



SPONSOR: Sen. Bushweller & Rep. B. Short & Rep. M. Smith  
Sens. Hansen, Townsend, Delcollo, Pettyjohn; Reps.  
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DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 195

AN ACT TO AMEND TITLES 10, 12, 18, AND 25 OF THE DELAWARE CODE RELATING TO DECEDENTS' ESTATES AND FIDUCIARY RELATIONS AND PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 49, Title 10 of the Delaware Code by making insertions as shown by underline and  
2 deletions as shown by strike through as follows:

3 § 4915 Exemption of retirement plans, life insurance contracts, and annuity contracts [For application of this  
4 section, see 80 Del. Laws, c. 153, § 5]

5 § 4916 Exemption of ~~Delaware College Investment Plan Accounts~~ qualified tuition programs and ~~Delaware~~  
6 ~~Achieving a Better Life Experience Accounts~~ qualified ABLÉ programs.

7 (a) In addition to the exemptions provided in §§ 4902 and 4903 of this title, there shall be exempt from execution  
8 or attachment process assets held in and proceeds payable under or from any account established under ~~the Delaware~~  
9 ~~College Investment Plan pursuant to subchapter XII of Chapter 34 of Title 14 (a "Plan a Qualified Tuition Program under §~~  
10 529 of the Internal Revenue Code of 1986 (26 U.S.C. § 529), as amended (a "Tuition Account") and ~~or~~ any account  
11 established under § 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A) ~~the Delaware Achieving a Better Life~~  
12 ~~Experience Program pursuant to Chapter 96A of Title 16 (an "ABLE Account")~~. This exemption shall only apply to such  
13 amount as does not exceed the total contributions permitted under § 529(b)(6) of the Internal Revenue Code of 1986 (26  
14 U.S.C. § 529(b)(6)) with respect to any ~~Plan~~ Tuition Account or under § 529A(b)(6) of the Internal Revenue Code of 1986  
15 (26 U.S.C. § 529A(b)(6)) with respect to any ABLÉ Account.

16 (b) This section shall not exempt from execution or attachment assets contributed by a debtor to any ~~Plan~~ Tuition  
17 Account or ABLÉ Account within 365 days to the extent that such assets contributed within said 365 days exceed the  
18 greater of:

19 (1) \$5,000; or

20 (2) The average annual contribution made by such debtor to such ~~Plan~~ Tuition Account or ABLÉ

21 Account for the 2 calendar years preceding the date of the filing of such execution or attachment or the filing of

22 such petition.

23 (d) In the case of a ~~Plan~~ Tuition Account or ABLÉ Account owned by a trust, nothing in this section may be  
24 construed to limit the protections afforded to trusts by § 3536 of Title 12.

25 Section 2. Amend Chapter 65, Title 10 of the Delaware Code by making insertions as shown by underline and  
26 deletions as shown by strike through as follows:

27 § 6504 Persons entitled to declaration of rights or legal relations in respect to trust or estate of decedent.

28 Any person interested as or through an executor, administrator, trustee, guardian, ~~or~~ fiduciary, adviser, or protector  
29 under section 3313(a) of this title, designated representative under section 3339 of this title, creditor, devisee, legatee, heir,  
30 next-of kin or cestui que trust, in the administration of a trust, or the administration of the estate of a decedent, an infant, or  
31 a person with a mental condition, may have a declaration of rights or legal relations in respect thereto:

32 (1) To ascertain any class of creditors, devisees, legatees, heirs, next-of-kin or others; or

33 (2) To direct the executors, administrators or trustees to do or abstain from doing any particular act in  
34 their fiduciary capacity; or

35 (3) To determine any question arising in the administration of the estate or trust, including questions of  
36 construction of wills and other writings.

37 Section 3. Amend Chapter 2, Title 12 of the Delaware Code by making insertions as shown by underline and  
38 deletions as shown by strike through as follows:

39 § 213 Rules for construction or interpretation of will ~~or trust~~.

40 In the construction or interpretation of any will ~~or trust~~, the following rules set forth in section 3330 of this title  
41 shall apply in the absence of any contrary expression of intent in such will. ~~or trust~~:

42 ~~(1) The period of time during which an interest in trust is revocable pursuant to the uncontrolled volition of the~~  
43 ~~person having such a power of revocation shall not be included in determining whether the trust is invalid under~~  
44 ~~the rule against perpetuities.~~

45 ~~(2) There shall be no presumption that a testator or trustor did or did not intend that any law apply to a will or trust~~  
46 ~~which was not in effect on the date of execution of such will or trust instrument.~~

47 ~~(3) Except where the will or trust instrument expressly provides to the contrary, the determination of a class shall~~  
48 ~~be governed by the law in effect on the date the will or trust instrument becomes irrevocable.~~

49 Section 4. Amend Chapter 33, Title 12 of the Delaware Code by making insertions as shown by underline and  
50 deletions as shown by strike through as follows:

51 § 3301 Application of chapter; definitions [For application of this section, see 79 Del. Laws, c. 172, § 6; 81 Del.  
52 Laws, c. 149, § 6]

53 (a) This chapter shall govern fiduciaries, as well as agents in certain instances, now or hereafter acting under  
54 governing instruments. Except as otherwise specified within the definitions of this section, the definitions of this section  
55 shall apply to this chapter, as well as to Chapters 35, 39, and 45 of this title, as well as to any other laws of this state  
56 incorporating by reference either this section or the laws of trusts generally.

57 (d) The term "fiduciary" shall mean trustees, personal representatives, guardians, custodians under the Uniform  
58 Transfers to Minors Act (Chapter 45 of this title), advisers or protectors acting in a fiduciary capacity under section 3313(a)  
59 of this title, designated representatives acting in a fiduciary capacity under section 3339 of this title, agents to the extent  
60 delegated duties by another fiduciary, and other fiduciaries; while the term "nonfiduciary" shall mean advisers or protectors  
61 acting in a nonfiduciary capacity under section 3313(a) of this title or designated representatives acting in a nonfiduciary  
62 capacity under section 3339 of this title.

63 § 3302 Degree of care; authorized investments [For application of this section, see 79 Del. Laws, c. 172, § 6]

64 (a) When investing, reinvesting, purchasing, acquiring, exchanging, retaining, selling and managing property for  
65 the benefit of another, a fiduciary shall act with the care, skill, prudence and diligence under the circumstances then  
66 prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of  
67 the account. In making investment decisions, a fiduciary may consider the general economic conditions, the anticipated tax  
68 consequences of the investment and the anticipated duration of the account and the needs of ~~the its~~ beneficiaries; when  
69 considering the needs of the beneficiaries, the fiduciary may take into account the financial needs of the beneficiaries as  
70 well as the beneficiaries' personal values, including the beneficiaries' desire to engage in sustainable investing strategies  
71 that align with the beneficiaries' social, environmental, governance or other values or beliefs of the beneficiaries.

72 (c) The propriety of an investment decision is to be determined by what the fiduciary knew or should have known  
73 at the time of the decision about:

74 (1) The inherent nature and expected performance of the investment portfolio;

75 (2) The limitations of the standard set forth in subsection (a) of this section; and

76 (3) The nature and extent of other investments and resources, whether held in trust or otherwise, available  
77 to the beneficiaries as they existed at the time of the decision; provided however, that the fiduciary shall have no  
78 duty to inquire as to the nature and extent of any such other investments and resources not held by the fiduciary, or  
79 held by the fiduciary in a trust or trust account subject to the direction of an adviser or cotrustee authorized to  
80 direct the fiduciary with respect to investment decisions, within the meaning of § 3313(d) of this title, concerning  
81 the assets held in the trust or trust account, or held by the fiduciary in a trust or trust account where a cotrustee has

82 exclusive authority with respect to investment decisions, within the meaning of § 3313(d) of this title, concerning  
83 the assets held in the trust or trust account.

84 Any determination of liability for investment performance shall consider the performance of the entire portfolio  
85 and such other factors as the fiduciary considered when the investment decision was made.

86 § 3303 Effect of provisions of instrument [For application of this section, see 79 Del. Laws, c. 172, § 79; Del.  
87 Laws, c. 352, § 6; 80 Del. Laws, c. 89, § 2]

88 (a) Notwithstanding any other provision of this Code or other law, the terms of a governing instrument may  
89 expand, restrict, eliminate, or otherwise vary any laws of general application to fiduciaries, trusts and trust administration,  
90 including, but not limited to, any such laws pertaining to:

91 (1) The rights and interests of beneficiaries, including, but not limited to, the right to be informed of the  
92 beneficiary's interest for a period of time, as set forth in subsection (c) of this section;

93 (2) The grounds for removal of a fiduciary;

94 (3) The circumstances, if any, in which the fiduciary must diversify investments; ~~and~~

95 (4) The manner in which a fiduciary should invest assets, including whether to engage in one or more  
96 sustainable or socially responsible investment strategies, in addition to, or in place of, other investment strategies,  
97 with or without regard to investment performance; and

98 (5) A fiduciary's powers, duties, standard of care, rights of indemnification and liability to persons whose  
99 interests arise from that instrument; provided, however, that nothing contained in this section shall be construed to  
100 permit the exculpation or indemnification of a fiduciary for the fiduciary's own willful misconduct or preclude a  
101 court of competent jurisdiction from removing a fiduciary on account of the fiduciary's wilful misconduct. The  
102 rule that statutes in derogation of the common law are to be strictly construed shall have no application to this  
103 section. It is the policy of this section to give maximum effect to the principle of freedom of disposition and to the  
104 enforceability of governing instruments.

105 § 3313 Advisers [For application of this section, see 79 Del. Laws, c. 197, § 3; 80 Del. Laws, c. 153, § 5]

106 (d) For purposes of this section, unless the terms of the governing instrument provide otherwise, "investment  
107 decision" means with respect to all of the trust's investments (or, if applicable, to investments specified in the governing  
108 instrument), the retention, purchase, sale, exchange, tender or other transaction or decision affecting the ownership thereof  
109 or rights therein (including the powers to borrow and lend for investment purposes; provided, however, that the power to  
110 lend for investment purposes shall be considered an investment decision only with respect to loans other than those  
111 described in section 3325(19)(b) and (c) of this title), all management, control and voting powers related directly or

112 indirectly to such investments (including, without limitation, nonpublicly traded investments), the selection of custodians or  
113 subcustodians other than the trustee, the selection and compensation of, and delegation to, investments advisers, managers  
114 or other investment providers, and with respect to nonpublicly traded investments, the valuation thereof, and an adviser  
115 with authority with respect to such decisions is an investment adviser.

116 (g) A person who accepts appointment as an adviser of a trust, or acts as an adviser of a trust under this section,  
117 submits to personal jurisdiction of this State regarding any matter related to the trust. This provision does not preclude other  
118 methods of obtaining jurisdiction over such adviser of a trust.

119 § 3313A Excluded cotrustee [For application of this section, see 81 Del. Laws, c. 149, § 6]

120 (a) If the terms of a governing instrument confer upon a cotrustee, to the exclusion of another cotrustee, the power  
121 to take certain actions with respect to the trust, including the power to direct or prevent certain actions of the trustees, the  
122 duty and liability of the excluded trustee is as follows:

123 (1) If the terms of the governing instrument confer upon the cotrustee the power to direct certain actions  
124 of the excluded trustee, the excluded trustee must act in accordance with the direction and shall have no duty to act  
125 in the absence of such direction and is not liable, individually or as a fiduciary, for any loss resulting directly or  
126 indirectly from compliance with the direction unless compliance with the direction constitutes wilful misconduct  
127 on the part of the directed cotrustee;

128 (2) If the terms of the governing instrument confer upon the cotrustee exclusive authority to exercise any  
129 power, the excluded trustee is not liable, individually or as a fiduciary, for any loss resulting directly or indirectly  
130 from the action taken by the cotrustee in the exercise of the power, such that the excluded trustee shall not be a  
131 fiduciary with respect to any power as to which the governing instrument has conferred upon the cotrustee  
132 exclusive authority in accordance with this subsection (a)(2), but shall remain a fiduciary with respect to any  
133 powers or other matters as to which the governing instrument has not conferred exclusive authority on the  
134 cotrustee; and

135 (3) The excluded trustee has no duty to monitor the conduct of the cotrustee, provide advice to the  
136 cotrustee or consult with or request directions from the cotrustee. The excluded trustee is not required to give  
137 notice to any beneficiary of any action taken or not taken by the cotrustee whether or not the excluded trustee  
138 agrees with the result. Administrative actions taken by the excluded trustee for the purpose of implementing  
139 directions of the cotrustee, including confirming that the directions of the cotrustee have been carried out, do not  
140 constitute monitoring of the cotrustee nor do they constitute participation in decisions within the scope of the  
141 cotrustee's authority.

142 § 3317 Co-fiduciaries and co-nonfiduciaries; duty to keep informed.

143 Except as otherwise provided in a governing instrument, each trust fiduciary (including trustees, advisers,  
144 protectors, and other fiduciaries), and each trust nonfiduciary, has a ~~fiduciary~~ duty upon request to keep all of the ~~other~~  
145 fiduciaries and nonfiduciaries for the trust reasonably informed about the administration of the trust with respect to any  
146 specific duty or function being performed by such fiduciary or nonfiduciary to the extent that providing such information to  
147 the other fiduciaries and nonfiduciaries is reasonably necessary for the other fiduciaries and nonfiduciaries to perform their  
148 duties; provided, however, that:

149 (1) a fiduciary or nonfiduciary requesting and receiving any such information shall have no duty to:  
150 monitor the conduct of the fiduciary or nonfiduciary providing the information; provide advice to or consult with  
151 the fiduciary or nonfiduciary providing the information; or communicate with or warn or apprise any beneficiary  
152 or third party concerning instances in which the fiduciary or nonfiduciary receiving the information would or  
153 might have exercised the fiduciary's or nonfiduciary's own discretion in a manner different from the manner in  
154 which such discretion was actually exercised by the fiduciary or nonfiduciary providing the information; and

155 (2) a fiduciary or nonfiduciary providing any such information shall have no duty to: monitor the conduct  
156 of the fiduciary or nonfiduciary requesting and receiving the information; provide advice to or consult with the  
157 fiduciary or nonfiduciary requesting and receiving the information; or communicate with or warn or apprise any  
158 beneficiary or third party concerning instances in which the fiduciary or nonfiduciary providing the information  
159 would or might have exercised the fiduciary's or nonfiduciary's own discretion in a manner different from the  
160 manner in which such discretion was actually exercised by the fiduciary or nonfiduciary requesting and receiving  
161 the information.

162 § 3323 Co-fiduciaries and co-nonfiduciaries.

163 (a) Unless provided otherwise by the governing instrument, any power vested in 3 or more fiduciaries or  
164 nonfiduciaries by the governing instrument or by law may be exercised by a majority of such fiduciaries or nonfiduciaries  
165 and a majority of fiduciaries or nonfiduciaries named in a governing instrument may designate 1 of such fiduciaries or  
166 nonfiduciaries to perform ministerial functions on behalf of all such fiduciaries or nonfiduciaries. A fiduciary or  
167 nonfiduciary who dissents from the action of the majority is not liable to anyone having an interest in the fiduciary fund, or  
168 to the other fiduciaries or nonfiduciaries, if such dissent is evidenced by a writing delivered to the majority of the  
169 fiduciaries or nonfiduciaries.

170 (b) This section does not excuse a co-fiduciary or co-nonfiduciary from liability for failure to participate in the  
171 administration of the fiduciary fund or for failure to attempt to prevent a breach of trust, or for failure to seek advice and  
172 guidance from the court in a recurring situation, unless otherwise expressly provided by the governing instrument.

173 § 3330 Construction or interpretation affecting validity under rule against perpetuities, applicability of later-enacted laws,  
174 and class determination; eEffect of survivorship requirement.

175 (a) In the construction or interpretation of any governing instrument, the following rules shall apply in the absence  
176 of any contrary expression of intent in such governing instrument:

177 (1) The period of time during which an interest in trust is revocable pursuant to the uncontrolled volition  
178 of the person having such a power of revocation shall not be included in determining whether the trust is invalid  
179 under the rule against perpetuities.

180 (2) There shall be no presumption that a testator or trustor did or did not intend that any law apply to a  
181 governing instrument which was not in effect on the date of execution of such governing instrument.

182 (3) Except where the governing instrument expressly provides to the contrary, the determination of a  
183 class shall be governed by the law in effect on the date the governing instrument becomes irrevocable.

184 (b) If, in the construction or interpretation of any ~~will or trust~~ governing instrument, the vesting in ownership,  
185 possession, or enjoyment of an interest in property of any person is dependent, whether as a matter of expression,  
186 implication or inference, in whole or in part upon:

187 (1) That person's survival of or for a period of time after the life of some other person, including but not  
188 limited to the ~~transfer or~~ testator or trustor, who has interest in such property, whether vested or contingent, and

189 (2) That person fails to so survive the life of such other person or for a period of time thereafter,  
190 Then the probable or perceived intention of the transferor with respect to any person who would otherwise be entitled to the  
191 interest because of a gift, bequest, or devise made by the person who failed to so survive shall not be considered and shall  
192 not be admissible in any proceeding involving the construction or interpretation of such ~~will or trust~~ governing instrument.

193 § 3338 Nonjudicial settlement agreements [For application of this section, see 79 Del. Laws, c. 172, § 6; 80 Del.  
194 Laws, c. 153, § 5; 80 Del. Laws, c. 340, § 2; 81 Del. Laws, c. 149, § 6]

195 (d) Matters that may be resolved by a nonjudicial settlement agreement include:

196 (1) The interpretation or construction of the terms of the trust;

197 (2) The approval of a trustee's report or accounting;

198 (3) The direction to a trustee to refrain from performing a particular act or the grant to a trustee of any  
199 necessary or desirable power;

200 (4) The resignation, removal, or appointment of a trustee and the determination of a trustee's  
201 compensation;

202 (5) The transfer of a trust's principal place of administration; and

203 (6) The liability of a trustee for an action relating to the trust.

204 § 3341 Consequences of trust merger and similar transactions [For application of this section, see 80 Del. Laws, c.  
205 153, § 5; 81 Del. Laws, c. 149, § 6]

206 Whenever any trust (a "transferor trust") is merged with and into another trust (the "transferee trust"):

207 (1) The separate existence of the transferor trust shall cease and the transferee trust shall possess all of the rights  
208 and privileges, and shall be subject to all of the obligations of, the transferor trust;

209 (2) All of the property (including title to any real property vested by deed or otherwise) and other interests of the  
210 transferor trust shall be thereafter treated as effectively the property and interests of the transferee trust as they were the  
211 property and interests of the transferor trust prior to the merger;

212 (3) No such property or interests shall revert or be in any way impaired by reason  
213 of the merger;

214 (4) In cases where the initial funding of the transferee trust occurs by reason of the merger, unless the governing  
215 instrument of the transferee trust expressly states that 1 or more powers of appointment exercisable over the property of the  
216 transferor trust shall not be exercisable over the property of the transferee trust: (i) any power of appointment exercisable  
217 over property of the transferor trust shall be exercisable, in accordance with the terms of the governing instrument of the  
218 transferor trust, over property of the transferee trust, and (ii) any instrument in writing, executed prior to the merger,  
219 purporting to exercise a power of appointment over property of the transferor trust shall be treated as a valid exercise of a  
220 power of appointment over property of the transferee trust to the same extent that the appointment purportedly made  
221 pursuant to the instrument would have been a valid exercise of the power of appointment granted over property of the  
222 transferor trust; and

223 (5) In cases where the initial funding of the transferee trust occurs prior to the merger, any power of appointment  
224 exercisable over property of either trust participating in the merger shall, following the merger, be exercisable over  
225 property of the transferee trust only to the extent expressly provided by the terms of the instrument of merger or other  
226 written documents effecting the merger; provided, however, that if any person holds substantially identical powers of  
227 appointment over all of the property of each trust participating in the merger, such person's power of appointment over the  
228 property of the transferee trust shall be exercisable over all of the property of the transferee trust following the merger  
229 unless the instrument of merger or other written document effecting the merger expressly provides otherwise.

230 Furthermore, all rights of creditors and all liens upon the property of the transferor trust shall be preserved  
231 unimpaired and all debts, liabilities and duties of the transferor trust shall thenceforth attach to the transferee trust and may  
232 be enforced against the transferee trust to the same extent as if the transferor trust's debts, liabilities and duties had been  
233 incurred or contracted by the transferee trust. Except to the extent provided in paragraph (5) of this section, the terms of the  
234 governing instrument of the transferee trust shall, following the merger, control the administration and disposition of the  
235 property of the transferee trust, including any such property obtained by the transferee trust by reason of the merger.  
236 Furthermore, any transaction in which all of the property of a trust is appointed or otherwise transferred to another trust,  
237 whether pursuant to § 3528 of this title, the terms of a governing instrument or otherwise, shall be treated as a merger  
238 within the meaning of this section with the appointing or transferring trust and the recipient trust treated as a transferor trust  
239 and transferee trust, respectively, for purposes of applying the provisions of this section to the transaction. This section is  
240 not intended, nor shall it be construed, to grant to any trustee a right or power to merge trusts but rather this section is  
241 intended only to describe certain consequences of a trust merger in cases where the merger is authorized by other applicable  
242 law. Except as expressly provided in clause (ii) of paragraph (4) of this section, this section is not intended, nor shall it be  
243 construed, to address the validity or effect of any instrument in writing, executed prior to a trust merger, purporting to  
244 exercise a power of appointment over property of any trust participating in a trust merger.

245 § 3342 Modification of trust by consent while trustor is living [For application of this section, see 80 Del. Laws, c.  
246 340, § 2; 81 Del. Laws, c. 149, § 6]

247 (a) Notwithstanding any provision of law or the trust's governing instrument limiting or prohibiting amendment of  
248 the trust, an irrevocable trust may be modified ~~to include~~ by the addition of a new provision or the modification of any  
249 existing provision that so long as such provision could have been included in the governing instrument of a trust were such  
250 trust created upon the date of the modification by written consent or written nonobjection of all of the trust's trustors, all  
251 then serving fiduciaries and all beneficiaries regardless of whether the modification may violate a material purpose of the  
252 trust. A trustor's power to provide a written consent or written nonobjection to a trust's modification may be exercised: (i)  
253 by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the  
254 trust's governing instrument; or (ii) if an agent under a power of attorney is not so authorized, by the guardian of the  
255 trustor's property (or similar court-appointed representative) with the approval of the court supervising the guardian (or  
256 similar representative).

257 Section 5. Amend Chapter 35, Title 12 of the Delaware Code by making insertions as shown by underline and  
258 deletions as shown by strike through as follows:

259 § 3524 Trustees' accounts for other testamentary trusts [For application of this section, see 79 Del. Laws, c. 352, §  
260 6; 80 Del. Laws, c. 153, § 5]

261 (a) Trustees of a testamentary trust shall be required to file accounts as described in § 3525 of this title, except  
262 that:

263 (1) Trustees subject to § 3523 of this title shall file accounts only in accordance with such section.

264 (2) Trustees of a testamentary trust established under a will probated on or after April 5, 1909, but of a  
265 decendent dying on or before July 31, 2005, shall be required to file accounts as described in § 3525 of this title  
266 unless waived by express provision in such will, in which case such trustees shall be required to file such accounts  
267 only in accordance with the express terms, if any, of such will or upon order of the Court of Chancery with respect  
268 to any such trust.

269 (3) Trustees of a testamentary trust established under the will of a decendent dying after July 31, 2005,  
270 shall be required to file accounts as described in § 3525 of this title only in accordance with the express terms, if  
271 any, of any such trust or upon order of the Court of Chancery with respect to any such trust.

272 ~~(b) Trustees of a testamentary trust established under a will probated on or after April 5, 1909, but of a decendent~~  
273 ~~dying on or before July 31, 2005, shall be required to file accounts as described in § 3525 of this title unless waived by~~  
274 ~~express provision in such will, in which case such trustees shall be required to file such accounts only in accordance with~~  
275 ~~the express terms, if any, of such will or upon order of the Court of Chancery with respect to any such trust.~~

276 § 3528 Trustee's authority to invade principal in trust [For application of this section, see 80 Del. Laws, c. 153, §  
277 5; 81 Del. Laws, c. 149, § 6]

278 (b) The exercise of the power to invade the principal or income or both of a the trust under subsection (a) of this  
279 section shall be by an instrument in writing, signed ~~and acknowledged~~ by the trustee ~~and filed with the records of the trust.~~

280 § 3536 Rights of creditors and assignees of beneficiary of trust [For application of this section, see 79 Del. Laws, c. 172, §  
281 6; 79 Del. Laws, c. 352, § 6]

282 (e) Notwithstanding subsection (a) of this section, a beneficiary of a charitable remainder unitrust or charitable-  
283 remainder annuity trust as such terms are defined in § 664 of the Internal Revenue Code of 1986 (26 U.S.C. § 664) and any  
284 successor provision thereto, shall have the right, at any time and from time to time, by written instrument delivered to  
285 trustee, to release such beneficiary's retained interest in such a trust, in whole or in part, to a charitable organization that has  
286 or charitable organizations that have a succeeding beneficial interest in such trust. Notwithstanding subsection (a) of this  
287 section, a beneficiary may also disclaim an interest in a trust pursuant to Chapter 6 of this title. In addition, notwithstanding  
288 subsection (a) of this section, a beneficiary of a trust, holding a beneficial interest described in subsection (c)(1) of this

289 section, shall have the right, at any time and from time to time, by written instrument delivered to the trustee, to release  
290 such beneficiary's retained interest in such trust, in whole or in part, to the beneficiary or beneficiaries having the next  
291 succeeding beneficial interest in such trust.

292 § 3545 Limitations on oral trusts; execution requirements for written trusts [For application of this section, see 81  
293 Del. Laws, c. 149, § 6]

294 (a) Except as otherwise required by this Code, the creation, modification or revocation of a trust whereby a person  
295 other than the trustor acquires or is divested of an interest in the trust the possession or enjoyment of which is contingent  
296 upon surviving the trustor shall be void unless such creation, modification or revocation be:

297 (1) In a writing executed by the trustor and witnessed in writing in the trustor's presence by at least 1  
298 disinterested person or 2 credible persons; or

299 (2) In a writing executed by a trustee who is a disinterested person without regard to whether any other  
300 person, including the trustor, has executed the writing.

301 For purposes of this section, a disinterested person is one who has no beneficial interest in the trust that would be materially  
302 increased or decreased as a result of the creation, modification or revocation of the trust and a notary public or similar  
303 official may serve as a witness in cases where such official is a disinterested or credible person without regard to whether  
304 such notary public or similar official signs the writing as a witness or solely in a notarial capacity.

305 § 3547 Representation by person with a substantially identical interest [For application of this section, see 79 Del.  
306 Laws, c. 172, § 6]

307 (b) A presumptive remainder beneficiary or the person or persons authorized to represent the presumptive  
308 remainder beneficiary under any other subsection of this section may represent and bind contingent successor remainder  
309 beneficiaries for the same purposes, in the same circumstances, and to the same extent as an ascertainable competent  
310 beneficiary may represent and bind a minor or person who is incapacitated, unborn or unascertainable. In addition, a  
311 contingent successor remainder beneficiary or the person or persons authorized to represent the contingent successor  
312 remainder beneficiary under any other subsection of this section may represent and bind more remote contingent successor  
313 remainder beneficiaries for the same purposes, in the same circumstances, and to the same extent as an ascertainable  
314 competent beneficiary may represent and bind a minor or person who is incapacitated, unborn or unascertainable. As used  
315 in this subsection (b), (i) a "presumptive remainder beneficiary" means as of any date, a beneficiary who, as of any date and  
316 but for the exercise of any power of appointment, would receive income or principal of the trust if the trust were to  
317 terminate as of that date (without regard to the exercise of any power of appointment) or, if the trust does not provide for its  
318 termination, a beneficiary who would receive or be eligible to receive distributions of income or principal of the trust if all

319 of the beneficiaries currently receiving or eligible to receive distributions of income or principal were deceased; (ii) a  
320 “contingent successor remainder beneficiary” means a beneficiary who would succeed to the interest of a presumptive  
321 remainder beneficiary in the circumstances described in clause (i) above if the presumptive remainder beneficiary and all of  
322 the trust’s other beneficiaries, if any, failed to take such interest; and (iii) a contingent successor remainder beneficiary shall  
323 be considered “more remote” than any other beneficiary whose interest must fail in order for such contingent successor  
324 remainder beneficiary to take the interest.

325 (c) The holder of a general testamentary or inter vivos power of appointment—or a nongeneral testamentary or  
326 inter vivos power of appointment that is expressly exercisable in favor of any person or persons, excepting such holder, his  
327 estate, his creditors, or the creditors of his estate—may represent and bind persons whose interests, as takers in default, are  
328 subject to the power, but only to the extent that there is no material conflict of interest between the holder and the persons  
329 represented with respect to the particular question or dispute.

330 (d) In the case of a trust having a beneficiary who is a minor or incapacitated who may not be represented by  
331 another pursuant to subsection (a) or subsection (b) of this section, the surviving and competent parent or parents or  
332 custodial parent (in cases where 1 parent has sole custody of the beneficiary), or guardian of the property of the beneficiary  
333 may represent and bind the beneficiary for purposes of any judicial proceeding or nonjudicial matter pertaining to the trust;  
334 provided that, in the case of a beneficiary represented by 1 or both parents, there is no material conflict of interest  
335 between the beneficiary who is a minor or incapacitated and either of such beneficiary's parents with respect to the  
336 particular question or dispute. In the case of a trust having a potential beneficiary who is unborn who may not be  
337 represented by another pursuant to subsection (a) or subsection (b) of this section, the parent of such unborn beneficiary  
338 may represent and bind such unborn beneficiary for purposes of any judicial proceeding or nonjudicial matter pertaining to  
339 the trust; provided that there is no material conflict of interest between such unborn beneficiary and such unborn  
340 beneficiary’s parent with respect to the particular question or dispute. Furthermore, such a representative under either of the  
341 preceding sentences may, for all purposes, represent and bind a ~~another minor, incapacitated, a~~ unborn, ~~person~~ or  
342 unascertainable person who has an interest, with respect to the particular question or dispute, that is substantially identical  
343 to the interest of the beneficiary who is a minor or incapacitated ~~or unborn~~ represented by the representative, but only to the  
344 extent that there is no material conflict of interest between the beneficiary who is a minor or incapacitated ~~or unborn~~  
345 represented by the representative and the ~~minor, incapacitated, unborn,~~ or unascertainable person with respect to the  
346 particular question or dispute.

347 (e) Unless otherwise provided in the governing instrument, the provisions of this section shall apply for purposes  
348 of any judicial proceeding and for purposes of any nonjudicial matter. For purposes of this section, judicial proceedings

349 shall include any proceeding before a court or administrative tribunal of this State, including a proceeding that involves a  
350 trust whether or not the administration of the trust is governed by the laws of this State, and nonjudicial matters include, but  
351 are not limited to, the grant of consents, releases or ratifications pursuant to § 3588 of this title and the measurement of the  
352 limitation period described in § 3585 of this title.

353 (fe) For purposes of this section, there is a presumption that a material conflict of interest exists between the  
354 representative and each trust beneficiary in any judicial proceeding or nonjudicial matter:

355 (1) In which the representative would, as a result of the judicial proceeding or nonjudicial matter, be  
356 appointed to a fiduciary or nonfiduciary office or role relating to the trust unless the representative presently serves  
357 in a fiduciary or nonfiduciary office or role relating to the trust and will not receive greater authority, broader  
358 discretion, or increased protection by reason of the new appointment;

359 (2) In which the representative currently holds a fiduciary or nonfiduciary office or role relating to the  
360 trust and, as a result of the judicial proceeding or nonjudicial matter, will receive greater authority, broader  
361 discretion, or increased protection, including but not limited to any limitation on exculpation from, or  
362 indemnification for any existing or potential future liability; or

363 (3) In which the representative has any other actual or potential conflict of interest with the represented  
364 beneficiaries with respect to the particular question or dispute, including but not limited to a conflict resulting from  
365 a differing investment horizon or an interest in present income over capital growth.

366 (g) For purposes of this section, when a trust (the "beneficiary trust") is a beneficiary of another trust, the  
367 beneficiary trust shall be represented by its trustee or, if the beneficiary trust is not in existence, the beneficiary trust shall  
368 be represented by those persons who would be beneficiaries of the beneficiary trust if the beneficiary trust were then in  
369 existence.

370 § 3580 Definition [For application of this section, see 79 Del. Laws, c. 172, § 6; 79 Del. Laws, c. 352, § 6]

371 In this subchapter, the term "trustee" includes fiduciaries and other persons exercising, or directing or consenting  
372 to the exercise of, or who are required to be consulted before the exercise of, trust powers or duties under a trust's  
373 governing instrument or under this title, as well as designated representatives under section 3339 of this title.

374 § 3585 Limitation of action against trustee following trustee's report [For application of this section, see 81 Del. Laws, c.  
375 149, § 6]

376 (a) A beneficiary person may initiate a proceeding against a trustee for breach of trust or other claim until the first  
377 to occur of:

378 (1) ~~Two~~ One years after the date the beneficiary person was sent a report that adequately disclosed the  
379 facts constituting a claim—provided, however, that if the governing instrument provides that claims shall survive  
380 for a period longer than one year after such date, then claims shall survive for the period specified in the governing  
381 instrument;

382 (2) In the case of any trustee who has resigned, been removed or ceased to serve as trustee for any other  
383 reason (including on account of the termination of the trust by reason of liquidation or by reason of a merger or  
384 similar transaction described in § 3341 of this title), 120 days after the date the beneficiary person was sent a  
385 report that: (i) notifies the beneficiary person that the trustee has ceased to serve; (ii) adequately discloses the facts  
386 constituting a claim; and (iii) adequately discloses the time allowed under this section for initiating proceedings  
387 against the former trustee; or

388 (3) The date the proceeding was otherwise precluded by adjudication, release, consent, limitation or  
389 pursuant to the terms of the governing instrument.

390 (b) A report adequately discloses the facts constituting a claim if it provides sufficient information so that the  
391 beneficiary person knows of the claim or reasonably should have inquired into its existence.

392 (c) For the purpose of subsection (a) of this section, a beneficiary person is deemed to have been sent a report if:

393 (1) In the case of a beneficiary person having capacity, it is sent to the beneficiary person;

394 (2) In the case of a person who is a beneficiary and who under § 3547 of this title may be represented and  
395 bound by another person, it is sent to the other person; or

396 (3) In the case of a person who is a beneficiary and who under § 3303(d) of this title is represented and  
397 bound by a designated representative, it is sent to the designated representative.

398 (d) If subsection (a) of this section does not apply, a judicial proceeding by a beneficiary person against a trustee  
399 for breach of trust or other claim must be commenced within 5 years after the first to occur of:

400 (1) The removal, resignation, or death of the trustee;

401 (2) The termination of the beneficiary's person's interest in the trust; or

402 (3) The termination of the trust.

403 (e) This section does not preclude an action to recover for fraud or misrepresentation related to the report.

404 § 3588 Beneficiary's Consent, release, or ratification, or indemnification in favor of a trustee.

405 (a) Whether or not the consent, release, or ratification is supported by consideration, a beneficiary person may

406 not hold a trustee liable for a breach of trust or other claim if the beneficiary person consented to the conduct constituting

407 the breach or other claim, released the trustee from liability for the breach or other claim, or ratified the transaction  
408 constituting the breach or other claim, unless:

409 (1) The consent, release or ratification of the beneficiary person was induced by improper conduct of the  
410 trustee; or

411 (2) At the time of the consent, release or ratification, the beneficiary person did not know of:

412 a. The beneficiary's person's rights; or

413 b. Material facts the trustee knew or should have known with the exercise of reasonable inquiry.

414 (b) A consent, release, ratification, or indemnification in favor of a trustee need not be supported by consideration.

415 Section 6. Amend Chapter 5, Title 25 of the Delaware Code by making insertions as shown by underline as follows:

416 § 505 Exercise of powers of appointment [For application of this section, see 79 Del. Laws, c. 352, § 6]

417 (e) When a donee of a nongeneral power of appointment appoints, effective on the donee's death, all or a  
418 portion of the assets subject to such power, to the donee's revocable trust, for the benefit of 1 or more objects of  
419 the power, such appointment shall be treated as having created, effective on the donee's death, a separate trust  
420 within such donee's revocable trust solely for the benefit of the objects of the power, which therefore shall not be  
421 subject to the claims of creditors of the donee, the donee's estate, or the donee's revocable trust (whether under  
422 section 3337 of Title 12 or any other law).

423 Section 7. Sections 2725 and 2728 of Title 18 of the Delaware Code are hereby repealed.

424 Section 8. The provisions of section 5 of this Act amending section 3545(a)(1) of Title 12 shall be effective with  
425 respect to the creation, modification or revocation of trusts executed on or after January 1, 2001. The provisions of section 5  
426 of this Act amending the period under section 3585(a)(1) of Title 12 from two years to one year shall apply to trusts  
427 whenever created, but shall apply only to reports sent to persons after the date of enactment, and thus shall not apply to  
428 reports sent to persons at any time within the two-year period immediately preceding the date of enactment. Otherwise, this  
429 Act shall be effective upon enactment and shall apply to trusts whenever created.

#### SYNOPSIS

Section 1 of the Act addresses statutes under Chapter 49 of Title 10 and (i) amends the title of section 4915 (but makes no substantive changes to the statute); and (ii) modifies section 4916 to provide that plans similar to the Delaware College Investment Plan and the Delaware Achieving a Better Life Experience Plan, but created under the laws of other states, are similarly exempt from the execution or attachment process in Delaware.

Section 2 of the Act modifies section 6504 of Title 10 by: (i) providing that advisers and protectors under section 3313(a) of Title 12, and designated representatives under section 3339 of Title 12, are among those persons who may have a declaration of rights or legal relations in respect to the subjects currently enumerated in the statute; and (ii) making minor grammatical clarifications.

Section 3 of the Act transfers certain statutes affecting the construction of trusts' governing instruments from Chapter 2 of Title 12 (which governs wills) to Chapter 33 of Title 12 (which governs trusts) so that these statutes will be more readily accessible as a part of Delaware's nationwide trust practice, and therefore cross-references the transferred statutes for purposes of the construction of wills.

Section 4 of the Act addresses statutes under Chapter 33 of Title 12 and (i) clarifies that the definitions of section 3301 also apply to Chapters 35, 39, and 45 of Title 12, and to any other Delaware laws specifically incorporating section 3301 or the laws of trusts generally; (ii) clarifies that the definition of “fiduciary” as used in other sections of Title 12 also includes advisers or protectors acting in a fiduciary capacity under section 3313(a) of Title 12 and designated representatives acting in a fiduciary capacity under section 3339 of Title 12; (iii) defines in section 3301 the term “nonfiduciary” as used in other sections of Title 12; (iv) clarifies that sections 3302 and 3303 authorize sustainable investment strategies; (v) clarifies that section 3302’s protections of fiduciaries who do not have control over assets, or whose control is subject to the direction of a direction adviser, also apply to fiduciaries whose control is subject to the direction of a co-trustee or to fiduciaries whose co-trustees have exclusive authority over investment decisions; (vi) clarifies section 3313 such that only loans not in the nature of distribution decisions are considered to be investment decisions for purposes of directed trusts; (vii) modifies section 3313 by adding a new subsection (g), which provides that persons accepting appointment, or serving, as trust advisers submit to personal jurisdiction of this State, thereby paralleling the Uniform Trust Code; (viii) clarifies that under section 3313A, an excluded co-trustee is a fiduciary only with respect to powers from which such co-trustee is not excluded, and thus is not a fiduciary as to powers from which such co-trustee is excluded; (ix) clarifies that section 3317’s requirement for co-fiduciaries to keep each other informed also extends to nonfiduciaries with powers relating to a trust; (x) clarifies that section 3317’s protections for fiduciaries and nonfiduciaries providing information to co-fiduciaries or co-nonfiduciaries also extend to fiduciaries and nonfiduciaries receiving information from cofiduciaries or co-nonfiduciaries; (xi) clarifies that section 3323’s “majority rules” provisions

relating to decisions among three or more co-fiduciaries also extend to decisions among three or more nonfiduciaries, and apply to powers vested in three or more such persons by a governing instrument or by law; (xii) transfers certain statutes affecting the construction of trusts’ governing instruments from Chapter 2 of Title 12 (which governs wills) to Chapter 33 of Title 12 (which governs trusts), and specifically to section 3330 (whose title is accordingly clarified), so that these statutes will be more readily accessible as a part of Delaware’s nationwide trust practice; (xiii) clarifies that section 3330 applies to trusts’ governing instruments generally (and not just wills or trust instruments); (xiv) clarifies that nonjudicial settlement agreements under section 3338 may resolve or address the removal of a trustee; (xv) clarifies section 3341 to provide that where substantially identical powers of appointment exist between two merged trusts, such powers applicable to the surviving trust before the merger shall extend to all of the assets within the surviving trust after the merger, unless the instrument of merger specifies otherwise, and also to clarify that section 3341 does not address the validity or effect of written instruments executed before trust mergers that purport to exercise powers of appointment over trusts; and (xvi) clarifies that modification of a trust under section 3342 permits both the addition of new provisions that were not included in the governing instrument previously as well as the modification of existing provisions that were included in the governing instrument previously.

Section 5 of the Act addresses statutes under Chapter 35 of Title 12 and (i) reorders section 3524 to clarify when accountings for testamentary trusts are required to be filed with the Court of Chancery; (ii) modifies section 3528, such that exercises of powers to invade principal or income or both of a trust under that section need only be signed, and no longer need be acknowledged or filed with the records of the trust; (iii) modifies section 3536 so that a trustor may release a beneficial interest that is contingent on surviving the trustor’s spouse, so as to accelerate the next succeeding beneficial interests, thereby overturning Delaware common law to

the contrary; (iv) clarifies the execution requirements for a trust’s governing instrument under section 3545; (v) clarifies section 3547 to define contingent successor remainder beneficiaries, define when such beneficiaries are more remote than others, and define when such beneficiaries may virtually represent more remote such beneficiaries; (vi) consistent with the Uniform Trust Code, modifies section 3547 to permit holders of general powers of appointment and the broadest form of nongeneral powers of appointment to virtually represent takers in default absent a conflict of interest; (vii) modifies section 3547 to allow a parent to virtually represent an unborn beneficiary (consistent with the Uniform Trust Code), and to provide that a virtual representative who represents a minor or incapacitated or unborn beneficiary and who, under the statute’s existing language, may therefore also represent an unborn or unascertainable person who has an interest in the trust substantially identical to that of the minor or incapacitated or unborn beneficiary represented by such virtual representative, may now also represent a minor or

incapacitated or unborn person who has an interest in the trust substantially identical to that of the minor or incapacitated or unborn beneficiary represented by such virtual representative; (viii) clarifies section 3547 to provide that for purposes of virtually representing a trust that is a beneficiary of another trust, a trustee of an existing beneficiary-trust, or those who would be the beneficiaries under the terms of a beneficiary-trust not yet in existence, may virtually represent such beneficiary-trust; (ix) clarifies the definition of “trustee” in section 3580 for purposes of Subchapter VII of Chapter 35; (x) clarifies that sections 3585 and 3588 govern statutes of

limitations applicable to any person interested in a trust (and not just beneficiaries) and to any claim against a trustee (and not just breach of trust claims); (xi) modifies the statute of limitations applicable to claims against a trustee from two years after a report is sent to a person to one year after such report is sent, to align such period with the Uniform Trust Code (unless the trust’s governing instrument specifies a period longer than one year, in which case the governing

instrument shall control); and (xii) clarifies that section 3588 does not require consideration for indemnifications of trustees.

Section 6 of the Act clarifies, within Section 505 of Title 25, that exercises of nongeneral powers of appointment to a donee's revocable trust, for the benefit of proper objects of the power, are not rendered invalid by such appointment, and thus are deemed to create a separate trust within such revocable trust that is not subject to the creditors of the donee, the donee's estate, or the donee's revocable trust.

Section 7 of the Act repeals sections 2725 and 2728 of Title 18 because they have been superseded by recent amendments to section 4915 of Title 10.

Section 8 of the Act provides effective dates.

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