purpose of such trust; and

1829 (2) Terminate an irrevocable trust if all qualified beneficiaries consent, the trustee has  
1830 ~~received~~ been given notice of the proposed termination, and the court concludes that  
1831 continuance of such trust is not necessary to achieve any material purpose of such trust."

1832 "(k) Subsections (b) and (c) of this Code section shall not apply to charitable trusts. If a  
1833 transfer to any other trust qualified for a charitable deduction under Sections 170(a),  
1834 2055(a), or 2522(a) of the federal Internal Revenue Code, the trust may not be modified  
1835 or terminated pursuant to subsection (b) or (c) of this Code section in a manner that  
1836 prevents the transfer to the trust from qualifying for or reduces the amount of such  
1837 charitable deduction."

1838 "(o) For purposes of subsection (b) of this Code section, notwithstanding the provisions  
1839 of Code Section 53-12-8, all qualified beneficiaries shall represent and bind all other  
1840 beneficiaries who are not qualified beneficiaries, regardless of whether there is a conflict



1841 of interest between a qualified beneficiary and any such other beneficiary or whether any  
 1842 such other beneficiary objects to the representation."

1843 **SECTION 71.**

1844 Said title is further amended by revising Code Section 53-12-62, relating to power of trustee  
 1845 to invade principal of original trust, as follows:

1846 "53-12-62.

1847 (a) As used in this Code section, the term:

1848 (1) 'Original trust' refers to the trust from which principal is being distributed.

1849 (2) 'Second trust' refers to the trust to which assets are being distributed from the original  
 1850 trust, whether a separate trust or an amended version of the original trust.

1851 (b)(1) As used in this subsection, the term 'current beneficiary' means a person who, on  
 1852 the date of distribution to the second trust, is a distributee or permissible distributee of  
 1853 trust income or principal.

1854 (2) Unless the original trust instrument expressly provides otherwise, a trustee, other than  
 1855 a ~~person who contributed property~~ donor to the trust, with the discretionary authority to  
 1856 ~~invade the~~ distribute income or principal of the original trust to make distributions to or  
 1857 for the benefit of one or more of the beneficiaries may also, independently or with court  
 1858 approval, exercise such authority by distributing all or part of the income or principal of  
 1859 the original trust subject to such discretion to a trustee of a second trust; provided,  
 1860 however, that the second trust shall not include as a:

1861 (A) Current beneficiary any person that is not a current beneficiary of income or  
 1862 principal of the original trust; or

1863 (B) Beneficiary any person that is not a beneficiary of the original trust.

1864 (c) Except as provided in this Code section, a trustee may exercise the power to ~~invade the~~  
 1865 distribute income or principal of the original trust under subsection (b) of this Code section  
 1866 without the consent of the settlor or the beneficiaries of the original trust if such trustee

1867 provides written notice of such trustee's decision to exercise the power to such settlor, if  
1868 living, any trust director, and those persons then entitled to annual reports from the trustee  
1869 of the original trust under subsection (b) of Code Section 53-12-243, taking into account  
1870 the provisions of the original trust and subsections (c) and (d) of Code Section 53-12-243.

1871 Such notice shall:

1872 (1) Describe the manner in which such trustee intends to exercise such power;

1873 (2) Specify the date such trustee proposes to distribute to the second trust; and

1874 (3) Be delivered at least 30 days before the proposed distribution to the second trust.

1875 (d) The exercise of the power to ~~invade the~~ distribute income or principal of the original  
1876 trust under subsection (b) of this Code section shall be by an instrument in a writing, signed  
1877 and acknowledged by the trustee, and filed with the records of the original trust.

1878 (e) The exercise of the power to ~~invade the~~ distribute income or principal of the original  
1879 trust under subsection (b) of this Code section shall not extend the permissible period of  
1880 the rule against perpetuities that applies to such original trust.

1881 (f) The exercise of the power to ~~invade the~~ distribute income or principal of the original  
1882 trust under subsection (b) of this Code section by a trustee who is also a beneficiary shall  
1883 be subject to the limitations of Code Section 53-12-270.

1884 (g) This Code section shall not be construed to abridge the right of any trustee who has a  
1885 power of ~~invasion~~ to distribute ~~property~~ income or principal in further trust that arises  
1886 under any other law or under common law, and nothing in this Code section shall be  
1887 construed to imply that the common law does not permit the exercise of a power to ~~invade~~  
1888 ~~the~~ distribute income or principal of a trust in the manner authorized under subsection (b)  
1889 of this Code section.

1890 (h) A second trust may confer a power of appointment upon a beneficiary of the original  
1891 trust to whom or for the benefit of whom the trustee has the power to distribute ~~the~~ income  
1892 or principal of such original trust. For purposes of this subsection, the permissible

1893 appointees of the power of appointment conferred upon a beneficiary may include persons  
1894 who are not beneficiaries of such original trust or second trust.

1895 (i) If any contribution to the original trust qualified for the annual exclusion under Section  
1896 2503(b) of the federal Internal Revenue Code, ~~as it existed on February 1, 2018~~, the marital  
1897 deduction under Section 2056(a) or 2523(a) of the federal Internal Revenue Code, ~~as it~~  
1898 ~~existed on February 1, 2018~~, or the charitable deduction under Section 170(a), ~~642(c)~~,  
1899 2055(a), or 2522(a) of the federal Internal Revenue Code, ~~as it existed on February 1, 2018~~,  
1900 is a direct skip qualifying for treatment under Section 2642(c) of the federal Internal  
1901 Revenue Code, ~~as it existed on February 1, 2018~~, or qualified for any other specific tax  
1902 benefit that would be lost by the existence of the authorized trustee's authority under  
1903 subsection (b) of this Code section for income, gift, estate, or generation-skipping transfer  
1904 tax purposes under the federal Internal Revenue Code, then the authorized trustee shall not  
1905 have the power to distribute the income or principal of a trust pursuant to subsection (b) of  
1906 this Code section in a manner that would prevent the contribution to the original trust from  
1907 qualifying for such exclusion, deduction, or other tax benefit or would reduce such  
1908 exclusion, deduction, or other tax benefit that was originally claimed with respect to such  
1909 contribution.

1910 (j) The exercise of the power to ~~invade the~~ distribute income or principal of the original  
1911 trust under subsection (b) of this Code section shall be subject to the following limitations  
1912 with respect to any portion of the original trust or second trust that does or will qualify as  
1913 a grantor trust with respect to a donor:

1914 (1) The second trust need not qualify as a grantor trust for federal income tax purposes,  
1915 even if the original trust does qualify as a grantor trust, except that if such original trust  
1916 qualifies as a grantor trust because of the application of Section 672(f)(2)(A) of the  
1917 federal Internal Revenue Code, ~~as it existed on February 1, 2018~~, such second trust may  
1918 not include or omit a term that, if included in or omitted from the original trust  
1919 instrument, would have prevented such original trust from qualifying under such section;

1920 (2) Notwithstanding any other provision of this Code section, when the original trust  
1921 does not qualify as a grantor trust and the donor is alive, the terms of the second trust  
1922 shall not provide for a power of disposition that is not exempt from the application of  
1923 subsection (a) of Section 674 of the federal Internal Revenue Code unless an adverse  
1924 party, as defined in subsection (a) of Section 672 of the federal Internal Revenue Code,  
1925 approves or consents to the inclusion of the power in the second trust. Subject to  
1926 paragraph (3) of this subsection, the second trust may qualify as a grantor trust pursuant  
1927 to other sections of the federal Internal Revenue Code;

1928 ~~(2)~~(3) Unless ~~the settlor~~ the donor objects in a writing delivered to the trustee before the  
1929 date the trustee proposes to distribute from the original trust to the second trust, such  
1930 second trust may qualify as a grantor trust for federal income tax purposes, even if such  
1931 original trust does not so qualify, except that if such original trust does not so qualify and  
1932 such second trust will so qualify, in whole or in part, with respect to the ~~settlor~~ donor,  
1933 such second trust shall grant such ~~settlor~~ donor or another person a power that would  
1934 cause such second trust to cease to be a grantor trust for federal income tax purposes; and  
1935 ~~(3)~~(4) When both the original trust and the second trust qualify as grantor trusts for  
1936 federal income tax purposes and such original trust grants the ~~settlor~~ donor or another  
1937 person the power to cause such original trust to cease to be a grantor trust, such second  
1938 trust shall grant an equivalent power to the ~~settlor~~ donor or another person unless such  
1939 ~~settlor~~ donor objects in a writing delivered to the trustee before the date the trustee  
1940 proposes to distribute from such original trust to such second trust.

1941 For purposes of this subsection, a trust that is a 'grantor trust' or that qualifies as a 'grantor  
1942 trust' shall mean a trust, or portion of a trust, of which the donor is treated as the owner of  
1943 the trust property for federal income tax purposes pursuant to Subchapter J of the federal  
1944 Internal Revenue Code.

1945 (k) During any period when the original trust owns stock in a Subchapter 'S' corporation  
1946 as defined in Section 1361(a)(1) of the federal Internal Revenue Code, ~~as it existed on~~

1947 ~~February 1, 2018~~, an authorized trustee shall not exercise a power authorized by subsection  
1948 (b) of this Code section to distribute part or all of the stock of the Subchapter 'S'  
1949 corporation to a second trust that is not a permitted shareholder under Section 1361(c)(2)  
1950 of the federal Internal Revenue Code, ~~as it existed on February 1, 2018~~.

1951 (l) A trustee or other person that reasonably relies on the validity of a distribution of  
1952 property of the original trust to the second trust under subsection (b) of this Code section  
1953 or any other law or common law shall not be liable for any action or failure to act as a  
1954 result of such reliance.

1955 (m) This Code section shall not create or imply a duty for a trustee or trust director to  
1956 exercise a power conferred by this Code section.

1957 (n) If exercise of the power to ~~invade the~~ distribute income or principal of the original trust  
1958 would be effective under subsection (b) of this Code section except that the second trust  
1959 in part does not comply with this Code section, such exercise of the power shall be  
1960 effective, a provision in such second trust that is not permitted under this Code section shall  
1961 be void to the extent necessary to comply with this Code section, and a provision required  
1962 by this Code section to be in such second trust that is not contained in such second trust  
1963 shall be deemed to be included in such second trust to the extent necessary to comply with  
1964 this Code section.

1965 (o) The ~~settlor~~ donor of the original trust shall be deemed to be the ~~settlor~~ donor of the  
1966 second trust with respect to the portion of the income or principal of the original trust  
1967 subject to the exercise of the power to ~~invade~~ distribute the principal of such original trust  
1968 under subsection (b) of this Code section. The settlor of the second trust shall be the  
1969 person who creates the second trust, including a testator in the case of a testamentary trust;  
1970 provided, however, that, if the trustee of the original trust creates the second trust, the  
1971 settlor of the original trust shall be deemed to be the settlor of the second trust.

1972 (p) A debt, liability, or other obligation enforceable against property of the original trust  
1973 shall be enforceable to the same extent against the property when held by the second trust

1974 after exercise of the power to ~~invade~~ distribute the income or principal of such original trust  
 1975 under subsection (b) of this Code section.

1976 (q) This Code section shall apply to any trust ~~the meaning and effect of whose trust~~  
 1977 ~~provisions are determined by the law of this state~~ that:

1978 (1) Has its principal place of administration in this state, including a trust whose  
 1979 principal place of administration has been changed to this state; or

1980 (2) Provides in its trust instrument that it is governed by the law of this state or is  
 1981 governed by the law of this state for the purpose of:

1982 (A) Administration, including administration of a trust whose governing law for  
 1983 purposes of administration has been changed to the law of this state;

1984 (B) Construction of the terms of the trust; or

1985 (C) Determining the meaning or effect of the terms of the trust.

1986 (r) This Code section shall not apply to charitable trusts."

1987 **SECTION 72.**

1988 Said title is further amended by revising subsection (f) of Code Section 53-12-80, relating  
 1989 to spendthrift provisions, as follows:

1990 "(f) If a beneficiary is also a ~~contributor to the trust~~ donor, a spendthrift provision shall not  
 1991 be valid as to such beneficiary to the extent of the ~~proportion~~ portion of trust property  
 1992 ~~attributable to such beneficiary's contribution~~ of which such beneficiary is the donor. This  
 1993 subsection shall not apply to a special needs trust established pursuant to 42 U.S.C.  
 1994 ~~Sections~~ Section 1396p(d)(4)(A) or 1396p(d)(4)(C)."

1995 **SECTION 73.**

1996 Said title is further amended by revising Code Section 53-12-81, relating to limitations on  
 1997 creditors' rights to discretionary distributions, as follows:

1998 "53-12-81.

1999 A transferee or creditor of a beneficiary shall not compel the trustee or a trust director to  
 2000 pay any amount that is payable only in the discretion of the trustee or trust director  
 2001 regardless of whether the discretion is expressed in the form of a standard of distribution,  
 2002 including, but not limited to, health, education, maintenance, and support, and whether  
 2003 such trustee or trust director is also a beneficiary. This Code section shall not apply to the  
 2004 extent of the ~~proportion~~ portion of trust property ~~attributable to the beneficiary's~~  
 2005 ~~contribution~~ of which such beneficiary is the donor."

2006 **SECTION 74.**

2007 Said title is further amended by revising Code Section 53-12-82, relating to rules for trusts  
 2008 and consideration of assets of an inter vivos marital trust following death, as follows:

2009 "53-12-82.

2010 (a)(1) As used in this subsection, the term 'creditor' means:

2011 (A) With respect to subparagraphs (A) and (B) of paragraph (2) of this subsection,  
 2012 those creditors of a ~~settlor~~ donor whose claims against the property of the trust are  
 2013 governed by this article, including those creditors identified in subsection (d) of Code  
 2014 Section 53-12-80; and

2015 (B) With respect to subparagraph (C) of paragraph (2) of this subsection, those  
 2016 claimants whose claims against the property of ~~the settlor's~~ a donor's estate are  
 2017 governed by Article 4 of Chapter 7 of this title, including those claimants identified in  
 2018 Code Section 53-7-40.

2019 (2) Regardless of whether the trust instrument contains a spendthrift provision, the  
 2020 following rules shall apply:

2021 (A) During the lifetime of the settlor, the settlor shall be treated as the donor of all  
 2022 property of a ~~revocable~~ trust revocable by such settlor and such property shall be  
 2023 subject to claims of ~~the settlor's~~ such donor's creditors;

- 2024 (B) With respect to an irrevocable trust:
- 2025 (i) Creditors or assignees of the settlor donor may reach the maximum amount that
- 2026 can be distributed to or for the settlor's donor's benefit during the settlor's donor's life
- 2027 or that could have been distributed to or for the settlor's donor's benefit immediately
- 2028 prior to the settlor's donor's death, ~~provided that, if a trust has more than one settlor,~~
- 2029 ~~the amount the creditors or assignees of a particular settlor may reach shall not exceed~~
- 2030 ~~the settlor's interest in the portion of the trust attributable to that settlor's contribution;~~
- 2031 and
- 2032 (ii) The portion of a trust that can be distributed to or for the settlor's donor's benefit
- 2033 pursuant to the power of a trustee, whether arising under the trust instrument or any
- 2034 other law, to make a distribution to or for the benefit of a settlor donor for the purpose
- 2035 of reimbursing the settlor donor in an amount equal to any income taxes payable on
- 2036 any portion of the trust principal and income that is treated as the settlor's donor's
- 2037 individual income under applicable law shall not be considered an amount that can
- 2038 be distributed to or for the settlor's donor's benefit during the settlor's donor's life or
- 2039 that could have been distributed to or for the settlor's donor's benefit immediately
- 2040 prior to the settlor's donor's death; and
- 2041 (C) After the death of a settlor donor, and subject to the settlor's donor's right to direct
- 2042 the source from which liabilities shall be paid:
- 2043 (i) The settlor shall be treated as the donor of all property of a trust that was
- 2044 revocable by the settlor at the settlor's death or had become irrevocable as a result of
- 2045 the settlor's incapacity, and such property shall be subject to claims of the creditors
- 2046 of the settlor's donor's estate to the extent the settlor's donor's probate estate is
- 2047 inadequate; and
- 2048 (ii) Payments that would not be subject to the claims of the creditors of the settlor's
- 2049 donor's estate if made by way of beneficiary designation to persons other than the



2050 ~~settlor's donor's~~ estate shall not be made subject to such claims by virtue of this Code  
 2051 section unless otherwise provided in the trust instrument.

2052 (b)(1) As used in this subsection, the term:

2053 (A) 'Donor's spouse' means the spouse of the donor at the time of the creation of an  
 2054 inter vivos marital trust, regardless of whether such spouse is married to the donor at  
 2055 the time of such spouse's death.

2056 ~~(A)(B)~~ 'Inter vivos marital trust' means:

2057 (i) A trust described in Section 2523(e) of the Internal Revenue Code of 1986, ~~as it~~  
 2058 ~~existed on February 1, 2018;~~

2059 (ii) A trust for which the election described in Section 2523(f) of the Internal  
 2060 Revenue Code of 1986, ~~as it existed on February 1, 2018,~~ has been made; or

2061 (iii) Another trust to the extent such trust's ~~assets are~~ property is attributable to a trust  
 2062 described in division (i) or (ii) of this subparagraph.

2063 ~~(B) 'Settlor's spouse' means the spouse of the settlor at the time of the creation of an~~  
 2064 ~~inter vivos marital trust, regardless of whether such spouse is married to the settlor at~~  
 2065 ~~the time of such spouse's death.~~

2066 (2) Subject to Article 4 of Chapter 2 of Title 18, after the death of the ~~settlor's~~ donor's  
 2067 spouse, the ~~assets~~ property of an inter vivos marital trust shall be deemed to have been  
 2068 contributed by the ~~settlor's~~ donor's spouse and not by the ~~settlor~~ donor so that the spouse  
 2069 becomes the donor of all such property; provided, however, that this Code section shall  
 2070 not apply to any property contributed to such trust after the death of the donor's spouse."

2071 **SECTION 75.**

2072 Said title is further amended by revising Code Section 53-12-83, relating to creditors' claims  
 2073 against property that is subject to withdrawal right, as follows:

2074 "53-12-83.

2075 For purposes of this article, the ~~The~~ holder of a power of withdrawal, during the period that  
 2076 the power may be exercised, shall be treated in the same manner as the settlor of a  
 2077 revocable trust to the extent of the property subject to the power. ~~The, and the~~ lapse,  
 2078 release, or waiver of a power of withdrawal shall not cause the holder to be treated as a  
 2079 ~~settlor~~ donor of the trust."

2080 **SECTION 76.**

2081 Said title is further amended by revising Code Section 53-12-172, relating to cy pres, as  
 2082 follows:

2083 "53-12-172.

2084 If a charitable ~~trust or gift cannot be executed in the manner provided by the settlor or~~  
 2085 ~~donor~~ purpose of a charitable trust becomes unlawful, impracticable, impossible to achieve,  
 2086 or wasteful, the superior court shall, upon a petition by a donor or other interested person  
 2087 pursuant to this Code section, modify or terminate the trust ~~exercise equitable powers in~~  
 2088 such a way as will as nearly as possible effectuate the intention of the settlor or donor."

2089 **SECTION 77.**

2090 Said title is further amended by revising Code Section 53-12-200, relating to capacity of  
 2091 trustee, as follows:

2092 "53-12-200.

2093 A trustee shall have legal capacity under Georgia law to acquire, hold, and transfer title to  
 2094 property. An individual shall be eligible to serve as a trustee regardless of citizenship or  
 2095 residency. If the trustee is a corporation, partnership, or other entity, it shall be required  
 2096 to have the power to act as a trustee in Georgia pursuant to Code Section 7-1-242, Article  
 2097 15 of this chapter, or other applicable law."

**SECTION 78.**

2098

2099 Said title is further amended by revising Code Section 53-12-201, relating to appointment  
2100 and vacancies, as follows:

2101 "53-12-201.

2102 (a) A settlor may appoint trustees or grant that power to others, including trust  
2103 beneficiaries.

2104 (b) A trust shall never fail for want of a trustee.

2105 ~~(c) If the trust instrument names a person to fill a vacancy or provides a method of~~  
2106 ~~appointing a trustee, any vacancy shall be filled or appointment made as provided in the~~  
2107 ~~trust instrument. A vacancy in a trusteeship occurs if:~~

2108 (1) A person designated as trustee rejects the trusteeship;

2109 (2) A person designated as trustee cannot be identified, cannot be located, or does not  
2110 exist;

2111 (3) A guardian or conservator is appointed for an individual serving as trustee;

2112 (4) A trustee is disqualified or removed;

2113 (5) A trustee resigns or dies; or

2114 (6) For any other reason there is no person currently serving as trustee of a trust.

2115 ~~(d) The qualified beneficiaries may appoint a trustee by unanimous consent. Unless~~  
2116 ~~otherwise provided in the trust instrument, if one or more cotrustees remain in office, a~~  
2117 ~~vacancy need not be filled.~~

2118 ~~(e) In all other cases, the court, on petition of an interested person, may appoint any~~  
2119 ~~number of trustees consistent with the intention of the settlor and the interests of the~~  
2120 ~~beneficiaries. A vacancy in a trusteeship that is required to be filled shall be filled, in the~~  
2121 ~~following order of priority, by a person:~~

2122 (1) Designated in the trust instrument as successor trustee;

2123 (2) Appointed as provided in the trust instrument;

2124 (3) Appointed by the unanimous agreement of the qualified beneficiaries; or

2125 (4) On petition of an interested person, appointed by the court.  
 2126 (f) Regardless of whether a vacancy in a trusteeship exists or is required to be filled, the  
 2127 court may, on petition of an interested person, appoint an additional trustee or special  
 2128 fiduciary whenever the court considers the appointment consistent with the intention of the  
 2129 settlor and the interests of the beneficiaries, or otherwise necessary for the administration  
 2130 of the trust.  
 2131 ~~(f)(g)~~ A The petition provided for in ~~subsection (e)~~ of this Code section shall be served  
 2132 upon all qualified beneficiaries.  
 2133 ~~(g)(h)~~ A trustee appointed as a successor trustee shall have all the authority of the original  
 2134 trustee."

2135 **SECTION 79.**

2136 Said title is further amended by revising Code Section 53-12-221, relating to removal of  
 2137 trustee, as follows:

2138 "53-12-221.

2139 (a) A trustee may be removed:

2140 (1) In accordance with the provisions of the trust instrument; or

2141 (2) Upon petition to the court by any interested person ~~showing good cause~~ or by the  
 2142 court on its own motion.

2143 (b) The court may remove a trustee if:

2144 (1) The trustee has committed a serious breach of trust;

2145 (2) Lack of cooperation among cotrustees substantially impairs the administration of the  
 2146 trust;

2147 (3) The court finds that removal of the trustee best serves the interests of the  
 2148 beneficiaries because of unfitness (including, but not limited to, a lack of capacity to  
 2149 make or communicate significant responsible decisions concerning the management of  
 2150 trust property) or unwillingness or persistent failure to administer the trust effectively;

2151 (4) There has been a substantial change of circumstances, the court finds that removal  
 2152 of the trustee best serves the interests of the beneficiaries and is not inconsistent with a  
 2153 material purpose of the trust, and a suitable cotrustee or successor trustee is available; or  
 2154 (5) Removal is requested by all of the qualified beneficiaries, the court finds that removal  
 2155 of the trustee best serves the interests of the beneficiaries and is not inconsistent with a  
 2156 material purpose of the trust, and a suitable cotrustee or successor trustee is available.  
 2157 (c) In the discretion of the court, in order to protect the trust property or the interests of any  
 2158 beneficiary, on its own motion or on motion of a cotrustee or other interested person, the  
 2159 court may compel the trustee whose removal is being sought to surrender trust property to  
 2160 a cotrustee, a receiver, or temporary trustee pending a decision on a petition for removal  
 2161 of a trustee or pending appellate review of such decision. To the extent the court deems  
 2162 necessary, the powers of the trustee also may be suspended."

#### 2163 SECTION 80.

2164 Said title is further amended by revising subsections (b) and (c) of Code Section 53-12-243,  
 2165 relating to duty to provide reports and accounts, as follows:

2166 "(b)(1) A trustee shall account at least annually, at the termination of the trust, and upon  
 2167 a change of trustees to each beneficiary of an irrevocable trust to whom income or  
 2168 principal is required or authorized in the trustee's discretion to be distributed ~~currently~~  
 2169 during the period covered by the report, including upon the termination of the trust on the  
 2170 last day of such period, and to any person who may revoke the trust. ~~At the termination~~  
 2171 ~~of the trust, the trustee shall also account to each remainder beneficiary.~~ Upon a change  
 2172 of trustees, the trustee shall also account to the successor trustee.

2173 (2) An accounting furnished to a beneficiary pursuant to paragraph (1) of this subsection  
 2174 shall contain a statement of receipts and disbursements of principal and income that have  
 2175 occurred during the last complete fiscal year of the trust or since the last accounting to

2176 that beneficiary and a statement of the assets and liabilities of the trust as of the end of  
2177 the accounting period.

2178 (c) A trustee shall not be required to report information or account to:

2179 (1) A a beneficiary who has waived in writing the right to a report or accounting and has  
2180 not withdrawn that waiver; or

2181 (2) The unascertainable charitable beneficiaries of a trust that is not a charitable trust."

2182 **SECTION 81.**

2183 Said title is further amended in Part 1 of Article 13 of Chapter 12, relating to duties of  
2184 trustee, by adding a new Code section to read as follows:

2185 "53-12-248.

2186 When a person holds a power of appointment, as defined in Code Section 53-12-500, over  
2187 property with respect to which the person is also a trustee or a trust director, the duties  
2188 imposed on such person as a trustee or trust director shall not apply to the exercise or  
2189 nonexercise of the power of appointment."

2190 **SECTION 82.**

2191 Said title is further amended by revising paragraphs (11), (23), (28), and (29) of and by  
2192 adding a new paragraph to subsection (b) of Code Section 53-12-261, relating to powers of  
2193 trustee and limitation based on fiduciary duties, to read as follows:

2194 "(11) To borrow money for such periods of time and upon such terms and conditions as  
2195 to rates, maturities, renewals, and security as the fiduciary shall deem advisable for ~~the~~  
2196 any purpose of paying debts, taxes, or other charges against the estate or trust or any part  
2197 thereof and to mortgage, pledge, or otherwise encumber such portion of the property held  
2198 by the fiduciary as may be required to secure the loan and to renew existing loans either  
2199 as maker or endorser;"

2200 "(23) To employ and compensate, out of income or principal or both and in such  
2201 proportion as the fiduciary shall deem advisable, persons deemed by the fiduciary needful  
2202 to advise or assist in the administration of the estate or trust, including, but not limited to,  
2203 agents, accountants, brokers, attorneys at law, attorneys in fact, investment brokers, rental  
2204 agents, realtors, appraisers, and tax specialists; and to do so without liability for any  
2205 neglect, omission, misconduct, or default of any such agent or representative selected and  
2206 retained with due care on the part of the fiduciary; ~~provided, however, that, if an attorney~~  
2207 ~~in fact is appointed by a power of attorney to which Chapter 6B of Title 10 is applicable~~  
2208 ~~under Code Section 10-6B-81, the exercise of the fiduciary powers of the trustee by the~~  
2209 ~~attorney in fact shall be subject to Code Section 10-6B-40;"~~

2210 "(28) To determine:

2211 (A) What is principal and what is income of any estate or trust and to allocate or  
2212 apportion receipts and expenses, as between principal and income, in the exercise of the  
2213 fiduciary's discretion and, by way of illustration and not limitation of the fiduciary's  
2214 discretion, to charge premiums on securities purchased at a premium against principal  
2215 or income or partly against each;

2216 (B) Whether to apply stock dividends and other noncash dividends to income or  
2217 principal or to apportion them as the fiduciary shall deem advisable; and

2218 (C) What expenses, costs, and taxes, other than estate, inheritance, and succession  
2219 taxes and other governmental charges, shall be charged against principal or income or  
2220 apportioned between principal and income and in what proportions; ~~and~~

2221 (29) To make, modify, and execute contracts and other instruments, under seal or  
2222 otherwise, as the fiduciary deems advisable; and

2223 (30) To endorse, guarantee, become the surety of or otherwise become obligated for or  
2224 with respect to the debts or other obligations of a beneficiary or any debt or obligation  
2225 incurred for the benefit of a beneficiary, whether with or without consideration, as the  
2226 fiduciary deems advisable."

**SECTION 83.**

2227

2228 Said title is further amended by revising Code Section 53-12-262, relating to powers of  
2229 corporate fiduciaries, as follows:

2230 "53-12-262.

2231 A corporate fiduciary, without authorization by the court, may exercise the power:

2232 (1) To retain stock or other securities of its own issue received on the creation of the trust  
2233 or later contributed to the trust, including the securities into which the securities  
2234 originally received or contributed may be converted or ~~which~~ that may be derived  
2235 therefrom as a result of merger, consolidation, stock dividends, splits, liquidations, and  
2236 similar procedures. The corporate fiduciary may exercise by purchase or otherwise any  
2237 rights, warrants, or conversion features attaching to any such securities. The authority  
2238 described in this paragraph shall:

2239 (A) Apply to the exchange or conversion of stock or securities of the corporate  
2240 fiduciary's own issue, regardless of whether ~~or not~~ any new stock or securities received  
2241 in exchange therefor are substantially equivalent to those originally held;

2242 (B) Apply to the continued retention of all new stock and securities resulting from  
2243 merger, consolidation, stock dividends, splits, liquidations, and similar procedures and  
2244 received by virtue of such conversion or exchange of stock or securities of the corporate  
2245 fiduciary's own issue, regardless of whether ~~or not~~ the new stock or securities are  
2246 substantially equivalent to those originally received by the fiduciary;

2247 (C) Have reference, inter alia, to the exchange of such stock or securities for stock or  
2248 securities of any holding company ~~which~~ that owns stock or other interests in one or  
2249 more other corporations, including the corporate fiduciary, whether the holding  
2250 company is newly formed or already existing and regardless of whether ~~or not~~ any of  
2251 the corporations own assets identical or similar to the assets of or carry on a business  
2252 identical or similar to the corporation whose stock or securities were previously



2253 received by the fiduciary and the continued retention of stock or securities, or both, of  
 2254 the holding company; and

2255 (D) Apply regardless of whether any of the corporations have officers, directors,  
 2256 employees, agents, or trustees in common with the corporation whose stock or  
 2257 securities were previously received by the fiduciary; and

2258 (2) To borrow money from its own banking department for such periods of time and  
 2259 upon such terms and conditions as to rates, maturities, renewals, and security as the  
 2260 fiduciary shall deem advisable for the any purpose of ~~paying debts, taxes, or other~~  
 2261 ~~charges against the estate or any trust or any part thereof, and to mortgage, pledge, or~~  
 2262 ~~otherwise encumber such portion of the estate or any trust~~ as may be required to secure  
 2263 the loan or loans; and to renew existing loans either as maker or endorser."

2264 **SECTION 84.**

2265 Said title is further amended by repealing Code Section 53-12-264, relating to granting of  
 2266 powers by qualified beneficiaries.

2267 **SECTION 85.**

2268 Said title is further amended by revising Code Section 53-12-270, relating to exercise of  
 2269 power by trustee who is also a beneficiary, as follows:

2270 "53-12-270.

2271 (a) Subject to subsection (c) of this Code section, and unless the trust provisions expressly  
 2272 indicate that a rule in this subsection shall not apply, a person other than a settlor or donor  
 2273 who is a beneficiary and either a trustee or trust director of a trust shall not:

2274 (1) ~~A person other than a settlor who is a beneficiary and trustee of a trust that confers~~  
 2275 ~~on such trustee a power to make~~ Make discretionary distributions to or for ~~such trustee's~~  
 2276 ~~personal~~ the benefit may exercise such power only in of such person unless in accordance  
 2277 with an ascertainable standard; ~~and~~

2278 (2) Make discretionary allocations of receipts or expenses as between principal and  
2279 income, unless such person acts in a fiduciary capacity whereby such person has no  
2280 power to enlarge or shift any beneficial interest except as an incidental consequence of  
2281 the discharge of such person's fiduciary duties; and

2282 (3) ~~Make~~ A trustee shall not exercise a power to make discretionary distributions to  
2283 satisfy a any of such person's legal obligation obligations of support ~~that such trustee~~  
2284 ~~personally owes another person.~~

2285 (b) A power whose exercise is limited or prohibited by subsection (a) of this Code section  
2286 may be exercised by a majority of the remaining trustees or trust directors who have the  
2287 power to make or direct discretionary distributions to or for such trustee or trust director  
2288 and whose exercise of such power is not so limited or prohibited. If the power of all  
2289 trustees or trust directors is so limited or prohibited, the court may appoint a special  
2290 fiduciary with authority to exercise the power.

2291 (c) Subsection (a) of this Code section shall not apply to:

2292 (1) A power held by the settlor's or donor's spouse who is the trustee or trust director of  
2293 a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the  
2294 federal Internal Revenue Code of 1986, was previously allowed;

2295 (2) Any trust during any period that the trust may be revoked or amended by its settlor;  
2296 ~~or~~

2297 (3) A trust if contributions to such trust qualify for the annual exclusion under Section  
2298 2503(c) of the federal Internal Revenue Code of 1986; or

2299 (4) Any portion of a trust over which the trustee or trust director is expressly granted in  
2300 the trust instrument a presently exercisable or testamentary general power of  
2301 appointment.

2302 (d)(1) If a beneficiary of a trust, in an individual, fiduciary, or other capacity, removes  
2303 and appoints a successor trustee or trust director who would be related or subordinate to  
2304 the beneficiary within the meaning of Section 672(c) of the federal Internal Revenue

2305 Code if the beneficiary were a grantor, the successor trustee or trust director's  
 2306 discretionary powers shall be limited as follows:

2307 (A) The trustee or trust director's discretionary power to make distributions to or for  
 2308 the benefit of that beneficiary is limited to an ascertainable standard;

2309 (B) The trustee or trust director's discretionary power shall not be exercised to satisfy  
 2310 any of that beneficiary's legal obligations for support or other purposes; and

2311 (C) The trustee or trust director's discretionary power shall not be exercised to grant  
 2312 to the beneficiary a general power to appoint property of the trust to the beneficiary, the  
 2313 beneficiary's estate, or the creditors thereof within the meaning of Section 2041 of the  
 2314 federal Internal Revenue Code.

2315 (2) This subsection shall not apply if the appointment of the trustee or trust director by  
 2316 the beneficiary may be made only in conjunction with another person having a substantial  
 2317 interest in the property of the trust subject to the power that is adverse to the exercise of  
 2318 the power in favor of the beneficiary within the meaning of Section 2041 (b)(1)(C)(ii) of  
 2319 the federal Internal Revenue Code."

2320 **SECTION 86.**

2321 Said title is further amended by revising subsection (d) of and by adding a new subsection  
 2322 to Code Section 53-12-301, relating to actions for breach of trust, to read as follows:

2323 "(d) If the settlor of a trust provides for both charitable and noncharitable purposes, the  
 2324 settlor or a donor may maintain a civil action to enforce the charitable purposes of the trust.

2325 (e) The provision of remedies for breach of trust shall not prevent resort to any other  
 2326 appropriate remedy provided by statute or common law."

2327 **SECTION 87.**

2328 Said title is further amended by revising subsection (a) of Code Section 53-12-307, relating  
 2329 to limitation of actions, as follows:

2330 "(a) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise,  
 2331 if a beneficiary ~~has received a written report~~ was sent a written report that adequately  
 2332 ~~discloses~~ disclosed the existence of a claim against the trustee for a breach of trust, the  
 2333 claim shall be barred as to that beneficiary unless a proceeding to assert the claim is  
 2334 commenced within two years after ~~receipt of the report~~ the date the beneficiary was sent  
 2335 such report. A report adequately discloses existence of a claim if it provides sufficient  
 2336 information so that the beneficiary knows of such claim or reasonably should have inquired  
 2337 into the existence of such claim. If the beneficiary ~~has not received a report which was not~~  
 2338 sent a report that adequately discloses disclosed the existence of a claim against the trustee  
 2339 for a breach of trust, such claim shall be barred as to that beneficiary unless a proceeding  
 2340 to assert such claim is commenced within six years after the beneficiary discovered, or  
 2341 reasonably should have discovered, the subject of such claim."

2342 **SECTION 88.**

2343 Said title is further amended by revising subsection (a) of Code Section 53-12-320, relating  
 2344 to nonresidents acting as trustees, as follows:

2345 "(a) Any nonresident who is eligible to serve as a trustee under Code Section ~~53-12-201~~  
 2346 7-1-242, Part 1 of Article 11 of this chapter, or other applicable law may act as a trustee in  
 2347 this state pursuant to the terms of this Code section."

2348 **SECTION 89.**

2349 Said title is further amended by revising subsection (a) of Code Section 53-12-321, relating  
 2350 to foreign entities acting as trustees, as follows:

2351 "(a) Any foreign entity may act in this state as a trustee, executor, trust director, personal  
 2352 representative, temporary administrator, conservator, or guardian, or in any other like or  
 2353 similar fiduciary capacity, whether the appointment is by law, will, deed, inter vivos trust,  
 2354 security deed, mortgage, deed of trust, court order, or otherwise without the necessity of

2355 complying with any law of this state relating to the qualification of foreign entities to do  
2356 business in this state or the licensing of foreign entities to do business in this state, except  
2357 as provided in this article, and notwithstanding any prohibition, limitation, or restriction  
2358 contained in any other law of this state, provided only that the foreign entity is authorized  
2359 to act in the fiduciary capacity in the state in which it is chartered or licensed or, if the  
2360 foreign entity is a national banking association, in the state in which it has its principal  
2361 place of business."

2362 **SECTION 90.**

2363 Said title is further amended by revising subsection (c) of Code Section 53-12-323, relating  
2364 to filing statement with Secretary of State and appointment of agent for service, as follows:  
2365 "(c) Any foreign entity that acts as a trustee or trust director in this state shall be deemed  
2366 to have consented to service upon the Secretary of State of any summons, notice, or process  
2367 in connection with any action or proceeding in the courts of this state growing out of or  
2368 based upon any act or failure to act on the part of the trustee or trust director unless the  
2369 trustee or trust director shall designate as the agent for such service some person who may  
2370 be found and served with notice, summons, or process in this state by a designation to be  
2371 filed, from time to time, in the office of the Secretary of State, giving the name of the agent  
2372 and the place in this state where the agent may be found and served."

2373 **SECTION 91.**

2374 Said title is further amended by revising subsections (b), (g), and (j) of Code Section  
2375 53-12-362, relating to conversion to unitrust, as follows:  
2376 "(b)(1) The trustee may petition the ~~superior~~ court to order the conversion to a unitrust.  
2377 (2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not  
2378 convert, the beneficiary may petition the ~~superior~~ court to order the conversion.

2379 (3) The court shall order conversion if ~~the~~ such court concludes that the conversion will  
 2380 enable the trustee to better carry out the intent of the settlor or testator and the purposes  
 2381 of the trust."

2382 "(g) The trustee or, if the trustee declines to do so, a beneficiary may petition the ~~superior~~  
 2383 court to:

2384 (1) Select a payout percentage different from 4 percent but not lower than 3 percent or  
 2385 higher than 5 percent;

2386 (2) Provide for a distribution of net income, as would be determined if the trust were not  
 2387 a unitrust, in excess of the unitrust distribution if such distribution is necessary to  
 2388 preserve a tax benefit;

2389 (3) Average the valuation of the trust's net assets over a period other than three years; or

2390 (4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under Code  
 2391 Section 53-12-361 shall be revived."

2392 "(j)(1) If paragraph (3) or (4) of subsection (i) of this Code section applies to a trustee  
 2393 and there is more than one trustee, a cotrustee to whom such provision does not apply  
 2394 may convert the trust unless the exercise of the power by the remaining trustee is  
 2395 prohibited by the governing trust instrument.

2396 (2) If paragraph (3) or (4) of subsection (i) of this Code section applies to all the trustees,  
 2397 the trustees may petition the ~~superior~~ court to direct a conversion."

2398 **SECTION 92.**

2399 Said title is further amended by revising paragraphs (2) and (3) of Code Section 53-12-500,  
 2400 relating to definitions regarding trust directors, as follows:

2401 "(2) 'Power of appointment' means a power that enables a person, acting in a  
 2402 nonfiduciary capacity, to:

2403 (A) Designate a recipient of either an ownership interest in or another power of  
 2404 appointment over trust property;

2405 (B) Rescind or terminate either an ownership interest in or another power of  
 2406 appointment over trust property; ~~and~~ or

2407 (C) Determine when a beneficiary shall have the rights granted under Code Sections  
 2408 53-12-242 and 53-12-243 or similar rights granted under the ~~governing~~ trust instrument.

2409 (3) 'Power of direction' means a power over a trust granted to a person by the trust  
 2410 instrument to the extent the power is exercisable in a capacity other than as a trustee.  
 2411 Such term includes a power over the administration of the trust or the investment,  
 2412 management, or distribution of the trust property; a power to consent to a trustee's  
 2413 actions, whether through exercise of an affirmative power to consent or through  
 2414 nonexercise of a veto power over a trustee's actions, where a trustee may not act without  
 2415 such consent; and all further powers appropriate to the exercise or nonexercise of such  
 2416 powers held by the trust director pursuant to subsection (a) of Code Section 53-12-502.  
 2417 Such term shall exclude the powers described in subsection (b) of Code Section  
 2418 53-12-501 and the power of a person designated in a trust instrument to receive notice  
 2419 and provide consent pursuant to paragraph (6) of subsection (f) of Code Section 53-12-8."

2420 **SECTION 93.**

2421 Said title is further amended by revising paragraph (5) of subsection (b) of Code Section  
 2422 53-12-501, relating to application of article and construction of trust instrument, as follows:

2423 "(5) A power over a trust if both:

2424 (A) The trust instrument provides such power is held in a nonfiduciary capacity; and

2425 (B) Such power is must be held in a nonfiduciary capacity to achieve the settlor's tax  
 2426 objectives."

2427 **SECTION 94.**

2428 Said title is further amended by revising Code Section 53-12-506, relating to statutory  
 2429 provisions applicable to trust directors, defenses available to trust directors, personal

2430 jurisdiction, and term "trustee" includes trust director where required or permitted, as  
2431 follows:

2432 "53-12-506.

2433 (a) An individual shall be eligible to serve as a trust director regardless of citizenship ~~and~~  
2434 or residency. If the trust director is a corporation, partnership, or other entity, it shall be  
2435 required to have the power to act as a trustee in Georgia.

2436 (b) If the trust director is a corporation, partnership, or other entity, it shall be required to  
2437 have the power to act as a trustee in Georgia pursuant to Code Section 7-1-242, Part 1 of  
2438 Article 11 or Article 15 of this chapter, or other applicable law.

2439 (c) The rules applicable to a trustee apply to a trust director regarding:

2440 (1) Jurisdiction under Code Section 53-12-6;

2441 (2) All matters governed by Article 11 of this chapter, including, but not limited to,  
2442 appointment ~~Appointment~~ and acceptance, compensation, and resignation and removal  
2443 ~~of trustees under Article 11 of this chapter;~~

2444 (3) Accounting under Article 12 of this chapter; and

2445 (4) Nonresidents and foreign entities acting as trustees under Article 15 of this chapter.

2446 ~~(e)~~(d) In an action against a trust director for breach of trust, the trust director may assert  
2447 the same defenses a trustee in a like position and under similar circumstances could assert  
2448 in an action for breach of trust against the trustee.

2449 ~~(d)~~(e) By accepting appointment as a trust director of a trust subject to this article, a trust  
2450 director submits to personal jurisdiction of the courts of this state regarding any matter  
2451 related to a power or duty of a trust director. This subsection shall not preclude use of  
2452 another method to obtain jurisdiction over a trust director.

2453 ~~(e)~~(f) As used in this Code, where the context requires or permits, the term 'trustee'  
2454 includes a trust director.

2455 (g) Notwithstanding the provisions of subsection (b) of this Code section, a partnership or  
2456 limited liability company shall be eligible to serve as a trust director, regardless of whether



2457 such partnership or limited liability company is otherwise qualified to act as a trustee, if all  
2458 of the partners or members are individuals who are jointly and severally liable for all debts,  
2459 obligations, and liabilities of the partnership or limited liability company pursuant to  
2460 subsection (a) of Code Section 14-8-15, a written operating agreement or another written  
2461 agreement under subsection (b) of Code Section 14-11-303, or other similar statute or  
2462 agreement."

2463 **SECTION 95.**

2464 Said title is further amended by adding a new article to Chapter 12, relating to trusts, to read  
2465 as follows:

2466 "ARTICLE 19

2467 53-12-510.

2468 As used in this article, the term:

2469 (1) 'Electronic' means relating to technology having electrical, digital, magnetic,  
2470 wireless, optical, electromagnetic, or similar capabilities.

2471 (2) 'Electronic address' means a unique username or other identifier, commonly  
2472 expressed as a string of characters or numbers, at which information may be received by  
2473 electronic means and shall include, but shall not be limited to, an email or internet  
2474 address, and any other information system or portion thereof, designed for the exchange  
2475 of information among parties.

2476 (3) 'Electronic portal' means a website or other similar electronic service through which  
2477 a person may retrieve information.

2478 (4) 'Electronic record' means a record created, generated, sent, communicated, received,  
2479 or stored by electronic means.

2480 (5) 'Electronic signature' means an electronic symbol or process attached to or logically  
2481 associated with a record and executed or adopted by a person with the intent to sign the  
2482 record.

2483 (6) 'Information' includes data, text, images, codes, computer programs, software, and  
2484 data bases.

2485 (7) 'Record' means information:

2486 (A) Inscribed on a tangible medium; or

2487 (B) Stored in an electronic or other medium and retrievable in perceivable form.

2488 (8) 'Security procedure' means a procedure applied to verify that an electronic signature,  
2489 record, or performance is that of a specific person or to detect a change or error in an  
2490 electronic record. Such term includes a procedure that uses an algorithm, code,  
2491 identifying word or number, encryption, or callback or other acknowledgment procedure.

2492 (9) 'Sign' means, with present intent to authenticate or adopt a record:

2493 (A) Execute or adopt a tangible symbol; or

2494 (B) Attach to or logically associate with the record an electronic signature.

2495 53-12-511.

2496 (a) This Code section shall govern notice to a person or the sending of a record to a person  
2497 under this chapter, under the provisions of a trust instrument, or with respect to any matter  
2498 involving a trust. This Code section shall not govern whether notice or the sending of a  
2499 record complied with any duties relating to the privacy, confidentiality, or security of a  
2500 notice or record.

2501 (b) Notice to a person or the sending of a record to a person shall be accomplished in a  
2502 manner that is likely to result in receipt of the notice or record and reasonably suitable  
2503 under the circumstances.

2504 (c) Without limitation, the manner of notice to a person or the sending of a record to a  
2505 person shall be presumed likely to result in receipt of the notice or record, unless proven  
2506 otherwise by clear and convincing evidence, if accomplished by:

2507 (1) Personal delivery;

2508 (2) Registered or certified mail or statutory overnight delivery to either the person's last  
2509 known place of residence or place of business or the address last used by the person to  
2510 receive notices or records;

2511 (3) An electronic address the person has consented to use to receive notices or records;  
2512 or

2513 (4)(A) An electronic portal if:

2514 (i) The person has been granted access to an electronic portal and informed that  
2515 notices and records will be made available in the electronic portal;

2516 (ii) The notice or record is made available in the electronic portal;

2517 (iii) Concurrently with or subsequently to the notice or record being made available  
2518 in the electronic portal, the person is notified that one or more notices or records have  
2519 been made available in the electronic portal; and

2520 (iv) For a period of at least 90 days after the date on which the person was notified  
2521 as provided in division (iii) of this subparagraph, the person's access to the electronic  
2522 portal is not terminated without his or her consent and the notice or record remains  
2523 available in the electronic portal.

2524 (B) If the person objects to notices or the sending of records by means of an electronic  
2525 address or electronic portal, then notice or the sending of a record by such means shall  
2526 not be presumed likely to result in receipt of the notice or record.

2527 (d) If a record was sent to a beneficiary solely by means of an electronic portal and the  
2528 existence of a claim would not have been adequately disclosed to the beneficiary for  
2529 purposes of Code Section 53-12-307 but for the sending of the record, the running of the  
2530 limitations period under Code Section 53-12-307 for such claim shall be tolled if the

2531 beneficiary's access to the electronic portal is terminated without his or her consent or the  
2532 record is no longer available in the electronic portal; provided, however, that the period  
2533 shall not be tolled if, within 30 days after such event, the beneficiary is notified of an  
2534 alternative means by which to obtain the record. If the limitations period is tolled, the  
2535 period shall recommence on the date on which the record is resent to the beneficiary,  
2536 whether by means of an electronic portal or otherwise.

2537 (e)(1) For purposes of subsections (c) and (d) of this Code section:

2538 (A) Without limitation, a person consents to the use of an electronic address to receive  
2539 notices and records from:

2540 (i) Any person with respect to any matter involving a particular trust, by providing  
2541 the electronic address to any other person to be used to receive notices and records  
2542 with respect to any matters involving such trust, regardless of whether such other  
2543 person is the person providing notice or sending the record; and

2544 (ii) A particular person with respect to any matter involving any trust, by providing  
2545 the electronic address to such person to receive such notices and records with respect  
2546 to any matters involving a trust, regardless of whether such trust is the trust to which  
2547 the notice or record relates; and

2548 (B) The use of an electronic address by a person with respect to any matter involving  
2549 a trust shall constitute a provision of the electronic address with respect to the trust  
2550 under division (i) of subparagraph (A) of this paragraph and the use of an electronic  
2551 address to communicate with another person with respect to any matter involving a trust  
2552 shall constitute a provision of the electronic address to the other person under division  
2553 (ii) of subparagraph (A) of this paragraph.

2554 (2) Requiring a person to take steps to activate his or her account in an electronic portal  
2555 or take other similar actions to establish access to an electronic portal shall not prevent  
2556 the person from having been granted access to the electronic portal.

2557 (3) A notice or record shall not be considered to have been made available in an  
2558 electronic portal unless a person who has been granted access to the electronic portal can  
2559 download or otherwise preserve a copy of the notice or record outside of the electronic  
2560 portal.

2561 (4) If a notice or record is made available in an electronic portal but the notice required  
2562 by division (c)(4)(A)(iii) of this Code section is not provided to a person who has been  
2563 granted access to the electronic portal, such notice shall be deemed provided to such  
2564 person on the next date on which the person accesses the electronic portal.

2565 (5) A person's access to an electronic portal shall not be considered to have been  
2566 terminated without his or her consent solely because such person is required to change  
2567 or reset his or her password or take other similar actions to preserve his or her access.

2568 (f) With respect to whether notice or the sending of a record to a person was reasonably  
2569 suitable under the circumstances:

2570 (1) For purposes of Code Section 53-12-307 providing for the limitation of actions, the  
2571 sending of a record to a person in a manner that is likely to result in receipt shall be  
2572 presumed to have been accomplished in a manner that was reasonably suitable under the  
2573 circumstances unless proven otherwise by clear and convincing evidence; and

2574 (2) For all other purposes, whether notice or the sending of a record to a person was  
2575 accomplished in a manner reasonably suitable under the circumstances shall be  
2576 determined, without limitation, in the context of the subject matter of the notice or record,  
2577 the length of any time period imposed with respect to notice or sending of the record, the  
2578 circumstances of the person, the sender's knowledge of those circumstances, and when  
2579 actual receipt, if any, occurred.

2580 (g) Notice to a person or the sending of a record to a person shall be deemed:

2581 (1) To have been accomplished on the date such person has actual knowledge of the  
2582 contents of the notice or record; and

2583 (2) Not to have been accomplished if the person providing notice or sending a record has  
2584 actual knowledge the person did not receive the notice or record.

2585 (h) Notice or the sending of a record to a person otherwise required under this chapter or  
2586 the trust instrument:

2587 (1) Need not be provided to a person whose identity or location is unknown to and not  
2588 reasonably ascertainable by the trustee, trust director, or other person required to provide  
2589 the notice or send the record; and

2590 (2) May be waived by the person to be notified or sent the record.

2591 (i) An action by a trustee, trust director, or other person authorized under this chapter or  
2592 a trust instrument to act with respect to any matter involving a trust shall not be ineffective  
2593 because of a failure to provide notice required under this chapter or the trust instrument if  
2594 such person acted with reasonable care to comply with this Code section.

2595 (j) Notice of a judicial proceeding shall be provided as required by the applicable rules of  
2596 civil procedure.

2597 (k) This Code section shall be construed and applied to be consistent with reasonable  
2598 practices concerning the use of electronic addresses and electronic portals to provide notice  
2599 and send records for matters involving trusts and the continued expansion of those  
2600 practices.

2601 53-12-512.

2602 (a) This Code section shall apply to all records and signatures relating to trusts, except a  
2603 writing and signature creating or declaring an express trust under Code Section 53-12-20,  
2604 including, but not limited to:

2605 (1) Exercises, delegations, determinations, releases, waivers, renunciations, disclaimers,  
2606 and all other actions related to powers and rights granted under this chapter or a trust  
2607 instrument;

- 2608 (2) Notices and records required to be provided or sent by this chapter or the provisions  
2609 of a trust instrument, including, but not limited to, notices under Code Section 53-12-242,  
2610 reports and accounts under Code Section 53-12-243, and accountings under Article 12  
2611 of this chapter;
- 2612 (3) Binding nonjudicial settlement agreements under Code Section 53-12-9 or other  
2613 applicable law, including agreements that modify a trust instrument;
- 2614 (4) Notices of a trustee's decision to exercise the power to distribute income or principal  
2615 of a trust under Code Section 53-12-62 or other applicable law;
- 2616 (5) Consents to actions by and the release from liability of a trustee or trust director;
- 2617 (6) Reports described in Code Section 53-12-307; and
- 2618 (7) Certifications of a trust under Code Section 53-12-280.
- 2619 (b) This Code section shall be construed and applied to facilitate electronic records and  
2620 electronic signatures consistent with other law and to be consistent with reasonable  
2621 practices concerning electronic records and electronic signatures and continued expansion  
2622 of those practices.
- 2623 (c) This Code section shall not invalidate an electronic record or electronic signature that  
2624 is valid under other applicable law.
- 2625 (d)(1) A record or signature shall not be denied legal effect or enforceability solely  
2626 because it is in electronic form.
- 2627 (2) If other laws of this state or a trust instrument require a record to be in writing, an  
2628 electronic record satisfies the requirement.
- 2629 (3) If other laws of this state or a trust instrument require a signature to be in writing, an  
2630 electronic signature satisfies the requirement.
- 2631 (e)(1) An electronic record or electronic signature is attributable to a person if it was the  
2632 act of the person. The act of the person may be shown in any manner, including, but not  
2633 limited to, showing the efficacy of a security procedure applied to determine the person  
2634 to which the electronic record or electronic signature was attributable.

2635 (2) The effect of attribution to a person under paragraph (1) of this subsection of a record  
2636 or signature shall be determined from the context and surrounding circumstances at the  
2637 time of its creation, execution, or adoption and as provided by other law.

2638 (f) If other laws of this state or a trust instrument require a record or signature to be  
2639 acknowledged or notarized, the requirement shall be satisfied if the signature of the  
2640 individual performing the acknowledgement or notarization, together with all other  
2641 information required to be included under other laws of this state or the trust instrument,  
2642 is attached to or logically associated with the electronic record or electronic signature.

2643 (g) A person may create a certified paper copy of an electronic record by affirming under  
2644 penalty of perjury that the paper copy is a complete and accurate copy of the record.

2645 (h) If other laws of this state or a trust instrument require a record to be retained,  
2646 transmitted, copied, or filed:

2647 (1) The requirement shall be satisfied by retaining, transmitting, copying, or filing an  
2648 electronic record that:

2649 (A) Accurately reflects the information in the record after it was first generated in final  
2650 form as an electronic record or as a certified paper copy under this Code section; and

2651 (B) Remains accessible to the extent required by the other laws of this state or a trust  
2652 instrument;

2653 (2) The requirement to retain a record shall not apply to information the sole purpose of  
2654 which is to enable the record to be sent, communicated, or received;

2655 (3) A person may satisfy paragraph (1) of this subsection by using the services of another  
2656 person;

2657 (4) A requirement that a record be presented or retained in its original form shall be  
2658 satisfied by an electronic record retained in accordance with this subsection; and

2659 (5) This subsection shall not preclude a governmental agency from specifying  
2660 requirements for the retention of a record subject to the agency's jurisdiction in addition  
2661 to those in this subsection.



2662 (i) Evidence relating to a record or a signature may not be excluded in a judicial  
2663 proceeding solely because it is in electronic form.

2664 53-12-513.

2665 The provisions of this chapter conform to the requirements of Section 102 of the Electronic  
2666 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7002, and supersede,  
2667 modify, and limit the requirements of such act."

2668 **SECTION 96.**

2669 All laws and parts of laws in conflict with this Act are repealed.