

---

**SUBSTITUTE SENATE BILL 6267**

---

**State of Washington 57th Legislature**

**2002 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Johnson and Kline)

READ FIRST TIME 02/06/2002.

1 AN ACT Relating to the principal and income act; adding new  
2 sections to chapter 11.104 RCW; repealing RCW 11.104.010, 11.104.020,  
3 11.104.030, 11.104.040, 11.104.050, 11.104.060, 11.104.070, 11.104.071,  
4 11.104.080, 11.104.090, 11.104.100, 11.104.110, 11.104.120, 11.104.130,  
5 11.104.900, 11.104.901, 11.104.910, 11.104.920, 11.104.930, and  
6 11.104.940; and providing an effective date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **ARTICLE 1**  
9 **DEFINITIONS; FIDUCIARY DUTIES AND POWERS; REMEDIES**

10 NEW SECTION. **Sec. 101.** SHORT TITLE. This act may be cited as the  
11 Washington principal and income act of 2002.

12 NEW SECTION. **Sec. 102.** DEFINITIONS. In this act:  
13 (1) "Accounting period" means a calendar year unless another  
14 twelve-month period is selected by a fiduciary. The term includes a  
15 portion of a calendar year or other twelve-month period that begins  
16 when an income interest begins or ends when an income interest ends.

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

4 (3) "Fiduciary" means a personal representative or a trustee. The  
5 term includes an executor, administrator, successor personal  
6 representative, special administrator, and a person performing  
7 substantially the same function.

8 (4) "Income" means money or property that a fiduciary receives as  
9 current return from a principal asset. The term includes a portion of  
10 receipts from a sale, exchange, or liquidation of a principal asset, to  
11 the extent provided in Article 4 of this act.

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

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

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

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

25 (9) "Person" means an individual, corporation, business trust,  
26 estate, trust, partnership, limited liability company, association,  
27 joint venture, or government; governmental subdivision, agency, or  
28 instrumentality; public corporation; or any other legal or commercial  
29 entity.

30 (10) "Principal" means property held in trust for distribution to  
31 a remainder beneficiary.

32 (11) "Remainder beneficiary" means a person entitled to receive  
33 principal, including when an income interest ends.

34 (12) "Terms of a trust" means the manifestation of the intent of a  
35 settlor or decedent with respect to the trust, expressed in a manner  
36 that admits of its proof in a judicial proceeding. The "terms of a  
37 trust" shall include without limitation such modifications as may be  
38 made from time to time with respect to the trust under chapter 11.96A  
39 RCW or otherwise under Washington or applicable federal laws.

1 (13) "Trustee" includes an original, additional, or successor  
2 trustee, whether or not appointed or confirmed by a court.

3 NEW SECTION. **Sec. 103.** FIDUCIARY DUTIES; GENERAL PRINCIPLES. (a)  
4 In allocating receipts and disbursements to or between principal and  
5 income, and with respect to any matter within the scope of this act, a  
6 fiduciary:

7 (1) Shall administer a trust or estate in accordance with the terms  
8 of the trust or the will, even if there is a different provision in  
9 this act;

10 (2) May administer a trust or estate by the exercise of a  
11 discretionary power of administration given to the fiduciary by the  
12 terms of the trust or the will, even if the exercise of the power  
13 produces a result different from a result required or permitted by this  
14 act;

15 (3) Shall administer a trust or estate in accordance with this act  
16 if the terms of the trust or the will do not contain a different  
17 provision or do not give the fiduciary a discretionary power of  
18 administration; and

19 (4) Shall add a receipt or charge a disbursement to principal to  
20 the extent that the terms of the trust and this act do not provide a  
21 rule for allocating the receipt or disbursement to or between principal  
22 and income.

23 (b) In exercising the power to adjust under section 104 (a) or (e)  
24 of this act or another discretionary power of administration regarding  
25 a matter within the scope of this act, whether granted by the terms of  
26 a trust, a will, or this act, a fiduciary shall administer a trust or  
27 estate impartially, based on what is fair and reasonable to all of the  
28 beneficiaries, except to the extent that the terms of the trust or the  
29 will clearly manifest an intention that the fiduciary shall or may  
30 favor one or more of the beneficiaries. A determination in accordance  
31 with this act is presumed to be fair and reasonable to all of the  
32 beneficiaries.

33 NEW SECTION. **Sec. 104.** FIDUCIARY'S POWER TO ADJUST. (a) A  
34 trustee may adjust between principal and income to the extent the  
35 trustee considers necessary if the trustee invests and manages trust  
36 assets as a prudent investor, the terms of the trust describe the  
37 amount that may or must be distributed to a beneficiary by referring to

1 the trust's income, and the trustee determines, after applying the  
2 rules in section 103(a) of this act, that the trustee is unable to  
3 comply with section 103(b) of this act.

4 (b) In deciding whether and to what extent to exercise the power  
5 conferred by subsection (a) of this section, a trustee shall consider  
6 all factors relevant to the trust and its beneficiaries, including the  
7 following factors to the extent they are relevant:

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

9 (2) The intent of the settlor;

10 (3) The identity and circumstances of the beneficiaries;

11 (4) The needs for liquidity, regularity of income, and preservation  
12 and appreciation of capital;

13 (5) The assets held in the trust; the extent to which they consist  
14 of financial assets, interests in closely held enterprises, tangible  
15 and intangible personal property, or real property; the extent to which  
16 an asset is used by a beneficiary; and whether an asset was purchased  
17 by the trustee or received from the settlor;

18 (6) The net amount allocated to income under the other sections of  
19 this act and the increase or decrease in the value of the principal  
20 assets, which the trustee may estimate as to assets for which market  
21 values are not readily available;

22 (7) Whether and to what extent the terms of the trust give the  
23 trustee the power to invade principal or accumulate income or prohibit  
24 the trustee from invading principal or accumulating income, and the  
25 extent to which the trustee has exercised a power from time to time to  
26 invade principal or accumulate income;

27 (8) The actual and anticipated effect of economic conditions on  
28 principal and income and effects of inflation and deflation; and

29 (9) The anticipated tax consequences of an adjustment.

30 (c) A trustee may not make an adjustment:

31 (1) That diminishes the income interest in a trust that requires  
32 all of the income to be paid at least annually to a spouse and for  
33 which an estate tax or gift tax marital deduction would be allowed, in  
34 whole or in part, if the trustee did not have the power to make the  
35 adjustment;

36 (2) That reduces the actuarial value of the income interest in a  
37 trust to which a person transfers property with the intent to qualify  
38 for a gift tax exclusion;

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

3 (4) From any amount that is permanently set aside for charitable  
4 purposes under a will or the terms of a trust unless both income and  
5 principal are so set aside;

6 (5) If possessing or exercising the power to make an adjustment  
7 causes an individual to be treated as the owner of all or part of the  
8 trust for income tax purposes, and the individual would not be treated  
9 as the owner if the trustee did not possess the power to make an  
10 adjustment;

11 (6) If possessing or exercising the power to make an adjustment  
12 causes all or part of the trust assets to be included for estate tax  
13 purposes in the estate of an individual who has the power to remove a  
14 trustee or appoint a trustee, or both, and the assets would not be  
15 included in the estate of the individual if the trustee did not possess  
16 the power to make an adjustment;

17 (7) If the trustee is a beneficiary of the trust; or

18 (8) If the trustee is not a beneficiary, but the adjustment would  
19 benefit the trustee directly or indirectly.

20 (d) If subsection (c)(5), (6), (7), or (8) of this section applies  
21 to a trustee and there is more than one trustee or an additional  
22 trustee who is appointed by a court order, a binding agreement, or  
23 otherwise under chapter 11.96A RCW, a cotrustee to whom the provision  
24 does not apply may make the adjustment unless the exercise of the power  
25 by the remaining trustee or trustees is not permitted by the terms of  
26 the trust.

27 (e) A personal representative serving with nonintervention powers  
28 under chapter 11.68 RCW may adjust between principal and income to the  
29 extent the personal representative considers necessary, if the personal  
30 representative invests and manages assets of the estate as a prudent  
31 investor and the personal representative determines, after applying the  
32 rules of section 103(a) of this act, that the personal representative  
33 is unable to comply with section 103(b) of this act. In deciding  
34 whether and to what extent to exercise the power conferred by this  
35 subsection, the personal representative shall consider all factors  
36 relevant to the estate and its beneficiaries, including factors  
37 comparable to those a trustee would consider under subsection (b) of  
38 this section if considering such an adjustment. A personal  
39 representative may not make an adjustment under circumstances

1 comparable to those that are described in subsection (c) of this  
2 section and that prohibit a trustee from making such an adjustment,  
3 although a copersonal representative, or an additional personal  
4 representative who is appointed by a court order, a binding agreement,  
5 or otherwise under chapter 11.96A RCW, to whom such limitations do not  
6 apply may make the adjustment unless the exercise of the power by the  
7 remaining personal representative or personal representatives is not  
8 permitted by the terms of a will.

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

19 (g) Terms of a trust that limit the power of a fiduciary to make an  
20 adjustment between principal and income do not affect the application  
21 of this section unless it is clear from the terms of the trust that the  
22 terms are intended to deny the fiduciary the power of adjustment  
23 conferred by subsection (a) of this section.

24 (h) Unless a beneficiary has requested the fiduciary in writing  
25 that the fiduciary consider an adjustment, nothing in this section  
26 imposes a duty on the fiduciary to make an adjustment and the fiduciary  
27 is not liable for not considering whether to make an adjustment under  
28 this section.

29 NEW SECTION. **Sec. 105.** JUDICIAL CONTROL OF DISCRETIONARY POWERS.

30 (a) A court shall not change a fiduciary's decision to exercise or not  
31 to exercise a discretionary power conferred by this act unless it  
32 determines that the decision was an abuse of the fiduciary's  
33 discretion. A court shall not determine that a fiduciary abused its  
34 discretion merely because the court would have exercised the discretion  
35 in a different manner or would not have exercised the discretion.

36 (b) The decisions to which subsection (a) of this section apply  
37 include:

1 (1) A determination under section 104 (a) or (e) of this act of  
2 whether and to what extent an amount should be transferred from  
3 principal to income or from income to principal.

4 (2) A determination of: (i) The factors that are relevant to the  
5 trust or estate and its beneficiaries; (ii) the extent to which they  
6 are relevant; and (iii) the weight, if any, to be given to the relevant  
7 factors, in deciding whether and to what extent to exercise the power  
8 conferred by section 104 (a) or (e) of this act.

9 (3) A determination under section 106(g) of this act.

10 (c) If a court determines that a fiduciary has abused its  
11 discretion, the remedy is to restore the income and remainder  
12 beneficiaries to the positions they would have occupied if the  
13 fiduciary had not abused its discretion, according to the following  
14 principles:

15 (1) To the extent that the abuse of discretion has resulted in no  
16 distribution to a beneficiary or a distribution that is too small, the  
17 court may require the fiduciary to distribute from the trust to the  
18 beneficiary an amount that the court determines will restore the  
19 beneficiary, in whole or in part, to his or her appropriate position.

20 (2) To the extent that the abuse of discretion has resulted in a  
21 distribution to a beneficiary that is too large, the court may restore  
22 the beneficiaries, the trust, or both, in whole or in part, to their  
23 appropriate positions by requiring the fiduciary to withhold an amount  
24 from one or more future distributions to the beneficiary who received  
25 the distribution that was too large or requiring that beneficiary to  
26 return some or all of the distribution to the trust.

27 (3) To the extent that the court does not restore under (1) and (2)  
28 of this subsection the beneficiaries, the trust, or both, to the  
29 positions they would have occupied if the fiduciary had not abused its  
30 discretion, the court may require the fiduciary to pay an appropriate  
31 amount from its own funds to one or more of the beneficiaries or the  
32 trust, or both. The fiduciary has no liability under this section  
33 unless the beneficiary alleging the abuse of discretion establishes  
34 that the fiduciary did not exercise its discretion in good faith and  
35 with honest judgment.

36 (d) Upon a petition by the fiduciary, the court having jurisdiction  
37 over the trust or estate shall determine whether a proposed exercise or  
38 nonexercise by the fiduciary of a discretionary power conferred by the  
39 act will result in an abuse of the fiduciary's discretion. If the

1 petition describes the proposed exercise or nonexercise of the power  
2 and contains sufficient information to inform the beneficiaries of the  
3 reasons for the proposal, the facts upon which the fiduciary relies,  
4 and an explanation of how the income and remainder beneficiaries will  
5 be affected by the proposed exercise or nonexercise of the power, a  
6 beneficiary who challenges the proposed exercise or nonexercise has the  
7 burden of establishing that it will result in an abuse of discretion.

8 (e) The fiduciary shall be reimbursed for any and all costs,  
9 including without limitation all attorneys' fees and costs of defense,  
10 and all liabilities that the fiduciary may incur in connection with any  
11 claim or action relating in any way to the fiduciary's exercise of its  
12 discretion under this act, except to the extent that the beneficiary  
13 establishes that the fiduciary did not exercise its discretion in good  
14 faith and with honest judgment. All attorneys' fees and costs shall be  
15 advanced to the fiduciary as incurred and shall only be collected from  
16 the fiduciary after it has been determined that the fiduciary did not  
17 exercise its discretion in good faith and with honest judgment.

18 NEW SECTION. Sec. 106. POWER TO CONVERT TO UNITRUST. (a) In this  
19 section, "beneficiary" means a person who has an interest in the trust  
20 to be converted and who has the legal capacity to act in his, her, or  
21 its own right with respect to all actions that such person may take  
22 under this section.

23 (b) Unless expressly prohibited by the terms of the trust, a  
24 trustee may release the power to make adjustments under section 104 of  
25 this act and convert a trust into a unitrust as described in this  
26 section if all of the following apply:

27 (1) The trustee determines that the conversion will enable the  
28 trustee better to carry out the intent of the settlor or testator and  
29 the purposes of the trust.

30 (2) The trustee gives written notice of the trustee's intention to  
31 release the power to adjust and to convert the trust into a unitrust  
32 and of how the unitrust will operate, including what initial decisions  
33 the trustee will make under this section, to all beneficiaries:

34 (i) Who are currently eligible to receive income from the trust; or

35 (ii) Who would receive, if no powers of appointment were exercised,  
36 a distribution of principal if the trust were to terminate immediately  
37 before the notice is given.

1 (3) There is at least one beneficiary under (2)(i) of this  
2 subsection and at least one other person who is a beneficiary under  
3 (2)(ii) of this subsection.

4 (4) No beneficiary objects to the conversion to a unitrust in a  
5 writing delivered to the trustee within sixty days after the notice is  
6 given under (2) of this subsection.

7 (c) The parties, as defined by RCW 11.96A.030(4), may agree to  
8 convert a trust to or from a unitrust by means of a binding agreement  
9 under chapter 11.96A RCW.

10 (d)(1) The trustee may petition the court under chapter 11.96A RCW  
11 to order a conversion to a unitrust if either of the following apply:

12 (i) A party, as defined by RCW 11.96A.030(4), timely objects to the  
13 conversion to a unitrust; or

14 (ii) There are no beneficiaries under (2)(i) and (ii) of this  
15 subsection.

16 (2) A party, as defined by RCW 11.96A.030(4), may request a trustee  
17 to convert to a unitrust. If the trustee does not convert, the party,  
18 as defined by RCW 11.96A.030(4), may petition the court to order the  
19 conversion.

20 (3) The court shall approve the conversion or direct the requested  
21 conversion if the court concludes that the conversion will enable the  
22 trustee to better carry out the intent of the settlor or testator and  
23 the purposes of the trust.

24 (e) In deciding whether to exercise a power to convert to a  
25 unitrust under this section, a trustee may consider, among other  
26 things, the factors set forth in section 104(b) of this act.

27 (f) After a trust is converted to a unitrust, all of the following  
28 apply:

29 (1) The trustee shall follow an investment policy seeking a total  
30 return for the investments held by the trust, whether the return is to  
31 be derived:

32 (i) From appreciation of principal;

33 (ii) From earnings and distributions from principal; or

34 (iii) From both.

35 (2) The trustee shall make regular distributions in accordance with  
36 the terms of the trust, or the terms of the will, as the case may be,  
37 construed in accordance with the provisions of this section.

38 (3) The term "income" in the terms of a trust or a will means an  
39 annual distribution, the "unitrust distribution", equal to four

1 percent, the "payout percentage", of the net fair market value of the  
2 trust's assets, whether such assets would be considered income or  
3 principal under other provisions of this act, averaged over the lesser  
4 of:

5 (i) The three preceding years; or

6 (ii) The period during which the trust has been in existence.

7 (g) The trustee may in the trustee's discretion from time to time  
8 determine all of the following:

9 (1) The effective date of a conversion to a unitrust.

10 (2) The provisions for prorating a unitrust distribution for a  
11 short year in which a beneficiary's right to payments commences or  
12 ceases.

13 (3) The frequency of unitrust distributions during the year.

14 (4) The effect of other payments from or contributions to the trust  
15 on the trust's valuation.

16 (5) Whether to value the trust's assets annually or more  
17 frequently.

18 (6) What valuation dates to use.

19 (7) How frequently to value nonliquid assets and whether to  
20 estimate their value.

21 (8) Whether to omit from the calculations trust property occupied  
22 or possessed by a beneficiary.

23 (9) Any other matters necessary for the proper functioning of the  
24 unitrust.

25 (h)(1) Expenses which would be deducted from income if the trust  
26 were not a unitrust may not be deducted from the unitrust distribution.

27 (2) Unless otherwise provided by the terms of the trust, the  
28 unitrust distribution shall be paid from net income, as such term would  
29 be determined if the trust were not a unitrust. To the extent net  
30 income is insufficient, the unitrust distribution shall be paid from  
31 net realized short-term capital gains. To the extent net income and  
32 net realized short-term capital gains are insufficient, the unitrust  
33 distribution shall be paid from net realized long-term capital gains.  
34 To the extent net income and net realized short-term and long-term  
35 capital gains are insufficient, the unitrust distribution shall be paid  
36 from the principal of the trust.

37 (i) The trustee or, if the trustee declines to do so, a beneficiary  
38 may petition the court:

39 (1) To select a payout percentage different than four percent.

1 (2) To provide for a distribution of net income, as would be  
2 determined if the trust were not a unitrust, in excess of the unitrust  
3 distribution if such distribution is necessary to preserve a tax  
4 benefit.

5 (3) To average the valuation of the trust's net assets over a  
6 period other than three years.

7 (4) To reconvert from a unitrust.

8 (j) Upon a reconversion, the power to adjust under section 104 of  
9 this act is revived.

10 (k) A conversion to a unitrust does not affect a provision in the  
11 terms of a trust directing or authorizing the trustee to distribute  
12 principal or authorizing a beneficiary to withdraw a portion or all of  
13 the principal.

14 (l) A trustee may not possess or exercise any power under this  
15 section in any of the following circumstances:

16 (1) The unitrust distribution would be made from any amount that is  
17 permanently set aside for charitable purposes under the terms of a  
18 trust and for which a charitable deduction from a federal gift or  
19 estate tax has been taken.

20 (2) The possession or exercise of the power would cause an  
21 individual to be treated as the owner of all or part of the trust for  
22 federal income tax purposes and the individual would not be treated as  
23 the owner if the trustee did not possess or exercise the power.

24 (3) The possession or exercise of the power would cause all or any  
25 part of the trust estate to be subject to any federal gift or estate  
26 tax with respect to the individual and the trust estate would not be  
27 subject to such taxation if the trustee did not possess or exercise the  
28 power.

29 (4) The possession or exercise of the power would result in the  
30 disallowance of a federal gift or estate tax marital deduction which  
31 would be allowed if the trustee did not have the power.

32 (5) The trustee is a beneficiary of the trust.

33 (m) If subsection (1)(2), (3), or (5) of this section applies to a  
34 trustee and there is more than one trustee or an additional trustee who  
35 is appointed by a court order, a binding agreement, or otherwise under  
36 chapter 11.96A RCW, a cotrustee to whom subsection (1)(2), (3), or (5)  
37 of this section does not apply may possess and exercise the power  
38 unless the possession or exercise of the power by the remaining trustee  
39 or trustees is not permitted by the terms of the trust. If subsection

1 (1)(2), (3), or (5) of this section restricts all trustees from  
2 possessing or exercising a power under this section, the trustee may  
3 petition a court under chapter 11.96A RCW for the court to effect the  
4 intended conversion or action.

5 (n) A trustee may release any power conferred by this section if  
6 any of the following applies:

7 (1) The trustee is uncertain about whether possessing or exercising  
8 the power will cause a result described in subsection (1)(2), (3), or  
9 (4) of this section.

10 (2) The trustee determines that possessing or exercising the power  
11 will or may deprive the trust of a tax benefit or impose a tax burden  
12 not described in subsection (1) of this section.

13 The release may be permanent or for a specified period, including  
14 a period measured by the life of an individual.

15 **ARTICLE 2**

16 **DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST**

17 NEW SECTION. **Sec. 201.** DETERMINATION AND DISTRIBUTION OF NET  
18 INCOME. After a decedent dies, in the case of an estate, or after an  
19 income interest in a trust ends, the following rules apply:

20 (1) A fiduciary of an estate or of a terminating income interest  
21 shall determine the amount of net income and net principal receipts  
22 received from property specifically given to a beneficiary under the  
23 rules in Articles 3 through 5 of this act which apply to trustees and  
24 the rules in subsection (5) of this section. The fiduciary shall  
25 distribute the net income and net principal receipts to the beneficiary  
26 who is to receive the specific property.

27 (2) A fiduciary shall determine the remaining net income of a  
28 decedent's estate or a terminating income interest under the rules in  
29 Articles 3 through 5 of this act which apply to trustees, except to the  
30 extent that the following apply:

31 (i) The fiduciary shall include in net income all income from  
32 property used to discharge liabilities;

33 (ii) The fiduciary shall pay from income or principal, in the  
34 fiduciary's discretion, family allowances; fees of attorneys,  
35 accountants, and fiduciaries; court costs and other expenses of  
36 administration; and interest on death taxes, but the fiduciary may pay  
37 those expenses from income of property passing to a trust for which the

1 fiduciary claims an estate tax marital or charitable deduction only to  
2 the extent that the payment of those expenses from income will not  
3 cause the reduction or loss of the deduction; and

4 (iii) The fiduciary shall pay from principal all other  
5 disbursements made or incurred in connection with the settlement of a  
6 decedent's estate or the winding up of a terminating income interest,  
7 including debts, funeral expenses, disposition of remains, and death  
8 taxes and related penalties that are apportioned to the estate or  
9 terminating income interest by the will, the terms of the trust, or  
10 applicable law.

11 (3) A fiduciary shall distribute to a beneficiary who receives a  
12 pecuniary amount outright the interest or any other amount provided by  
13 the will, the terms of a trust, or applicable law from net income  
14 determined under subsection (2) of this section or from principal to  
15 the extent that net income is insufficient. Otherwise, no outright  
16 gift of a pecuniary amount whether under a will, or under a trust after  
17 an income interest ends shall receive interest or any other income.

18 (4) A fiduciary shall distribute the net income remaining after  
19 distributions required by subsection (3) of this section in the manner  
20 described in section 202 of this act to all other beneficiaries,  
21 including a beneficiary who receives a pecuniary amount in trust, even  
22 if the beneficiary holds an unqualified power to withdraw assets from  
23 the trust or other presently exercisable general power of appointment  
24 over the trust.

25 (5) A fiduciary may not reduce principal or income receipts from  
26 property described in subsection (1) of this section because of a  
27 payment described in section 501 or 502 of this act to the extent that  
28 the will, the terms of the trust, or applicable law requires the  
29 fiduciary to make the payment from assets other than the property or to  
30 the extent that the fiduciary recovers or expects to recover the  
31 payment from a third party. The net income and principal receipts from  
32 the property are determined by including all of the amounts the  
33 fiduciary receives or pays with respect to the property, whether those  
34 amounts accrued or became due before, on, or after the date of a  
35 decedent's death or an income interest's terminating event, and by  
36 making a reasonable provision for amounts that the fiduciary believes  
37 the estate or terminating income interest may become obligated to pay  
38 after the property is distributed.

1        NEW SECTION.    **Sec. 202.**    DISTRIBUTION TO RESIDUARY AND REMAINDER

2 BENEFICIARIES.    (a) Each beneficiary described in section 201(4) of  
3 this act is entitled to receive a portion of the net income equal to  
4 the beneficiary's fractional interest in undistributed principal  
5 assets, using values as of the distribution date. If a fiduciary makes  
6 more than one distribution of assets to beneficiaries to whom this  
7 section applies, each beneficiary, including one who does not receive  
8 part of the distribution, is entitled, as of each distribution date, to  
9 the net income the fiduciary has received after the date of death or  
10 terminating event or earlier distribution date but has not distributed  
11 as of the current distribution date.

12        (b) In determining a beneficiary's share of net income, the  
13 following rules apply:

14        (1) The beneficiary is entitled to receive a portion of the net  
15 income equal to the beneficiary's fractional interest in the  
16 undistributed principal assets immediately before the distribution  
17 date, including assets that later may be sold to meet principal  
18 obligations.

19        (2) The beneficiary's fractional interest in the undistributed  
20 principal assets must be calculated without regard to property  
21 specifically given to a beneficiary and property required to pay  
22 pecuniary amounts not in trust.

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

27        (4) The distribution date for purposes of this section may be the  
28 date as of which the fiduciary calculates the value of the assets if  
29 that date is reasonably near the date on which assets are actually  
30 distributed.

31        (c) If a fiduciary does not distribute all of the collected but  
32 undistributed net income to each person as of a distribution date, the  
33 fiduciary shall maintain appropriate records showing the interest of  
34 each beneficiary in that net income.

35        (d) A fiduciary may apply the rules in this section, to the extent  
36 that the fiduciary considers it appropriate, to net gain or loss  
37 realized after the date of death or terminating event or earlier  
38 distribution date from the disposition of a principal asset if this  
39 section applies to the income from the asset.



1 decedent dies or an income interest begins must be allocated to  
2 principal and the balance must be allocated to income.

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

13 NEW SECTION. **Sec. 303.** APPORTIONMENT WHEN INCOME INTEREST ENDS.

14 (a) In this section, "undistributed income" means net income received  
15 before the date on which an income interest ends. The term does not  
16 include an item of income or expense that is due or accrued or net  
17 income that has been added or is required to be added to principal  
18 under the terms of the trust.

19 (b) When a mandatory income interest ends, the trustee shall pay to  
20 a mandatory income beneficiary who survives that date, or the estate of  
21 a deceased mandatory income beneficiary whose death causes the interest  
22 to end, the beneficiary's share of the undistributed income that is not  
23 disposed of under the terms of the trust unless the beneficiary has an  
24 unqualified power to revoke more than five percent of the trust  
25 principal immediately before the income interest ends. In the latter  
26 case, the undistributed income from the portion of the trust that may  
27 be revoked must be added to principal.

28 (c) When a trustee's obligation to pay a fixed annuity or a fixed  
29 fraction of the value of the trust's assets ends, the trustee shall  
30 prorate the final payment if and to the extent required by applicable  
31 law to accomplish a purpose of the trust or its settlor relating to  
32 income, gift, estate, or other tax requirements.

33 **ARTICLE 4**

34 **ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST**

35 **PART 1: RECEIPTS FROM ENTITIES**

1        NEW SECTION.    **Sec. 401.**    CHARACTER OF RECEIPTS.    (a) In this

2 section, "entity" means a corporation, partnership, limited liability  
3 company, regulated investment company, real estate investment trust,  
4 common trust fund, or any other organization in which a trustee has an  
5 interest. "Entity" does not mean a trust or estate to which section  
6 402 of this act applies, a business or activity to which section 403 of  
7 this act applies, or an asset-backed security to which section 415 of  
8 this act applies.

9        (b) Except as otherwise provided in this section, a trustee shall  
10 allocate to income money received from an entity.

11        (c) A trustee shall allocate the following receipts from an entity  
12 to principal:

13        (1) Property other than money;

14        (2) Money received in one distribution or a series of related  
15 distributions in exchange for part or all of a trust's interest in the  
16 entity;

17        (3) Money received in total or partial liquidation of the entity;  
18 and

19        (4) Money received from an entity that is a regulated investment  
20 company or a real estate investment trust if the money distributed is  
21 a capital gain dividend for federal income tax purposes.

22        (d) Money is received in partial liquidation:

23        (1) To the extent that the entity, at or near the time of a  
24 distribution, indicates that it is a distribution in partial  
25 liquidation; or

26        (2) If the total amount of money and property distributed in a  
27 distribution or series of related distributions is greater than twenty  
28 percent of the entity's gross assets, as shown by the entity's year-end  
29 financial statements immediately preceding the initial distribution.

30        (e) Money is not received in partial liquidation, nor may it be  
31 taken into account under subsection (d)(2) of this section, to the  
32 extent that it does not exceed the amount of income tax that a trustee  
33 or beneficiary must pay on taxable income of the entity that  
34 distributes the money.

35        (f) A trustee may rely upon a statement made by an entity about the  
36 source or character of a distribution if the statement is made at or  
37 near the time of distribution by the entity's board of directors or  
38 other person or group of persons authorized to exercise powers to pay

1 money or transfer property comparable to those of a corporation's board  
2 of directors.

3 NEW SECTION. **Sec. 402.** DISTRIBUTION FROM TRUST OR ESTATE. A  
4 trustee shall allocate to income an amount received as a distribution  
5 of income from a trust or an estate in which the trust has an interest  
6 other than a purchased interest in a trust that is an investment  
7 entity, and shall allocate to principal an amount received as a  
8 distribution of principal from such a trust or estate. If a trustee  
9 purchases an interest in a trust that is an investment entity, or a  
10 decedent or donor transfers an interest in such a trust to a trustee,  
11 section 401 or 415 of this act applies to a receipt from the trust.

12 NEW SECTION. **Sec. 403.** BUSINESS AND OTHER ACTIVITIES CONDUCTED BY  
13 TRUSTEE. (a) If a trustee who conducts a business or other activity  
14 determines that it is in the best interest of all the beneficiaries to  
15 account separately for the business or activity instead of accounting  
16 for it as part of the trust's general accounting records, the trustee  
17 may maintain separate accounting records for its transactions, whether  
18 or not its assets are segregated from other trust assets. The trustee  
19 shall maintain such records in accordance with principles of accounting  
20 that are generally accepted.

21 (b) A trustee who accounts separately for a business or other  
22 activity may determine the extent to which its net cash receipts must  
23 be retained for working capital, the acquisition or replacement of  
24 fixed assets, and other reasonably foreseeable needs of the business or  
25 activity, and the extent to which the remaining net cash receipts are  
26 accounted for as principal or income in the trust's general accounting  
27 records. If a trustee sells assets of the business or other activity,  
28 other than in the ordinary course of the business or activity, the  
29 trustee shall account for the net amount received as principal in the  
30 trust's general accounting records to the extent the trustee determines  
31 that the amount received is no longer required in the conduct of the  
32 business.

33 (c) Activities for which a trustee may maintain separate accounting  
34 records include:

35 (1) Retail, manufacturing, service, and other traditional business  
36 activities;

37 (2) Farming;

- 1 (3) Raising and selling livestock and other animals;
- 2 (4) Management of rental properties;
- 3 (5) Extraction of minerals and other natural resources;
- 4 (6) Timber operations; and
- 5 (7) Activities to which section 414 of this act applies.

6 **PART 2: RECEIPTS NOT NORMALLY APPORTIONED**

7 NEW SECTION. **Sec. 404.** PRINCIPAL RECEIPTS. A trustee shall  
8 allocate to principal:

9 (1) To the extent not allocated to income under this act, assets  
10 received from a transferor during the transferor's lifetime, a  
11 decedent's estate, a trust with a terminating income interest, or a  
12 payer under a contract naming the trust or its trustee as beneficiary;

13 (2) Money or other property received from the sale, exchange,  
14 liquidation, or change in form of a principal asset, including realized  
15 profit, subject to this Article;

16 (3) Amounts recovered from third parties to reimburse the trust  
17 because of disbursements described in section 502(a)(7) of this act or  
18 for other reasons to the extent not based on the loss of income;

19 (4) Proceeds of property taken by eminent domain, but a separate  
20 award made for the loss of income with respect to an accounting period  
21 during which a current income beneficiary had a mandatory income  
22 interest is income;

23 (5) Net income received in an accounting period during which there  
24 is no beneficiary to whom a trustee may or must distribute income; and

25 (6) Other receipts as provided in Part 3 of this Article.

26 NEW SECTION. **Sec. 405.** RENTAL PROPERTY. To the extent that a  
27 trustee accounts for receipts from rental property pursuant to this  
28 section, the trustee shall allocate to income an amount received as  
29 rent of real or personal property, including an amount received for  
30 cancellation or renewal of a lease. An amount received as a refundable  
31 deposit, including a security deposit or a deposit that is to be  
32 applied as rent for future periods, must be added to principal and held  
33 subject to the terms of the lease and is not available for distribution  
34 to a beneficiary until the trustee's contractual obligations have been  
35 satisfied with respect to that amount.



1 unless one of the circumstances described in section 104(c) of this act  
2 applies to the allocation. This power may be exercised by a cotrustee  
3 in the circumstances described in section 104(d) of this act and may be  
4 released for the reasons and in the manner described in section 104(f)  
5 of this act. An allocation is presumed to be insubstantial if:

6 (1) The amount of the allocation would increase or decrease net  
7 income in an accounting period, as determined before the allocation, by  
8 less than ten percent; or

9 (2) The value of the asset producing the receipt for which the  
10 allocation would be made is less than ten percent of the total value of  
11 the trust's assets at the beginning of the accounting period.

12 NEW SECTION. **Sec. 409.** DEFERRED COMPENSATION, ANNUITIES, AND  
13 SIMILAR PAYMENTS. (a) In this section, "payment" means a payment that  
14 a trustee may receive over a fixed number of years or during the life  
15 of one or more individuals because of services rendered or property  
16 transferred to the payer in exchange for future payments. The term  
17 includes a payment made in money or property from the payer's general  
18 assets or from a separate fund created by the payer, including a  
19 private or commercial annuity, an individual retirement account, and a  
20 pension, profit-sharing, stock-bonus, or stock-ownership plan.

21 (b) To the extent that a payment is characterized as interest or a  
22 dividend or a payment made in lieu of interest or a dividend, a trustee  
23 shall allocate it to income. The trustee shall allocate to principal  
24 the balance of the payment and any other payment received in the same  
25 accounting period that is not characterized as interest, a dividend, or  
26 an equivalent payment.

27 (c) If no part of a payment is characterized as interest, a  
28 dividend, or an equivalent payment, a trustee shall allocate to income  
29 four percent of the total value of the interests of the trustee in the  
30 plan, annuity, or similar payment as of the first business day of the  
31 accounting period and the balance to principal.

32 (d) If, to obtain an estate tax marital deduction for a trust, a  
33 trustee must allocate more of a payment to income than provided for by  
34 this section, the trustee shall allocate to income the additional  
35 amount necessary to obtain the marital deduction.

36 (e) This section does not apply to payments to which section 410 of  
37 this act applies.

1        NEW SECTION.    **Sec. 410.**    LIQUIDATING ASSET.    (a) In this section,  
2 "liquidating asset" means an asset whose value will diminish or  
3 terminate because the asset is expected to produce receipts for a  
4 period of limited duration.    The term includes a leasehold, patent,  
5 copyright, royalty right, and right to receive payments during a period  
6 of more than one year under an arrangement that does not provide for  
7 the payment of interest on the unpaid balance.    The term does not  
8 include a payment subject to section 409 of this act, resources subject  
9 to section 411 of this act, timber subject to section 412 of this act,  
10 an activity subject to section 414 of this act, an asset subject to  
11 section 415 of this act, or any asset for which the trustee establishes  
12 a reserve for depreciation under section 503 of this act.

13        (b) A trustee shall allocate to income ten percent of the receipts  
14 from a liquidating asset and the balance to principal.

15        NEW SECTION.    **Sec. 411.**    MINERALS, WATER, AND OTHER NATURAL  
16 RESOURCES.    (a) To the extent that a trustee accounts for receipts from  
17 an interest in minerals or other natural resources pursuant to this  
18 section, the trustee shall allocate them as follows:

19        (1) If received as nominal delay rental or nominal annual rent on  
20 a lease, a receipt must be allocated to income;

21        (2) If received from a production payment, a receipt must be  
22 allocated to income if and to the extent that the agreement creating  
23 the production payment provides a factor for interest or its  
24 equivalent.    The balance must be allocated to principal;

25        (3) If an amount received as a royalty, shut-in-well payment, take-  
26 or-pay payment, bonus, or delay rental is more than nominal, ninety  
27 percent must be allocated to principal and the balance to income; or

28        (4) If an amount is received from a working interest or any other  
29 interest not provided for in subsection (1), (2), or (3) of this  
30 section, ninety percent of the net amount received must be allocated to  
31 principal and the balance to income.

32        (b) An amount received on account of an interest in water that is  
33 renewable must be allocated to income.    If the water is not renewable,  
34 ninety percent of the amount must be allocated to principal and the  
35 balance to income.

36        (c) This act applies whether or not a decedent or donor was  
37 extracting minerals, water, or other natural resources before the  
38 interest became subject to the trust.

1 (d) If a trust owns an interest in minerals, water, or other  
2 natural resources on January 1, 2003, the trustee may allocate receipts  
3 from the interest as provided in this act or in the manner used by the  
4 trustee before January 1, 2003. If the trust acquires an interest in  
5 minerals, water, or other natural resources after January 1, 2003, the  
6 trustee shall allocate receipts from the interest as provided in this  
7 act.

8 NEW SECTION. **Sec. 412.** TIMBER. (a) To the extent that a trustee  
9 accounts for receipts from the sale of timber and related products  
10 pursuant to this section, the trustee shall allocate the net receipts:

11 (1) To income to the extent that the amount of timber removed from  
12 the land does not exceed the rate of growth of the timber during the  
13 accounting periods in which a beneficiary has a mandatory income  
14 interest;

15 (2) To principal to the extent that the amount of timber removed  
16 from the land exceeds the rate of growth of the timber or the net  
17 receipts are from the sale of standing timber;

18 (3) To or between income and principal if the net receipts are from  
19 the lease of timberland or from a contract to cut timber from land  
20 owned by a trust, by determining the amount of timber removed from the  
21 land under the lease or contract and applying the rules in (1) and (2)  
22 of this subsection; or

23 (4) To principal to the extent that advance payments, bonuses, and  
24 other payments are not allocated pursuant to (1), (2), or (3) of this  
25 subsection.

26 (b) In determining net receipts to be allocated pursuant to  
27 subsection (a) of this section, a trustee shall deduct and transfer to  
28 principal a reasonable amount for depletion.

29 (c) This act applies whether or not a decedent or transferor was  
30 harvesting timber from the property before it became subject to the  
31 trust.

32 (d) If a trust owns an interest in timberland on January 1, 2003,  
33 the trustee may allocate net receipts from the sale of timber and  
34 related products as provided in this act or in the manner used by the  
35 trustee before January 1, 2003. If the trust acquires an interest in  
36 timberland after January 1, 2003, the trustee shall allocate net  
37 receipts from the sale of timber and related products as provided in  
38 this act.

1        NEW SECTION.    **Sec. 413.**    PROPERTY NOT PRODUCTIVE OF INCOME.    (a) If  
2 a marital deduction is allowed for all or part of a trust whose assets  
3 consist substantially of property that does not provide the spouse with  
4 sufficient income from or use of the trust assets, and if the amounts  
5 that the trustee transfers from principal to income under section 104  
6 of this act and distributes to the spouse from principal pursuant to  
7 the terms of the trust are insufficient to provide the spouse with the  
8 beneficial enjoyment required to obtain the marital deduction, the  
9 spouse may require the trustee to make property productive of income,  
10 convert property within a reasonable time, or exercise the power  
11 conferred by section 104(a) of this act. The trustee may decide which  
12 action or combination of actions to take.

13        (b) In cases not governed by subsection (a) of this section,  
14 proceeds from the sale or other disposition of an asset are principal  
15 without regard to the amount of income the asset produces during any  
16 accounting period.

17        NEW SECTION.    **Sec. 414.**    DERIVATIVES AND OPTIONS.    (a) In this  
18 section, "derivative" means a contract or financial instrument or a  
19 combination of contracts and financial instruments which gives a trust  
20 the right or obligation to participate in some or all changes in the  
21 price of a tangible or intangible asset or group of assets, or changes  
22 in a rate, an index of prices or rates, or other market indicator for  
23 an asset or a group of assets.

24        (b) To the extent that a trustee does not account under section 403  
25 of this act for transactions in derivatives, the trustee shall allocate  
26 to principal receipts from and disbursements made in connection with  
27 those transactions.

28        (c) If a trustee grants an option to buy property from the trust,  
29 whether or not the trust owns the property when the option is granted,  
30 grants an option that permits another person to sell property to the  
31 trust, or acquires an option to buy property for the trust or an option  
32 to sell an asset owned by the trust, and the trustee or other owner of  
33 the asset is required to deliver the asset if the option is exercised,  
34 an amount received for granting the option must be allocated to  
35 principal. An amount paid to acquire the option must be paid from  
36 principal. A gain or loss realized upon the exercise of an option,  
37 including an option granted to a settlor of the trust for services  
38 rendered, must be allocated to principal.



1 a proceeding or other matter that concerns primarily the income  
2 interest; and

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

5 NEW SECTION. **Sec. 502.** DISBURSEMENTS FROM PRINCIPAL. (a) A  
6 trustee shall make the following disbursements from principal:

7 (1) The remaining one-half of the disbursements described in  
8 section 501 (1) and (2) of this act;

9 (2) All of the trustee's compensation calculated on principal as a  
10 fee for acceptance, distribution, or termination, and disbursements  
11 made to prepare property for sale;

12 (3) Payments on the principal of a trust debt;

13 (4) Expenses of a proceeding that concerns primarily principal,  
14 including a proceeding to construe the trust or to protect the trust or  
15 its property;

16 (5) Premiums paid on a policy of insurance not described in section  
17 501(4) of this act of which the trust is the owner and beneficiary;

18 (6) Estate, inheritance, and other transfer taxes, including  
19 penalties, apportioned to the trust; and

20 (7) Disbursements related to environmental matters, including  
21 reclamation, assessing environmental conditions, remedying and removing  
22 environmental contamination, monitoring remedial activities and the  
23 release of substances, preventing future releases of substances,  
24 collecting amounts from persons liable or potentially liable for the  
25 costs of those activities, penalties imposed under environmental laws  
26 or regulations and other payments made to comply with those laws or  
27 regulations, statutory or common law claims by third parties, and  
28 defending claims based on environmental matters.

29 (b) If a principal asset is encumbered with an obligation that  
30 requires income from that asset to be paid directly to the creditor,  
31 the trustee shall transfer from principal to income an amount equal to  
32 the income paid to the creditor in reduction of the principal balance  
33 of the obligation.

34 (c) For disbursements not covered in this section or section 501 of  
35 this act, see section 103(a)(4) of this act.

36 NEW SECTION. **Sec. 503.** TRANSFERS FROM INCOME TO PRINCIPAL FOR  
37 DEPRECIATION. (a) In this section, "depreciation" means a reduction in

1 value due to wear, tear, decay, corrosion, or gradual obsolescence of  
2 a fixed asset having a useful life of more than one year.

3 (b) A trustee may transfer to principal a reasonable amount of the  
4 net cash receipts from a principal asset that is subject to  
5 depreciation, but may not transfer any amount for depreciation:

6 (1) Of that portion of real property used or available for use by  
7 a beneficiary as a residence or of tangible personal property held or  
8 made available for the personal use or enjoyment of a beneficiary; or

9 (2) Under this section if the trustee is accounting under section  
10 403 of this act for the business or activity in which the asset is  
11 used.

12 (c) An amount transferred to principal need not be held as a  
13 separate fund.

14 NEW SECTION. **Sec. 504.** TRANSFERS FROM INCOME TO REIMBURSE

15 PRINCIPAL. (a) If a trustee makes or expects to make a principal  
16 disbursement described in this section, the trustee may transfer an  
17 appropriate amount from income to principal in one or more accounting  
18 periods to reimburse principal or to provide a reserve for future  
19 principal disbursements.

20 (b) Principal disbursements to which subsection (a) of this section  
21 applies include the following, but only to the extent that the trustee  
22 has not been and does not expect to be reimbursed by a third party:

23 (1) An amount chargeable to income but paid from principal because  
24 it is unusually large, including extraordinary repairs;

25 (2) A capital improvement to a principal asset, whether in the form  
26 of changes to an existing asset or the construction of a new asset,  
27 including special assessments;

28 (3) Disbursements made to prepare property for rental, including  
29 tenant allowances, leasehold improvements, and broker's commissions;

30 (4) Periodic payments on an obligation secured by a principal asset  
31 to the extent that the amount transferred from income to principal for  
32 depreciation is less than the periodic payments; and

33 (5) Disbursements described in section 502(a)(7) of this act.

34 (c) If the asset whose ownership gives rise to the disbursements  
35 becomes subject to a successive income interest after an income  
36 interest ends, a trustee may continue to transfer amounts from income  
37 to principal as provided in subsection (a) of this section.

1        NEW SECTION.    **Sec. 505.**    INCOME TAXES.    (a) A tax required to be  
2 paid by a trustee based on receipts allocated to income must be paid  
3 from income.

4        (b) A tax required to be paid by a trustee based on receipts  
5 allocated to principal must be paid from principal, even if the tax is  
6 called an income tax by the taxing authority.

7        (c) A tax required to be paid by a trustee on the trust's share of  
8 an entity's taxable income must be paid proportionately:

9        (1) From income to the extent that receipts from the entity are  
10 allocated to income; and

11        (2) From principal to the extent that:

12        (i) Receipts from the entity are allocated to principal; and

13        (ii) The trust's share of the entity's taxable income exceeds the  
14 total receipts described in (1) and (2)(i) of this subsection.

15        (d) For purposes of this section, receipts allocated to principal  
16 or income must be reduced by the amount distributed to a beneficiary  
17 from principal or income for which the trust receives a deduction in  
18 calculating the tax.

19        NEW SECTION.    **Sec. 506.**    ADJUSTMENTS BETWEEN PRINCIPAL AND INCOME  
20 BECAUSE OF TAXES.    (a) A fiduciary may make adjustments between  
21 principal and income to offset the shifting of economic interests or  
22 tax benefits between income beneficiaries and remainder beneficiaries  
23 which arise from:

24        (1) Elections and decisions, other than those described in  
25 subsection (b) of this section, that the fiduciary makes from time to  
26 time regarding tax matters;

27        (2) An income tax or any other tax that is imposed upon the  
28 fiduciary or a beneficiary as a result of a transaction involving or a  
29 distribution from the estate or trust; or

30        (3) The ownership by an estate or trust of an interest in an entity  
31 whose taxable income, whether or not distributed, is includable in the  
32 taxable income of the estate, trust, or a beneficiary.

33        (b) If the amount of an estate tax marital deduction or charitable  
34 contribution deduction is reduced because a fiduciary deducts an amount  
35 paid from principal for income tax purposes instead of deducting it for  
36 estate tax purposes, and as a result estate taxes paid from principal  
37 are increased and income taxes paid by an estate, trust, or beneficiary  
38 are decreased, each estate, trust, or beneficiary that benefits from

1 the decrease in income tax shall reimburse the principal from which the  
2 increase in estate tax is paid. The total reimbursement must equal the  
3 increase in the estate tax to the extent that the principal used to pay  
4 the increase would have qualified for a marital deduction or charitable  
5 contribution deduction but for the payment. The proportionate share of  
6 the reimbursement for each estate, trust, or beneficiary whose income  
7 taxes are reduced must be the same as its proportionate share of the  
8 total decrease in income tax. An estate or trust shall reimburse  
9 principal from income.

10 **ARTICLE 6**

11 **MISCELLANEOUS PROVISIONS**

12 NEW SECTION. **Sec. 601.** The following acts or parts of acts are  
13 each repealed:

14 (1) RCW 11.104.010 (Definitions) and 1997 c 252 s 78 & 1985 c 30 s  
15 84;

16 (2) RCW 11.104.020 (Duty of trustee as to receipts and  
17 expenditures) and 1985 c 30 s 85;

18 (3) RCW 11.104.030 (Income--Principal--Charges) and 1985 c 30 s 86;

19 (4) RCW 11.104.040 (When right to income arises--Apportionment of  
20 income) and 1985 c 30 s 87;

21 (5) RCW 11.104.050 (Income earned during administration of a  
22 decedent's estate) and 1993 c 161 s 1 & 1985 c 30 s 88;

23 (6) RCW 11.104.060 (Corporate distribution) and 1985 c 30 s 89;

24 (7) RCW 11.104.070 (Bond premium and discount) and 1985 c 30 s 90;

25 (8) RCW 11.104.071 (Charitable remainder unitrusts) and 1997 c 252  
26 s 79;

27 (9) RCW 11.104.080 (Trade, business and farming operations) and  
28 1985 c 30 s 91;

29 (10) RCW 11.104.090 (Disposition of receipts from natural  
30 resources) and 1985 c 30 s 92;

31 (11) RCW 11.104.100 (Timber) and 1971 c 74 s 10;

32 (12) RCW 11.104.110 (Other property subject to deferred payment  
33 right--Inventory value determination) and 1997 c 252 s 80 & 1971 c 74  
34 s 11;

35 (13) RCW 11.104.120 (Underproductive property--Definition) and 1985  
36 c 30 s 93;

- 1 (14) RCW 11.104.130 (Charges against income and principal) and 1985  
2 c 30 s 94;
- 3 (15) RCW 11.104.900 (Application of chapter) and 1971 c 74 s 14;
- 4 (16) RCW 11.104.901 (Application of RCW 11.104.010 through  
5 11.104.130 as of January 1, 1985) and 1985 c 30 s 142;
- 6 (17) RCW 11.104.910 (Short title) and 1971 c 74 s 15;
- 7 (18) RCW 11.104.920 (Severability--1971 c 74) and 1971 c 74 s 16;
- 8 (19) RCW 11.104.930 (Section headings not part of law) and 1971 c  
9 74 s 18; and
- 10 (20) RCW 11.104.940 (Effective date--1971 c 74) and 1971 c 74 s 19.

11 NEW SECTION. **Sec. 602.** UNIFORMITY OF APPLICATION AND  
12 CONSTRUCTION. In applying and construing this act, consideration must  
13 be given to the need to promote uniformity of the law with respect to  
14 its subject matter among states that enact similar laws.

15 NEW SECTION. **Sec. 603.** APPLICATION OF CHAPTER 11.96A RCW.  
16 Nothing in this act is intended to restrict the application of chapter  
17 11.96A RCW to issues, questions, or disputes that arise under or that  
18 relate to this act. Any and all such issues, questions, or disputes  
19 shall be resolved judicially or nonjudicially under chapter 11.96A RCW.

20 NEW SECTION. **Sec. 604.** SEVERABILITY CLAUSE. If any provision of  
21 this act or its application to any person or circumstance is held  
22 invalid, the remainder of the act or the application of the provision  
23 to other persons or circumstances is not affected.

24 NEW SECTION. **Sec. 605.** Captions, article headings, and part  
25 headings used in this act are not any part of the law.

26 NEW SECTION. **Sec. 606.** EFFECTIVE DATE. This act takes effect  
27 January 1, 2003.

28 NEW SECTION. **Sec. 607.** APPLICATION OF ACT TO EXISTING TRUSTS AND  
29 ESTATES. Except as specifically provided otherwise in the terms of a  
30 trust or a will, this act shall apply to any receipt or expense  
31 received or incurred on or after January 1, 2003, by any trust or  
32 decedent's estate, whether established before, on, or after January 1,

1 2003, and whether the asset involved was acquired by the fiduciary  
2 before, on, or after January 1, 2003.

3 NEW SECTION. **Sec. 608.** Sections 101 through 506 and 602 through  
4 606 of this act are each added to chapter 11.104 RCW.

--- END ---