

Appendix B to  
Rights of a Trust Beneficiary's Creditors under the Uniform Trust Code

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Changes Made by Enacting Jurisdictions in the Provisions of the Uniform Trust Code Dealing with the Rights of a Beneficiary's Creditors

The charts on the following pages show significant changes that have been made by enacting jurisdictions in the portions of the Uniform Trust Code (UTC) that deal with the rights of creditors of a trust beneficiary. These charts are excerpted from charts prepared by the National Conference of Commissioners on Uniform State Laws (NCCUSL) that show changes made by enacting jurisdictions to all of the provisions of the UTC. The charts are reprinted with the permission of NCCUSL. The complete charts are available at: [www.utcproject.org](http://www.utcproject.org).

The charts are divided into four parts, as follows:

States covered:	Pages:
<b>Kansas, Wyoming, New Mexico, Nebraska, and the District of Columbia</b>	<b>2–10</b>
<b>Utah, Maine, Tennessee, New Hampshire, and Missouri</b>	<b>11–17</b>
<b>Arkansas, Virginia, South Carolina, Oregon, and North Carolina</b>	<b>18–26</b>
<b>Ohio, Florida, Alabama, Pennsylvania, and North Dakota</b>	<b>27–39</b>

Note: these charts print on 8 \_ x 14 inch paper in landscape orientation.

## Significant Differences in States' Enacted Uniform Trust Codes

*This chart was created as an unofficial in-house NCCUSL document and is not for general publication.  
Statutes are subject to change; the date of the most recent update to each state comparison may be found on the last page of this chart.  
To report a typo or omission, please contact [mclayton@nccusl.org](mailto:mclayton@nccusl.org).  
Total length: 35 pages*

UNIFORM TRUST CODE	KANSAS K.S.A. 58a-101 to 58a-1106 Effective: January 1, 2003	WYOMING W.S. 4-10-101 to 4-10-1001 Effective: July 1, 2003	NEW MEXICO 46A-1-10 to 46A-11-1104 Effective: July 1, 2003	NEBRASKA 30-3801 to 30-38,110 Effective January 1, 2005	D.C. 19-1301.01 to 19-1311.03 Effective: March 10, 2004
§105	X	X	X	X	X
	<p>Changes paragraph (b)(2) to read: "...act in good faith and <u>administer the trust in accordance with K.S.A. 58a-801, and amendments thereto.</u>"</p> <p>(b)(5) replaces "the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust..." with <i>the effect of the rights of creditors to reach a trust as provided in article 5 of chapter 58a of the Kansas Statutes Annotated, and amendments thereto;</i></p> <p>Omits optional subsections (b)(8), (b)(9), (b)(14)</p> <p>Adds (b)(12): <u>the barring of claims against trusts and trustees under K.S.A. 2004 Supp. 58a-818, and amendments thereto.</u></p> <p>Adds (c) requiring that trusts created by will and admitted to probate be subject to the requirements of KSA chapter 59.</p>	<p>Omits the italicized language from [UTC] subsection (b)(2): "the duty of a trustee to act in good faith and in accordance with the <i>terms and purposes</i> of the trust <i>and the interests of the beneficiaries;</i>" (2005 amendment not adopted.)</p> <p>Omits optional [UTC] subsections (b)(8) and (b)(9).</p>	<p>Omits the following language from (b)(2): "the duty of a trustee to act in good faith and in accordance with the <i>terms and purposes</i> of the trust <i>and the interests of the beneficiaries;</i>" (italicized text omitted). (2005 amendment not adopted.)</p>	<p>Omits the italicized language from [UTC] subsection (b)(2): "the duty of a trustee to act in good faith and in accordance with the <i>terms and purposes</i> of the trust <i>and the interests of the beneficiaries;</i>" (2005 amendment not adopted.)</p> <p>Omits optional paragraph (b)(8).</p> <p>Adds language to paragraph (b)(8) [UTC (b)(9)]: "the duty under subsection (a) of section 30-3878 to <u>keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, and to respond to the request...</u>"</p> <p>Adds (b) (14): "<u>the power of the court under subdivision (a)(1) of section 30-3807</u>" [Referring to UTC §107]</p> <p>Adds (b)(16): "<u>the power of the court to review the action or the proposed action of the trustee for an abuse of discretion.</u>"</p> <hr/> <p style="color: blue;">Italicized language from</p>	<p>Omits the italicized language from [UTC] subsection (b)(2): "the duty of a trustee to act in good faith and in accordance with the <i>terms and purposes</i> of the trust <i>and the interests of the beneficiaries;</i>" (2005 amendment not adopted.)</p> <p>Adds the following language to the beginning of (b)(8) &amp; (b)(9), "Subject to subsection (c) of this section,"</p> <p>Adds a subsection (c) which allows the settlor to waive or modify the trustee's duties to give notice, information and reports to beneficiaries.</p> <p>Omits (b)(14)</p>

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				subsection (b)(2) is not omitted. (2005 amendment adopted.)  Does not add a section (b)(16).	
§106		<b>X</b>  Adds the following underlined language: “The common law of trusts and principles of equity supplement this act, except to the extent modified by this act or another statute of this state. <u>When interpreting article 5 of this act, the court shall first use the law of this state, then general common law.</u> ”			
§501		<b>X</b>  Replaces “subject to” in the first sentence with “protected by.” <i>(2005 amendment not adopted.)</i> <hr/> Begins with the added underlined language: “To the extent a beneficiary's interest in trust income <u>or principal, or both...</u> ”  Includes “subject to” language of 2005 Amendment.	<b>X</b>  Replaces “subject to” in the first sentence with “protected by.” <i>(2005 amendment not adopted.)</i> <hr/> “subject to” remains in first sentence (2005 amendment adopted)	<b>X</b>  Replaces “subject to” in the first sentence with “protected by.” <i>(2005 amendment not adopted.)</i> <hr/> “subject to” remains in first sentence (2005 amendment adopted)	<b>X</b>  Replaces “subject to” in the first sentence with “protected by.” <i>(2005 amendment not adopted.)</i>  Adds an additional sentence at end, that creditors cannot compel or exercise beneficiary’s rights.
§502	<b>X</b>  Omits the following from the end of (a) “only if it restrains both voluntary and involuntary transfer.”  Adds subsection (d): <u>Whether or not a trust contains a spendthrift</u>	<b>X</b>  Adds to beginning of (c): <u>“Other than by valid disclaimer under W.S. 2-1-401....”</u> <hr/> Subsection (a) is repealed. Subsection (c) begins with the			

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	<p><u>provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee’s discretion even if: (1) The discretion is expressed in the form of a standard for distribution; or (2) the trustee has abused the discretion.</u></p> <p>Adds subsection (e): <u>This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.</u></p>	<p><u>added language “Other than by valid disclaimer under W.S. 2-1-401,…”</u></p>			
§503	<p style="text-align: center;"><b>X</b></p> <p>Omits this section</p>	<p style="text-align: center;"><b>X</b></p> <p>Omits [UTC] subsection (b) and (c). <i>(2005 amendment not adopted.)</i></p> <p>Adds subsection (b): <u>“Even if a trust contains a spendthrift provision, a beneficiary’s child, who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust, may obtain from a court an order attaching present or future distributions to, or for the benefit of, the beneficiary.”</u> <i>(2005 amendment not adopted.)</i></p> <p>-----</p> <p><u>Subsec. (b) reads: Even if a trust</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Replaces subsections (b) and (c) with the following sections:</p> <p><u>(B) Even if a trust contains a spendthrift provision, a beneficiary’s child, spouse or former spouse who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.</u></p> <p><u>(C) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.”</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Replaces subsections (b) and (c) with the following sections:</p> <p><u>(B) Even if a trust contains a spendthrift provision, a beneficiary’s child, spouse or former spouse who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.</u></p> <p><u>(C) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.”</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Replaces subsections (b) and (c) with the following subsections:</p> <p><u>(b) Whether or not a trust contains a spendthrift provision, a beneficiary’s child, who has a judgment or court order against the beneficiary for support or maintenance, may obtain from a court an order attaching present or future distributions when payable under the terms of the trust to or for the benefit of the beneficiary.</u></p> <p><u>(c) A spendthrift provision is unenforceable against a claim of the District of Columbia or the United States to the extent a statute of the District of Columbia or federal law so provides.</u></p>

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		<p>contains a spendthrift provision, <u>a person who has a judgment or court order against the beneficiary for child support or maintenance or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust</u>, may obtain from a court an order attaching present or future distributions to, or for the benefit of, the beneficiary.</p>	<p>(2005 amendment not adopted.)</p> <hr/> <p>Adopted the 2005 amendment but adds the following underlined language to subsection (c): A claimant against whom a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. <u>The order attaching present or future distributions to or for the benefit of the beneficiary shall be the exclusive remedy available to a claimant against whom a spendthrift provision cannot be enforced.</u></p>	<p>(2005 amendment not adopted.)</p> <hr/> <p>Does not replace subsections (b) and (c). Adopted 2005 amendment.</p>	<p>(2005 amendment not adopted.)</p>
§504	<p style="text-align: center;"><b>X</b></p> <p>Omits this section.</p>	<p style="text-align: center;"><b>X</b></p> <p>Omits all references to support or maintenance for spouses and former spouses in subsections (c)(1) and (c)(2), thereby limiting court ordered distributions to beneficiary's children only.</p> <p>Rewords subsection (e) as follows: <u>A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee's discretion to make</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Omits subsection (e). (2004 amendment not adopted.)</p> <hr/> <p>Does not omit subsection (e). Adopts 2004 amendment.</p>	<p style="text-align: center;"><b>X</b></p> <p>Rewords subsection (e) as follows: <u>A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.</u> (2004 amendment adopted, but reworded.)</p>	<p style="text-align: center;"><b>X</b></p> <p>Omits this section.</p>

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		<p>distributions for the trustee's own benefit is limited by an ascertainable standard. (2004 amendment adopted, but reworded.)</p> <hr/> <p>Subsections (a), (c) and (e) are repealed entirely.  Subsection (b) omits "Except as otherwise provided in subsection (c),..." and reads "whether or not a trust contains a spendthrift provision, a creditor or assignee of a trust beneficiary may not attach the interest of the beneficiary or compel the trustee to distribute any income or principal, or both, from a trust when the terms of the trust provide that the trustee may only make discretionary distributions, even if:  (i) The trustee has discretion to make distributions for purposes stated in a standard of distribution;"</p>		Does not reword subsection (e).	
§505	<p style="text-align: center;"><b>X</b></p> <p>In (a)(3), adds: ... the property of a trust that was revocable at the settlor's death is subject to... <u>"the homestead, homestead allowance, all the elective share rights of the surviving spouse pursuant to K.S.A. 59-6a209, and amendments thereto,"</u>...</p> <p>Adds subsection (b)(3): <u>this subsection shall not apply to the</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Changes subsection (b)(ii) [UTC (b)(2)] to read: "upon the lapse, release, or waiver of the power, the holder is <u>no longer treated as the settler with respect to the property affected by the lapse, release or waiver.</u>"</p> <hr/> <p>Included as Sec. 4-10-506.</p>		<p style="text-align: center;"><b>X</b></p> <p>Adds to end of (a) (3):  -- Proceedings to assert liability for claims under this section may not commence unless the personal representative has received a written demand from the spouse, creditor, child, representative of the child  --Proceedings must commence within one year of settlor's death</p>	<p style="text-align: center;"><b>X</b></p> <p>Adds to §(a)(3) references to other DC Code sections</p> <p>Adds parts (c), (d), &amp; (e) dealing with proceedings in DC other than a small estate proceeding and notice to be given.</p>

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	<p><u>lapse of powers held by the spouse of a person occurring upon the death of such person.</u></p>	<p>Subsection (a)(i) has the following added in underline: “During the lifetime of the settlor, the property of a revocable trust contributed by the settlor, <u>and all income and appreciation thereon and proceeds thereof</u>, is subject to claims of the settlor's creditors;”</p> <p>Subsection (a)(3) is omitted, but included later as Subsection (c) and reworded as follows: “After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the portion of a trust that was revocable at the settlor's death, and the property subject thereto, is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains to the extent the settlor's probate estate is inadequate to satisfy those claims, costs of administration and expenses.”</p> <p>Subsection (b) now reads as follows: “With respect to an irrevocable trust with a spendthrift provision, a creditor or assignee of the right of a settlor are limited by the provisions of W.S. 4-10-510 et seq.”</p> <p>Subsection (d) is added as follows: “ For purposes of this section, the holder of an unexercised power of</p>		<p>--Sums recovered by the personal representative must be administered as part of the settlor's estate.</p> <p>--Liability under (a)(3) does not apply to assets otherwise exempt under federal law.</p> <p>Adds (a) (4), which deals with who may be joined as a party to a proceeding under (a)(3).</p> <p>Adds (a)(5): A trustee is released from liability on assets distributed to beneficiaries unless the trustee received notice of insufficiency of settlor's estate to cover claims.</p>	

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		<p>withdrawal or power of appointment over trust property shall not be treated as a settlor of the trust regardless of whether the power remains exercisable or has lapsed.”</p>			
§506	<p style="text-align: center;"><b>X</b></p> <p>In subsection (a) changes language to read: “...exercise of the trustee’s discretion <u>whether or not the terms of the trust (1) include a support or other standard to guide the trustee in making distribution decisions; or (2) provide that the trustee “may” or “shall” make discretionary distributions, including distributions pursuant to a support or other standard.”</u></p>	<p style="text-align: center;"><b>X</b></p> <p>[4-10-507]</p> <p>Omits [UTC] subsection (a). (2005 amendment not adopted.)</p> <hr/> <p>Included as Sec. 4-10-508. Overdue mandatory distribution</p> <p>Sec. (a) is reworded as follows: In this section, Amandatory distribution@ means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a <u>discretionary distribution under W.S. 4-10-504, subject to the exercise of the trustee=s discretion even if (1) the discretion is expressed in the form of a standard of distribution, or (2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.</u></p> <p>Subsection (b) is replaced with</p>	<p style="text-align: center;"><b>X</b></p> <p>Omits subsection (a). (2005 amendment not adopted.)</p> <hr/> <p>Both subsections are included in the NM UTC, but are in reverse order.</p>	<p style="text-align: center;"><b>X</b></p> <p>Omits subsection (a). (2005 amendment not adopted.)</p> <hr/> <p>Includes subsection (a), 2005 amendment adopted.</p>	<p style="text-align: center;"><b>X</b></p> <p>Omits subsection (a). (2005 amendment not adopted.)</p>



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		<p>subsections (b) and (c) as follows:</p> <p><u>(b) If the trust includes a spendthrift provision, a creditor or assignee of a beneficiary may not compel a mandatory distribution or attach a mandatory distribution until it is received by the beneficiary.</u></p> <p><u>(c) If a trust providing for a mandatory distribution does not include a spendthrift provision, a creditor or assignee of a beneficiary may compel the trustee to make the mandatory distribution to the beneficiary where the distribution was not made within a reasonable time.</u></p>			
§814	<p style="text-align: center;"><b>X</b></p> <p>Omits subsections (b) through (d)</p>	<p style="text-align: center;"><b>X</b></p> <p>Subsection (a) is repealed.</p>	<p style="text-align: center;"><b>X</b></p> <p>Adds the following language to subsection (b)(1): ...”in accordance with an ascertainable standard <u>relating to the trustee’s individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) [26 U.S.C.S. §2041(b)(1)(A)] or 2514(c)(1) [26 U.S.C.S. §2514(c)(1)] of the Internal Revenue Code of 1986, as amended; and...</u> (2004 amendment not adopted.)</p> <p>Language not added to subsection (b)(1). (2004</p>		<p style="text-align: center;"><b>X</b></p> <p>Omits subsections (b) through (d)</p> <p>Adds a new (b): “Section 21-1722 applies to a trust governed by this chapter”</p>

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<b>Last Update</b>	March 19, 2008 (Added HB2607 amendments)	March 19, 2008	March 19, 2008	March 19, 2008	March 19, 2008

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Total length: 47 pages*

UNIFORM TRUST CODE	UTAH U.C.A. 75-7-101 to 75-7-1103 Effective: July 1, 2004	MAINE M.R.S.A. Title 18B §§ 101-1004 Effective: July 1, 2005	TENNESSEE T.C.A. Title 35 §§ 2-95 Effective: July 1, 2004	NEW HAMPSHIRE Chapter 564 B: 1-101 to 11-1104 Effective: October 1, 2004	MISSOURI 456.1-101 to 456.11-1106 Effective: January 1, 2005
§105	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
	<p>Adds to subsection (2) [UTC (b)]: “<u>Except as specifically provided in this chapter</u>, the terms of a trust prevail...”</p> <p>Changes (2)(b) [UTC (b)(2)] to read “the duty of a trustee to act in good faith and in accordance with the purposes of the trust.” (2005 amendment not adopted.)</p> <p>Omits from (2)(c) [UTC (b)(3)]: “...and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;”</p> <p>Omits [UTC] (b)(7), (13).</p> <p>Omits optional [UTC] sections (8), (9).</p>	<p>Changes (2)(b) [UTC (b)(2)] to read “the duty of a trustee to act in good faith and in accordance with the purposes of the trust.” (2005 amendment not adopted.)</p> <p>Adds to the beginning of paragraphs (2)(H) and (2)(I): <u>Subject to subsection 3, the...</u></p> <p>Adds subsection (3): <u>Waiver or modification. The settler, in the trust instrument or in another writing delivered to the trustee, may waive or modify the duties of a trustee under section 813, subsection 1 or 2 to give notice, information and reports to qualified beneficiaries by:</u>  <u>(A) Waiving or modifying such duties as to all qualified beneficiaries except the settlor’s surviving spouse during the lifetime of the settlor or the lifetime of the settlor’s surviving spouse; and</u>  <u>(B) Designating a person or persons, any of whom may or may not be a beneficiary, to act in good faith to protect the interests of the qualified beneficiaries who are not receiving notice, information or reports and to receive any notice,</u></p>	<p>In paragraph (b)(2), omits the “in good faith” requirement.</p> <p>Also in paragraph (b)(2), omits the requirement to act in accordance with the <i>terms</i> of the contract, and in “the interests of the beneficiaries.” (2005 amendment not adopted.)</p> <p>Omits optional (b)(8) and (9). (these paragraphs were previously omitted, but are now “optional” under 2004 amendments)</p> <p style="color: blue;">Subsection (b)(2) includes “terms” and “the interests of the beneficiaries.” (2005 Amendment adopted.)</p>	<p>Omits optional subsections (8) and (9).</p> <p>(b)(12) adds “statutory” - (<u>statutory</u> periods of limitation...) as subsec. (b)(10).</p>	<p>Changes (2)(2) [UTC (b)(2)] to read “the duty of a trustee to act in good faith and in accordance with the purposes of the trust.” (2005 amendment not adopted.)</p> <p>Omits from 2(3) [UTC (b)(3)] the following: “...and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve.”</p> <p>Changes 2.(8) [UTC (b)(8)] to: (8) <u>subject to subsection 3 of this section, the duty of a trustee of an irrevocable trust to notify each permissible distributee who has attained the age of twenty-one years of the existence of the trust and of that permissible distributee’s rights to request trustee’s reports and other information reasonably related to the administration of the trust;</u></p> <p>Omits from 2(9) [UTC (b)(9)]: “under Section 813(a).”</p> <p>Omits from 2(14) [UTC (b)(14)] “subject matter jurisdiction” and its relevant provision of this code.</p>

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		<p><u>information or reports required under section 813, subsection 1 or 2 in lieu of providing such notice, information or reports to the qualified beneficiaries. The person or persons designated under this paragraph are deemed to be representatives of the qualified beneficiaries not receiving notice, information or reports for the purposes of the time limitation for a beneficiary to commence an action against the trustee for breach of trust as provided in subsection 1005, subsection 1.</u></p>			<p>Adds new subsection (3): <u>For purposes of subdivision (8) of subsection 2 of this section, the settler may designate by the terms of the trust one or more permissible distributees to receive notification of the existence of the trust and of the right to request trustee’s reports and other information reasonably related to the administration of the trust in lieu of providing the notice, information or reports to any other permissible distributee who is an ancestor or lineal descendant of the designated permissible distributee.</u></p>
§106					
§501	<p style="text-align: center;"><b>X</b></p> <p>Replaces “to the extent a beneficiary’s interest is not <i>subject to...</i>” with “to the extent a beneficiary’s interest is not <u>protected by...</u>” (2005 amendment not adopted.)</p>	<p style="text-align: center;"><b>X</b></p> <p>Replaces “to the extent a beneficiary’s interest is not <i>subject to...</i>” with “to the extent a beneficiary’s interest is not <u>protected by...</u>” (2005 amendment not adopted.)</p> <p>Omits the following italicized language: “...by attachment or present or future distributions to <i>or for the benefit of</i> the beneficiary <i>or other means.</i>”</p>	<p style="text-align: center;"><b>X</b></p> <p>Replaces “to the extent a beneficiary’s interest is not <i>subject to...</i>” with “to the extent a beneficiary’s interest is not <u>protected by...</u>” (2005 amendment not adopted.)</p> <hr/> <p>Phrase “to the extent a beneficiary’s interest is not <u>subject to...</u>” is included. (2005 Amendment adopted.)</p>		<p style="text-align: center;"><b>X</b></p> <p>Adds: “<u>Except as otherwise provided in sections 456.5-506 to 456.5-507, to the extent...</u>”</p> <p>Changes the following: “To the extent a beneficiary’s interest is not protected by a spendthrift provision, <u>an assignee or a judgment creditor of the beneficiary may, without court order, reach the beneficiary’s interest...</u>”</p>
§502	<p style="text-align: center;"><b>X</b></p> <p>Adds to subsection (1) [UTC (a)]: A spendthrift provision for a beneficiary other than the settlor is valid only if it restrains both voluntary and involuntary transfer</p>		<p style="text-align: center;"><b>X</b></p> <p>Omits from subsection (c): “except as otherwise provided in this article”</p>		<p style="text-align: center;"><b>X</b></p> <p>Omits “only” from subsection 1. [UTC (a)] and adds: “...restrains <u>either the voluntary or involuntary transfer or both...</u>”</p>

UNIFORM TRUST CODE	UTAH U.C.A. 75-7-101 to 75-7-1103 Effective: July 1, 2004	MAINE M.R.S.A. Title 18B §§ 101-1004 Effective: July 1, 2005	TENNESSEE T.C.A. Title 35 §§ 2-95 Effective: July 1, 2004	NEW HAMPSHIRE Chapter 564 B: 1-101 to 11-1104 Effective: October 1, 2004	MISSOURI 456.1-101 to 456.11-1106 Effective: January 1, 2005
	<p>of a beneficiary's interest, <u>even if the beneficiary is the trustee or cotrustee of the trust.</u></p> <p>Adds to subsection (2) [UTC (b)]: A term of a trust providing that the interest of a beneficiary <u>other than the settlor</u> is held subject to a "spendthrift trust,"...</p>				
§503	<p style="text-align: center;"><b>X</b></p> <p>Omits [UTC] subsections (b) and (c). <i>(2005 amendment not adopted.)</i></p> <p>Adds: <u>“(2) Even if a trust contains a spendthrift provision, a beneficiary’s child who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.</u></p> <p><u>(3) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.”</u> <i>(2005 amendment not adopted.)</i></p>	<p style="text-align: center;"><b>X</b></p> <p>Replaces the entire section with the following: <u>There are no exceptions to spendthrift provisions except as provided in sections 504, 505 and 506.</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Replaces the entire section with the following: <u>A spendthrift provision is unenforceable against a claim of this state to the extent a statute of this state so provides.</u> <i>(this language was originally found in the pre-2005 amendment UTC §503(c).)</i></p>	<p style="text-align: center;"><b>X</b></p> <p>Replaces subsection (b) with the following: <u>(b) A spendthrift provision is unenforceable against:</u> <u>(1) a beneficiary’s child for whom there is a judgment or court order against the beneficiary for support;</u> <u>(2) a beneficiary’s spouse or former spouse who has a judgment or court order against the beneficiary for alimony but only for and to the extent that such judgment or court order expressly specifies the alimony amount attributable to the most basic food, shelter, and medical needs of the spouse or former spouse;</u> <u>(3) a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust;</u> <u>(4) a claim of this state or the United States to the extent a statute of this state or federal law so provides.</u> <u>(c) A claimant against whom a spendthrift provision cannot be enforced may obtain from court an order attaching present or</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Adds subpart (2), following the definition of “child”, to define “judgment.”</p> <p>Omits [UTC] subsections (b) and (c). <i>(2005 amendment not adopted.)</i></p> <p>Adds: <u>2. Even if a trust contains a spendthrift provision, a beneficiary's child, spouse, or former spouse who has a judgment against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future trust income. If there is more than one permissible distributee, the court may grant relief as is equitable under the circumstances.</u></p> <p><u>3. A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.</u> <i>(2005 amendment not adopted).</i></p>

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				<p><u>an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.</u></p> <hr/> <p>Also added: <u>(d) Nothing in this section or RSA 564-B:5-502 shall be construed to prevent the application of RSA 545-A, the Uniform Fraudulent Transfer Act, or a similar law of another state having jurisdiction over a transfer of property.</u></p>	
§504	<p style="text-align: center;"><b>X</b></p> <p>Omits [UTC] subsection (e). <i>(2004 amendment not adopted.)</i></p>	<p style="text-align: center;"><b>X</b></p> <p>Omits subsection (a).</p> <p>Omits from the beginning of subsection (1) [UTC (b)]: “Except as otherwise provided in subsection (c),...”</p> <p>Omits subsection (c).</p> <p>Rewords subsection (3) [UTC (e)] as follows: <u>A creditor may not reach the interest of a beneficiary who is also a trustee, or otherwise compel a distribution, if the trustee’s discretion is limited by an ascertainable standard.</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Omits subsections (a), (c), and (e). <i>(2004 amendment not adopted.)</i></p> <hr/> <p>Omits UTC (a). UTC (b) becomes subsec. (a), but omits the phrase “<i>Except as otherwise provided in subsection (c).</i>” UTC (c) is omitted, UTC (d) is now subsec. (b). UTC (e) is now included as subsec. (c).</p>	<p style="text-align: center;"><b>X</b></p> <p>In subsection (b) omits “...and (d)...”</p> <p>Changes (c)(1) by <i>omitting</i> “or maintenance” of the child and by <i>adding</i> “<u>or for alimony for the beneficiary’s spouse, or former spouse...</u>”</p> <p>In paragraph (c)(2) adds: <u>...and with respect to alimony, only for and to the extent that the judgment or court order expressly specifies the alimony amount attributable to the most basic food, shelter and medical needs of the spouse or former spouse.</u></p> <p>Changes subsection (d) to begin: “<u>Subsection (b) does not limit...</u>”</p>	<p style="text-align: center;"><b>X</b></p> <p>Omits subsections (a) through (c).</p> <p>Adds new subsection (1): <u>A beneficiary’s interest in a trust that is subject to the trustee’s discretion does not constitute an enforceable right even if the discretion is expressed in the form of a standard of distribution or the beneficiary is then serving as a trustee or co-trustee. A creditor or other claimant may not attach present or future distributions from such an interest or right, obtain an order from a court forcing the judicial sale of the interest or compelling the trustee to make distributions, or reach the interest or right by any other means, even if the</u></p>

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				<p>Replaces the language of subsection (e) with the following: <u>A creditor or assignee of a beneficiary may not compel a distribution to the beneficiary solely because the beneficiary is a trustee if the beneficiary trustee does not have the discretion to make or participate in making distributions to himself or herself, if the beneficiary-trustee’s discretion to make or participate in making distributions to himself or herself is limited by an ascertainable standard, or if the beneficiary-trustee’s discretion to make or participate in making distributions to himself or herself is exercisable only with the consent of a cotrustee or another person holding an adverse interest. Under such circumstances, the creditor or assignee may compel a distribution only to the extent the creditor or assignee otherwise may compel a distribution where the beneficiary not acting as trustee or cotrustee.</u></p> <hr/> <p>Subsection (d) begins “This section does not limit...”</p>	<p><u>trustee has abused the trustee’s discretion.</u></p> <p>Adds new subsection (3): <u>This section applies whether or not an interest is subject to a spendthrift provision.</u></p> <p>Adds new subsection (4): <u>For purposes of this section, a beneficiary’s interest in a trust is subject to the trustee’s discretion if that interest does not constitute a mandatory distribution as defined in subsection 1 of section 456.5-506.</u></p> <p>Omits [UTC] subsection (e). <i>(2004 amendment not adopted.)</i></p>
§505	<p style="text-align: center;"><b>X</b></p> <p>Adds to (1)(a) [UTC (a)(1)]: During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor’s creditors. <u>If a trust has more than</u></p>		<p style="text-align: center;"><b>X</b></p> <p>In (a)(3), replaces “at the settlor’s death” with “immediately preceding the settlor’s death” and omits “and statutory allowances to a</p>	<p style="text-align: center;"><b>X</b></p> <p>Adds to (a)(2): <u>This subparagraph shall not apply to an irrevocable “special needs trust” established for a disabled person as described in 42 U.S.C.</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Omits from subsection 1. [UTC (a)], “the following rules apply” and merges UTC subpart (a)(1) into subsection 1.</p>

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	<p><u>one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.</u></p> <p>Adds to (1)(b) [UTC (a)(2)]: With respect to an irrevocable trust <u>other than an irrevocable trust that meets the requirements of Section 25-6-14</u>, a creditor or assignee of the settlor may reach the maximum...</p> <p>Adds to (1)(c) [UTC (a)(3)]: ... the property of a trust that was revocable at the settlor's death, <u>but not property received by the trust as a result of the death of the settlor which is otherwise exempt from the claims of the settlor's creditors</u>, is subject to...</p>		<p>surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances."</p> <p>Condenses subparts (1) and (2) of (b) into subsection (b) and omits from (1) the following: "the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property to the power; and"</p>	<p><u>1396p(d)(4) or similar federal law governing the transfer to such a trust.</u></p> <p>Omits in (a)(3): "statutory allowances to a surviving spouse and children" and adds: <u>This section does not apply to the proceeds and any other benefits of a policy of life or endowment insurance effected by the settlor on the settlor's own life or on another life as provided in RSA 408:2.</u></p>	<p>UTC subpart (a)(2) is subsection 2 and limits this subsection to irrevocable trusts <u>without a spendthrift provision.</u></p> <p>Omits UTC subpart (a)(3).</p> <p>Inserts subsection 3 addressing irrevocable trusts with a spendthrift provision.</p> <p>Inserts subsection 4 regarding notice and provides a standard form for newspaper publication.</p> <p>Subsection 5 = UTC subsection (b).</p>
§506	<p style="text-align: center;"><b>X</b></p> <p>Omits [UTC] subsection (a). <i>(2005 amendment not adopted.)</i></p>	<p style="text-align: center;"><b>X</b></p> <p>Omits [UTC] subsection (a). <i>(2005 amendment not adopted.)</i></p>	<p style="text-align: center;"><b>X</b></p> <p>Omits [UTC] subsection (a). <i>(2005 amendment not adopted.)</i></p> <hr/> <p>Subsection (a) included.</p>		
§814	<p style="text-align: center;"><b>X</b></p> <p>[75-7-812] Adds to subsection 2(a) [UTC (b)(1)]: "...in accordance with an ascertainable standard <u>relating to the trustee's individual health, education, support, or maintenance within the meaning of Subsection 2041(b)(1)(A) or 2514(c)(1) of the</u></p>	<p style="text-align: center;"><b>X</b></p> <p>In subsection (1) [UTC (a)], omits the phrase "...and the interests of the beneficiaries." Adds to subsection (1): "...<u>A trustee's power to make distributions is discretionary notwithstanding terms of the trust providing that the trustee</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Adds to paragraph (b)(1): "...in accordance with an ascertainable standard <u>relating to the trustee's individual health, education, support, or maintenance within the meaning of Subsection 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of</u></p>		<p style="text-align: center;"><b>X</b></p> <p>Changes subsection 1. to read: "Notwithstanding the use of such terms as "absolute," "sole," or "uncontrolled," <u>in the exercise of discretion under an ascertainable standard</u>, the trustee shall exercise <u>such</u> discretionary..."</p>



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	<u>Internal Revenue Code of 1986, as in effect on May 1, 2004;</u> " (2004 amendment not adopted.)	<u>"shall" make distributions exercising a discretionary power, with or without standards.</u> "	<u>1986, as in effect on May 1, 2004;</u> " (2004 amendment not adopted.)  The above underlined phrase is omitted. (2004 Amendment adopted.)		Adds paragraph 2.(3): (3) for purposes of this subsection 2 of this section, the term "trustee" shall include a person who is deemed to have any power of a trustee, whether because such person has the right to remove or replace any trustee, because a reciprocal trust or power doctrine applies, or for any other reason.
<b>Last Update</b>	March 20, 2008	March 20, 2008	March 20, 2008	March 20, 2008 (Amended by 2006 SB332) (Amended by 2006 SB0394)	March 20, 2008 (Amended by 2006 SB332)

### Significant Differences in States' Enacted Uniform Trust Codes

*This chart was created as an unofficial in-house NCCUSL document and is not for general publication.  
Statutes are subject to change; the date of the most recent update to each state comparison may be found on the last page of this chart.  
To report a typo or omission, please contact [mclayton@nccusl.org](mailto:mclayton@nccusl.org).  
Total length: 66 pages*

UNIFORM TRUST CODE	ARKANSAS A.C.A. 28-73-101 to 28-73-1005 Effective: September 1, 2005	VIRGINIA V.C.A. 55-541.01 to 55-551.06 Effective: July 1, 2006	SOUTH CAROLINA S.C.C. 62-7-101 to 62-7-1106 Effective: January 1, 2006	OREGON O.R.S. 130.001 et seq. Effective: January 1, 2006	NORTH CAROLINA G.S. 36C-1-101 to 36C-11-1103 Effective: January 1, 2006
§105	<b>X</b>  Omits the italicized language from subpart (b)(2): “the duty of a trustee to act in good faith and in accordance with <i>the terms and purposes of the trust and the interests of the beneficiaries.</i> ”  Omits optional subparts (b)(8) and (b)(9).  Omits subpart (b)(10).	<b>X</b>  Omits the italicized language from subpart (b)(2): “the duty of a trustee to act in good faith and in accordance with <i>the terms and purposes of the trust and the interests of the beneficiaries.</i> ”  Omits optional subparts (b)(8), (b)(9), and (b)(14).	<b>X</b>  Omits the italicized language from subpart (b)(2): “the duty of a trustee to act in good faith and in accordance with <i>the terms and purposes of the trust and the interests of the beneficiaries.</i> ”  In paragraph (b)(3), omits the requirement that the purpose of the trust not be contrary to public policy.  Omits UTC paragraph (b)(6).  Omits optional UTC paragraphs (b)(8) and (b)(9).	<b>X</b>  Omits the italicized language from subpart (2)(b) [UTC (b)(2)]: “the duty of a trustee to act in good faith and in accordance with <i>the terms and purposes of the trust and the interests of the beneficiaries.</i> ”  In paragraph (2)(h) [UTC (b)(8)] adds “ <u>Subject to subsection (3) of this section</u> , the duty...” and omits the requirement that qualified beneficiaries have attained the age of 25.  In paragraph (2)(i) [UTC (b)(9)] adds “ <u>Subject to subsection (3) of this section</u> , the duty...”  Adds new subsection (3): <u>(3) The settler, in the trust instrument or in another writing delivered to the trustee, may waive or modify the duties of a trustee under section 71 of this 2005 Act to give notice, information and reports to qualified beneficiaries by:</u> <u>(a) Waiving or modifying those duties during the period that either the settler is alive and financially capable, or the settlor’s spouse, if a qualified beneficiary, is alive and financially capable; or</u>	<b>X</b>  Omits UTC subsections (6) through (9).

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				<u>(b) Designating a person or persons to act in good faith to protect the interests of qualified beneficiaries and to receive any notice, information or reports required under section 71(1), (2)(b) and (2)(c) of this 2005 Act in lieu of providing the notice, information, or reports to the qualified beneficiaries.</u>	
§106					
§501	<p style="text-align: center;"><b>X</b></p> <p>Replaces “subject to” in the first sentence with “<u>protected by.</u>”</p>	<p style="text-align: center;"><b>X</b></p> <p>Replaces “subject to” in the first sentence with “<u>protected by.</u>”</p> <p>“<u>To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.</u>”</p> <p>(2005 Amendment)</p>	<p style="text-align: center;"><b>X</b></p> <p>Replaces the phrase “To the extent a beneficiary’s interest is not subject to a spendthrift provision” with “<u>Except as provided in subsection (b)</u>”</p> <p>Adds subsection (b): <u>This section shall not apply and a trustee shall have no liability to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary to the extent a beneficiary’s interest</u></p> <p><u>(1) is protected by a spendthrift provision, or</u></p> <p><u>(2) is a discretionary trust interest as referred to in S.C. Code Section 62-7-504.</u></p>		<p style="text-align: center;"><b>X</b></p> <p>Changes this section to read as follows:</p> <p><u>(a) Except as provided in subsection (b) of this section, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary’s interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to that relief as is appropriate under the circumstances.</u></p> <p><u>(b) This section shall not apply and a trustee shall have no liability to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary, to the extent that a beneficiary’s interest:</u></p> <p><u>(1) Is subject to a spendthrift provision;</u></p> <p><u>(2) Is a discretionary trust interest as defined in G.S. 36C-5-504(a)(2); or</u></p>

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					(3) Is a protective trust interest as described in G.S. 36C-5-508.
§502				X	
§503	X  Omits this entire section.	X  Omits UTC subsections (b) and (c). Replaces them with the following:  <u>(B) Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.</u> <u>(C) Subject to the limitations of § 55-545.03:1, no spendthrift provision shall operate to the prejudice of the United States, the Commonwealth, or any county, city, or town.</u>	X  Omits UTC subsections (b) and (c), replacing them with the following:  <u>(b) Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.</u> <u>(c) The exception in subsection (b) is unenforceable against a special needs trust, supplemental needs trust, or similar trust established for a disabled person if the applicability of such a provision could invalidate such a trust's exemption from consideration as a countable resource for Medicaid or Supplemental Security Income (SSI) purposes or if the applicability of such a provision has the effect or potential effect of rendering such disabled person ineligible for any program of public benefit, including, but not limited to, Medicaid and SSI.</u>	In subsection (2) [UTC (b)], paragraphs (1) and (2) are incorporated into the subsection and the following language is then added: <u>...may obtain an order from a court of this state authorizing garnishment or other execution against present or future distributions to or for the benefit of the beneficiary. The court may issue an order authorizing execution against such amount as the court determines to be equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary. Distributions subject to execution under this subsection include distributions required by the express terms of the trust, such as mandatory payments of income, and distributions the trustee has otherwise decided to make, such as through the exercise of discretion.</u>  UTC paragraph (b)(3) is moved to subsection (3) and UTC subsection (c) is omitted.X	X  Omits UTC subsections (b) and (c), replacing them with the following:  <u>(b) Even if a trust contains a spendthrift provision, or if the beneficiary's interest is a discretionary trust interest as defined in G.S. 36C-5-504(a)(2) or a protective trust interest as defined in G.S. 36C-5-508, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to relief that is appropriate under the circumstances.</u>

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§504	<p style="text-align: center;"><b>X</b></p> <p>Omits [UTC] subsection (a).</p> <p>Omits from subsection (a) [UTC (b)]: <i>Except as otherwise provided in subsection (c), whether or not...</i></p> <p>Omits [UTC] subsection ©.</p> <p>Adds to subsection (b) [UTC (d)]: <u>Under § 26-78-814(a), a trustee must always exercise a discretionary power in good faith and with regard to the purposes of the trust and the interests of the beneficiaries.</u></p> <p>Changes subsection © [UTC (e)] to read as follows: <u>A creditor may not reach the interest of a beneficiary who is also a trustee or co-trustee, or otherwise compel a distribution, if the trustee’s discretion to make distributions for the trustee’s own benefit is limited by an ascertainable standard.</u></p>	<p style="text-align: center;"><b>X</b></p> <p>In subsection (B), the language is changed to apply to subsection C <u>“and §55-545.03:1.”</u></p> <p>In paragraphs ©(1) and ©(2), the language is changed to apply only to “beneficiary’s child” and not to beneficiary’s “spouse, or former spouse.”</p> <p>Subsection (E) is reworded to read: <u>A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee’s discretion to make distributions for the trustee’s own benefit is limited by an ascertainable standard.</u></p>	<p style="text-align: center;"><b>X</b></p> <p>In subsection (b), the phrase “whether or not a trust contains a spendthrift provision” is omitted, and the language is changed slightly to read: “...may not compel a distribution <u>from a trust in which the beneficiary has a discretionary trust interest</u>, even if:”</p> <p>In paragraphs ©(1) and ©(2), omits reference to beneficiary’s spouse or former spouse.</p> <p>In subsection (d), adds the following: <u>provided, however, this right may not be exercised by a creditor for the beneficiary.</u></p> <p>Omits UTC subsection (e), adds the following new sections:</p> <p><u>(e) Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution from insurance proceeds payable to the trustee as beneficiary to the extent state law exempts such insurance proceeds from creditors’ claims.</u></p> <p><u>(f) A creditor of a beneficiary who is also a trustee or cotrustee may not reach the trustee’s beneficial interest or otherwise compel a distribution if the trustee’s discretion to make distributions for the trustee’s own benefit is limited by an ascertainable standard.</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Omits this entire section.</p>	<p style="text-align: center;"><b>X</b></p> <p>Moves UTC subsection (a) to paragraph (a)(1), adds new paragraph (a)(2): <u>“Discretionary trust interest” means an interest in a trust that is subject to the trustee’s discretion, whether or not the discretion is expressed in the form of a standard of distribution. A discretionary trust interest shall include an interest in any one or any combination of the following:</u></p> <p><u>(a) A trust in which the amount to be received by the beneficiary, including whether or not the beneficiary, or a class of beneficiaries is to receive anything at all, is within the discretion of the trustee.</u></p> <p><u>(b) A trust in which the trustee has no duty to pay or distribute any particular amount to the beneficiary, but has only a duty to pay or distribute to the beneficiary, or apply on behalf of the beneficiary, those sums that the trustee, in the trustee’s discretion, determines are appropriate for the support, education, or maintenance of the beneficiary.</u></p> <p>Adds new subsection (b): <u>The beneficiary may not transfer a discretionary trust interest. Except as otherwise provided in this Article, a creditor or assignee of a beneficiary may not reach a discretionary trust interest or a distribution by the</u></p>

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					<p><u>trustee before its receipt by the beneficiary.</u></p> <p>Changes subsection (c) [UTC (b)] to read: <u>Except as provided in subsection (d) of this section, a creditor of a beneficiary may not compel a distribution from a trust in which the beneficiary has a discretionary trust interest even if the trustee has abused the trustee's discretion.</u></p> <p>In subsection (d) [UTC (c)] omits reference to beneficiary's spouse or former spouse; applies only to beneficiary's child.</p> <p>Omits UTC subsection (e)</p> <p>Adds new subsection (f): <u>A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.</u></p>
§505	<p style="text-align: center;"><b>X</b></p> <p>Omits subpart (a)(3).</p>	<p style="text-align: center;"><b>X</b></p> <p>In paragraph (A)(3), the following language is added: "...a surviving spouse and children <u>including the family allowance, the right to exempt property, and the homestead allowance</u> to the extent..." And at the end of the paragraph, the following is added: <u>This section shall not apply to life insurance</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Replaces UTC subsection (b) and all paragraphs thereunder with the following: <u>(b) For purposes of this section, a beneficiary who is a trustee of a trust, but who is not the settler of the trust, cannot be treated in the same manner as the settler of a revocable trust if the beneficiary-trustee's power to</u></p>	<p style="text-align: center;"><b>X</b></p> <p>In paragraph (3)© [UTC ©(3)], the language making the property of the trust subject to the costs of administration of the settler's estate, the expenses of the settler's funeral and disposal of remains, and statutory allowances to surviving spouse and children is all omitted.</p>	<p style="text-align: center;"><b>X</b></p> <p>In subsection (a) adds: "...a spendthrift provision <u>or the interest in the trust is a discretionary trust interest as defined in G.S. 36C-504(a)(2) or a protective trust interest as defined in G.S. 36C-5-508</u>, the following rules apply..."</p> <p>Replaces subsection (b) with the</p>

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		<p><u>proceeds under §38.2-3122. No proceeding to subject a trustee, trust assets or distributes of such assets to such claims, costs and expenses shall be commenced unless the personal representative of the settler has received a written demand by a surviving spouse, a creditor or one acting for a minor or dependent child of the settler and no proceeding shall be commenced later than two years following the death of the settler. This section shall not affect the right of a trustee to make distributions required or permitted by the terms of the trust prior to being served with process in a proceeding brought by the personal representative.</u></p>	<p><u>make distributions to the beneficiary-trustee is limited by an ascertainable standard related to the beneficiary-trustee's health, education, maintenance, and support.</u></p>	<p>UTC subsection (b) and paragraph (b)(1) are incorporated into Oregon subsection (2).</p> <p>UTC paragraph (b)(2) becomes subsection (3).</p> <p>Adds subsection (4): <u>Subsections (2) and (3) of this section do not apply to a person other than a settler who is a beneficiary of a revocable or irrevocable trust and who is also a trustee of the trust, if the power to withdraw for the person's own benefit is limited by an ascertainable standard.</u></p>	<p><u>following: The lapse, release, or waiver of a power of withdrawal shall not cause the holder to be treated as a settler of the trust.</u></p> <hr/> <p>Subsection (b) becomes: (b) For purposes of this section, with respect to a power of withdrawal over property of a trust exercisable by a holder of the power other than the settlor of the trust, both of the following shall apply: (1) The property subject to the exercise of the power shall be subject to the claims of the creditors of the holder only when and to the extent that the holder exercises the power. (2) The lapse, release, or waiver of a power shall not be deemed to be an exercise of the power and shall not cause the holder to be treated as a settlor of the trust. (2005-192, s. 2; 2007-106, s. 20.)</p>
§506	<p style="text-align: center;"><b>X</b></p> <p>Omits subsection (a).</p>	<p style="text-align: center;"><b>X</b></p> <p>Omits subsection (a).</p> <p>Subsection (a) reads: <b>A. In this section "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including</b></p>	<p style="text-align: center;"><b>X</b></p> <p>Omits subsection (a).</p> <p>In subsection (b), adds the following: <u>For purposes of this section, a mandatory distribution is a distribution where the trustee has no discretion in determining whether the distribution shall be made or the amount or timing of such distribution.</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Omits subsection (a).</p>	<p style="text-align: center;"><b>X</b></p> <p>Changes subsection (a) to read: <u>"...of the trustee's discretion, regardless of whether the terms of the trust (i) include a support or other standard to guide the trustee in making distribution decisions; or (ii) provide that the trustee "may" or "shall" make discretionary distributions, including distributions under a support or other standard."</u></p>

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		<p>a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if (i) the discretion is expressed in the form of a standard of distribution, or (ii) the terms of the trust authorizing a distribution use language of discretion with language of direction.</p> <p>(2005 Amendment)</p>			
§814			<p style="text-align: center;"><b>X</b></p> <p>Omits UTC subsections (b) through (d) and all paragraphs there under. Adds the following:</p> <p><u>(b) A power whose exercise is limited or prohibited by subsection (d) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.</u></p> <p><u>© Subject to subsection (d), and unless the application of this section is clearly and convincingly negated in the will, the trust document, terms of the trust, or a written instrument</u></p>		<p style="text-align: center;"><b>X</b></p> <p>Changes subsection (a) to read: "...sole", or "uncontrolled", a <u>trustee abuses the trustee's discretion in exercising or failing to exercise a discretionary power if the trustee acts with bad faith, acts dishonestly, acts with an improper motive, even though not a dishonest motive, or if the trustee fails to use the trustee's judgment in accordance with the terms and purposes of the trust and the interests of the beneficiaries.</u></p> <p>Divides paragraph (b)(1) into paragraphs (b)(1) and (b)(2) and changes them to read:</p> <p>(1) A person other than a settler who is a beneficiary and trustee of a trust that confers on</p>



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			<p><u>appointing a fiduciary, expressly indicating that a rule in this subsection does not apply, any power conferred upon the fiduciary, in his capacity as a fiduciary (and not including any power conferred upon him in his capacity as a beneficiary), which would, except for this section, constitute, in whole or in part, a general power of appointment cannot be exercised by him in favor of himself, his estate, his creditors, or the creditors of his estate.</u></p> <p><u>_____ (1) The fiduciary can, however, exercise the power in favor of someone other than himself, his estate, his creditors and the creditors of his estate.</u></p> <p><u>_____ (2) If a power comes within subsection © and the power is conferred upon two or more fiduciaries, it can be exercised by the fiduciary or the fiduciaries who are not disqualified from exercising the power as if they were the only fiduciary or fiduciaries.</u></p> <p><u>_____ (3) If all of the serving fiduciaries are disqualified from exercising a power, the court that would have jurisdiction to appoint a fiduciary under the instrument, if there were no fiduciary currently serving, shall exercise, or shall appoint a special fiduciary whose only power is to exercise the power that cannot be exercised by the other fiduciaries by reason of subsection ©.</u></p>		<p><u>the trustee a power that would, except for this subsection, constitute in whole or in part a general power of appointment may not exercise that power in favor of the trustee/beneficiary, the trustee/beneficiary's estate, the trustee/beneficiary's creditors, or the creditors of the trustee/beneficiary's estate.</u></p> <p><u>_____ (2) Notwithstanding subdivision (1) of this subsection, if the trust confers on the trustee the power to make discretionary distributions to or for the trustee's personal benefit, the trustee may exercise the power in accordance with an ascertainable standard. For purposes of this subsection, a "general power of appointment" means any power that would cause the income to be taxed to the trustee in his individual capacity under section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under section 2041(b)(1) or section 2514(c) of the Internal Revenue Code.</u></p> <p><u>Adds new subsection (e): If a trust created under a will or trust instrument for the benefit of the spouse of the settler of the trust, other than a trust that provides that upon the termination of the income interest that the entire remaining trust estate be paid to the estate of the spouse, requires</u></p>

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			<p><u>(4) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.</u></p> <p><u>(d) Subsection © does not apply to:</u></p> <p><u>(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code, as amended, was previously allowed;</u></p> <p><u>(2) any trust during any period that the trust may be revoked or amended by its settler; or</u></p> <p><u>(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503© of the Internal Revenue Code as amended.</u></p>		<p><u>that all the income of the trust be paid not less frequently than annually to the spouse and a federal estate or gift tax marital deduction is claimed with respect to the trust, then, unless the trust instrument specifically provides otherwise by reference to this section, any investment in or retention of unproductive property as an asset of the trust is subject to the power of the spouse to require either that the asset be made productive of income, or that it be converted to assets productive of income, within a reasonable period of time.</u></p>
<b>Last Revised:</b>	March 19, 2008	March 19, 2008	March 19, 2008	March 19, 2008	March 19, 2008

## Significant Differences in States' Enacted Uniform Trust Codes

*This chart was created as an unofficial in-house NCCUSL document and is not for general publication.  
Statutes are subject to change; the date of the most recent update to each state comparison may be found on the last page of this chart.  
To report a typo or omission, please contact [mclayton@nccusl.org](mailto:mclayton@nccusl.org).  
Total length: 67 pages*

UNIFORM TRUST CODE	OHIO ORC §5801.01 et seq. Effective: January 1, 2007	FLORIDA FSA § 736.0101 et seq. Effective: July 1, 2007	ALABAMA AC §19-3B-101 et seq. Effective: January 1, 2007	PENNSYLVANIA 20 Pa. C.S. §7701 et seq. Effective: November 6, 2006	NORTH DAKOTA NDCC §59-09 to 59-19
<b>General Notes:</b>	Though not always noted below, Ohio frequently adds the phrase “for any of the following reasons” or “if any of the following” before dispositive lists.			<p>Pennsylvania regularly adds titles to sections and subsections throughout the UTC. These titles describe the general subject matter of the section and include a reference to the corresponding UTC section number.</p> <p>Elsewhere in the Code where the UTC makes reference to another section, Pennsylvania typically adds a parenthetical noting the subject matter of that section and its UTC section number, e.g. (relating to duty to administer trust – UTC 801).</p> <p>Furthermore, when omitting a subsection, Pennsylvania typically reserves the subsection number so that the remainder of the section numbering matches the UTC.</p>	Throughout the North Dakota bill, bracketed language for the “code” or “act” is replaced with this string of chapter citations: Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.
§105	<p style="text-align: center;"><b>X</b></p> <p>In paragraph (b)(2) omits the following: “the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;”</p> <p>In paragraph (b)(3) omits the following: “the requirement that a trust and its terms be for the benefit of its beneficiaries and</p>	<p style="text-align: center;"><b>X</b></p> <p>Significantly rearranges and renumbers the paragraphs under subsection (2) [UTC (b)]. UTC (1) becomes (a), (2) becomes (b), (12) becomes (d), (13) becomes (e), (14) becomes (g), (4) is (j), (5) is (l), (6) is (p), (7) is (q), (8) is (r), (10) is (u), and (11) is (v).</p> <p>Omits UTC paragraphs (b)(3) and (b)(9).</p>	<p style="text-align: center;"><b>X</b></p> <p>Omits optional subsection (8).</p> <p>In subsection (13) [UTC (14)] omits: “<i>the subject-matter jurisdiction of the court and venue for commencing...</i>”</p>	<p style="text-align: center;"><b>X</b></p> <p>Changes subsection (a) to read: “<u>Except as provided in subsection (b), the provisions of a trust instrument prevail over any contrary provisions in this chapter.</u>”</p> <p>Changes subsection (b) to read: “<u>Notwithstanding a contrary provision in the trust instrument, the following rules apply:</u>”</p>	<p style="text-align: center;"><b>X</b></p> <p>Omits from subsection (b)(2): “...terms and purposes of the trust <del>and the interests of the beneficiaries.</del>”</p> <p>Omits from (b)(3): “the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, <del>not contrary to public policy,</del> and</p>

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	<p><del>that the trust</del> have a purpose that is lawful...”</p> <p>In paragraphs (b)(8) and (b)(9) adds “<u>Subject to division (C) of this section, ...</u>” to the beginning and replaces “qualified” beneficiary with “current” beneficiary.</p> <p>Omits language in paragraph (b)(14): “The subject-matter jurisdiction of the court <del>and venue</del> for commencing...”</p> <p>Adds new subsection (C): <u>With respect to one or more of the current beneficiaries, the settler, in the trust instrument, may waive or modify the duties of the trustee described in divisions (B)(8) and (9) of this section. The waiver or modification may be made only by the settler designating in the trust instrument one or more beneficiary surrogates to receive any notices, information, or reports otherwise required under those divisions to be provided to the current beneficiaries. If the settler makes a waiver or modification pursuant to this division, the trustee shall provide the notices, information, and reports to the beneficiary surrogate or surrogates in lieu of providing them to the current beneficiaries. The beneficiary surrogate or surrogates shall act in good faith to protect the interests of the current beneficiaries for whom the notices, information, or</u></p>	<p>In paragraph (2)(g) [UTC (b)(14)] omits “subject-matter”.</p> <p>In paragraph (2)(j) [UTC (b)(4)] adds: “<u>except as provided in s. 736.04115(3)(b), and under ss. 736.0413, 736.0415, and 736.0416.</u>”</p> <p>In paragraph (2)(r) [UTC (b)(8)] omits the language “who have attained 25 years of age”</p> <p>Adds the following paragraphs under subsection (2):</p> <p><u>(f) The requirements under s. 736.0108(1) for the designation of a principal place of administration of the trust.</u></p> <p><u>(h) The restrictions on the designation of representative under s. 736.0306.</u></p> <p><u>(i) The formalities required under s. 736.0403(2) for the execution of a trust.</u></p> <p><u>(k) The ability to modify a trust under s. 736.0412, except as provided in s. 736.0412(4)(b).</u></p> <p><u>(m) The trustee’s duty under s. 736.05053 to pay expenses and obligations of the settlor’s estate.</u></p> <p><u>(n) The trustee’s duty under s. 736.05055 to file a notice of trust at the settlor’s death.</u></p> <p><u>(o) The right of a trustee under s.</u></p>		<p>In paragraph (b)(1) adds: “...<u>set forth in section 7732 (relating to requirements for creation – UTC 402).</u>”</p> <p>Changes paragraph (b)(2) to read: “...with the purposes of the trust <u>as set forth in section 7771 (relating to duty to administer trust – UTC 801).</u>”</p> <p>Changes paragraph (b)(3) to read: “The requirement <u>in section 7734 (relating to trust purposes – UTC 404) that a trust’s purpose be lawful and not contrary to public policy.</u>”</p> <p>In paragraph (b)(6) omits “...<i>to require, dispense with, or modify or terminate a bond.</i>”</p> <p>In paragraph (b)(7) omits “...<i>which is unreasonably low or high.</i>”</p> <p>Omits optional subsection (9).</p> <p>In paragraph (14) adds “...jurisdiction of the court <u>described in Chapter 7 (relating to orphans’ court divisions) and venue...</u>”</p>	<p>possible to achieve;”</p> <p>Omits optional subsections (8) and (9).</p>

UNIFORM TRUST CODE	OHIO ORC §5801.01 et seq. Effective: January 1, 2007	FLORIDA FSA § 736.0101 et seq. Effective: July 1, 2007	ALABAMA AC §19-3B-101 et seq. Effective: January 1, 2007	PENNSYLVANIA 20 Pa. C.S. §7701 et seq. Effective: November 6, 2006	NORTH DAKOTA NDCC §59-09 to 59-19
	reports are received. A waiver of <u>modification made under this division shall be effective for so long as the beneficiary surrogate or surrogates, or their successor or successors designated in accordance with the terms of the trust instrument, act in that capacity.</u>	<p><u>736.0701 to decline a trusteeship and the right of a trustee under s. 736.0705 to resign a trusteeship.</u></p> <p><u>(s) The duty under s. 736.0813(1)(c) and (d) to provide a complete copy of the trust instrument and to account to qualified beneficiaries.</u></p> <p><u>(t) The duty under s. 736.0813(1)(e) to respond to the request of a qualified beneficiary of an irrevocable trust for relevant information about the assets and liabilities of the trust and the particulars relating to trust administration.</u></p> <p><u>(w) The effect of a penalty clause for contesting a trust under s. 736.1108.</u></p>			
§106					
§501	<p style="text-align: center;"><b>X</b></p> <p>Omits this section.</p>			<p style="text-align: center;"><b>X</b></p> <p>Changes this section to read: <u>A judgment creditor or assignee of the beneficiary may reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means to the extent the beneficiary's interest is not subject to a spendthrift provision.</u></p>	
§502	<p style="text-align: center;"><b>X</b></p> <p>Adds to subsection (A): “...of a beneficiary’s interest <u>or if it restrains involuntary transfer of a beneficiary’s interest and permits</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Adds to subsection (1) [UTC (a)]: <u>“This subsection does not apply to any trust in existence on the effective date of this code.”</u></p>		<p style="text-align: center;"><b>X</b></p> <p>In subsection (b) replaces “terms of the trust” with <u>“trust instrument.”</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Adds to subsection (a): <u>restrains either the voluntary or involuntary transfer or...</u></p>

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	<p><u>voluntary transfer of a beneficiary's interest only with the consent of a trustee who is not the beneficiary.</u></p> <p>Adds to subsection (C): <u>Real property or tangible personal property that is owned by the trust but that is made available for a beneficiary's use or occupancy in accordance with the trustee's authority under the trust instrument shall not be considered to have been distributed by the trustee or received by the beneficiary for purposes of allowing a creditor or assignee of the beneficiary to reach the property.</u></p>	<p>Changes subsection (3) [UTC (c)] to read: "...trustee before receipt of the interest or distribution by the beneficiary."</p> <p>Adds new subsection (4): <u>A valid spendthrift provision does not prevent the appointment of interests through the exercise of a power of appointment.</u></p>		<p>In subsection (c) separates the first clause into its own sentence and adds "...the beneficiary of a <u>spendthrift trust</u> may not reach..." in the second sentence.</p> <p><b>(c) Effect.--A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this subchapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.</b></p>	
§503	<p style="text-align: center;"><b>X</b></p> <p>Changes subsection (B) to read: <u>"Subject to section 5805.03 of the Revised Code, a spendthrift provision is unenforceable against either of the following:"</u></p> <p>In paragraph (B)(1) drops reference to former spouse and adds <u>"but only if distributions can be made for the beneficiary's support or the beneficiary is entitled to receive mandatory distributions under the terms of the trust;"</u></p> <p>Omits UTC paragraph (b)(2).</p> <p>Adds new subsection (C): <u>A spendthrift provision is enforceable against the</u></p>	<p style="text-align: center;"><b>X</b></p> <p>In subsection (2) [UTC (b)] adds: <u>"To the extent provided in subsection (3), a spendthrift..."</u></p> <p>In subsection (3) [UTC (c)] adds: <u>"Except as otherwise provided in this subsection, a claimant against which a spendthrift provision may not be enforced may obtain from a court, or pursuant to the Uniform Interstate Family Support Act, an order attaching..."</u>. Also adds: <u>"Notwithstanding this subsection, the remedies provided in this subsection apply to a claim by a beneficiary's child, spouse, former spouse, or a judgment creditor described in paragraph (2)(a) or paragraph (2)(b) only as a last resort upon an initial showing that</u></p>		<p style="text-align: center;"><b>X</b></p> <p>Moves UTC subsection (a) to subsection (d), reserves subsection (a).</p> <p>In paragraph (b)(1) omits "former spouse" and adds: <u>"...maintenance, to the extent of the beneficiary's interests in the income and principal of the trust."</u></p> <p>Subsection (B) reads: <b>(b) Who may override.--Even if the trust instrument contains a spendthrift provision, a beneficiary's child, spouse or former spouse who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services</b></p>	<p style="text-align: center;"><b>X</b></p> <p>Adds to subsection (a): <u>"...entered by a court of competent jurisdiction"</u></p> <p>Adds subsection 3: <u>3. The exceptions contained in subsection 2 do not apply to a self-settled special needs trust or a third-party special needs trust under chapter 59-08 nor to any trust that meets the qualifications of 42 U.S.C. 1396(d).</u></p> <p>Adds the following to subsection (c): <u>If there is more than one permissible distribute, the court may grant such relief as is equitable.</u></p>

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	<p><u>beneficiary’s former spouse.</u></p> <p>In subsection (D) [UTC (c)] adds “A claimant <u>described in division (B) of this section...</u>” and omits “against which a spendthrift provision cannot be enforced.” Also adds: “...under the circumstances, <u>considering among any other factors determined appropriate by the court the support needs of the beneficiary, the beneficiary’s spouse, and the beneficiary’s dependent children or, with respect to a beneficiary who is the recipient of public benefits, the supplemental needs of the beneficiary if the trust was not intended to provide for the beneficiary’s basic support.</u>”</p> <p>Adds new subsection (E): <u>The only exceptions to the effectiveness of a spendthrift provision are those described in divisions (B) or (D) of this section, in division (B) of section 5805.05 of the Revised Code, and in sections 5805.06 and 5810.04 of the Revised Code.</u></p>	<p><u>traditional methods of enforcing the claim are insufficient.”</u></p>		<p><u>for the protection of the beneficiary’s interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.</u></p> <p>Adds new paragraph (b)(2): <u>any other person who has a judgment or court order against the beneficiary for support or maintenance, to the extent of the beneficiary’s interest in the trust’s income;”</u></p> <p><u>The act has omitted the above new paragraph (b)(2).</u></p>	
§504	<p style="text-align: center;"><b>X</b></p> <p>Changes subsection (B) to incorporate UTC paragraphs (b)(1) and (b)(2), and extends the “except as provided in” language to include subsection (D).</p> <p>Adds new subsection (C): <u>Division (B) of this section does</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Omits UTC subsection (a).</p> <p>In subsection (1) [UTC (b)] omits “Except as otherwise provided in subsection (c), ...”</p> <p>Omits UTC subsection (c).</p>	<p style="text-align: center;"><b>X</b></p> <p>In subsection (a) adds “...”child”, <u>“spouse”, or “former spouse” include...</u>” and “...for child or <u>spousal support...</u>”</p> <p>Changes subsection (e) to read: <u>A creditor may not reach the interest of a beneficiary who is also a</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Moves UTC subsection (a) to subsection (f), reserves subsection (a).</p> <p>Adds new paragraph (b)(3): <u>the beneficiary is the trustee or a cotrustee of the trust.</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Adds to subsection (a):”..entered <u>by a court of competent jurisdiction”</u></p>

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	<p><u>not apply to this state for any claim for support of a beneficiary in a state institution if the terms of the trust do not include a spendthrift provision and do include a standard for distributions to or for the beneficiary under which the trustee may make distributions for the beneficiary's support.</u></p> <p>Changes subsection (D) [UTC (c)] to read: <u>Unless the settler has explicitly provided in the trust that the beneficiary's child or spouse or both are excluded from benefiting from the trust to the extent a trustee of a trust that is not a wholly discretionary trust has not complied with a standard of distribution or has abused a discretion, both of the following apply:</u></p> <p>Changes paragraph (D)(1) [UTC (c)(1)] to read: <u>The court may order a distribution to satisfy a judgment or court order against the beneficiary for support of the beneficiary's child or spouse, provided that the court may order the distributions only if distributions can be made for the beneficiary's support under the terms of the trust and that the court may not order any distributions under this division to satisfy a judgment or court order against the beneficiary for support of the beneficiary's former spouse.</u></p>	<p>In subsection (2) [UTC (e)] omits references to "cotrustee."</p> <p>Renumbers UTC subsection (d) as subsection (3).</p>	<p><u>trustee or co-trustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.</u></p>	<p>In paragraph (c)(1) adds: "a distribution <u>from the trust's income, principal, or both</u> may be..." and then: "...child <u>to the extent of the beneficiary's interests in the trust's income, principal or both, and the court shall direct the trustee to pay the child from the trust an amount that is equitable under the circumstances, but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion; and"</u></p> <p>Changes paragraph (c)(2) to read: <u>a distribution from trust income may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of any person other than the beneficiary's child to the extent of the beneficiary's interest in the income of the trust, and the court shall direct the trustee to pay the person an amount from the income of the trust as is equitable under the circumstances, but not more than the amount of income the trustee..."</u></p> <p>Omits UTC subsection (e).</p> <p>Subsection (a) is reserved. UTC (a) is moved to (e).</p> <p>Omit UTC subsection (e).</p> <p>The section now reads: (a) (Reserved).</p>	



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	<p>In paragraph (D)(2) [UTC (c)(2)] omits reference to “former spouse”.</p> <p>Changes subsection (E) [UTC (d)] to read: <u>“Even if a trust does not contain a spendthrift provision, to the extent a beneficiary’s interest in a trust is subject to the exercise of the trustee’s discretion, whether or not such discretion is subject to one or more standards of distribution, the interest may not be ordered sold to satisfy or partially satisfy a claim of the beneficiary’s creditor or assignee.</u></p>			<p>(b) Distribution not compelled.-- Except as otherwise provided in subsection (c), whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee’s discretion, even if:</p> <p>(1) the discretion is expressed in the form of a standard of distribution; or</p> <p>(2) the trustee has abused the discretion.</p> <p>(c) Exception.--To the extent a trustee has not complied with a standard of distribution or has abused a discretion:</p> <p>(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary’s child, spouse or former spouse; and</p> <p>(2) the court shall direct the trustee to pay to the child, spouse or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.</p> <p>(d) Proceeding against trustee.-- This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.</p> <p>(2004 Amendment)</p>	

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§505	<p style="text-align: center;"><b>X</b></p> <p>Changes paragraph (a)(3) to read: <u>With respect to a trust described in 42 USC section 1396p(d)(4)(A) or (C), the court may limit the award of a settlor’s creditor under division (A)(1) or (2) of this section to the relief that is appropriate under the circumstances, considering among any other factors determined appropriate by the court, the supplemental needs of the beneficiary.</u></p> <p>In subsection (B) adds: “For purposes of this section, <u>all of the following apply:</u>”</p> <p>In paragraph (B)(1) moves the language “during the period the power may be exercised” to the end of the paragraph.</p> <p>Divides paragraph (B)(2) into subparagraphs following the language “...exceeds the greatest of.” They read:  <u>(a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code;</u>  <u>(b) If the donor of the property subject to the holder’s power of withdrawal is not married at the time of the transfer of the property to the trust, the amount specified in section 2503(b) of the Internal Revenue Code;</u>  <u>(c) If the donor of the property subject to the holder’s power of withdrawal is married at the time</u></p>	<p style="text-align: center;"><b>X</b></p> <p>In paragraph (1)(a) [UTC (a)(1)] rearranges the phrasing slightly and adds: “... <u>to the extent the property would not otherwise be exempt by law if owned directly by the settlor.</u>”</p> <p>Changes paragraph (1)(c) [UTC (a)(3)] to read: <u>Notwithstanding the provisions of paragraph (b), the assets of an irrevocable trust may not be subject to the claims of an existing or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence of a discretionary power granted to the trustee by the terms of the trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settler for any tax on trust income or principal which is payable by the settler under the law imposing such tax.</u></p> <p>In paragraph (2)(b) [UTC (b)(2)] citations to the IRC are separated into subparagraphs (1) and (2).</p>	<p style="text-align: center;"><b>X</b></p> <p>In paragraph (a)(3) changes “at the settlor’s death” to “<u>immediately prior to the settlor’s death</u>”. Also adds “...disposal of remains, and <u>homestead allowance, exempt property and family allowance</u> to a surviving...” and “...expenses, <u>and homestead allowance, exempt property and family allowance.</u>”</p> <p>Adds new subsection (b): <u>With respect to claims, expenses, and taxes in connection with the settlement of a trust that was revocable at the settlor’s death:</u>  <u>(1) Any claim of a creditor which would be barred against the fiduciary of a decedents estate, the estate of the decedent, or any creditor or beneficiary of the decedent’s estate, shall be barred against the trustee, the trust property, and the creditors and beneficiaries of the trust.</u>  <u>(2) A trustee at any time may give notice to any person the trustee has reason to believe may have a claim against the settler at death. The notice shall contain the name and address of the trustee to whom the claim must be presented. If the person fails to present the claim in writing within 90 days from the date of the notice, then the person shall be forever barred from asserting or recovering on the claim from the trustee, the trust property and the creditors and beneficiaries of the trust. Any person who presents a claim on or</u></p>	<p style="text-align: center;"><b>X</b></p> <p>The introductory language [UTC (a)] is changed to read: “...<u>spendthrift provision and notwithstanding section 7744 (relating to discretionary trusts; effect of standard – UTC 504).</u>”</p> <p>In subsection (2) [UTC (a)(2)] changes language to read: “<u>A judgment creditor or assignee of the settler of an irrevocable trust may reach...</u>” and then omits “<u>the amount</u>” and “...<u>may not</u>”</p> <p>“<u>Amount</u>” is included in <u>subsection (2).</u> (2004 Amendment)</p> <p>In subsection (3) [UTC (a)(3)] replaces “trust that was revocable at the settlor’s death” with “<u>revocable trust</u>” and replaces “[<u>statutory allowances</u>] to a <u>surviving spouse and children</u>” to “<u>family exemption.</u>” Adds: “...and no other statute specifically exempts the property from those claims.”</p> <p>UTC subsection (b) is moved to a different section (§7748) and changed to read: <u>Trust property that is subject to a power of withdrawal, during the period the power may be exercised and after its lapse, release or waiver, may be reached by a creditor or an assignee of the holder of the power whether or not the interest of the holder in the trust is subject to a</u></p>	<p style="text-align: center;"><b>X</b></p> <p>Adds the following to subsection (a)(1): <u>During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor’s creditors to the extent that the property would be subject to creditors’ claims if the property had not been placed in the trust.</u></p> <p>Adds to subsection (a)(2): “...<u>irrevocable trust, other than a special needs trust.</u>”</p> <p>Makes the following change to subsection (a)(3): “...<u>revocable immediately before at the settlor’s death...</u>”</p> <p>Adds to subsection (a)(3): <u>For purposes of this section, “statutory allowances” includes any homestead exception under chapter 47-18 and the allowances included in title 30.1.</u></p> <p>Adds to subsection (b)(2): “...of the Internal Revenue Code of 1986, <u>or corresponding future provisions of federal tax law...</u>”</p>

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	<p><u>of the transfer of the property to the trust, twice the amount specified in section 2503(b) of the Internal Revenue Code.</u></p>		<p><u>before the date specified in the notice may not later increase the claim following the expiration of the 90-day period.</u>  <u>(3) If a claim is not presented in writing to the personal representative of the settlor's estate or to the trustee (i) within six months from the date of the appointment of the initial personal representative of the settlor's estate, or (ii) if no personal representative is appointed within six months from the settlor's date of death and a claim is not presented in writing to the trustee within six months from the settlor's date of death, then no trustee shall be chargeable for any assets that the trustee may pay or distribute in good faith in satisfaction of any lawful claims, expenses, or taxes or to any beneficiary before the claim was presented. A payment or distribution of assets by a trustee shall be deemed to have been made in good faith unless the creditor can prove that the trustee had actual knowledge of the claim at the time of the payment or distribution. The six-month period shall not be interrupted or affected by the death, resignation, or removal of a trustee, except that the time during which there is no trustee in office shall not be counted as part of the period.</u>  <u>(4) The provisions of Section 43-2-371 dealing with the priority of payment of claims, expenses, and taxes from the probate estate of a</u></p>	<p><u>spendthrift provision.</u></p> <p>UTC subsection (b) is included in this section, and reads:</p> <p>(b) Holder of power of withdrawal.--For purposes of this section:  (1) the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power during the period the power may be exercised; and  (2) upon the lapse, release or waiver of a power of withdrawal, the holder of the power of withdrawal is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the amount specified in section 2041(b)(2), 2503(b) or 2514(e) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2041(b)(2), 2503(b) or 2514(e)(2)).</p> <p>(2004 Amendment)</p>	

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			<u>decedent shall apply to a revocable trust to the extent the assets of the decedent's probate estate are inadequate.</u>		
§506	<p style="text-align: center;"><b>X</b></p> <p>Omits this section.</p>		<p style="text-align: center;"><b>X</b></p> <p>In subsection (a) replaces “does not include” with “<u>excludes,</u>” and changes the language to read: “...trustee’s discretion <u>regardless of whether the terms of the trust (i) include a support or other standard to guide the trustee in making distribution decisions or (ii) provide that the trustee “may” or “shall” make discretionary distributions, including distributions pursuant to a support or other standard.</u></p> <p>In subsection (b) replaces “may reach” with “may <u>compel</u>” and “designated distribution” with <u>mandatory</u> distribution.”</p>	<p style="text-align: center;"><b>X</b></p> <p>UTC subsection (a) is moved to subsection (b). Language is changed to read: “...is required <u>by the terms of the trust instrument</u> to make to a beneficiary, including...” Changes the second sentence to read: “...discretion <u>regardless of whether the trust instrument includes a support or other standard to guide the trustee in making distribution decisions or provides that the trustee “may” or “shall” make discretionary distributions, including distributions pursuant to a support or other standard.</u>”</p> <p>Changes subsection (a) [UTC (b)] to read: “Whether or not <u>the interest of the beneficiary in the trust is subject to a spendthrift provision, a creditor...</u>” and replaces “designated” with “<u>mandated.</u>”</p> <p><u>Section is combined into one paragraph as follows:</u></p> <p><u>Whether or not the interest of the beneficiary in the trust is subject to a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of</u></p>	

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				<p>the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.</p> <p>(2005 Amendment)</p>	
§814	<p style="text-align: center;"><b>X</b></p> <p>Changes subsection (A) to read: <u>The judicial standard of review for discretionary trusts is that the trustee shall exercise a discretionary power reasonably, in good faith, and in accordance with the terms and purposes of the trust and the interests of the beneficiaries, except that a reasonableness standard shall not be applied to the exercise of discretion by the trustee of a wholly discretionary trust. The greater the grant of discretion by the settler to the trustee, the broader the range of permissible conduct by the trustee in exercising it.</u></p> <p>In paragraphs (D)(1) and (D)(3) omits language after “Internal Revenue Code.”</p>	<p style="text-align: center;"><b>X</b></p> <p>Adds to subsection (1) [UTC (a)]: <u>A court shall not determine that a trustee abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.</u></p> <p>Adds to subsection (2) [UTC (b)]: <u>“...subsection does not apply, a person who is a beneficiary and a trustee may not.”</u></p> <p>UTC paragraph (b)(1) is omitted, though new paragraphs (2)(a) and (b) are somewhat similar.</p> <p>New paragraph (2)(a): <u>Make discretionary distributions of either principal or income to or for the benefit of that trustee, except to provide for that trustee’s health, education, maintenance, or support as described under ss. 2041 and 2514 of the Internal Revenue Code.</u></p> <p>New paragraph (2)(b) reads: <u>Make discretionary allocations of receipts or expenses between principal and income, unless the trustee acts in a fiduciary capacity whereby the trustee has no power to enlarge or</u></p>		<p style="text-align: center;"><b>X</b></p> <p>Replaces the UTC language with the following: <u>The trustee shall exercise a discretionary power in good faith and in accordance with the provisions and purposes of the trust and the interests of the beneficiaries, notwithstanding the breadth of discretion granted to a trustee in the trust instrument, including the use of such terms as “absolute,” “sole” or “uncontrolled.”</u></p>	

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		<p><u>shift any beneficial interest except as an incidental consequence of the discharge of the trustee's fiduciary duties;</u></p> <p>Changes paragraph (2)(c) [UTC (b)(2)] to read: <u>Make discretionary distributions of either principal or income to satisfy any of the trustee's legal support obligations; or;</u></p> <p>Adds new paragraph (2)(d): <u>Exercise any other power, including, but not limited to, the right to remove or to replace any trustee, so as to cause the powers enumerated in paragraph (a), paragraph (b), or paragraph (c) to be exercised on behalf of, or for the benefit of, a beneficiary who is also a trustee.</u></p> <p>Adds new paragraph (3)(a): <u>A power held by the settler of the trust;</u></p> <p>UTC paragraphs (c)(1) through (c)(3) are renumbered (3)(b) through (3)(d).</p> <p>Adds new subsection (4): <u>A power whose exercise is limited or prohibited by subsection (2) may be exercised by the remaining trustees whose exercise of the power is not so limited or prohibited. If there is no trustee qualified to exercise the power, on petition by any qualified beneficiary, the court may appoint an independent trustee with authority to exercise the power.</u></p> <p>Adds new subsection (5): <u>A person who has the right to remove or to</u></p>			

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		<u>replace a trustee does not possess nor may that person be deemed to possess, by virtue of having that right, the powers of the trustee that is subject to removal or to replacement.</u>			
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