

SENATE BILL NO. 393

February 25, 1999, Introduced by Senator DINGELL and referred to the Committee on Economic Development, International Trade and Regulatory Affairs.

A bill to enact the uniform principal and income act; to prescribe the manner in which receipts and expenditures of trusts and estates are credited and charged between income and principal; to make uniform the law with respect to principal and income allocation; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 ARTICLE 1

2 Sec. 101. This act shall be known and may be cited as the
3 "uniform principal and income act".

4 Sec. 102. As used in this act:

5 (a) "Accounting period" means a calendar year unless another
6 12-month period is selected by a fiduciary. Accounting period
7 includes a portion of a calendar year or other 12-month period
8 that begins when an income interest begins or ends when an income
9 interest ends.

1 (b) "Beneficiary" means, in the case of a decedent's estate,
2 an heir, legatee, or devisee and, in the case of a trust, an
3 income beneficiary or remainder beneficiary.

4 (c) "Fiduciary" means a personal representative or trustee.
5 Fiduciary includes an executor, administrator, successor personal
6 representative, and special administrator, and a person perform-
7 ing substantially the same function as 1 or more of them.

8 (d) "Income" means money or property that a fiduciary
9 receives as current return from a principal asset. Income
10 includes a portion of receipts from a sale, exchange, or liquida-
11 tion of a principal asset, to the extent provided in article 4.

12 (e) "Income beneficiary" means a person to whom net income
13 of a trust is or may be payable.

14 (f) "Income interest" means the right of an income benefi-
15 ciary to receive all or part of net income, whether the terms of
16 the trust require it to be distributed or authorize it to be dis-
17 tributed in the trustee's discretion.

18 (g) "Mandatory income interest" means the right of an income
19 beneficiary to receive net income that the terms of the trust
20 require the fiduciary to distribute.

21 (h) "Net income" means the total receipts allocated to
22 income during an accounting period minus the disbursements made
23 from income during the period, plus or minus transfers under this
24 act to or from income during the period.

25 (i) "Person" means an individual, corporation, business
26 trust, estate, trust, partnership, limited liability company,
27 association, joint venture, or government; governmental

1 subdivision, agency, or instrumentality; public corporation; or
2 another legal or commercial entity.

3 (j) "Principal" means property held in trust for distribu-
4 tion to a remainder beneficiary when the trust terminates.

5 (k) "Remainder beneficiary" means a person entitled to
6 receive principal when an income interest ends.

7 (l) "Terms of a trust" means the manifestation of the intent
8 of a settlor or decedent with respect to the trust, expressed in
9 a manner that admits of its proof in a judicial proceeding,
10 whether by written or spoken words or by conduct.

11 (m) "Trustee" includes an original, additional, or successor
12 trustee, whether or not appointed or confirmed by a court.

13 Sec. 103. (1) In allocating receipts and disbursements to
14 or between principal and income, and with respect to any matter
15 found within the scope of articles 2 and 3, a fiduciary shall do
16 all of the following:

17 (a) Administer a trust or estate in accordance with the
18 terms of the trust or the will, even if there is a different pro-
19 vision in this act.

20 (b) Administer a trust or estate in accordance with this act
21 if the terms of the trust or the will do not contain a different
22 provision or do not give the fiduciary a discretionary power of
23 administration.

24 (c) Add a receipt or charge a disbursement to principal to
25 the extent that the terms of the trust and this act do not pro-
26 vide a rule for allocating the receipt or disbursement to or
27 between principal and income.

1 (2) A fiduciary may administer a trust or estate by the
2 exercise of a discretionary power of administration given to the
3 fiduciary by the terms of the trust or the will, even if the
4 exercise of the power produces a result different from a result
5 required or permitted under this act.

6 (3) In exercising the power to adjust under section 104 or a
7 discretionary power of administration regarding a matter within
8 the scope of this act, whether granted by the terms of a trust or
9 a will, or as provided in this act, a fiduciary shall administer
10 a trust or estate impartially, based on what is fair and reason-
11 able to all of the beneficiaries, except to the extent that the
12 terms of the trust or the will clearly manifest an intention that
13 the fiduciary shall or may favor 1 or more of the beneficiaries.
14 A determination in accordance with this act is presumed to be
15 fair and reasonable to all of the beneficiaries.

16 Sec. 104. (1) A trustee may adjust between principal and
17 income to the extent the trustee considers necessary if the
18 trustee invests and manages trust assets as a prudent investor,
19 the terms of the trust describe the amount that may or must be
20 distributed to a beneficiary by referring to the trust's income,
21 and the trustee determines, after applying the provisions in sec-
22 tion 103(1), that the trustee is unable to comply with section
23 103(3).

24 (2) In deciding whether and to what extent to exercise the
25 power conferred by subsection (1), a trustee shall consider all
26 factors relevant to the trust and its beneficiaries, including
27 the following factors to the extent each is relevant:

1 (a) The trust's nature, purpose, and expected duration.

2 (b) The settlor's intent.

3 (c) The identity and circumstances of the beneficiaries.

4 (d) The needs for liquidity, regularity of income, and pre-
5 servation and appreciation of capital.

6 (e) The assets held in the trust; the extent to which they
7 consist of financial assets, interests in closely held enter-
8 prises, tangible and intangible personal property, or real prop-
9 erty; the extent to which an asset is used by a beneficiary; and
10 whether an asset was purchased by the trustee or received from
11 the settlor.

12 (f) The net amount allocated to income under the other sec-
13 tions of this act and the increase or decrease in the value of
14 the principal assets, which the trustee may estimate as to assets
15 for which market values are not readily available.

16 (g) Whether and to what extent the terms of the trust give
17 the trustee the power to invade principal or accumulate income or
18 prohibit the trustee from invading principal or accumulating
19 income, and the extent to which the trustee has exercised a power
20 from time to time to invade principal or accumulate income.

21 (h) The actual and anticipated effect of economic conditions
22 on principal and income and effects of inflation and deflation.

23 (i) The anticipated tax consequences of an adjustment.

24 (3) A trustee shall not make an adjustment that does 1 or
25 more of the following or under 1 or more of the following
26 circumstances:

1 (a) Diminishes the income interest in a trust that requires
2 all of the income to be paid at least annually to a surviving
3 spouse and for which an estate tax or gift tax marital deduction
4 would be allowed, in whole or in part, if the trustee did not
5 have the power to make the adjustment.

6 (b) Reduces the actuarial value of the income interest in a
7 trust to which a person transfers property with the intent to
8 qualify for a gift tax exclusion.

9 (c) Changes the amount payable to a beneficiary as a fixed
10 annuity or a fixed fraction of the value of the trust assets.

11 (d) Alters any amount that is permanently set aside for
12 charitable purposes under a will or the terms of a trust unless
13 both income and principal are so set aside.

14 (e) If possessing or exercising the power to make an adjust-
15 ment causes an individual to be treated as the owner of all or
16 part of the trust for income tax purposes, and the individual
17 would not be treated as the owner if the trustee did not possess
18 the power to make an adjustment.

19 (f) If possessing or exercising the power to make an adjust-
20 ment causes all or part of the trust assets to be included for
21 estate tax purposes in the estate of an individual who has the
22 power to remove a trustee or appoint a trustee, or both, and the
23 assets would not be included in the estate of the individual if
24 the trustee did not possess the power to make an adjustment.

25 (g) If the trustee is a beneficiary of the trust.

26 (h) If the trustee is not a beneficiary, but the adjustment
27 would benefit the trustee directly or indirectly.

1 (4) If subsection (3)(e), (f), (g), or (h) applies to a
2 trustee and there is more than 1 trustee, a cotrustee to whom the
3 provision does not apply may make the adjustment unless the exer-
4 cise of the power by the remaining trustee or trustees is not
5 permitted by the terms of the trust.

6 (5) A trustee may release the entire power conferred by sub-
7 section (1) or may release only the power to adjust from income
8 to principal or the power to adjust from principal to income if
9 the trustee is uncertain about whether possessing or exercising
10 the power will cause a result described in subsection (3)(a)
11 through (f) or (3)(h) or if the trustee determines that possess-
12 ing or exercising the power will or may deprive the trust of a
13 tax benefit or impose a tax burden not described in subsection
14 (3). The release may be permanent or for a specified period,
15 including a period measured by the life of an individual.

16 (6) Terms of a trust that limit the power of a trustee to
17 make an adjustment between principal and income do not affect the
18 application of this section unless it is clear from the terms of
19 the trust that the terms are intended to deny the trustee the
20 power of adjustment conferred by subsection (1).

21 ARTICLE 2

22 Sec. 201. After the settlor dies, in the case of an estate,
23 or after an income interest in a trust ends, all of the following
24 apply:

25 (a) A fiduciary of an estate or of a terminating income
26 interest shall determine the amount of net income and net
27 principal receipts received from property specifically given to a

1 beneficiary under the provisions of articles 3 through 5 that
2 apply to trustees and as provided in subdivision (e). The fidu-
3 ciary shall distribute the net income and net principal receipts
4 to the beneficiary who is to receive the specific property.

5 (b) A fiduciary shall determine the remaining net income of
6 a decedent's estate or a terminating income interest under the
7 provisions of articles 3 through 5 that apply to trustees and by
8 doing all the following:

9 (i) Including in net income all income from property used to
10 discharge liabilities.

11 (ii) Paying from income or principal, in the fiduciary's
12 discretion, fees of attorneys, accountants, and fiduciaries;
13 court costs and other expenses of administration; and interest on
14 death taxes, but the fiduciary may pay those expenses from income
15 of property passing to a trust for which the fiduciary claims an
16 estate tax marital or charitable deduction only to the extent
17 that the payment of those expenses from income will not cause the
18 reduction or loss of the deduction.

19 (iii) Paying from principal all other disbursements made or
20 incurred in connection with the settlement of a decedent's estate
21 or the winding up of a terminating income interest, including
22 debts, funeral expenses, disposition of remains, family allow-
23 ances, and death taxes and related penalties that are apportioned
24 to the estate or terminating income interest by the will, the
25 terms of the trust, or applicable law.

26 (c) A fiduciary shall distribute to a beneficiary who
27 receives a pecuniary amount outright the interest or any other

1 amount provided by the will, the terms of the trust, or
2 applicable law from net income determined under subdivision (b)
3 or from principal to the extent that net income is insufficient.
4 If a beneficiary is to receive a pecuniary amount outright from a
5 trust after an income interest ends and no interest or other
6 amount is provided for by the terms of the trust or applicable
7 law, the fiduciary shall distribute the interest or other amount
8 to which the beneficiary would be entitled under applicable law
9 if the pecuniary amount were required to be paid under a will.

10 (d) A fiduciary shall distribute the net income remaining
11 after distributions required by subdivision (c) in the manner
12 described in section 202 to all other beneficiaries, including a
13 beneficiary who receives a pecuniary amount in trust, even if the
14 beneficiary holds an unqualified power to withdraw assets from
15 the trust or other presently exercisable general power of
16 appointment over the trust.

17 (e) A fiduciary may not reduce principal or income receipts
18 from property described in subdivision (a) because of a payment
19 or disbursement, or both, described in section 501 or 502 to the
20 extent that the will, the terms of the trust, or applicable law
21 requires the fiduciary to make the payment from assets other than
22 the property or to the extent that the fiduciary recovers or
23 expects to recover the payment from a third party. The net
24 income and principal receipts from the property are determined by
25 including all of the amounts the fiduciary receives or pays with
26 respect to the property, whether those amounts accrued or became
27 due before, on, or after the date of a decedent's death or an

1 income interest's terminating event, and by making a reasonable
2 provision for amounts that the fiduciary believes the estate or
3 terminating income interest may become obligated to pay after the
4 property is distributed.

5 Sec. 202. (1) Each beneficiary described in section 201(d)
6 is entitled to receive a portion of the net income equal to the
7 beneficiary's fractional interest in undistributed principal
8 assets, using values as of the distribution date. If a fiduciary
9 makes more than 1 distribution of assets to beneficiaries to whom
10 this section applies, each beneficiary, including a beneficiary
11 who does not receive part of the distribution, is entitled, as of
12 each distribution date, to the net income the fiduciary has
13 received after the date of death or terminating event or earlier
14 distribution date but has not distributed as of the current dis-
15 tribution date.

16 (2) In determining a beneficiary's share of net income, the
17 following apply:

18 (a) The beneficiary is entitled to receive a portion of the
19 net income equal to the beneficiary's fractional interest in the
20 undistributed principal assets immediately before the distribu-
21 tion date, including assets that later may be sold to meet prin-
22 cipal obligations.

23 (b) The beneficiary's fractional interest in the undistrib-
24 uted principal assets must be calculated without regard to prop-
25 erty specifically given to a beneficiary and property required to
26 pay pecuniary amounts not in trust.

1 (c) The beneficiary's fractional interest in the
2 undistributed principal assets must be calculated on the basis of
3 the aggregate value of those assets as of the distribution date
4 without reducing the value by any unpaid principal obligation.

5 (d) The distribution date for purposes of this section may
6 be the date as of which the fiduciary calculates the value of the
7 assets if that date is reasonably near the date on which assets
8 are actually distributed.

9 (3) If a fiduciary does not distribute all of the collected
10 but undistributed net income to each person as of a distribution
11 date, the fiduciary shall maintain appropriate records showing
12 the interest of each beneficiary in that net income.

13 (4) A trustee may apply the provisions in this section, to
14 the extent that the trustee considers it appropriate, to net gain
15 or loss realized after the date of death or terminating event or
16 earlier distribution date from the disposition of a principal
17 asset if this section applies to the income from the asset.

18 ARTICLE 3

19 Sec. 301. (1) An income beneficiary is entitled to net
20 income from the date on which the income interest begins. An
21 income interest begins on the date specified in the terms of the
22 trust or, if no date is specified, on the date an asset becomes
23 subject to a trust or successive income interest.

24 (2) An asset becomes subject to a trust on 1 of the
25 following:

1 (a) The date it is transferred to the trust in the case of
2 an asset that is transferred to a trust during the transferor's
3 life.

4 (b) The date of a testator's death in the case of an asset
5 that becomes subject to a trust by reason of a will, even if
6 there is an intervening period of administration of the
7 testator's estate.

8 (c) The date of an individual's death in the case of an
9 asset that is transferred to a fiduciary by a third party because
10 of the individual's death.

11 (3) An asset becomes subject to a successive income interest
12 on the day after the preceding income interest ends, as deter-
13 mined under subsection (4), even if there is an intervening
14 period of administration to wind up the preceding income
15 interest.

16 (4) An income interest ends on the day before an income ben-
17 eficiary dies or another terminating event occurs, or on the last
18 day of a period during which there is no beneficiary to whom a
19 trustee may distribute income.

20 Sec. 302. (1) Except as provided in section 201(a), a
21 trustee shall allocate an income receipt or disbursement to prin-
22 cipal if its due date occurs before a settlor dies in the case of
23 an estate or before an income interest begins in the case of a
24 trust or successive income interest.

25 (2) A trustee shall allocate an income receipt or disburse-
26 ment to income if its due date occurs on or after the date on
27 which the settlor dies or an income interest begins and it is a

1 periodic due date. An income receipt or disbursement shall be
2 treated as accruing from day to day if its due date is not
3 periodic or it has no due date. The portion of the receipt or
4 disbursement accruing before the date on which a settlor dies or
5 an income interest begins shall be allocated to principal and the
6 balance shall be allocated to income.

7 (3) An item of income or an obligation is due on the date
8 the payer is required to make a payment. If a payment date is
9 not stated, there is no due date for the purposes of this act.
10 Distributions to shareholders or other owners from an entity to
11 which section 401 applies are considered to be due on the date
12 fixed by the entity for determining who is entitled to receive
13 the distribution or, if no date is fixed, on the declaration date
14 for the distribution. A due date is periodic for receipts of
15 disbursements that must be paid at regular intervals under a
16 lease or an obligation to pay interest or if an entity customar-
17 ily makes distributions at regular intervals.

18 Sec. 303. (1) As used in this section, "undistributed
19 income" means net income received before the date on which an
20 income interest ends. Undistributed income does not include an
21 item of income or expense that is due or accrued or net income
22 that has been added or is required to be added to principal under
23 the terms of the trust.

24 (2) Except as otherwise provided in this subsection, when a
25 mandatory income interest ends, the trustee shall pay to a manda-
26 tory income beneficiary who survives that date, or the estate of
27 a deceased mandatory income beneficiary whose death causes the

1 interest to end, the beneficiary's share of the undistributed
2 income that is not disposed of under the terms of the trust. If
3 the beneficiary has an unqualified power to revoke more than 5%
4 of the trust immediately before the income interest ends, the
5 undistributed income from the portion of the trust that may be
6 revoked shall be added to principal.

7 (3) When a trustee's obligation to pay a fixed annuity or a
8 fixed fraction of the value of the trust's assets ends, the
9 trustee shall prorate the final payment if and to the extent
10 required by applicable law to accomplish a purpose of the trust
11 or its settlor relating to income, gift, estate, or other tax
12 requirements.

13 ARTICLE 4

14 PART 1

15 Sec. 401. (1) As used in this section, "entity" means a
16 corporation, partnership, limited liability company, regulated
17 investment company, real estate investment trust, common trust
18 fund, or other organization in which a trustee has an interest,
19 other than a trust or estate to which section 402 applies, a
20 business or other activity to which section 403 applies, or an
21 asset-backed security to which section 415 applies.

22 (2) Except as otherwise provided in this section, a trustee
23 shall allocate to income money received from an entity.

24 (3) A trustee shall allocate the following receipts from an
25 entity to principal:

26 (a) Property other than money.

1 (b) Money received in 1 distribution or a series of related
2 distributions in exchange for part or all of a trust's interest
3 in the entity.

4 (c) Money received in total liquidation of the entity, or in
5 partial liquidation of the entity as prescribed by subsections
6 (4) to (6).

7 (d) Money received from an entity that is a regulated
8 investment company or a real estate investment trust if the money
9 distributed is a capital gain dividend for federal income tax
10 purposes.

11 (4) Money is received in partial liquidation under either of
12 the following circumstances:

13 (a) To the extent that the entity, at or near the time of a
14 distribution, indicates that it is a distribution in partial
15 liquidation.

16 (b) If the total amount of money and property received in a
17 distribution or series of related distributions is greater than
18 20% of the entity's gross assets, as shown by the entity's
19 year-end financial statements immediately preceding the initial
20 receipt.

21 (5) Money is not received in partial liquidation, nor may it
22 be taken into account under subsection (4)(b), to the extent that
23 it does not exceed the amount of income tax that a trustee or
24 beneficiary must pay on taxable income of the entity that dis-
25 tributes the money.

26 (6) A trustee may rely upon a statement made by an entity
27 about the source or character of a distribution if the statement

1 is made at or near the time of distribution by the entity's board
2 of directors or other person or group of persons authorized to
3 exercise powers to pay money or transfer property comparable to
4 those of a corporation's board of directors.

5 Sec. 402. A trustee shall allocate to income an amount
6 received as a distribution of income from a trust or an estate in
7 which the trust has an interest other than a purchased interest,
8 and shall allocate to principal an amount received as a distribu-
9 tion of principal from such a trust or estate. If a trustee pur-
10 chases an interest in a trust that is an investment entity, or a
11 decedent or donor transfers an interest in such a trust to a
12 trustee, section 401 or 415 applies to a receipt from the trust.

13 Sec. 403. (1) If a trustee who conducts a business or other
14 activity determines that it is in the best interest of all the
15 beneficiaries to account separately for the business or activity
16 instead of accounting for it as part of the trust's general
17 accounting records, the trustee may maintain separate accounting
18 records for its transactions, whether or not its assets are seg-
19 regated from other trust assets.

20 (2) A trustee who accounts separately for a business or
21 other activity may determine the extent to which its net cash
22 receipts must be retained for working capital, the acquisition or
23 replacement of fixed assets, and other reasonably foreseeable
24 needs of the business or activity, and the extent to which the
25 remaining net cash receipts are accounted for as principal or
26 income in the trust's general accounting records. If a trustee
27 sells assets of the business or other activity, other than in the

1 ordinary course of the business or activity, the trustee shall
2 account for the net amount received as principal in the trust's
3 general accounting records to the extent the trustee determines
4 that the amount received is no longer required in the conduct of
5 business.

6 (3) A business or other activity for which a trustee may
7 maintain separate accounting records include all of the
8 following:

9 (a) A retail, manufacturing, service, and other traditional
10 business activity.

11 (b) Farming.

12 (c) Raising and selling livestock and other animals.

13 (d) Management of rental property.

14 (e) Extraction of minerals and other natural resources.

15 (f) A timber operation.

16 (g) An activity to which section 414 applies.

17 PART 2

18 Sec. 404. A trustee shall allocate to principal all of the
19 following:

20 (a) To the extent not allocated to income under this act,
21 assets received from a transferor during the transferor's life-
22 time, a decedent's estate, a trust with a terminating income
23 interest, or a payer under a contract naming the trust or its
24 trustee as beneficiary.

25 (b) Money or other property received from the sale,
26 exchange, liquidation, or change in form of a principal asset,
27 including realized profit, subject to this article.

1 (c) Amounts recovered from third parties to reimburse the
2 trust because of disbursements described in section 502(1)(g) or
3 for other reasons to the extent not based on the loss of income.

4 (d) Proceeds of property taken by eminent domain, but a sep-
5 arate award made for the loss of income with respect to an
6 accounting period during which a current income beneficiary had a
7 mandatory income interest is income.

8 (e) Net income received in an accounting period during which
9 there is no beneficiary to whom a trustee may or must distribute
10 income.

11 (f) Other receipts as provided in part 3 of this article.

12 Sec. 405. To the extent that a trustee accounts for
13 receipts from rental property pursuant to this section, the
14 trustee shall allocate to income an amount received as rent of
15 real or personal property, including an amount received for can-
16 cellation or renewal of a lease. An amount received as a refund-
17 able deposit, including a security deposit or a deposit that is
18 to be applied as rent for future periods, shall be added to prin-
19 cipal and held subject to the terms of the lease and is not
20 available for distribution to a beneficiary until the trustee's
21 contractual obligations have been satisfied with respect to that
22 amount.

23 Sec. 406. (1) An amount received as interest, whether
24 determined at a fixed, variable, or floating rate, on an obliga-
25 tion to pay money to the trustee, including an amount received as
26 consideration for prepaying principal, shall be allocated to
27 income without any provision for amortization of premium.

1 (2) A trustee shall allocate to principal an amount received
2 from the sale, redemption, or other disposition of an obligation
3 to pay money to the trustee more than 1 year after it is pur-
4 chased or acquired by the trustee, including an obligation whose
5 purchase price or value when it is acquired is less than its
6 value at maturity. If the obligation matures within 1 year after
7 it is purchased or acquired by the trustee, an amount received in
8 excess of its purchase price or its value when acquired by the
9 trust must be allocated to income.

10 (3) This section does not apply to an obligation to which
11 section 409, 410, 411, 412, 414, or 415 applies.

12 Sec. 407. (1) Except as otherwise provided in subsection
13 (2), a trustee shall allocate to principal the proceeds of a life
14 insurance policy or other contract in which the trust or its
15 trustee is named as beneficiary, including a contract that
16 insures the trust or its trustee against loss for damage to,
17 destruction of, or loss of title to a trust asset. The trustee
18 shall allocate dividends on an insurance policy to income if the
19 premiums on the policy are paid from income and to principal if
20 the premiums are paid from principal.

21 (2) A trustee shall allocate to income proceeds of a con-
22 tract that insures the trustee against loss of occupancy or other
23 use by an income beneficiary, loss of income, or, subject to sec-
24 tion 403, loss of profits from a business.

25 (3) This section does not apply to a contract to which sec-
26 tion 409 applies.

PART 3

1
2 Sec. 408. If a trustee determines that an allocation
3 between principal and income required by section 409, 410, 411,
4 412, or 415 is insubstantial, the trustee may allocate the entire
5 amount to principal unless 1 or more of the circumstances
6 described in section 104(3) applies to the allocation. This
7 power may be exercised by a cotrustee in the circumstances
8 described in section 104(4) and may be released for the reasons
9 and in the manner described in section 104(5). An allocation is
10 presumed to be insubstantial if 1 or more of the following
11 apply:

12 (a) The amount of the allocation would increase or decrease
13 net income in an accounting period, as determined before the
14 allocation, by less than 10%.

15 (b) The value of the asset producing the receipt for which
16 the allocation would be made is less than 10% of the total value
17 of the trust's assets at the beginning of the accounting period.

18 Sec. 409. (1) As used in this section, "payment" means a
19 payment that a trustee may receive over a fixed number of years
20 or during the life of 1 or more individuals because of services
21 rendered or property transferred to the payer in exchange for
22 future payments. The term includes a payment made in money or
23 property from the payer's general assets or from a separate fund
24 created by the payer, including a private or commercial annuity,
25 an individual retirement account, or a pension, profit-sharing,
26 stock-bonus, or stock-ownership plan.

1 (2) To the extent that a payment is characterized as
2 interest or a dividend or a payment made in lieu of interest or a
3 dividend, a trustee shall allocate it to income. The trustee
4 shall allocate to principal the balance of the payment and any
5 other payment received in the same accounting period that is not
6 characterized as interest, a dividend, or an equivalent payment.

7 (3) If no part of a payment is characterized as interest, a
8 dividend, or an equivalent payment, and all or part of the pay-
9 ment is required to be made, a trustee shall allocate to income
10 10% of the part that is required to be made during the accounting
11 period and the balance to principal. If no part of a payment is
12 required to be made or the payment received is the entire amount
13 to which the trustee is entitled, the trustee shall allocate the
14 entire payment to principal. For purposes of this subsection, a
15 payment is not required to be made to the extent that it is made
16 because the trustee exercises a right of withdrawal.

17 (4) If, to obtain an estate tax marital deduction for a
18 trust, a trustee must allocate more of a payment to income than
19 provided for by this section, the trustee shall allocate to
20 income the additional amount necessary to obtain the marital
21 deduction.

22 (5) This section does not apply to payments to which section
23 410 applies.

24 Sec. 410. (1) As used in this section, "liquidating asset"
25 means an asset whose value will diminish or terminate because the
26 asset is expected to produce receipts for a period of limited
27 duration. Liquidating asset includes a leasehold, patent,

1 copyright, royalty right, and right to receive payments during a
2 period of more than 1 year under an arrangement that does not
3 provide for the payment of interest on the unpaid balance.

4 Liquidating asset does not include a payment subject to section
5 409, natural resources subject to section 411, timber subject to
6 section 412, an activity subject to section 414, an asset subject
7 to section 415, or an asset for which the trustee establishes a
8 reserve for depreciation under section 503.

9 (2) A trustee shall allocate to income 10% of the receipts
10 from a liquidating asset and the balance to principal.

11 Sec. 411. (1) Except as provided in subsection (4), to the
12 extent that a trustee accounts for receipts from an interest in
13 minerals or other natural resources pursuant to this section, the
14 trustee shall allocate them as follows:

15 (a) If received as nominal delay rental or nominal annual
16 rent on a lease, a receipt must be allocated to income.

17 (b) If received from a production payment, a receipt must be
18 allocated to income if and to the extent that the agreement cre-
19 ating the production payment provides a factor for interest or
20 its equivalent. The balance must be allocated to principal.

21 (c) If an amount received as a royalty, shut-in-well pay-
22 ment, take-or-pay payment, bonus, or delay rental is more than
23 nominal, 90% must be allocated to principal and the balance to
24 income.

25 (d) If an amount is received from a working interest or any
26 other interest not provided for in subdivision (a), (b), or (c),

1 90% of the net amount received must be allocated to principal and
2 the balance to income.

3 (2) Except as provided in subsection (4), a trustee shall
4 allocate to income an amount received on account of an interest
5 in water that is renewable. If the interest in water is not
6 renewable, the trustee shall allocate 90% of the amount to prin-
7 cipal and the balance to income.

8 (3) This act applies whether or not a decedent or donor was
9 extracting minerals, water, or other natural resources before the
10 interest became subject to the trust.

11 (4) If a trust owns an interest in minerals, water, or other
12 natural resources on the effective date of this act, the trustee
13 may allocate receipts from the interest as provided in this act
14 or in the manner used by the trustee before the effective date of
15 this act. If the trust acquires an interest in minerals, water,
16 or other natural resources after the effective date of this act,
17 the trustee shall allocate receipts from the interest as provided
18 in this act.

19 Sec. 412. (1) Except as provided in subsection (4), to the
20 extent that a trustee accounts for receipts from the sale of
21 timber and related products pursuant to this section, the trustee
22 shall allocate the net receipts as follows:

23 (a) To income to the extent that the amount of timber
24 removed from the land does not exceed the rate of growth of the
25 timber during the accounting periods in which a beneficiary has a
26 mandatory income interest.

1 (b) To principal to the extent that the amount of timber
2 removed from the land exceeds the rate of growth of the timber or
3 the net receipts are from the sale of standing timber.

4 (c) To or between income and principal if the net receipts
5 are from the lease of timberland or from a contract to cut timber
6 from land owned by a trust, by determining the amount of timber
7 removed from the land under the lease or contract and applying
8 the rules in subdivisions (a) and (b).

9 (d) To principal to the extent that advance payments,
10 bonuses, and other payments are not allocated pursuant to subdi-
11 vision (a), (b), or (c).

12 (2) In determining net receipts to be allocated pursuant to
13 subsection (1), a trustee shall deduct and transfer to principal
14 a reasonable amount for depletion.

15 (3) This act applies whether or not a decedent or transferor
16 was harvesting timber from the property before it became subject
17 to the trust.

18 (4) If a trust owns an interest in timberland on the effec-
19 tive date of this act, the trustee may allocate net receipts from
20 the sale of timber and related products as provided in this act
21 or in the manner used by the trustee before the effective date of
22 this act. If the trust acquires an interest in timberland after
23 the effective date of this act, the trustee shall allocate net
24 receipts from the sale of timber and related products as provided
25 in this act.

26 Sec. 413. (1) If a marital deduction is allowed for all or
27 part of a trust whose assets consist substantially of property

1 that does not provide the surviving spouse with sufficient income
2 from or use of the trust assets, and if the amounts that the
3 trustee transfers from principal to income under section 104 and
4 distributes to the spouse from principal pursuant to the terms of
5 the trust are insufficient to provide the spouse with the benefi-
6 cial enjoyment required to obtain the marital deduction, the
7 spouse may require the trustee to make property productive of
8 income, convert property within a reasonable time, or exercise
9 the power conferred by section 104(1). The trustee may decide
10 which action or combination of actions to take.

11 (2) In cases not governed by subsection (1), proceeds from
12 the sale or other disposition of an asset are principal without
13 regard to the amount of income the asset produces during any
14 accounting period.

15 Sec. 414. (1) As used in this section, "derivative" means a
16 contract or financial instrument or a combination of contracts
17 and financial instruments that gives a trust the right or obliga-
18 tion to participate in some or all changes in the price of a tan-
19 gible or intangible asset or group of assets, or changes in a
20 rate, an index of prices or rates, or other market indicator for
21 an asset or a group of assets.

22 (2) To the extent that a trustee accounts for transactions
23 in derivatives under this section, the trustee shall allocate to
24 principal receipts from and disbursements made in connection with
25 those transactions.

26 (3) If a trustee grants an option to buy property from the
27 trust, whether or not the trust owns the property when the option

1 is granted, grants an option that permits another person to sell
2 property to the trust, or acquires an option to buy property for
3 the trust or an option to sell an asset owned by the trust, and
4 the trustee or other owner of the asset is required to deliver
5 the asset if the option is exercised, an amount received for
6 granting the option must be allocated to principal. An amount
7 paid to acquire the option must be paid from principal. A gain
8 or loss realized upon the exercise of an option, including an
9 option granted to a settlor of the trust for services rendered,
10 must be allocated to principal.

11 Sec. 415. (1) As used in this section, "asset-backed
12 security" means an asset whose value is based upon the right it
13 gives the owner to receive distributions from the proceeds of
14 financial assets that provide collateral for the security.
15 Asset-backed security includes an asset that gives the owner the
16 right to receive from the collateral financial assets only the
17 interest or other current return or only the proceeds other than
18 interest or current return. Asset-backed security does not
19 include an asset to which section 401 or 409 applies.

20 (2) If a trust receives a payment from interest or other
21 current return and from other proceeds of the collateral finan-
22 cial assets of an asset-backed security, the trustee shall allo-
23 cate to income the portion of the payment that the payer identi-
24 fies as being from interest or other current return and shall
25 allocate the balance of the payment to principal.

26 (3) If a trust receives 1 or more payments in exchange for
27 the trust's entire interest in an asset-backed security in 1

1 accounting period, the trustee shall allocate the payments to
2 principal. If a payment is 1 of a series of payments that will
3 result in the liquidation of the trust's interest in the security
4 over more than 1 accounting period, the trustee shall allocate
5 10% of the payment to income and the balance to principal.

6

ARTICLE 5

7

8 Sec. 501. A trustee shall make the following disbursements
9 from income to the extent that they are not disbursements to
10 which section 201(b)(ii) or (iii) applies:

11

12 (a) One-half of the regular compensation of the trustee and
13 of any person providing investment advisory or custodial services
14 to the trustee.

15

16 (b) One-half of all expenses for accountings, judicial pro-
17 ceedings, or other matters that involve both the income and
18 remainder interests.

19

20 (c) All of the other ordinary expenses incurred in connec-
21 tion with the administration, management, or preservation of
22 trust property and the distribution of income, including inter-
23 est, ordinary repairs, regularly recurring taxes assessed against
24 principal, and expenses of a proceeding or other matter that con-
25 cerns primarily the income interest.

26

27 (d) Recurring premiums on insurance covering the loss of a
principal asset or the loss of income from or use of the asset.

28

29 Sec. 502. (1) A trustee shall make the following disburse-
30 ments from principal:

31

32 (a) The remaining 1/2 of the disbursements described in
33 section 501(a) and (b).

1 (b) All of the trustee's compensation calculated on
2 principal as a fee for acceptance, distribution, or termination,
3 and disbursements made to prepare property for sale.

4 (c) Payments on the principal of a trust debt.

5 (d) Expenses of a proceeding that concerns primarily princi-
6 pal, including a proceeding to construe the trust or to protect
7 the trust or its property.

8 (e) Premiums paid on a policy of insurance not described in
9 section 501(d) of which the trust is the owner and beneficiary.

10 (f) Estate, inheritance, and other transfer taxes, including
11 penalties, apportioned to the trust.

12 (g) Disbursements related to environmental matters, includ-
13 ing reclamation, assessing environmental conditions, remedying
14 and removing environmental contamination, monitoring remedial
15 activities and the release of substances, preventing future
16 releases of substances, collecting amounts from persons liable or
17 potentially liable for the costs of those activities, penalties
18 imposed under environmental laws or regulations and other pay-
19 ments made to comply with those laws or regulations, statutory or
20 common law claims by third parties, and defending claims based on
21 environmental matters.

22 (2) If a principal asset is encumbered with an obligation
23 that requires income from that asset to be paid directly to the
24 creditor, the trustee shall transfer from principal to income an
25 amount equal to the income paid to the creditor in reduction of
26 the principal balance of the obligation.

1 Sec. 503. (1) As used in this section, "depreciation" means
2 a reduction in value due to wear, tear, decay, corrosion, or
3 gradual obsolescence of a fixed asset having a useful life of
4 more than 1 year.

5 (2) A trustee may transfer to principal a reasonable amount
6 of the net cash receipts from a principal asset that is subject
7 to depreciation, but may not transfer an amount for depreciation
8 as follows:

9 (a) An amount for that portion of real property used or
10 available for use by a beneficiary as a residence or an amount
11 for tangible personal property held or made available for the
12 personal use or enjoyment of a beneficiary.

13 (b) An amount during the administration of a descendant's
14 estate.

15 (c) An amount under this section if the trustee is account-
16 ing under section 403 for the business or other activity in which
17 the asset is used.

18 (3) An amount transferred to principal need not be held as a
19 separate fund.

20 Sec. 504. (1) If a trustee makes or expects to make a prin-
21 cipal disbursement described in this section, the trustee may
22 transfer an appropriate amount from income to principal in 1 or
23 more accounting periods to reimburse principal or to provide a
24 reserve for future principal disbursements.

25 (2) Principal disbursements to which subsection (1) applies
26 include the following, but only to the extent that the trustee

1 has not been and does not expect to be reimbursed by a third
2 party:

3 (a) An amount chargeable to income but paid from principal
4 because it is unusually large, including extraordinary repairs.

5 (b) A capital improvement to a principal asset, whether in
6 the form of changes to an existing asset or the construction of a
7 new asset, including special assessments.

8 (c) Disbursements made to prepare property for rental,
9 including tenant allowances, leasehold improvements, and broker's
10 commissions.

11 (d) Periodic payments on an obligation secured by a princi-
12 pal asset to the extent that the amount transferred from income
13 to principal for depreciation is less than the periodic
14 payments.

15 (e) Disbursements described in section 502(1)(g).

16 (3) If the asset whose ownership gives rights to the dis-
17 bursements becomes subject to a successive income interest after
18 an income interest ends, a trustee may continue to transfer
19 amounts from income to principal as provided in subsection (1).

20 Sec. 505. (1) A tax required to be paid by a trustee based
21 on receipts allocated to income shall be paid from income.

22 (2) A tax required to be paid by a trustee based on receipts
23 allocated to principal shall be paid from principal, even if the
24 tax is called an income tax by the taxing authority.

25 (3) A tax required to be paid by a trustee on the trust's
26 share of an entity's taxable income must be paid proportionately
27 as follows:

1 (a) From income to the extent that receipts from the entity
2 are allocated to income.

3 (b) From principal to the extent as follows:

4 (i) Receipts from the entity are allocated to principal.

5 (ii) The trust's share of the entity's taxable income
6 exceeds the total receipts described in subdivisions (a) and
7 (b)(i).

8 (4) For purposes of this section, receipts allocated to
9 principal or income must be reduced by the amount distributed to
10 a beneficiary from principal or income for which the trust
11 receives a deduction in calculating the tax.

12 Sec. 506. (1) A fiduciary may make adjustments between
13 principal and income to offset the shifting of economic interests
14 or tax benefits between income beneficiaries and remainder bene-
15 ficiaries that arise from 1 or more of the following:

16 (a) Elections and decisions, other than those described in
17 subsection (2), that the fiduciary makes from time to time
18 regarding tax matters.

19 (b) An income tax or any other tax that is imposed upon the
20 fiduciary or a beneficiary as a result of a transaction involving
21 or a distribution from the estate or trust.

22 (c) The ownership by an estate or trust of an interest in an
23 entity whose taxable income, whether or not distributed, is
24 includable in the taxable income of the estate, trust, or a
25 beneficiary.

26 (2) If the amount of an estate tax marital deduction or
27 charitable contribution deduction is reduced because a fiduciary

1 deducts an amount paid from principal for income tax purposes
2 instead of deducting it for estate tax purposes, and as a result
3 estate taxes paid from principal are increased and income taxes
4 paid by an estate, trust, or beneficiary are decreased, each
5 estate, trust, or beneficiary that benefits from the decrease in
6 income tax shall reimburse the principal from which the increase
7 in estate tax is paid. The total reimbursement must equal the
8 increase in the estate tax to the extent that the principal used
9 to pay the increase would have qualified for a marital deduction
10 or charitable contribution deduction but for the payment. The
11 proportionate share of the reimbursement for each estate, trust,
12 or beneficiary whose income taxes are reduced must be the same as
13 its proportionate share of the total decrease in income tax. An
14 estate or trust shall reimburse principal from income.

15

ARTICLE 6

16 Sec. 601. In applying and construing this act, considera-
17 tion shall be given to the need to promote uniformity of the law
18 with respect to this act among states that enact it.

19 Sec. 602. If any provision of this act or its application
20 to any person or circumstance is held invalid, the invalidity
21 does not affect other provisions or applications of this act that
22 can be given effect without the invalid provision or application,
23 and to this end the provisions of this act are severable.

24 Sec. 603. The revised uniform principal and income act,
25 1965 PA 340, MCL 555.51 to 555.68, is repealed.

26 Sec. 604. This act applies to each trust or decedent's
27 estate existing on the effective date of this act except as

1 otherwise expressly provided in the will or terms of the trust or
2 in this act.