

August 2006

Introduced by

1 A BILL for an Act to create and enact chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15,  
2 59-16, 59-17, 59-18, 59-19, and 59-20 of the North Dakota Century Code, relating to adoption  
3 of the uniform trust code and charitable trusts; to amend and reenact section 3-02-05,  
4 subsection 24 of section 10-33-21, section 10-33-105, subsection 7 of section 23-20.3-03.1,  
5 and sections 23-21.1-03, 30.1-18-03, 30.1-20-13, 30.1-29-17, 30.1-32-03, 30.1-34-02,  
6 38-10-12, and 38-13-01 of the North Dakota Century Code, relating to trusts; to repeal chapters  
7 30.1-33, 30.1-34, 59-01, 59-02, 59-03, 59-04, 59-04.2, and 59-05 of the North Dakota Century  
8 Code, relating to trusts; and to provide for retroactive application.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1. AMENDMENT.** Section 3-02-05 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **3-02-05. General authority limited.** An authority expressed in general terms, however  
13 broad, does not authorize an agent:

- 14 1. ~~To~~ to act in ~~his~~ the agent's own name unless ~~it~~ doing so is the usual course of  
15 business to ~~do so~~;
- 16 2. ~~To~~ define the scope of ~~his~~ the agent's agency; or
- 17 3. ~~To~~ to do any act ~~which~~ that a trustee is forbidden to do ~~by the provisions of~~  
18 ~~sections 59-01-09 to 59-01-19, inclusive~~ under chapters 59-09, 59-10, 59-11,  
19 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

20 **SECTION 2. AMENDMENT.** Subsection 24 of section 10-33-21 of the North Dakota  
21 Century Code is amended and reenacted as follows:

- 22 24. Except when the trust instrument prescribes otherwise, a corporation may invest  
23 trust property or its proceeds in accordance with ~~sections 59-02-08.1 through~~

~~59-02-08-11~~ chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16,  
59-17, 59-18, and 59-19.

**SECTION 3. AMENDMENT.** Section 10-33-105 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-105. Distribution of assets.**

1. In performing the duties under section 10-33-100, the board, or the officers acting under the direction of the board, shall distribute the assets of the corporation in the following order of priority:
  - a. Distribution of assets received and held for a special use or purpose under subsection 2;
  - b. Payment of costs and expenses of the dissolution proceedings, including attorney's fees and disbursements;
  - c. Payment of debts, obligations, and liabilities of the corporation;
  - d. Distribution of assets pursuant to articles or bylaws of the dissolving corporation or the rules or canons of another organization under subsection 3; and
  - e. Distribution of remaining assets under subsection 4.
2. Assets of the corporation may not be diverted from the uses and purposes for which the assets have been received and held or from the uses and purposes expressed or intended by the original donor.
3. When the articles or bylaws of the dissolving corporation, or the rules or canons of another organization by which the dissolving corporation is bound, provide for a particular distribution of the assets of the dissolving corporation, the assets must be distributed accordingly.
4. The distribution of assets held for or devoted to a charitable or public use or purpose is subject to section ~~59-02-22~~ 59-20-01.

**SECTION 4. AMENDMENT.** Subsection 7 of section 23-20.3-03.1 of the North Dakota Century Code is amended and reenacted as follows:

7. Before agreeing to any institutional controls or responsibility exemptions, the department may require insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on

the property after the site-specific responsibility exemptions and institutional controls are established, and must require such insurance coverage or other financial assurance when the projected cost of an active monitoring or remediation program exceeds five hundred thousand dollars. The department may enter a joint agreement with affected political subdivisions, state or federal agencies, property owners, lenders, the administrator of the petroleum tank release compensation fund, or any responsible or potentially responsible party concerning payment for or funding of any insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on contaminated or affected properties. Such agreements do not waive the liability limitations that apply by law to the state, to state agencies, or to political subdivisions, except up to the amounts, and subject to the terms, conditions, and limitations, of any insurance policy or any financial assurance fund created by the joint agreement of the parties under this subsection. Any financial assurance fund must comply with chapters ~~59-01, 59-02, 59-03, and 59-04~~, 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 and be managed for the benefit of the affected persons or community, but liability of the fund may not exceed the amount deposited with the fund.

**SECTION 5. AMENDMENT.** Section 23-21.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-21.1-03. Creation of perpetual care fund.**

1. Any organization subject to this chapter which is organized or commences business in this state and desires to operate as a perpetual care cemetery, before selling or disposing of any interment space or lots, shall establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash, except that the minimum perpetual care and maintenance guarantee fund for organizations in operation on July 1, 1963, must be five thousand dollars. The perpetual care and maintenance guarantee fund must be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court shall have jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond

required, and investment of funds as provided by ~~chapter 59-04~~ chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 relating to the administration of trust estates. Only the income from such fund may be used for the care and maintenance of the cemetery for which it was established. All such organizations shall submit at least annually, to the district court, such reports as are required. The clerks of each of the district courts shall transmit copies of all reports, and rules and regulations enacted by the organization, to the state department of health and the commissioner of financial institutions.

2. To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

~~1.~~ a. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult space, whichever is the greater.

~~2.~~ b. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches [1006.8 millimeters] in length or ten dollars for each space up to sixty inches [1524 millimeters] in length, whichever is the greater.

~~3.~~ c. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each space or crypt in a mausoleum, whichever is the greater, except a mausoleum located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community mausoleum itself shall contain a minimum of twenty percent of the cost of the construction of such public or community mausoleum.

~~4.~~ d. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a columbarium, except a columbarium located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or

community columbarium itself shall contain a minimum of twenty percent of the cost of the construction of such public or community columbarium.

~~5-~~ e. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars, whichever is the greater, for each interment space in crypt gardens or any other structure or device by whatever name, established or constructed wholly or partially above the natural surface of the ground, for the interment of any dead human body.

3. There is no required perpetual care fund deposit on spaces provided without charge for paupers and infants.

**SECTION 6. AMENDMENT.** Section 30.1-18-03 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-18-03. (3-703) General duties - Relation and liability to persons interested in estate - Standing to sue.**

1. A personal representative is a fiduciary who shall observe the standards of care applicable to trustees ~~as described by section 30.1-34-02~~. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this title, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this title, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

2. A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will authorizes a personal representative to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, authorizes the personal representative to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal

proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described in this title.

3. Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at the decedent's death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death.

**SECTION 7. AMENDMENT.** Section 30.1-20-13 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-20-13. (3-913) Distributions to trustee.**

1. Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries ~~as provided in section 30.1-34-03.~~
2. If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if the personal representative apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and the personal representative may withhold distribution until the court has acted.
3. No inference of negligence on the part of the personal representative shall be drawn from the personal representative's failure to exercise the authority conferred by subsections 1 and 2.

**SECTION 8. AMENDMENT.** Section 30.1-29-17 of the North Dakota Century Code is amended and reenacted as follows:

**30.1-29-17. (5-417) General duty of conservator.** In the exercise of conservator's powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees ~~as described by section 30.1-34-02.~~

1           **SECTION 9. AMENDMENT.** Section 30.1-32-03 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **30.1-32-03. (7-103) Effect of registration.**

- 4           1. By registering a trust, or accepting the trusteeship of a registered trust, the trustee  
5 submits personally to the jurisdiction of the district court in any proceeding under  
6 ~~section 30.1-33-04~~ chapter 59-10 relating to the trust that may be initiated by any  
7 interested person while the trust remains registered. Notice of any proceeding  
8 must be delivered to the trustee, or mailed to the trustee by ordinary first-class  
9 mail, at the trustee's address as listed in the registration or as thereafter reported  
10 to the district court and to the trustee's address as then known to the petitioner.
- 11          2. To the extent of their interests in the trust, all beneficiaries of a trust properly  
12 registered in this state are subject to the jurisdiction of the district court of  
13 registration for the purposes of proceedings under ~~section 30.1-33-04~~ chapter  
14 59-10, provided notice is given pursuant to section 30.1-03-01.

15           **SECTION 10. AMENDMENT.** Section 30.1-34-02 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17           **30.1-34-02. (7-302) Trustee's standard of care and performance.** Except as  
18 otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing  
19 with the trust assets as provided in ~~sections 59-02-08.1 through 59-02-08.14~~ chapter 59-17.

20           **SECTION 11. AMENDMENT.** Section 38-10-12 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22           **38-10-12. Appointment of trustee to execute mineral lease if contingent future**  
23 **interests are involved.** If lands, or any estate or interest therein, are subject to any contingent  
24 future interest, legal or equitable, by way of remainder, reversion, or possibility of reverter, upon  
25 the happening of a condition subsequent, or otherwise, created by deed, will, or otherwise, and  
26 whether a trust is involved or not, and it is made to appear that it will be advantageous to the  
27 present and ultimate owners of said lands or estate or interest therein, the district court of the  
28 county in which the land or a portion thereof is situated has the power, pending the happening  
29 of any contingency and the vesting of such future interest or interests, to declare a trust in said  
30 lands or estate or interest therein, appoint a trustee therefor, and to authorize such trustee to  
31 sell, on such terms and containing such conditions as the court may prescribe, execute and

1 deliver a valid oil, gas, coal, or other mineral lease covering said lands or estate or interest  
2 therein. If a trust is in existence and there is a trustee serving under the trust, the trustee  
3 appointed by the court under this section must be the same trustee or trustees as are serving  
4 under the existing trust. All proceedings must substantially comply with that provided for the  
5 administration of trusts in chapters ~~30-1-33, 30-1-34, and 59-04~~ 59-09, 59-10, 59-11, 59-12,  
6 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

7 **SECTION 12. AMENDMENT.** Section 38-13-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **38-13-01. Appointment of trustee to execute mineral lease and other documents if**  
10 **owner or claimant is absent - Administration of trust.** If any undivided mineral, leasehold,  
11 or royalty interest in land is claimed or owned by a person whose place of residence and  
12 whereabouts is unknown, and cannot reasonably be ascertained, the district court of the county  
13 in which the said land or a portion thereof is situated has the power to declare a trust in the  
14 interest of such owner or claimant and appoint a trustee therefor. Upon satisfactory proof made  
15 by the petitioner that a diligent but unsuccessful effort to locate such owner or claimant has  
16 been made and that it will be in the best interest of all owners of interests in said lands, the  
17 court shall authorize such trustee to execute and deliver an oil, gas, or other mineral lease, an  
18 assignment of leasehold interest, a ratification, division orders or other related documents or  
19 instruments on such terms and conditions as the court may approve. All proceedings must  
20 substantially comply with that provided for the administration of trusts in chapters ~~30-1-33,~~  
21 ~~30-1-34, and 59-04~~ 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and  
22 59-19.

23 **SECTION 13.** Chapter 59-09 of the North Dakota Century Code is created and enacted  
24 as follows:

25 **59-09-01. (101) Short title.** Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15,  
26 59-16, 59-17, 59-18, and 59-19 may be cited as the uniform trust code.

27 **59-09-02. (102) Scope.** Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15,  
28 59-16, 59-17, 59-18, and 59-19 apply to express trusts, charitable or noncharitable, and trusts  
29 created pursuant to a statute, judgment, or decree that requires the trust to be administered in  
30 the manner of an express trust.



1           **59-09-03. (103) Definitions.** Unless the context otherwise requires, in chapters 59-09,  
2 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19:

- 3           1. "Action", with respect to an act of a trustee, includes a failure to act.
- 4           2. "Beneficiary" means a person that has a present or future beneficial interest in a  
5 trust, vested or contingent, or, in a capacity other than that of trustee, holds a  
6 power of appointment over trust property.
- 7           3. "Charitable trust" means a trust, or portion of a trust, created for a charitable  
8 purpose described in subsection 1 of section 59-12-05.
- 9           4. "Conservator" means a person appointed by the court to administer the estate of a  
10 minor or adult individual.
- 11          5. "Environmental law" means a federal, state, or local law, rule, regulation, or  
12 ordinance relating to protection of the environment.
- 13          6. "Guardian" means a person appointed by the court, a parent, or a spouse to make  
14 decisions regarding the support, care, education, health, and welfare of a minor or  
15 adult individual. The term does not include a guardian ad litem.
- 16          7. "Interests of the beneficiaries" means the beneficial interests provided in the terms  
17 of the trust.
- 18          8. "Jurisdiction", with respect to a geographic area, includes a state or country.
- 19          9. "Power of withdrawal" means a presently exercisable general power of  
20 appointment other than a power exercisable only upon consent of the trustee or a  
21 person holding an adverse interest.
- 22          10. "Property" means anything that may be the subject of ownership, whether real or  
23 personal, legal or equitable, or any interest therein.
- 24          11. "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's  
25 qualification is determined:
  - 26           a. Is a distributee or permissible distributee of trust income or principal;
  - 27           b. Would be a distributee or permissible distributee of trust income or principal if  
28 the interests of the distributees described in subdivision a terminated on that  
29 date; or
  - 30           c. Would be a distributee or permissible distributee of trust income or principal if  
31 the trust terminated on that date.

- 1        12. "Revocable", as applied to a trust, means revocable by the settlor without the  
2        consent of the trustee or a person holding an adverse interest.
- 3        13. "Settlor" means a person, including a testator, who creates, or contributes property  
4        to, a trust. If more than one person creates or contributes property to a trust, each  
5        person is a settlor of the portion of the trust property attributable to that person's  
6        contribution except to the extent another person has the power to revoke or  
7        withdraw that portion.
- 8        14. "Special needs trust" means special needs trust as defined in section 59-08-01.
- 9        15. "Spendthrift provision" means a term of a trust which restrains both voluntary and  
10       involuntary transfer of a beneficiary's interest.
- 11       16. "State" means a state of the United States, the District of Columbia, Puerto Rico,  
12       the United States Virgin Islands, or any territory or insular possession subject to  
13       the jurisdiction of the United States. The term includes an Indian tribe or band  
14       recognized by federal law or formally acknowledged by a state.
- 15       17. "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's  
16       provisions as expressed in the trust instrument or as may be established by other  
17       evidence that would be admissible in a judicial proceeding.
- 18       18. "Trust instrument" means an instrument executed by the settlor that contains terms  
19       of the trust, including any amendments thereto.
- 20       19. "Trustee" includes an original, additional, and successor trustee and a cotrustee.

21       **59-09-04. (104) Knowledge.**

- 22       1. Subject to subsection 2, a person has knowledge of a fact if the person has actual  
23       knowledge of a fact; has received a notice or notification of a fact; or from all the  
24       facts and circumstances known to the person at the time in question, has reason to  
25       know a fact.
- 26       2. An organization that conducts activities through employees has notice or  
27       knowledge of a fact involving a trust only from the time the information was  
28       received by an employee having responsibility to act for the trust, or would have  
29       been brought to the employee's attention if the organization had exercised  
30       reasonable diligence. An organization exercises reasonable diligence if the  
31       organization maintains reasonable routines for communicating significant

1 information to the employee having responsibility to act for the trust and there is  
2 reasonable compliance with the routines. Reasonable diligence does not require  
3 an employee of the organization to communicate information unless the  
4 communication is part of the individual's regular duties or the individual knows a  
5 matter involving the trust would be materially affected by the information.

6 **59-09-05. (105) Default and mandatory rules.**

- 7 1. Except as otherwise provided in the terms of the trust, this title governs the duties  
8 and powers of a trustee, relations among trustees, and the rights and interests of a  
9 beneficiary.
- 10 2. The terms of a trust prevail over any provision of this title except:
- 11 a. The requirements for creating a trust;
- 12 b. The duty of a trustee to act in good faith and in accordance with the purposes  
13 of the trust;
- 14 c. The requirement that a trust and its terms be for the benefit of its  
15 beneficiaries, and that the trust have a purpose that is lawful and possible to  
16 achieve;
- 17 d. The power of the court to modify or terminate a trust under sections 59-12-10,  
18 59-12-11, 59-12-12, 59-12-13, 59-12-14, 59-12-15, and 59-12-16;
- 19 e. The effect of a spendthrift provision and the rights of certain creditors and  
20 assignees to reach a trust as provided in chapter 59-13;
- 21 f. The power of the court under section 59-15-02 to require, dispense with, or  
22 modify or terminate a bond;
- 23 g. The power of the court under subsection 2 of section 59-15-08 to adjust a  
24 trustee's compensation specified in the terms of the trust which is  
25 unreasonably low or high;
- 26 h. The effect of an exculpatory term under section 59-18-08;
- 27 i. The rights under sections 59-18-10, 59-18-11, 59-18-12, and 59-18-13 of a  
28 person other than a trustee or beneficiary;
- 29 j. Periods of limitation for commencing a judicial proceeding;
- 30 k. The power of the court to take such action and exercise such jurisdiction as  
31 may be necessary in the interests of justice; and

1           I.    The subject matter jurisdiction of the court and venue for commencing a  
2           proceeding as provided in section 59-10-04.

3           **59-09-06. (106) Common law of trusts - Principles of equity.** The common law of  
4 trusts and principles of equity supplement chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14,  
5 59-15, 59-16, 59-17, 59-18, and 59-19, except to the extent modified by chapters 59-09, 59-10,  
6 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or another statute of this  
7 state.

8           **59-09-07. (107) Governing law.** The meaning and effect of the terms of a trust are  
9 determined by the law of the jurisdiction designated in the terms or, in the absence of a  
10 controlling designation in the terms of the trust, the law of the jurisdiction having the most  
11 significant relationship to the matter at issue.

12           **59-09-08. (108) Principal place of administration.**

13           1.    Without precluding other means for establishing a sufficient connection with the  
14 designated jurisdiction, terms of a trust designating the principal place of  
15 administration are valid and controlling if a trustee's principal place of business is  
16 located in or a trustee is a resident of the designated jurisdiction, or all or part of  
17 the administration occurs in the designated jurisdiction.

18           2.    A trustee is under a continuing duty to administer the trust at a place appropriate to  
19 its purposes, its administration, and the interests of the beneficiaries.

20           3.    Without precluding the right of the court to order, approve, or disapprove a transfer,  
21 the trustee, in furtherance of the duty prescribed by subsection 2, may transfer the  
22 trust's principal place of administration to another state or to a jurisdiction outside  
23 of the United States.

24           4.    The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's  
25 principal place of administration or a proposed transfer of some or all of the trust  
26 property to a successor trustee not less than sixty days before initiating the  
27 transfer. The notice of proposed transfer must include the name of the jurisdiction  
28 to which the principal place of administration is to be transferred; the address and  
29 telephone number at the new location at which the trustee can be contacted; an  
30 explanation of the reasons for the proposed transfer; the date on which the  
31 proposed transfer is anticipated to occur; and the date, not less than sixty days

1           after the giving of the notice, by which the qualified beneficiary must notify the  
2           trustee of an objection to the proposed transfer.

3           5.   The authority of a trustee under this section to transfer a trust's principal place of  
4           administration or a proposed transfer of some or all of the trust property to a  
5           successor trustee terminates if a majority of the qualified beneficiaries notify the  
6           trustee of an objection to the proposed transfer on or before the date specified in  
7           the notice.

8           6.   In connection with a transfer of the trust's principal place of administration, the  
9           trustee may transfer some or all of the trust property to a successor trustee  
10           designated in the terms of the trust or appointed pursuant to section 59-15-04.

11           **59-09-09. (109) Methods and waiver of notice.**

12           1.   Notice to a person under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14,  
13           59-15, 59-16, 59-17, 59-18, and 59-19 or the sending of a document to a person  
14           under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17,  
15           59-18, and 59-19 must be accomplished in a manner reasonably suitable under the  
16           circumstances and likely to result in receipt of the notice or document. Permissible  
17           methods of notice or for sending a document include first-class mail, personal  
18           delivery, delivery to the person's last-known place of residence or place of  
19           business, or a properly directed electronic message.

20           2.   Notice otherwise required under chapters 59-09, 59-10, 59-11, 59-12, 59-13,  
21           59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or a document otherwise required to  
22           be sent under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16,  
23           59-17, 59-18, and 59-19 does not need to be provided to a person whose identity  
24           or location is unknown to and not reasonably ascertainable by the trustee.

25           3.   Notice under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16,  
26           59-17, 59-18, and 59-19 or the sending of a document under chapters 59-09,  
27           59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 may be  
28           waived by the person to be notified or sent the document.

29           4.   Notice of a judicial proceeding must be given as provided in the applicable North  
30           Dakota Rules of Civil Procedure or as provided under section 30.1-03-01.

31           **59-09-10. (110) Others treated as qualified beneficiaries.**

- 1       1. A charitable organization expressly designated to receive distributions under the  
2       terms of a charitable trust has the rights of a qualified beneficiary under chapters  
3       59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 if  
4       the charitable organization, on the date the charitable organization's qualification is  
5       being determined:
  - 6       a. Is a permissible distributee of trust income or principal;  
7       b. Would be a permissible distributee of trust income or principal upon the  
8       termination of the interests of other distributees or permissible distributees  
9       then receiving or eligible to receive distributions; or  
10      c. Would be a permissible distributee of trust income or principal if the trust  
11      terminated on that date.
- 12      2. A person appointed to enforce a trust created for the care of an animal or another  
13      noncharitable purpose as provided in section 59-12-08 or 59-12-09 has the rights  
14      of a qualified beneficiary under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14,  
15      59-15, 59-16, 59-17, 59-18, and 59-19.
- 16      3. The attorney general of this state has the rights of a qualified beneficiary with  
17      respect to a charitable trust having its principal place of administration in this state.

18      **59-09-11. (111) Nonjudicial settlement agreements.**

- 19      1. For purposes of this section, "interested persons" means a trustee and persons  
20      whose consent would be required in order to achieve a binding settlement were the  
21      settlement to be approved by the court.
- 22      2. Except as otherwise provided in subsection 3, interested persons may enter into a  
23      binding nonjudicial settlement agreement with respect to any matter involving a  
24      trust.
- 25      3. A nonjudicial settlement agreement is valid only to the extent it does not violate a  
26      material purpose of the trust and includes terms and conditions that could be  
27      properly approved by the court under chapters 59-09, 59-10, 59-11, 59-12, 59-13,  
28      59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 or other applicable law. A spendthrift  
29      provision in the terms of a trust is presumed to constitute a material purpose of the  
30      trust.

1           4.   Matters that may be resolved by a nonjudicial settlement agreement include the  
2               interpretation or construction of the terms of the trust, the approval of a trustee's  
3               report or accounting, direction to a trustee to refrain from performing a particular  
4               act or the grant to a trustee of any necessary or desirable power, the resignation or  
5               appointment of a trustee and the determination of a trustee's compensation,  
6               transfer of a trust's principal place of administration, liability of a trustee for an  
7               action relating to the trust, the extent or waiver of bond of a trustee, and the criteria  
8               for distribution to a beneficiary where the trustee is given discretion.

9           5.   Any interested person may request the court to approve a nonjudicial settlement  
10               agreement to determine whether the representation as provided in chapter 59-11  
11               was adequate and to determine whether the agreement contains terms and  
12               conditions the court could have properly approved.

13           **59-09-12. (112) Rules of construction.** The rules of construction that apply to the  
14               interpretation of and disposition of property by will or other governing instrument provided for  
15               under chapter 30.1-09.1 also apply as appropriate to the interpretation of the terms of a trust  
16               and the disposition of the trust property.

17           **SECTION 14.** Chapter 59-10 of the North Dakota Century Code is created and enacted  
18 as follows:

19           **59-10-01. (201) Role of court in administration of trust.**

- 20           1.   The court may intervene in the administration of a trust to the extent its jurisdiction  
21               is invoked by an interested person or as provided by law.  
22           2.   A trust is not subject to continuing judicial supervision unless ordered by the court.  
23           3.   A judicial proceeding involving a trust may relate to any matter involving the trust's  
24               administration, including a request for instructions and an action to declare rights.

25           **59-10-02. (202) Jurisdiction over trustee and beneficiary.**

- 26           1.   By accepting the trusteeship of a trust having its principal place of administration in  
27               this state or by moving the principal place of administration to this state, the trustee  
28               submits personally to the jurisdiction of the courts of this state regarding any matter  
29               involving the trust.  
30           2.   With respect to their interests in the trust, the beneficiaries of a trust having its  
31               principal place of administration in this state are subject to the jurisdiction of the

1           courts of this state regarding any matter involving the trust. By accepting a  
2           distribution from the trust, the recipient submits personally to the jurisdiction of the  
3           courts of this state regarding any matter involving the trust.

- 4           3. This section does not preclude other methods of obtaining jurisdiction over a  
5           trustee, beneficiary, or other person receiving property from the trust.

6           **59-10-03. Reserved.**

7           **59-10-04. (204) Venue.**

- 8           1. Except as otherwise provided in subsection 2, venue for a judicial proceeding  
9           involving a trust is in the county of this state in which the trust's principal place of  
10           administration is or will be located and, if the trust is created by will and the estate  
11           is not yet closed, in the county in which the decedent's estate is being  
12           administered.

- 13          2. If a trust has no trustee, venue for a judicial proceeding for the appointment of a  
14           trustee is in a county of this state in which a beneficiary resides, in a county in  
15           which any trust property is located, and if the trust is created by will, in the county  
16           in which the decedent's estate was or is being administered.

17          **SECTION 15.** Chapter 59-11 of the North Dakota Century Code is created and enacted  
18 as follows:

19          **59-11-01. (301) Representation - Basic effect.**

- 20          1. Notice to a person who may represent and bind another person under this chapter  
21           has the same effect as if notice were given directly to the other person. Notice of a  
22           hearing on any petition for a judicial hearing must be given as provided in the North  
23           Dakota Rules of Civil Procedure.
- 24          2. The consent of a person who may represent and bind another person under this  
25           chapter is binding on the person represented unless the person represented  
26           objects to the representation to the trustee or representative before the consent  
27           would otherwise have become effective.
- 28          3. Except as otherwise provided in sections 59-12-11 and 59-14-02, a person who  
29           under this chapter may represent a settlor who lacks capacity may receive notice  
30           and give a binding consent on the settlor's behalf.



4. A settlor may not represent and bind a beneficiary under this chapter with respect to the termination or modification of a trust under subsection 1 of section 59-12-11.

**59-11-02. (302) Representation by holder of general power of appointment.** The holder of a presently exercisable general power of appointment and the persons represented with respect to the particular question or dispute may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power. The term "presently exercisable general power of appointment" includes a testamentary general power of appointment having no conditions precedent to its exercise other than the death of the holder, the validity of the holder's last will and testament, and the inclusion of a provision in the will sufficient to exercise this power.

**59-11-03. (303) Representation by fiduciaries and parents.** To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

1. A conservator may represent and bind the estate that the conservator controls to the extent of the powers and authority conferred upon conservators generally or by court order.
2. A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed to the extent of the powers and authority conferred upon guardians generally or by court order.
3. An agent under a power of attorney having written authority to act with respect to the particular question or dispute may represent and bind the principal.
4. A trustee may represent and bind the beneficiaries of the trust.
5. A personal representative of a decedent's estate may represent and bind persons interested in the estate.
6. A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed. If a disagreement arises between parents seeking to represent the same minor child:
  - a. The parent who is a beneficiary of the trust that is the subject of the representation is entitled to represent the minor child;

b. If both parents are beneficiaries of the trust that is the subject of the representation, the parent who is a lineal descendant of the settlor is entitled to represent the minor child;

c. If neither parent is a beneficiary of the trust that is the subject of the representation, the parent who is a lineal descendant of the settlor is entitled to represent the minor child; and

d. If neither parent is a beneficiary or a lineal descendant of the settlor of the trust that is the subject of the representation, a guardian ad litem must be appointed to represent the minor child.

7. A person may represent and bind that person's unborn issue.

**59-11-04. (304) Representation by person having substantially identical interest.**

Unless otherwise represented, a minor, incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented with respect to the particular question or dispute.

**59-11-05. (305) Appointment of representative.**

1. If the court determines that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable. A representative may be appointed to represent several persons or interests.

2. A representative may act on behalf of the individual represented with respect to any matter arising under chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, whether or not a judicial proceeding concerning the trust is pending.

3. In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

**SECTION 16.** Chapter 59-12 of the North Dakota Century Code is created and enacted as follows:

1       **59-12-01. (401) Methods of creating trust.** A trust may be created by transfer of  
2 property to another person as trustee during the settlor's lifetime or by will or other disposition  
3 taking effect upon the settlor's death, declaration by the owner of property that the owner holds  
4 identifiable property as trustee, or exercise of a power of appointment in favor of a trustee.

5       **59-12-02. (402) Requirements for creation.**

- 6       1. A trust is created only if the settlor has capacity to create a trust, the settlor  
7 indicates an intention to create the trust, the trust has a definite beneficiary or is a  
8 charitable trust, a trust for the care of an animal, as provided in section 59-12-08,  
9 or a trust for a noncharitable purpose, as provided in section 59-12-09; the trustee  
10 has duties to perform; and the same person is not the sole trustee and sole  
11 beneficiary.
- 12       2. A beneficiary is definite if the beneficiary can be ascertained now or in the future,  
13 subject to any applicable rule against perpetuities.
- 14       3. A power in a trustee to select a beneficiary from an indefinite class is valid. If the  
15 power is not exercised within a reasonable time, the power fails and the property  
16 subject to the power passes to the persons who would have taken the property had  
17 the power not been conferred.

18       **59-12-03. (403) Trusts created in other jurisdictions.** A trust not created by will is  
19 validly created if its creation complies with the law of the jurisdiction in which the trust  
20 instrument was executed, or the law of the jurisdiction in which at the time of creation the settlor  
21 was domiciled, had a place of abode, or was a national; a trustee was domiciled or had a place  
22 of business; or any trust property was located.

23       **59-12-04. (404) Trust purposes.** A trust may be created only to the extent its  
24 purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its  
25 beneficiaries.

26       **59-12-05. (405) Charitable purposes - Enforcement.**

- 27       1. A charitable trust may be created for the relief of poverty, the advancement of  
28 education or religion, the promotion of health, governmental or municipal purposes,  
29 or other purposes the achievement of which is beneficial to the community.
- 30       2. If the terms of a charitable trust do not indicate a particular charitable purpose or  
31 beneficiary, the court may select one or more charitable purposes or beneficiaries.

1           The selection must be consistent with the settlor's intention to the extent it can be  
2           ascertained.

- 3           3.   The settlor of a charitable trust, among others, may maintain a proceeding to  
4           enforce the trust.

5           **59-12-06. (406) Creation of trust induced by fraud, duress, or undue influence.** A  
6           trust is void or subject to reformation by the court to the extent its creation was induced by  
7           fraud, duress, or undue influence.

8           **59-12-07. (407) Evidence of oral trust.** Except as required by section 47-11-02 or a  
9           statute other than chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17,  
10          59-18, and 59-19, a trust need not be evidenced by a trust instrument, but the creation of an  
11          oral trust and its terms, or an amendment or revocation of an oral trust, may be established only  
12          by clear and convincing evidence.

13          **59-12-08. (408) Trust for care of animal.**

- 14          1.   A trust may be created to provide for the care of an animal alive during the settlor's  
15          lifetime. The trust terminates upon the death of the animal or, if the trust was  
16          created to provide for the care of more than one animal alive during the settlor's  
17          lifetime, upon the death of the last surviving animal.

- 18          2.   A trust authorized by this section may be enforced by a person appointed in the  
19          terms of the trust or, if no person is so appointed, by a person appointed by the  
20          court. A person having an interest in the welfare of the animal may request the  
21          court to appoint a person to enforce the trust or to remove a person appointed.

- 22          3.   Property of a trust authorized by this section may be applied only to its intended  
23          use, except to the extent the court determines that the value of the trust property  
24          exceeds the amount required for the intended use. Except as otherwise provided  
25          in the terms of the trust, property not required for the intended use must be  
26          distributed to the settlor, if then living, otherwise to the settlor's successors in  
27          interest.

28          **59-12-09. (409) Noncharitable trust without ascertainable beneficiary.** Except as  
29          otherwise provided in section 59-12-08 or by another statute, the following rules apply:

- 1       1. A trust may be created for a noncharitable purpose without a definite or definitely  
2       ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be  
3       selected by the trustee.
- 4       2. A trust authorized by this section may be enforced by a person appointed in the  
5       terms of the trust or, if no person is so appointed, by a person appointed by the  
6       court.
- 7       3. Property of a trust authorized by this section may be applied only to its intended  
8       use, except to the extent the court determines that the value of the trust property  
9       exceeds the amount required for the intended use. Except as otherwise provided  
10      in the terms of the trust, property not required for the intended use must be  
11      distributed to the settlor, if then living, otherwise to the settlor's successors in  
12      interest.

13       **59-12-10. (410) Modification or termination of trust - Proceedings for approval or**  
14      **disapproval.**

- 15      1. In addition to the methods of termination prescribed by sections 59-12-11,  
16      59-12-12, 59-12-13, and 59-12-14, a trust terminates to the extent the trust is  
17      revoked or expires pursuant to its terms, no purpose of the trust remains to be  
18      achieved, or the purposes of the trust have become unlawful or impossible to  
19      achieve.
- 20      2. A proceeding to approve or disapprove a proposed modification or termination  
21      under sections 59-12-11, 59-12-12, 59-12-13, 59-12-14, 59-12-15, and 59-12-16,  
22      or trust combination or division under section 59-12-17, may be commenced by a  
23      trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding  
24      to modify the trust under section 59-12-13.

25       **59-12-11. (411) Modification or termination of noncharitable irrevocable trust by**  
26      **consent.**

- 27      1. A noncharitable irrevocable trust may be terminated upon consent of all of the  
28      beneficiaries if the court concludes that continuance of the trust is not necessary to  
29      achieve any material purpose of the trust. A noncharitable irrevocable trust may be  
30      modified upon consent of all of the beneficiaries if the court concludes that  
31      modification is not inconsistent with a material purpose of the trust.

2. Upon termination of a trust under subsection 1, the trustee shall distribute the trust property as agreed by the beneficiaries.

3. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection 1, the modification or termination may be approved by the court if the court is satisfied that if all of the beneficiaries had consented, the trust could have been modified or terminated under this section and the interests of a beneficiary who does not consent will be adequately protected.

**59-12-12. (412) Modification or termination because of unanticipated circumstances or inability to administer trust effectively.**

1. Upon petition by the trustee, the attorney general, or an interested party other than the settlor, the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

2. The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

3. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

**59-12-13. (413) Cy pres.**

1. Except as otherwise provided in subsection 2, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful, the trust does not fail, in whole or in part; the trust property does not revert to the settlor or the settlor's successors in interest; and the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

2. A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection 1 to apply cy pres to modify or terminate the trust.

**59-12-14. (414) Modification or termination of uneconomic trust.**

1       1. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust  
2       property having a total value less than one hundred thousand dollars may  
3       terminate the trust if the trustee concludes that the value of the trust property is  
4       insufficient to justify the cost of administration.

5       2. The court may modify or terminate a trust or remove the trustee and appoint a  
6       different trustee if the court determines that the value of the trust property is  
7       insufficient to justify the cost of administration.

8       3. Upon termination of a trust under this section, the trustee shall distribute the trust  
9       property in a manner consistent with the purposes of the trust.

10      4. This section does not apply to an easement for conservation or preservation.

11      **59-12-15. (415) Reformation to correct mistakes.** The court may reform the terms of  
12      a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by  
13      clear and convincing evidence that both the settlor's intent and the terms of the trust were  
14      affected by a mistake of fact or law, whether in expression or inducement.

15      **59-12-16. (416) Modification to achieve settlor's tax objectives.** To achieve the  
16      settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary  
17      to the settlor's probable intention. The court may provide that the modification has retroactive  
18      effect.

19      **59-12-17. (417) Combination and division of trusts.** After notice to the qualified  
20      beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into  
21      two or more separate trusts, if the result does not impair rights of any beneficiary or adversely  
22      affect achievement of the purposes of the trust. The terms of each new trust created by a  
23      division under this section do not have to be identical if the interest of each beneficiary is  
24      substantially the same under the terms of the trust prior to its division and the combined terms  
25      of all trusts after the division. Two or more trusts may be combined into a single trust if the  
26      interests of each beneficiary in the trust resulting from the combination are substantially the  
27      same as the combined interests of the beneficiary in the trusts prior to the combination. The  
28      trustee shall determine the terms controlling any trust after its combination as authorized by this  
29      section.

30      **59-12-18. Requisites of trust relating to real property.** A trust in relation to real  
31      property is not valid unless the trust is created or declared:

1       1. By a written instrument, subscribed by the trustee or by the trustee's agent thereto  
2       authorized in writing;

3       2. By the instrument under which the trustee claims the estate affected; or

4       3. By operation of law.

5       **SECTION 17.** Chapter 59-13 of the North Dakota Century Code is created and enacted  
6 as follows:

7       **59-13-01. (501) Rights of beneficiary's creditor or assignee.** To the extent a  
8 beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor  
9 or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or  
10 future distributions to or for the benefit of the beneficiary or other means. The court may limit  
11 the award to such relief as is appropriate under the circumstances.

12       **59-13-02. (502) Spendthrift provision.**

13       1. A spendthrift provision is valid if it restrains either the voluntary or involuntary  
14 transfer or both the voluntary and involuntary transfer of a beneficiary's interest.

15       2. A term of a trust providing that the interest of a beneficiary is held subject to a  
16 "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary  
17 and involuntary transfer of the beneficiary's interest.

18       3. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift  
19 provision and, except as otherwise provided in this chapter, a creditor or assignee  
20 of the beneficiary may not reach the interest or a distribution by the trustee before  
21 its receipt by the beneficiary.

22       **59-13-03. (503) Exceptions to spendthrift provision.**

23       1. In this section, "child" includes any person for whom an order or judgment for child  
24 support has been entered by a court of competent jurisdiction.

25       2. A spendthrift provision is unenforceable against:

26       a. A beneficiary's child, spouse, or former spouse who has a judgment or court  
27 order against the beneficiary for support or maintenance;

28       b. A judgment creditor who has provided services for the protection of a  
29 beneficiary's interest in the trust; and

30       c. A claim of this state or the United States to the extent a statute of this state or  
31 federal law so provides.



1       3.   The exceptions contained in subsection 2 do not apply to a special needs trust that  
2       meets the qualifications of 42 U.S.C. 1396p(d)(4)(A) if the application of  
3       subsection 2 to the trust causes the trust to be counted as a resource for medicaid  
4       or supplemental security income purposes or if the application of subsection 2 of  
5       the trust renders an otherwise eligible beneficiary with a disability to be ineligible  
6       for any program of publicly funded assistance, including medicaid or supplemental  
7       security income.

8       4.   A claimant against which a spendthrift provision cannot be enforced may obtain  
9       from a court an order attaching present or future distributions to or for the benefit of  
10      the beneficiary. The court may limit the award to such relief as is appropriate  
11      under the circumstances. If there is more than one permissible distributee, the  
12      court may grant such relief as is equitable.

13      **59-13-04. (504) Discretionary trusts - Effect of standard.**

14      1.   In this section, "child" includes any person for whom an order or judgment for child  
15      support has been entered by a court of competent jurisdiction.

16      2.   Except as otherwise provided in subsection 3, whether or not a trust contains a  
17      spendthrift provision, a creditor of a beneficiary may not compel a distribution that  
18      is subject to the trustee's discretion, even if the discretion is expressed in the form  
19      of a standard of distribution, or the trustee has abused the discretion.

20      3.   To the extent a trustee has not complied with a standard of distribution or has  
21      abused a discretion, a distribution may be ordered by the court to satisfy a  
22      judgment or court order against the beneficiary for support or maintenance of the  
23      beneficiary's child, spouse, or former spouse and the court shall direct the trustee  
24      to pay the child, spouse, or former spouse such amount as is equitable under the  
25      circumstances but not more than the amount the trustee would have been required  
26      to distribute to or for the benefit of the beneficiary had the trustee complied with the  
27      standard or not abused the discretion.

28      4.   This section does not limit the right of a beneficiary to maintain a judicial  
29      proceeding against a trustee for an abuse of discretion or failure to comply with a  
30      standard for distribution.

31      **59-13-05. (505) Creditor's claim against settlor.**

1       1. The following rules apply whether or not the terms of a trust contain a spendthrift  
2       provision. During the lifetime of the settlor, the property of a revocable trust is  
3       subject to claims of the settlor's creditors to the extent that the property would be  
4       subject to creditors' claims if the property had not been placed in the trust. With  
5       respect to an irrevocable trust, other than a special needs trust, a creditor or  
6       assignee of the settlor may reach the maximum amount that can be distributed to  
7       or for the settlor's benefit. If a trust has more than one settlor, the amount the  
8       creditor or assignee of a particular settlor may reach may not exceed the settlor's  
9       interest in the portion of the trust attributable to that settlor's contribution. After the  
10      death of a settlor, and subject to the settlor's right to direct the source from which  
11      liabilities will be paid, the property of a trust that was revocable immediately before  
12      the settlor's death is subject to claims of the settlor's creditors, costs of  
13      administration of the settlor's estate, the expenses of the settlor's funeral and  
14      disposal of remains, and statutory allowances to a surviving spouse and children to  
15      the extent the settlor's probate estate is inadequate to satisfy those claims, costs,  
16      expenses, and allowances. For purposes of this section, "statutory allowances"  
17      includes any homestead exception under chapter 47-18 and the allowances  
18      included in title 30.1.

19      2. For purposes of this section during the period the power may be exercised, the  
20      holder of a power of withdrawal is treated in the same manner as the settlor of a  
21      revocable trust to the extent of the property subject to the power and, upon the  
22      lapse, release, or waiver of the power, the holder is treated as the settlor of the  
23      trust only to the extent the value of the property affected by the lapse, release, or  
24      waiver exceeds the greater of the amount specified in section 2041(b)(2) or  
25      2514(e) of the Internal Revenue Code of 1986, or section 2503(b) of the Internal  
26      Revenue Code of 1986, or corresponding future provisions of federal tax law.

27      **59-13-06. (506) Overdue distribution.**

28      1. In this section, "mandatory distribution" means a distribution of income or principal  
29      which the trustee is required to make to a beneficiary under the terms of the trust,  
30      including a distribution upon termination of the trust. The term does not include a  
31      distribution subject to the exercise of the trustee's discretion even if:

- 1           a. The discretion is expressed in the form of a standard of distribution; or  
2           b. The terms of the trust authorizing a distribution couple language of discretion  
3             with language of direction.

- 4           2. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a  
5             beneficiary may reach a mandatory distribution of income or principal, including a  
6             distribution upon termination of the trust, if the trustee has not made the distribution  
7             to the beneficiary within a reasonable time after the designated distribution date.

8           **59-13-07. (507) Personal obligations of trustee.** Trust property is not subject to  
9             personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

10          **SECTION 18.** Chapter 59-14 of the North Dakota Century Code is created and enacted  
11          as follows:

12          **59-14-01. (601) Capacity of settlor of revocable trust.** The capacity required to  
13          create, amend, revoke, or add property to a revocable trust, or to direct the actions of the  
14          trustee of a revocable trust, is the same as that required to make a will.

15          **59-14-02. (602) Revocation or amendment of revocable trust.**

- 16          1. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor  
17             may revoke or amend the trust. This subsection does not apply to a trust created  
18             under an instrument executed before the effective date of this section.
- 19          2. If a revocable trust is created or funded by more than one settlor to the extent the  
20             trust consists of community property, the trust may be revoked by either spouse  
21             acting alone but may be amended only by joint action of both spouses; to the  
22             extent the trust consists of property other than community property, each settlor  
23             may revoke or amend the trust with regard to the portion of the trust property  
24             attributable to that settlor's contribution; and upon the revocation or amendment of  
25             the trust by fewer than all of the settlors, the trustee shall promptly notify the other  
26             settlors of the revocation or amendment.
- 27          3. The settlor may revoke or amend a revocable trust by substantial compliance with  
28             a method provided in the terms of the trust or, if the terms of the trust do not  
29             provide a method or the method provided in the terms is not expressly made  
30             exclusive, by a later will or codicil that expressly refers to the trust or any other  
31             method manifesting clear and convincing evidence of the settlor's intent.

1       4. Upon revocation of a revocable trust, the trustee shall deliver the trust property as  
2       the settlor directs.

3       5. A settlor's powers with respect to revocation, amendment, or distribution of trust  
4       property may be exercised by an agent under a power of attorney only to the  
5       extent expressly authorized by the terms of the trust or the power, exercised in  
6       writing and delivered to the trustee.

7       6. A conservator of the settlor or, if no conservator has been appointed, a guardian of  
8       the settlor may exercise a settlor's powers with respect to revocation, amendment,  
9       or distribution of trust property only with the approval of the court supervising the  
10      conservatorship or guardianship.

11      7. A trustee who does not know that a trust has been revoked or amended is not  
12      liable to the settlor or settlor's successors in interest for distributions made and  
13      other actions taken on the assumption that the trust had not been amended or  
14      revoked.

15      **59-14-03. (603) Settlor's powers - Powers of withdrawal.**

16      1. While a trust is revocable and the settlor has capacity to revoke the trust, rights of  
17      the beneficiaries are subject to the control of, and the duties of the trustee are  
18      owed exclusively to, the settlor.

19      2. During the period the power may be exercised, the holder of a power of withdrawal  
20      has the rights of a settlor of a revocable trust under this section to the extent of the  
21      property subject to the power.

22      **59-14-04. (604) Limitation on action contesting validity of revocable trust -**

23      **Distribution of trust property.**

24      1. A person may commence a judicial proceeding to contest the validity of a trust that  
25      was revocable at the settlor's death within the earlier of three years after the  
26      settlor's death or one hundred twenty days after the trustee sent the person a copy  
27      of the trust instrument and a notice informing the person of the trust's existence, of  
28      the trustee's name and address, and of the time allowed for commencing a  
29      proceeding.

30      2. Upon the death of the settlor of a trust that was revocable at the settlor's death, the  
31      trustee may proceed to distribute the trust property in accordance with the terms of

the trust. The trustee is not subject to liability for doing so unless the trustee knows of a pending judicial proceeding contesting the validity of the trust or a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

3. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

**SECTION 19.** Chapter 59-15 of the North Dakota Century Code is created and enacted as follows:

**59-15-01. (701) Accepting or declining trusteeship.**

1. Except as otherwise provided in subsection 3, a person designated as trustee accepts the trusteeship by substantially complying with a method of acceptance provided in the terms of the trust or, if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.
2. A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.
3. A person designated as trustee, without accepting the trusteeship, may act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary and inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

**59-15-02. (702) Trustee's bond.**

1. A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

2. The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

3. A regulated financial service institution qualified to do trust business in this state need not give bond, even if required by the terms of the trust.

**59-15-03. (703) Cotrustees.**

1. Cotrustees who are unable to reach a unanimous decision may act by majority decision.

2. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

3. A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

4. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

5. A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

6. Except as otherwise provided in subsection 7, a trustee who does not join in an action of another trustee is not liable for the action.

7. Each trustee shall exercise reasonable care to prevent a cotrustee from committing a serious breach of trust and compel a cotrustee to redress a serious breach of trust.

8. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

**59-15-04. (704) Vacancy in trusteeship - Appointment of successor.**

- 1        1. A vacancy in a trusteeship occurs if a person designated as trustee rejects the  
2        trusteeship, a person designated as trustee cannot be identified or does not exist,  
3        a trustee resigns, a trustee is disqualified or removed, a trustee dies, or a guardian  
4        or conservator is appointed for an individual serving as trustee.
- 5        2. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be  
6        filled. A vacancy in a trusteeship must be filled if the trust has no remaining  
7        trustee.
- 8        3. A vacancy in a trusteeship of a noncharitable trust which is required to be filled  
9        must be filled in the following order of priority. First, the vacancy must be filled by a  
10       person designated in the terms of the trust to act as successor trustee. Second,  
11       the vacancy must be filled by a person appointed by unanimous agreement of the  
12       qualified beneficiaries. Finally, the vacancy must be filled by a person appointed  
13       by the court.
- 14       4. A vacancy in a trusteeship of a charitable trust which is required to be filled must  
15       be filled in the following order of priority. First, the vacancy must be filled by a  
16       person designated in the terms of the trust to act as successor trustee. Second,  
17       the vacancy must be filled by a person selected by the charitable organizations  
18       expressly designated to receive distributions under the terms of the trust if the  
19       attorney general concurs in the selection. Finally, the vacancy must be filled by a  
20       person appointed by the court.
- 21       5. Whether or not a vacancy in a trusteeship exists or is required to be filled, the court  
22       may appoint an additional trustee or special fiduciary whenever the court considers  
23       the appointment necessary for the administration of the trust.

24       **59-15-05. (705) Resignation of trustee.**

- 25       1. A trustee may resign upon at least thirty days' notice to the qualified beneficiaries,  
26       the settlor, if living, and all cotrustees or with the approval of the court.
- 27       2. In approving a resignation, the court may issue orders and impose conditions  
28       reasonably necessary for the protection of the trust property.
- 29       3. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts  
30       or omissions of the trustee is not discharged or affected by the trustee's  
31       resignation.

**59-15-06. (706) Removal of trustee.**

1. The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.
2. The court may remove a trustee if the trustee has committed a serious breach of trust; if lack of cooperation among cotrustees substantially impairs the administration of the trust; if because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or if there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.
3. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection 2 of section 59-18-01 as may be necessary to protect the trust property or the interests of the beneficiaries.

**59-15-07. (707) Delivery of property by former trustee.**

1. Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.
2. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to the property.

**59-15-08. (708) Compensation of trustee.**

1. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.
2. If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if the duties of the trustee are substantially different from those contemplated when



the trust was created or the compensation specified by the terms of the trust would be unreasonably low or high.

**59-15-09. (709) Reimbursement of expenses.**

1. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for expenses that were properly incurred in the administration of the trust and, to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

2. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

**SECTION 20.** Chapter 59-16 of the North Dakota Century Code is created and enacted as follows:

**59-16-01. (801) Duty to administer trust.** Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its purposes and in accordance with chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

**59-16-02. (802) Duty of loyalty.**

1. A trustee shall administer the trust solely in the interests of the beneficiaries.

2. Subject to the rights of persons dealing with or assisting the trustee as provided in section 59-18-12, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless the transaction was authorized by the terms of the trust; the transaction was approved by the court; the beneficiary did not commence a judicial proceeding within the time allowed by section 59-18-05; the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 59-18-09; or the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

3. A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and

fiduciary interests if it is entered into by the trustee with the trustee's spouse; the trustee's descendants, siblings, parents, or their spouses; an agent or attorney of the trustee; or a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

4. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

5. A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

6. An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 59-17. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee at least annually shall notify the persons entitled under section 59-16-13 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

7. In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

1           8.   If fair to the beneficiaries, an agreement between a trustee and a beneficiary  
2               relating to the appointment or compensation of the trustee; payment of reasonable  
3               compensation to the trustee; a transaction between a trust and another trust,  
4               decedent's estate, or conservatorship of which the trustee is a fiduciary or in which  
5               a beneficiary has an interest; a deposit of trust money in a regulated financial  
6               service institution operated by the trustee; or an advance by the trustee of money  
7               for the protection of the trust is not precluded by this section.

8           9.   The court may appoint a special fiduciary to make a decision with respect to any  
9               proposed transaction that might violate this section if entered into by the trustee.

10          **59-16-03. (803) Impartiality.** If a trust has two or more beneficiaries, the trustee shall  
11 act impartially in investing, managing, and distributing the trust property, giving due regard to  
12 the beneficiaries' respective interests.

13          **59-16-04. (804) Prudent administration.** A trustee shall administer the trust as a  
14 prudent person would by considering the purposes, terms, distributional requirements, and  
15 other circumstances of the trust. In satisfying this standard, the trustee shall exercise  
16 reasonable care, skill, and caution.

17          **59-16-05. (805) Costs of administration.** In administering a trust, the trustee may  
18 incur only costs that are reasonable in relation to the trust property, the purposes of the trust,  
19 and the skills of the trustee.

20          **59-16-06. (806) Trustee's skills.** A trustee who has special skills or expertise, or is  
21 named trustee in reliance upon the trustee's representation that the trustee has special skills or  
22 expertise, shall use those special skills or expertise.

23          **59-16-07. (807) Delegation by trustee.**

24          1.   A trustee may delegate duties and powers that a prudent trustee of comparable  
25               skills could properly delegate under the circumstances. The trustee shall exercise  
26               reasonable care, skill, and caution in selecting an agent; establishing the scope  
27               and terms of the delegation, consistent with the purposes and terms of the trust;  
28               and periodically reviewing the agent's actions in order to monitor the agent's  
29               performance and compliance with the terms of the delegation.

30          2.   In performing a delegated function, an agent owes a duty to the trust to exercise  
31               reasonable care to comply with the terms of the delegation.

1       3. A trustee who complies with subsection 1 is not liable to the beneficiaries or to the  
2       trust for an action of the agent to whom the function was delegated.

3       4. By accepting a delegation of powers or duties from the trustee of a trust that is  
4       subject to the law of this state, an agent submits to the jurisdiction of the courts of  
5       this state.

6       **59-16-08. (808) Powers to direct.**

7       1. While a trust is revocable, the trustee may follow a direction of the settlor that is  
8       contrary to the terms of the trust.

9       2. If the terms of a trust confer upon a person other than the settlor of a revocable  
10      trust power to direct certain actions of the trustee, the trustee shall act in  
11      accordance with an exercise of the power unless the attempted exercise is  
12      manifestly contrary to the terms of the trust or the trustee knows the attempted  
13      exercise would constitute a serious breach of a fiduciary duty that the person  
14      holding the power owes to the beneficiaries of the trust.

15      3. The terms of a trust may confer upon a trustee or other person a power to direct  
16      the modification or termination of the trust.

17      4. A person, other than a beneficiary, who holds a power to direct is presumptively a  
18      fiduciary who, as such, is required to act in good faith with regard to the purposes  
19      of the trust and the interests of the beneficiaries. The holder of a power to direct is  
20      liable for any loss that results from breach of fiduciary duty.

21      **59-16-09. (809) Control and protection of trust property.** A trustee shall take  
22      reasonable steps to take control of and protect the trust property.

23      **59-16-10. (810) Recordkeeping and identification of trust property.**

24      1. A trustee shall keep adequate records of the administration of the trust.

25      2. A trustee shall keep trust property separate from the trustee's own property.

26      3. Except as otherwise provided in subsection 4, a trustee, other than a trustee  
27      granted trust or fiduciary powers from a federal or state authority, shall cause the  
28      trust property to be designated so that the interest of the trust, to the extent  
29      feasible, appears in records maintained by a party other than a trustee or  
30      beneficiary.

- 1           4. If the trustee maintains records clearly indicating the respective interests, a trustee  
2           may invest as a whole the property of two or more separate trusts.

3           **59-16-11. (811) Enforcement and defense of claims.** A trustee shall take reasonable  
4           steps to enforce claims of the trust and to defend claims against the trust.

5           **59-16-12. (812) Collecting trust property.** A trustee shall take reasonable steps to  
6           compel a former trustee or other person to deliver trust property to the trustee and to redress a  
7           breach of trust known to the trustee to have been committed by a former trustee or other  
8           fiduciary.

9           **59-16-13. (813) Duty to inform and report.**

- 10          1. A trustee shall keep the qualified beneficiaries of the trust reasonably informed  
11          about the administration of the trust and of the material facts necessary for them to  
12          protect their interests. Unless unreasonable under the circumstances, a trustee  
13          shall promptly respond to a beneficiary's request for information related to the  
14          administration of the trust.

- 15          2. A trustee upon request of a beneficiary shall promptly furnish to the beneficiary a  
16          copy of the trust instrument.

- 17          3. A trustee within sixty days after accepting a trusteeship shall notify the qualified  
18          beneficiaries of the acceptance and of the trustee's name, address, and telephone  
19          number.

- 20          4. A trustee within sixty days after the date the trustee acquires knowledge of the  
21          creation of an irrevocable trust, or the date the trustee acquires knowledge that a  
22          formerly revocable trust has become irrevocable, whether by the death of the  
23          settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence,  
24          of the identity of the settlor or settlors, of the right to request a copy of the trust  
25          instrument, and of the right to a trustee's report as provided in subsection 6.

- 26          5. A trustee shall notify the qualified beneficiaries in advance of any change in the  
27          method or rate of the trustee's compensation.

- 28          6. A trustee shall send to the distributees or permissible distributees of trust income  
29          or principal, and to other qualified or nonqualified beneficiaries who request it, at  
30          least annually and at the termination of the trust, a report of the trust property,  
31          liabilities, receipts, and disbursements, including the source and amount of the

trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

7. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

**59-16-14. (814) Discretionary powers - Tax savings.**

1. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.
2. Subject to subsection 4, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply, a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, or corresponding future provisions of federal tax law, and a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.
3. A power whose exercise is limited or prohibited by subsection 2 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.
4. Subsection 2 does not apply to a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, or corresponding future provisions of federal tax law, was previously allowed; any trust during any period that the trust

1           may be revoked or amended by its settlor; or a trust if contributions to the trust  
2           qualify for the annual exclusion under section 2503(c) of the Internal Revenue  
3           Code of 1986, or corresponding future provisions of federal tax law.

4           **59-16-15. (815) General powers of trustee.** A trustee, without authorization by the  
5 court, may exercise powers conferred by the terms of the trust and, except as limited by the  
6 terms of the trust, all powers over the trust property which an unmarried competent owner has  
7 over individually owned property, any other powers appropriate to achieve the proper  
8 investment, management, and distribution of the trust property, and any other powers conferred  
9 by chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.  
10 The exercise of a power is subject to the fiduciary duties prescribed by this chapter.

11           **59-16-16. (816) Specific powers of trustee.** Without limiting the authority conferred  
12 by section 59-16-15, a trustee may:

- 13           1. Collect trust property and accept or reject additions to the trust property from a  
14           settlor or any other person.
- 15           2. Acquire or sell property, for cash or on credit, at public or private sale.
- 16           3. Exchange, partition, or otherwise change the character of trust property.
- 17           4. Deposit trust money in an account in a regulated financial service institution.
- 18           5. Borrow money, with or without security, and mortgage or pledge trust property for a  
19           period within or extending beyond the duration of the trust.
- 20           6. With respect to an interest in a proprietorship, partnership, limited liability company,  
21           business trust, corporation, or other form of business or enterprise, continue the  
22           business or other enterprise and take any action that may be taken by  
23           shareholders, members, or property owners, including merging, dissolving, or  
24           otherwise changing the form of business organization or contributing additional  
25           capital.
- 26           7. With respect to stocks or other securities, exercise the rights of an absolute owner,  
27           including the right to vote, or give proxies to vote, with or without power of  
28           substitution, or enter into or continue a voting trust agreement; hold a security in  
29           the name of a nominee or in other form without disclosure of the trust so that title  
30           may pass by delivery; pay calls, assessments, and other sums chargeable or  
31           accruing against the securities, and sell or exercise stock subscription or

1           conversion rights; and deposit the securities with a depository or other regulated  
2           financial service institution.

3           8.   With respect to an interest in real property, construct or make ordinary or  
4           extraordinary repairs to, alterations to, or improvements in, buildings or other  
5           structures, demolish improvements, raze existing or erect new party walls or  
6           buildings, subdivide or develop land, dedicate land to public use or grant public or  
7           private easements, and make or vacate plats and adjust boundaries.

8           9.   Enter into a lease for any purpose as lessor or lessee, including a lease or other  
9           arrangement for exploration and removal of natural resources, with or without the  
10          option to purchase or renew, for a period within or extending beyond the duration  
11          of the trust.

12          10.   Grant an option involving a sale, lease, or other disposition of trust property or  
13          acquire an option for the acquisition of property, including an option exercisable  
14          beyond the duration of the trust, and exercise an option so acquired.

15          11.   Insure the property of the trust against damage or loss and insure the trustee, the  
16          trustee's agents, and beneficiaries against liability arising from the administration of  
17          the trust.

18          12.   Abandon or decline to administer property of no value or of insufficient value to  
19          justify its collection or continued administration.

20          13.   With respect to possible liability for violation of environmental law, inspect or  
21          investigate property the trustee holds or has been asked to hold, or property owned  
22          or operated by an organization in which the trustee holds or has been asked to  
23          hold an interest for the purpose of determining the application of environmental law  
24          with respect to the property; take action to prevent, abate, or otherwise remedy any  
25          actual or potential violation of any environmental law affecting property held directly  
26          or indirectly by the trustee, whether taken before or after the assertion of a claim or  
27          the initiation of governmental enforcement; decline to accept property into trust or  
28          disclaim any power with respect to property that is or may be burdened with liability  
29          for violation of environmental law; compromise claims against the trust which may  
30          be asserted for an alleged violation of environmental law; and pay the expense of



any inspection, review, abatement, or remedial action to comply with environmental law.

14. Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust.

15. Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust.

16. Exercise elections with respect to federal, state, and local taxes.

17. Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

18. Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans.

19. Pledge trust property to guarantee loans made by others to the beneficiary.

20. Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed.

21. Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian; paying it to the beneficiary's custodian under chapter 47-24.1 and for that purpose, creating a custodianship or custodial trust; if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

- 1        22. On distribution of trust property or the division or termination of a trust, make  
2        distributions in divided or undivided interests, allocate particular assets in  
3        proportionate or disproportionate shares, value the trust property for those  
4        purposes, and adjust for resulting differences in valuation.
- 5        23. Resolve a dispute concerning the interpretation of the trust of the trust's  
6        administration by mediation, arbitration, or other procedure for alternative dispute  
7        resolution.
- 8        24. Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to  
9        protect trust property and the trustee in the performance of the trustee's duties.
- 10       25. Sign and deliver contracts and other instruments that are useful to achieve or  
11       facilitate the exercise of the trustee's powers.
- 12       26. On termination of the trust, exercise the powers appropriate to wind up the  
13       administration of the trust and distribute the trust property to the persons entitled to  
14       the property.

15       **59-16-17. (817) Distribution upon termination.**

- 16       1. Upon termination or partial termination of a trust, the trustee may send to the  
17       beneficiaries a proposal for distribution. The right of any beneficiary to object to  
18       the proposed distribution terminates if the beneficiary does not notify the trustee of  
19       an objection within thirty days after the proposal was sent, but only if the proposal  
20       informed the beneficiary of the right to object and of the time allowed for objection.
- 21       2. Upon the occurrence of an event terminating or partially terminating a trust, the  
22       trustee shall proceed expeditiously to distribute the trust property to the persons  
23       entitled to it, subject to the right of the trustee to retain a reasonable reserve for the  
24       payment of debts, expenses, and taxes.
- 25       3. A release by a beneficiary of a trustee from liability for breach of trust is invalid to  
26       the extent it was induced by improper conduct of the trustee or the beneficiary, at  
27       the time of the release, did not know of the beneficiary's rights or of the material  
28       facts relating to the breach.

29       **SECTION 21.** Chapter 59-17 of the North Dakota Century Code is created and enacted  
30 as follows:

31       **59-17-01. Prudent investor rule.**

1. Except as otherwise provided in subsection 2, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

2. The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

**59-17-02. Standard of care - Portfolio strategy - Risk and return objectives.**

1. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

2. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

3. Among circumstances a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:

- a. General economic conditions;
- b. The possible effect of inflation or deflation;
- c. The expected tax consequences of investment decisions or strategies;
- d. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
- e. The expected total return from income and the appreciation of capital;
- f. Other resources of the beneficiaries;
- g. Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
- h. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

1           4.   A trustee shall make a reasonable effort to verify facts relevant to the investment  
2                   and management of trust assets.

3           5.   A trustee may invest in any kind of property or type of investment consistent with  
4                   the standards of this title.

5           **59-17-03. Diversification.** A trustee shall diversify the investments of the trust unless  
6 the trustee reasonably determines that, because of special circumstances, the purposes of the  
7 trust are better served without diversifying.

8           **59-17-04. Duties at inception of trusteeship.** Within a reasonable time after  
9 accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and  
10 make and implement decisions concerning the retention and disposition of assets, in order to  
11 bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and  
12 other circumstances of the trust and with the requirements of this chapter.

13          **59-17-05. Reviewing compliance.** Compliance with the prudent investor rule is  
14 determined in light of the facts and circumstances existing at the time of a trustee's decision or  
15 action and not by hindsight.

16          **59-17-06. Language invoking standard of this chapter.** The following terms or  
17 comparable language in the provisions of a trust, unless otherwise limited or modified,  
18 authorizes any investment or strategy permitted under this chapter: "investments permissible  
19 by law for investment of trust funds", "legal investments", "authorized investments", "using the  
20 judgment and care under the circumstances then prevailing that persons of prudence,  
21 discretion, and intelligence exercise in the management of their own affairs, not in regard to  
22 speculation but in regard to the permanent disposition of their funds, considering the probable  
23 income as well as the probable safety of their capital", "prudent man rule", "prudent trustee  
24 rule", "prudent person rule", and "prudent investor rule".

25          **SECTION 22.** Chapter 59-18 of the North Dakota Century Code is created and enacted  
26 as follows:

27          **59-18-01. (1001) Remedies for breach of trust.**

28          1.   A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of  
29                   trust.

30          2.   To remedy a breach of trust that has occurred or may occur, the court may compel  
31                   the trustee to perform the trustee's duties; enjoin the trustee from committing a

1 breach of trust; compel the trustee to redress a breach of trust by paying money,  
2 restoring property, or other means; order a trustee to account; appoint a special  
3 fiduciary to take possession of the trust property and administer the trust; suspend  
4 the trustee; remove the trustee as provided in section 59-15-06; reduce or deny  
5 compensation to the trustee; subject to section 59-18-12, void an act of the trustee,  
6 impose a lien or a constructive trust on trust property, or trace trust property  
7 wrongfully disposed of and recover the property or its proceeds; or order any other  
8 appropriate relief.

9 **59-18-02. (1002) Damages for breach of trust.**

- 10 1. A trustee who commits a breach of trust is liable to the beneficiaries affected for  
11 the greater of the amount required to restore the value of the trust property and  
12 trust distributions to what they would have been had the breach not occurred or the  
13 profit the trustee made by reason of the breach.
- 14 2. Except as otherwise provided in this subsection, if more than one trustee is liable  
15 to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the  
16 other trustee or trustees. A trustee is not entitled to contribution if the trustee was  
17 substantially more at fault than another trustee or if the trustee committed the  
18 breach of trust in bad faith or with reckless indifference to the purposes of the trust  
19 or the interests of the beneficiaries. A trustee who received a benefit from the  
20 breach of trust is not entitled to contribution from another trustee to the extent of  
21 the benefit received.

22 **59-18-03. (1003) Damages in absence of breach.** A trustee is accountable to an  
23 affected beneficiary for any profit made by the trustee arising from the administration of the  
24 trust, even absent a breach of trust. Absent a breach of trust, a trustee is not liable to a  
25 beneficiary for a loss or depreciation in the value of trust property or for not having made a  
26 profit.

27 **59-18-04. (1004) Attorney's fees and costs.** In a judicial proceeding involving the  
28 administration of a trust, the court, as justice and equity may require, may award costs and  
29 expenses, including reasonable attorney's fees, to any party, to be paid by another party or  
30 from the trust that is the subject of the controversy.

31 **59-18-05. (1005) Limitation of action against trustee.**

1       1. A beneficiary may not commence a proceeding against a trustee for breach of trust  
2       more than one year after the date the beneficiary or a representative of the  
3       beneficiary was sent a report that adequately disclosed the existence of a potential  
4       claim for breach of trust and informed the beneficiary of the time allowed for  
5       commencing a proceeding.

6       2. A report adequately discloses the existence of a potential claim for breach of trust if  
7       it provides sufficient information so that the beneficiary or representative knows of  
8       the potential claim or should have inquired into its existence.

9       3. If subsection 1 does not apply, a judicial proceeding by a beneficiary against a  
10      trustee for breach of trust must be commenced within five years after whichever  
11      occurs first: the removal, resignation, or death of the trustee; the termination of the  
12      beneficiary's interest in the trust; or the termination of the trust.

13      **59-18-06. (1006) Reliance on trust instrument.** A trustee who acts in reasonable  
14      reliance on the terms of the trust as expressed in the trust instrument is not liable to a  
15      beneficiary for a breach of trust to the extent the breach resulted from the reliance.

16      **59-18-07. (1007) Event affecting administration or distribution.** If the happening of  
17      an event, including marriage, divorce, performance of educational requirements, or death,  
18      affects the administration or distribution of a trust, a trustee who has exercised reasonable care  
19      to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of  
20      knowledge.

21      **59-18-08. (1008) Exculpation of trustee.**

22      1. A term of a trust relieving a trustee of liability for breach of trust is unenforceable to  
23      the extent that the term relieves the trustee of liability for breach of trust committed  
24      in bad faith or with reckless indifference to the purposes of the trust or the interests  
25      of the beneficiaries or was inserted as the result of an abuse by the trustee of a  
26      fiduciary or confidential relationship to the settlor.

27      2. An exculpatory term drafted or caused to be drafted by the trustee is invalid as an  
28      abuse of a fiduciary or confidential relationship unless the trustee proves that the  
29      exculpatory term is fair under the circumstances and that its existence and  
30      contents were adequately communicated to the settlor.

1       **59-18-09. (1009) Beneficiary's consent, release, or ratification.** A trustee is not  
2       liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting  
3       the breach, released the trustee from liability for the breach, or ratified the transaction  
4       constituting the breach, unless the consent, release, or ratification of the beneficiary was  
5       induced by improper conduct of the trustee or at the time of the consent, release, or ratification,  
6       the beneficiary did not know of the beneficiary's rights or of the material facts relating to the  
7       breach.

8       **59-18-10. (1010) Limitation on personal liability of trustee.**

- 9       1. Except as otherwise provided in the contract, a trustee is not personally liable on a  
10       contract properly entered into in the trustee's fiduciary capacity in the course of  
11       administering the trust if the trustee in the contract disclosed the fiduciary capacity.  
12       2. A trustee is personally liable for torts committed in the course of administering a  
13       trust or for obligations arising from ownership or control of trust property, including  
14       liability for violation of environmental law, only if the trustee is personally at fault.  
15       3. A claim based on a contract entered into by a trustee in the trustee's fiduciary  
16       capacity, on an obligation arising from ownership or control of trust property, or on  
17       a tort committed in the course of administering a trust, may be asserted in a judicial  
18       proceeding against the trustee in the trustee's fiduciary capacity, whether or not the  
19       trustee is personally liable for the claim.

20       **59-18-11. (1011) Interest as general partner.**

- 21       1. Except as otherwise provided in subsection 3 or unless personal liability is imposed  
22       in the contract, a trustee who holds an interest as a general partner in a general or  
23       limited partnership is not personally liable on a contract entered into by the  
24       partnership after the trust's acquisition of the interest if the fiduciary capacity was  
25       disclosed in the contract or in a statement previously filed under title 45.  
26       2. Except as otherwise provided in subsection 3, a trustee who holds an interest as a  
27       general partner is not personally liable for torts committed by the partnership or for  
28       obligations arising from ownership or control of the interest unless the trustee is  
29       personally at fault.  
30       3. The immunity provided by this section does not apply if an interest in the  
31       partnership is held by the trustee in a capacity other than that of trustee or is held

by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

4. If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

**59-18-12. (1012) Protection of person dealing with trustee.**

1. A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers, is protected from liability as if the trustee properly exercised the power.

2. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

3. A person who in good faith delivers assets to a trustee need not ensure their proper application.

4. A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.

5. Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

**59-18-13. (1013) Certification of trust.**

1. Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing information that includes that the trust exists and the date the trust instrument was executed, the identity of the settlor, the identity and address of the currently acting trustee, the powers of the trustee, the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust, the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are



required in order to exercise powers of the trustee, the trust's taxpayer  
identification number, and the manner of taking title to trust property.

2. A certification of trust may be signed or otherwise authenticated by any trustee.

3. A certification of trust must state that the trust has not been revoked, modified, or  
amended in any manner that would cause the representations contained in the  
certification of trust to be incorrect.

4. A certification of trust need not contain the dispositive terms of a trust.

5. A recipient of a certification of trust may require the trustee to furnish copies of  
those excerpts from the original trust instrument and later amendments which  
designate the trustee and confer upon the trustee the power to act in the pending  
transaction.

6. A person who acts in reliance upon a certification of trust without knowledge that  
the representations contained therein are incorrect is not liable to any person for so  
acting and may assume without inquiry the existence of the facts contained in the  
certification. Knowledge of the terms of the trust may not be inferred solely from  
the fact that a copy of all or part of the trust instrument is held by the person relying  
upon the certification.

7. A person who in good faith enters into a transaction in reliance upon a certification  
of trust may enforce the transaction against the trust property as if the  
representations contained in the certification were correct.

8. A person making a demand for the trust instrument in addition to a certification of  
trust or excerpts is liable for damages if the court determines that the person did  
not act in good faith in demanding the trust instrument.

9. This section does not limit the right of a person to obtain a copy of the trust  
instrument in a judicial proceeding concerning the trust.

**SECTION 23.** Chapter 59-19 of the North Dakota Century Code is created and enacted  
as follows:

**59-19-01. (1102) Electronic records and signatures.** The provisions of chapters  
59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 governing the  
legal effect, validity, or enforceability of electronic records or electronic signatures, and of  
contracts formed or performed with the use of such records or signatures, conform to the

requirements of section 102 of the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7002] and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

**59-19-02. (1106) Application to existing relationships.**

1. Except as otherwise provided in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 as of August 1, 2007:

a. Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19:

(1) Apply to all trusts created before, on, or after that date;

(2) Apply to all judicial proceedings concerning trusts commenced on or after that date; and

(3) Apply to judicial proceedings concerning trusts commenced before that date unless the court finds that application of a particular provision of these chapters would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of these chapters do not apply and the superseded law applies;

b. Any rule of construction or presumption provided in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 applies to trust instruments executed before that date unless there is a clear indication of a contrary intent in the terms of the trust; and

c. An act done before that date is not affected by chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

2. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before August 1, 2007, that statute continues to apply to the right even if it has been repealed or superseded.

**SECTION 24.** Chapter 59-20 of the North Dakota Century Code is created and enacted as follows:

**59-20-01. Private foundations - Charitable trusts - Split-interest trusts.**

- 1        1. Any will or trust instrument creating a trust that is a "private foundation", as defined  
2        in section 509(a) of the Internal Revenue Code of 1954, or a "charitable trust", as  
3        defined in section 4947(a)(1) of the Internal Revenue Code of 1954, or a  
4        "split-interest trust", as defined in section 4947(a)(2) of the Internal Revenue Code  
5        of 1954, and any other instrument governing the trustee of any such trust, or the  
6        use, retention, or disposition of any of the income or property of such trust, may be  
7        deemed to have incorporated within the will, trust instrument, or other governing  
8        instrument, with the same effect as though such language were included in the will,  
9        trust instrument, or other governing instrument, the following provisions with  
10       respect to the trust and the trustee thereof, and, except as the contrary is provided  
11       in subsection 2, such provisions govern the administration and distribution of any  
12       such trust, irrespective of any provisions of any applicable will, trust instrument, or  
13       other governing instrument, statute, or law of this state to the contrary:
- 14       a. The trustee shall distribute for each taxable year of the trust amounts at least  
15       sufficient to avoid liability for the tax imposed by section 4942(a) of the  
16       Internal Revenue Code of 1954, as now enacted or as hereafter amended.
- 17       b. The trustee may not engage in any act of "self-dealing", as defined in  
18       section 4941(d) of the Internal Revenue Code of 1954, which would give rise  
19       to any liability for the tax imposed by section 4941(a) of the Internal Revenue  
20       Code of 1954.
- 21       c. The trustee may not retain any "excess business holdings", as defined in  
22       section 4943(c) of the Internal Revenue Code of 1954, which would give rise  
23       to any liability for the tax imposed by section 4943(a) of the Internal Revenue  
24       Code of 1954.
- 25       d. The trustee may not make any investments that would jeopardize the carrying  
26       out of any of the exempt purposes of the trust, within the meaning of section  
27       4944 of the Internal Revenue Code of 1954, so as to give rise to any liability  
28       for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954.
- 29       e. The trustee may not make any "taxable expenditure", as defined in  
30       section 4945(d) of the Internal Revenue Code of 1954, which would give rise

1                   to any liability for the tax imposed by section 4945(a) of the Internal Revenue  
2                   Code of 1954.

3           2. Subsection 1 does not apply to the extent that a court of competent jurisdiction  
4           determines that application would be contrary to the terms of the will, trust  
5           instrument, or other governing instrument described in subsection 1 and that such  
6           will, trust instrument, or other governing instrument may not be changed to conform  
7           to subsection 1.

8           3. As used in this section, "trustee" means a corporation, individual, or other legal  
9           entity acting as an original, added, or successor trustee of a testamentary or  
10           inter vivos trust estate. Any reference to a particular section of the Internal  
11           Revenue Code of 1954 includes, as now enacted or as hereafter amended, such  
12           section and any provision of federal law as is or may hereafter be applicable,  
13           cognate to such section.

14           4. This section does not impair the rights and powers of the attorney general or the  
15           courts of this state with respect to any trust.

16           **SECTION 25. REPEAL.** Chapters 30.1-33, 30.1-34, 59-01, 59-02, 59-03, 59-04,  
17   59-04.2, and 59-05 of the North Dakota Century Code are repealed.