GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2014 REGULAR SESSION

HOUSE BILL NO. 78

TUESDAY, MARCH 4, 2014

The following bill was reported to the Senate from the House and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to trusts and estates.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔SECTION 1. KRS CHAPTER 386B IS ESTABLISHED, SUBCHAPTER 1 OF
4 KRS CHAPTER 386B IS ESTABLISHED, AND A NEW SECTION THEREOF IS
5 CREATED TO READ AS FOLLOWS:

6 ***As used in this chapter, unless the context requires otherwise:***

7 ***(1) "Action" with respect to an act of a trustee, includes a failure to act;***

8 ***(2) "Ascertainable standard" means a standard relating to an individual's health,***
9 ***education, support, or maintenance within the meaning of 26 U.S.C. sec.***
10 ***2041(b)(1)(A) or 26 U.S.C. sec. 2514(c)(1), as amended;***

11 ***(3) "Beneficiary" means a person that:***

12 ***(a) Has a present or future beneficial interest in a trust, vested or contingent;***
13 ***or***

14 ***(b) In a capacity other than that of trustee, holds a power of appointment over***
15 ***trust property;***

16 ***(4) "Charitable trust" means a trust, or part of a trust, established for a charitable***
17 ***purpose as described in subsection (1) of Section 27 of this Act;***

18 ***(5) "Conservator" means a person appointed by the court to administer the estate of***
19 ***a minor or adult individual;***

20 ***(6) "Environmental law" means a federal, state, or local law, rule, regulation, or***
21 ***ordinance relating to protection of the environment;***

22 ***(7) "Guardian" means a person appointed by the court, a parent, or a spouse to***
23 ***make decisions regarding the support, care, education, health, and welfare of a***
24 ***minor or adult individual. The term shall not include a guardian ad litem;***

25 ***(8) "Interests of the beneficiaries" means the beneficial interests provided in the***
26 ***terms of the trust;***

27 ***(9) "Jurisdiction," with respect to a geographic area, includes a state or country;***

1 *(10) "Person" means any individual or entity as defined in KRS 446.010;*
2 *(11) "Power of withdrawal" means a presently exercisable general power of*
3 *appointment other than a power:*
4 *(a) Exercisable by a trustee and limited by an ascertainable standard; or*
5 *(b) Exercisable by another person only on the consent of the trustee or a person*
6 *holding an adverse interest;*
7 *(12) "Property" means anything that may be the subject of ownership, whether legal*
8 *or equitable, or any interest therein;*
9 *(13) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's*
10 *qualification is determined:*
11 *(a) Is a distributee or permissible distributee of trust income or principal;*
12 *(b) Would be a distributee or permissible distributee of trust income or*
13 *principal if the interests of the distributees described in paragraph (a) ended*
14 *on that date without causing the trust to end; or*
15 *(c) Would be a distributee or permissible distributee of trust income or*
16 *principal if the trust ended on that date;*
17 *(14) "Revocable" as applied to a trust, means revocable by the settlor without the*
18 *consent of the trustee or a person holding an adverse interest;*
19 *(15) "Settlor" means a person, including a testator, who creates, or contributes*
20 *property to, a trust. If more than one (1) person creates or contributes property to*
21 *a trust, each person is a settlor of the part of the trust property attributable to that*
22 *person's contribution except to the extent another person has the power to revoke*
23 *or withdraw that part;*
24 *(16) "Spendthrift provision" means a term of a trust which restrains both voluntary*
25 *and involuntary transfer of a beneficiary's interest;*
26 *(17) "State" means a State of the United States, the District of Columbia, Puerto Rico,*
27 *the United States Virgin Islands, or any territory or insular possession subject to*

1 *the jurisdiction of the United States. The term includes an Indian tribe or band*
2 *recognized by federal law or formally acknowledged by a state;*
3 *(18) "Terms of a trust" means the manifestation of the settlor's intent regarding a*
4 *trust's provisions as expressed in the trust instrument or as may be established by*
5 *other evidence that would be admissible in a judicial proceeding;*
6 *(19) (a) "Trust" means an express trust established by a trust instrument, including*
7 *a will, whereby a trustee has the duty to administer a trust asset for the*
8 *benefit of a named or otherwise described income or principal beneficiary,*
9 *or both. This definition includes oral trusts.*
10 *(b) "Trust" does not include a resulting or constructive trust, a business trust*
11 *which provides for certificates to be issued to the beneficiary, an investment*
12 *trust, a voting trust, a security instrument, a trust established by the*
13 *judgment of a court, a liquidation trust, or a trust for the primary purpose*
14 *of paying dividends, interests, interest coupons, salaries, wages, pensions or*
15 *profits, or employee benefits of any kind, an instrument in which a person is*
16 *nominee or escrowee for another, a trust established in deposits in any*
17 *financial institution, or other trust the nature of which does not admit of*
18 *general trust administration;*
19 *(20) "Trust instrument" means an instrument signed by the settlor that contains*
20 *terms of the trust, including any amendments thereto; and*
21 *(21) "Trustee" includes an original, additional, and successor trustee, and a co-*
22 *trustee.*
23 ➔SECTION 2. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER
24 386B IS CREATED TO READ AS FOLLOWS:
25 *(1) Subject to subsection (2) of this section, a person has knowledge of a fact if the*
26 *person:*
27 *(a) Has actual knowledge of it;*

1 *(b) Has received a notice or notification of it; or*

2 *(c) From all the facts and circumstances known to the person at the time in*

3 *question, has reason to know it.*

4 *(2) An organization that conducts activities through employees has notice or*

5 *knowledge of a fact involving a trust only from the time the information was*

6 *received by an employee having responsibility to act for the trust, or would have*

7 *been brought to the employee's attention if the organization had exercised*

8 *reasonable diligence. An organization exercises reasonable diligence if it*

9 *maintains reasonable routines for communicating significant information to the*

10 *employee having responsibility to act for the trust and there is reasonable*

11 *compliance with the routines. Reasonable diligence shall not require an employee*

12 *of the organization to communicate information unless the communication is*

13 *part of the individual's regular duties or the individual knows a matter involving*

14 *the trust would be materially affected by the information.*

15 ➔SECTION 3. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER

16 386B IS CREATED TO READ AS FOLLOWS:

17 *(1) Except as otherwise provided in the terms of the trust, this chapter governs the*

18 *duties and powers of a trustee, relations among trustees, and the rights and*

19 *interests of a beneficiary.*

20 *(2) The terms of a trust prevail over any provision of this chapter, except:*

21 *(a) The requirements for creating a trust;*

22 *(b) The duty of a trustee to act in good faith and in the interests of the*

23 *beneficiaries;*

24 *(c) The requirement that a trust and its terms be for the benefit of its*

25 *beneficiaries, and that the trust have a purpose that is lawful, not contrary*

26 *to public policy, and possible to achieve;*

27 *(d) The power of the court to change or terminate a trust under Subchapter 4 of*

1 *this chapter;*

2 *(e) The effect of a spendthrift provision and the rights of certain creditors and*

3 *assignees to reach a trust as provided in Subchapter 5 of this chapter;*

4 *(f) The power of the court under Section 51 of this Act to require, dispense*

5 *with, or modify or terminate a bond;*

6 *(g) The power of the court under subsection (2) of Section 57 of this Act to*

7 *adjust a trustee's compensation as specified in the terms of the trust which*

8 *is unreasonably low or high;*

9 *(h) The duty to notify and report under subsection (2) of Section 72 of this Act ;*

10 *(i) The effect of an exculpatory term under Section 86 of this Act;*

11 *(j) The rights under Sections 88, 89 and 90 of this Act of a person other than a*

12 *trustee or beneficiary;*

13 *(k) Periods of limitation for commencing a judicial proceeding;*

14 *(l) The power of the court to take such action and exercise such jurisdiction as*

15 *may be necessary in the interests of justice; and*

16 *(m) The subject-matter jurisdiction of the court and venue for commencing a*

17 *proceeding as provided in Sections 15 and 16 of this Act.*

18 ➔SECTION 4. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER

19 386B IS CREATED TO READ AS FOLLOWS:

20 *The common law of trusts and principles of equity supplement this chapter, except to*

21 *the extent modified by this chapter or another statute of this Commonwealth.*

22 ➔SECTION 5. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER

23 386B IS CREATED TO READ AS FOLLOWS:

24 *The meaning and effect of the terms of a trust governed by this chapter are determined*

25 *by:*

26 *(1) The law of the jurisdiction designated in the terms unless the designation of that*

27 *jurisdiction's law is contrary to a strong public policy of the jurisdiction having*

1 *the most significant relationship to the matter at issue; or*
2 *(2) In the absence of a controlling designation in the terms of the trust, the law of the*
3 *jurisdiction having the most significant relationship to the matter at issue.*
4 ➔SECTION 6. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER
5 386B IS CREATED TO READ AS FOLLOWS:
6 *(1) Without precluding other means for establishing a connection with the*
7 *designated jurisdiction, terms of a trust designating the principal place of*
8 *administration are valid and controlling if:*
9 *(a) A trustee's principal place of business is located in or a trustee is a resident*
10 *of the designated jurisdiction; or*
11 *(b) All or part of the administration occurs in the designated jurisdiction.*
12 *(2) A trustee is under a continuing duty to administer the trust at a place appropriate*
13 *to its purposes, its administration, and the interests of the beneficiaries.*
14 *(3) Without precluding the right of the court to order, approve, or disapprove a*
15 *transfer, the trustee, in furtherance of the duty prescribed by subsection (2) of*
16 *this section, may transfer the trust's principal place of administration to another*
17 *state or to a jurisdiction outside of the United States.*
18 *(4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a*
19 *trust's principal place of administration not less than sixty (60) days before*
20 *initiating the transfer. The notice of proposed transfer shall include:*
21 *(a) The name of the jurisdiction to which the principal place of administration*
22 *is to be transferred;*
23 *(b) The address and telephone number at the new location at which the trustee*
24 *can be contacted;*
25 *(c) An explanation of the reasons for the proposed transfer;*
26 *(d) The date on which the proposed transfer is anticipated to occur; and*
27 *(e) The date, not less than sixty (60) days after the giving of the notice, by*

1 *which the qualified beneficiary shall notify the trustee of an objection to the*
2 *proposed transfer.*
3 *(5) The authority of a trustee under this section to transfer a trust's principal place*
4 *of administration ends if a qualified beneficiary notifies the trustee of an*
5 *objection to the proposed transfer on or before the date specified in the notice.*
6 *(6) In connection with a transfer of the trust's principal place of administration, the*
7 *trustee may transfer some or all of the trust property to a successor trustee*
8 *designated in the terms of the trust or appointed under Section 53 of this Act.*
9 *(7) The District Court shall have exclusive jurisdiction over matters under this*
10 *section.*
11 ➔SECTION 7. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER
12 386B IS CREATED TO READ AS FOLLOWS:
13 *(1) Notice to a person under this chapter or the sending of a document to a person*
14 *under this chapter shall be accomplished in a manner reasonably suitable under*
15 *the circumstances and likely to result in receipt of the notice or document.*
16 *Permissible methods of notice or for sending a document include first-class mail,*
17 *personal delivery, delivery to the person's last known place of residence or place*
18 *of business, or a properly directed electronic message.*
19 *(2) Notice otherwise required under this chapter or a document otherwise required to*
20 *be sent under this chapter need not be provided to a person whose identity or*
21 *location is unknown to and not reasonably ascertainable by the trustee.*
22 *(3) Notice under this chapter or the sending of a document under this chapter may*
23 *be waived by the person to be notified or sent the document.*
24 *(4) Notice of a judicial proceeding shall be given as provided in the applicable rules*
25 *of civil procedure and, if notice is made by publication, proof of the giving of*
26 *notice shall be made on or before the hearing and filed in the proceeding as*
27 *provided in KRS 424.170.*

1 ➔SECTION 8. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER
2 386B IS CREATED TO READ AS FOLLOWS:
3 *(1) A charitable organization expressly designated to receive distributions under the*
4 *terms of a charitable trust has the rights of a qualified beneficiary under this*
5 *chapter if the charitable organization, on the date the charitable organization's*
6 *qualification is being determined:*
7 *(a) Is a distributee or permissible distributee of trust income or principal;*
8 *(b) Would be a distributee or permissible distributee of trust income or*
9 *principal on the termination of the interests of other distributees or*
10 *permissible distributes then receiving or eligible to receive distributions; or*
11 *(c) Would be a distributee or permissible distributee of trust income or*
12 *principal if the trust ended on that date.*
13 *(2) A person appointed to enforce a trust established for the care of an animal or*
14 *another noncharitable purpose under Section 30 or 31 of this Act, has the rights*
15 *of a qualified beneficiary under this chapter.*
16 *(3) Other than those listed in Section 55 of this Act, the Attorney General has the*
17 *rights of a qualified beneficiary with respect to a charitable trust governed by this*
18 *chapter.*
19 ➔SECTION 9. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER
20 386B IS CREATED TO READ AS FOLLOWS:
21 *(1) For purposes of this section, "interested persons" means persons whose consent*
22 *would be required to achieve a binding settlement were the settlement to be*
23 *approved by the court.*
24 *(2) Except as otherwise provided in subsection (3) of this section, interested persons*
25 *may enter into a binding nonjudicial settlement agreement with respect to any*
26 *matter involving a trust. This procedure is not intended to foreclose or limit any*
27 *other avenue of settlement under the laws of this Commonwealth.*

1 *(3) A nonjudicial settlement agreement is valid only to the extent it does not violate a*
2 *material purpose of the trust and includes conditions that could be properly*
3 *approved by the court under this chapter or other applicable law.*
4 *(4) Matters that may be resolved by a nonjudicial settlement agreement include:*
5 *(a) The interpretation or construction of the terms of the trust;*
6 *(b) The approval of a trustee's report or accounting;*
7 *(c) Direction to a trustee to refrain from performing a particular act or the*
8 *grant to a trustee of any necessary or desirable power;*
9 *(d) The resignation or appointment of a trustee and the determination of a*
10 *trustee's compensation;*
11 *(e) Transfer of a trust's principal place of administration; and*
12 *(f) Liability of a trustee for an action relating to the trust.*
13 *(5) Any interested person may request the court to approve a nonjudicial settlement*
14 *agreement, to determine whether the representation under Subchapter 3 of this*
15 *chapter was adequate, and to determine whether the agreement contains*
16 *conditions the court could have properly approved.*
17 *(6) The District Court shall have exclusive jurisdiction over matters under this*
18 *section.*
19 ➔SECTION 10. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER
20 386B IS CREATED TO READ AS FOLLOWS:
21 *The rules of construction that apply in this Commonwealth to the interpretation of and*
22 *disposition of property by will also apply as appropriate to the interpretation of the*
23 *terms of a trust and the disposition of the trust property.*
24 ➔SECTION 11. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER
25 386B IS CREATED TO READ AS FOLLOWS:
26 *The doctrine of worthier title and the doctrine of reversions shall not be in force in this*
27 *Commonwealth as rules of law and as rules of construction. Language in a governing*

1 ***instrument describing the beneficiaries of a disposition as the transferor's "heirs,"***
2 ***"heirs at law," "next of kin," "distributees," "relatives," or "family," or language of***
3 ***similar import, shall not create or presumptively create a reversionary interest in the***
4 ***transferor.***
5 ➔SECTION 12. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER
6 386B IS CREATED TO READ AS FOLLOWS:
7 ***(1) As used in this section, "settlor" means a person that executes a trust instrument.***
8 ***The term includes a person for which a fiduciary or agent is acting.***
9 ***(2) A trustee of a trust has an insurable interest in the life of an individual insured***
10 ***under a life insurance policy that is owned by the trustee of the trust acting in a***
11 ***fiduciary capacity or that designates the trust itself as the owner if, on the date***
12 ***the policy is issued:***
13 ***(a) The insured is:***
14 ***1. A settlor of the trust; or***
15 ***2. An individual in whom a settlor of the trust has, or would have had if***
16 ***living at the time the policy was issued, an insurable interest; and***
17 ***(b) The life insurance proceeds are primarily for the benefit of one (1) or more***
18 ***trust beneficiaries that have:***
19 ***1. An insurable interest in the life of the insured; or***
20 ***2. A substantial interest engendered by love and affection in the***
21 ***continuation of the life of the insured and, if not already included***
22 ***under subparagraph 1. of this paragraph, who are:***
23 ***a. Related within the third degree or closer, as measured by the***
24 ***civil law system of determining degrees of relation, either by***
25 ***blood or law, to the insured; or***
26 ***b. Stepchildren of the insured.***
27 ➔SECTION 13. SUBCHAPTER 2 OF KRS CHAPTER 386B IS

1 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
2 FOLLOWS:
3 *(1) The court may intervene in the administration of a trust to the extent its*
4 *jurisdiction is invoked by an interested person or as provided by law.*
5 *(2) A trust is not subject to continuing judicial supervision unless ordered by the*
6 *court.*
7 *(3) A judicial proceeding involving a trust may relate to any matter involving the*
8 *trust's administration, including a request for instructions, an action to declare*
9 *rights, and an action to settle the trustee's accounts.*
10 ➔SECTION 14. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER
11 386B IS CREATED TO READ AS FOLLOWS:
12 *(1) By accepting the trusteeship of a trust having its principal place of administration*
13 *in this Commonwealth or by moving the principal place of administration to this*
14 *Commonwealth, the trustee submits personally to the jurisdiction of the courts of*
15 *this Commonwealth regarding any matter involving the trust.*
16 *(2) With respect to their interests in the trust, the beneficiaries of a trust having its*
17 *principal place of administration in this Commonwealth are subject to the*
18 *jurisdiction of the courts of this Commonwealth regarding any matter involving*
19 *the trust. By accepting a distribution from such a trust, the recipient submits*
20 *personally to the jurisdiction of the courts of this Commonwealth regarding any*
21 *matter involving the trust.*
22 *(3) This section shall not preclude other methods of obtaining jurisdiction over a*
23 *trustee, beneficiary, or other person receiving property from the trust, including*
24 *trust registration under Section 17 of this Act.*
25 ➔SECTION 15. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER
26 386B IS CREATED TO READ AS FOLLOWS:
27 *Except with regard to matters otherwise provided for by statute:*

1 *(1) The District Court and Circuit Court shall have concurrent jurisdiction of any*
2 *proceedings in this Commonwealth brought by a trustee or beneficiary*
3 *concerning any trust matter.*
4 *(2) If a proceeding is initially brought in District Court concerning any trust matter,*
5 *the jurisdiction of the District Court shall become exclusive with respect to such*
6 *matter unless, within twenty (20) days of receipt of notice of such proceeding, a*
7 *party files an action in Circuit Court relating to the same trust matter, in which*
8 *event the District Court shall be divested of jurisdiction and the Circuit Court*
9 *shall have exclusive jurisdiction over such action.*
10 ➔SECTION 16. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER
11 386B IS CREATED TO READ AS FOLLOWS:
12 *(1) Venue for proceedings under this chapter involving registered trusts is in the*
13 *place of registration.*
14 *(2) Venue for proceedings under this chapter involving trusts not registered in this*
15 *Commonwealth is in any place where the trust properly could have been*
16 *registered, and otherwise by the venue statutes of this Commonwealth.*
17 ➔SECTION 17. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER
18 386B IS CREATED TO READ AS FOLLOWS:
19 *(1) The trustee of a trust having its principal place of administration in this*
20 *Commonwealth shall register the trust in the District Court of this*
21 *Commonwealth at the principal place of administration. Unless otherwise*
22 *designated in the trust instrument, the principal place of administration of a trust*
23 *is the trustee's usual place of business where the records pertaining to the trust*
24 *are kept, or at the trustee's residence if he or she has no such place of business.*
25 *In the case of co-trustees, the principal place of administration, if not otherwise*
26 *designated in the trust instrument, is:*
27 *(a) 1. The usual place of business of the corporate trustee if there is but one*

1 *(1) corporate co-trustee; or*
2 *2. The usual place of business or residence of the individual trustee who*
3 *is a professional fiduciary if there is but one (1) such person and no*
4 *corporate co-trustee; and*
5 *(b) In all other cases, the usual place of business or residence of any of the co-*
6 *trustees as agreed on by them.*
7 *The duty to register under this section shall not apply to the trustee of a trust if*
8 *registration would be inconsistent with the retained jurisdiction of a foreign court*
9 *from which the trustee cannot obtain release, nor does the duty to register under*
10 *this section apply to any trust, whether testamentary or inter vivos, revocable or*
11 *irrevocable, unless the settlor of the trust so directs.*
12 *(2) Registration shall be accomplished by filing a statement indicating the name and*
13 *address of the trustee in which he or she acknowledges the trusteeship. The*
14 *statement shall indicate whether the trust has been registered elsewhere. The*
15 *statement shall identify the trust:*
16 *(a) In the case of a testamentary trust, by the name of the testator and the date*
17 *and place of domiciliary probate;*
18 *(b) In the case of a written inter vivos trust, by the name of each settlor and the*
19 *original trustee and the date of the trust instrument; or*
20 *(c) In the case of an oral trust, by information identifying the settlor or other*
21 *source of funds and describing the time and manner of the trust's creation*
22 *and the terms of the trust, including the subject matter, beneficiaries, and*
23 *time of performance.*
24 *If a trust has been registered elsewhere, registration in this Commonwealth is*
25 *ineffective until the earlier registration is released by order of the court where*
26 *prior registration occurred, or an instrument signed by the trustee and all*
27 *beneficiaries is filed with the registration in this state.*

1 *(3) (a) By registering a trust, or accepting the trusteeship of a registered trust, the*
2 *trustee submits personally to the jurisdiction of the court in any proceeding*
3 *under this chapter relating to the trust that may be initiated by any*
4 *interested person while the trust remains registered. Notice of any*
5 *proceeding shall be given pursuant to Section 7 of this Act.*
6 *(b) To the extent of their interests in the trust, all beneficiaries of a trust*
7 *properly registered in this Commonwealth are subject to the jurisdiction of*
8 *the court of registration for the purposes of proceedings under this chapter,*
9 *provided notice is given pursuant to Section 7 of this Act.*
10 *(c) The court for good cause shown may provide for a different method or time*
11 *of giving notice for any hearing.*
12 *(4) A trustee who fails to register a trust in a proper place pursuant to this Chapter,*
13 *for purposes of any proceedings initiated by a beneficiary of the trust prior to*
14 *registration, is subject to the personal jurisdiction of any court in which the trust*
15 *could have been registered.*
16 ➔SECTION 18. SUBCHAPTER 3 OF KRS CHAPTER 386B IS
17 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
18 FOLLOWS:
19 *(1) Notice to a person who may represent and bind another person under this*
20 *subchapter has the same effect as if notice were given directly to the other person.*
21 *(2) The consent of a person who may represent and bind another person under this*
22 *subchapter is binding on the person represented unless the person represented*
23 *objects to the representation before the consent would otherwise have become*
24 *effective.*
25 *(3) Except as otherwise provided under Sections 33 and 47 of this Act, a person who*
26 *under this subchapter may represent a settlor who lacks capacity, may receive*
27 *notice and give a binding consent on the settlor's behalf.*

1 *(4) A settlor may not represent and bind a beneficiary under this Subchapter with*
2 *respect to the termination or modification of a trust under subsection (1) of*
3 *Section 33 of this Act.*
4 *(5) Provisions of this subchapter shall also be applicable to KRS 386.175 regarding a*
5 *trustee's power to appoint principal and income in favor of a trustee of a second*
6 *trust and Section 106 of this Act regarding a trustee's power to adjust between*
7 *principal and income and conversion to unitrust.*
8 ➔SECTION 19. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER
9 386B IS CREATED TO READ AS FOLLOWS:
10 *To the extent there is no conflict of interest between the holder of a general*
11 *testamentary power of appointment and the persons represented with respect to the*
12 *particular question or dispute, the holder may represent and bind persons whose*
13 *interests, as permissible appointees, takers in default, or otherwise, are subject to the*
14 *power.*
15 ➔SECTION 20. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER
16 386B IS CREATED TO READ AS FOLLOWS:
17 *To the extent there is no conflict of interest between the representative and the person*
18 *represented or among those being represented with respect to a particular question or*
19 *dispute:*
20 *(1) A conservator may represent and bind the estate that the conservator controls;*
21 *(2) A guardian may represent and bind the ward if a conservator of the ward's estate*
22 *has not been appointed;*
23 *(3) An agent having authority to act with respect to the particular question or dispute*
24 *may represent and bind the principal;*
25 *(4) A trustee may represent and bind the beneficiaries of the trust;*
26 *(5) A personal representative of a decedent's estate may represent and bind persons*
27 *interested in the estate;*

1 *(6) A parent may represent and bind the parent's minor or unborn child if a*
2 *conservator or guardian for the child has not been appointed; and*
3 *(7) A curator may represent and bind the estate or person that the curator controls.*
4 ➔SECTION 21. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER
5 386B IS CREATED TO READ AS FOLLOWS:
6 *Unless otherwise represented, a minor, incapacitated, or unborn individual, or a*
7 *person whose identity or location is unknown and not reasonably ascertainable, may*
8 *be represented by and bound by another having a substantially identical interest with*
9 *respect to the particular question or dispute, but only to the extent there is no conflict*
10 *of interest between the representative and the person represented.*
11 ➔SECTION 22. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER
12 386B IS CREATED TO READ AS FOLLOWS:
13 *(1) If the court determines that an interest is not represented under this subchapter,*
14 *or that the otherwise available representation might be inadequate because of*
15 *conflict or otherwise, the court may appoint a guardian ad litem to receive notice,*
16 *give consent, and otherwise represent, bind, and act on behalf of a minor,*
17 *incapacitated, or unborn individual, or a person whose identity or location is*
18 *unknown. A guardian ad litem may be appointed to represent several persons or*
19 *interests.*
20 *(2) A guardian ad litem may act on behalf of the individual represented with respect*
21 *to any matter arising under this chapter, whether or not a judicial proceeding*
22 *concerning the trust is pending.*
23 *(3) In making decisions, a guardian ad litem may consider general benefit accruing*
24 *to the living members of the individual's family.*
25 ➔SECTION 23. SUBCHAPTER 4 OF KRS CHAPTER 386B IS
26 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
27 FOLLOWS:

1 *A trust may be created by:*
2 *(1) Transfer of property to another person as trustee during the settlor's lifetime or*
3 *by will or other disposition taking effect on the settlor's death;*
4 *(2) Declaration by the owner of property that the owner holds identifiable property as*
5 *trustee; or*
6 *(3) Exercise of a power of appointment in favor of a trustee.*
7 ➔SECTION 24. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
8 386B IS CREATED TO READ AS FOLLOWS:
9 *(1) A trust is created only if:*
10 *(a) The settlor has capacity to create a trust;*
11 *(b) The settlor indicates an intention to create the trust;*
12 *(c) The trust has a definite beneficiary or is:*
13 *1. A charitable trust;*
14 *2. A trust for the care of an animal under Section 30 of this Act; or*
15 *3. A trust for a noncharitable purpose under Section 31 of this Act;*
16 *(d) The trustee has duties to perform; and*
17 *(e) The same person is not the sole trustee and sole beneficiary.*
18 *(2) A power in a trustee to select a beneficiary from an indefinite class is valid. If the*
19 *power is not exercised within a reasonable time, the power fails and the property*
20 *subject to the power passes to the persons who would have taken the property had*
21 *the power not been conferred.*
22 ➔SECTION 25. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
23 386B IS CREATED TO READ AS FOLLOWS:
24 *A trust not created by will is validly created if its creation complies with the law of the*
25 *jurisdiction in which the trust instrument was executed, or the law of the jurisdiction*
26 *in which, at the time of creation:*
27 *(1) The settlor was domiciled, had a place of abode, or was a national;*

1 *(2) A trustee was domiciled or had a place of business; or*

2 *(3) Any trust property was located.*

3 ➔SECTION 26. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER

4 386B IS CREATED TO READ AS FOLLOWS:

5 *A trust may be created only to the extent its purposes are lawful, not contrary to public*

6 *policy, and possible to achieve. A trust and its terms shall be for the benefit of its*

7 *beneficiaries.*

8 ➔SECTION 27. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER

9 386B IS CREATED TO READ AS FOLLOWS:

10 *(1) A charitable trust may be created for the relief of poverty, the advancement of*

11 *education or religion, the promotion of health, governmental or municipal*

12 *purposes, or other purposes the achievement of which is beneficial to the*

13 *community.*

14 *(2) Except as otherwise provided in KRS 381.260, if the terms of a charitable trust do*

15 *not indicate a particular charitable purpose or beneficiary, the court may select*

16 *one (1) or more charitable purposes or beneficiaries. The selection shall be*

17 *consistent with the settlor's intention to the extent it can be ascertained.*

18 *(3) The settlor of a charitable trust, among others, may maintain a proceeding to*

19 *enforce the trust.*

20 ➔SECTION 28. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER

21 386B IS CREATED TO READ AS FOLLOWS:

22 *A trust is void to the extent its creation was induced by fraud, duress, or undue*

23 *influence.*

24 ➔SECTION 29. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER

25 386B IS CREATED TO READ AS FOLLOWS:

26 *Except as required by a statute other than those in this chapter, a trust need not be*

27 *evidenced by a trust instrument, but the creation of an oral trust and its terms may be*

1 *established only by clear and convincing evidence.*

2 ➔SECTION 30. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
3 386B IS CREATED TO READ AS FOLLOWS:

4 *(1) A trust may be created to provide for the care of an animal alive during the*
5 *settlor's lifetime. The trust terminates on the death of the animal or, if the trust*
6 *was created to provide for the care of more than one (1) animal alive during the*
7 *settlor's lifetime, on the death of the last surviving animal.*

8 *(2) A trust authorized by this section may be enforced by a person appointed in the*
9 *terms of the trust or, if no person is so appointed, by a person appointed by the*
10 *court. A person having an interest in the welfare of the animal may request the*
11 *court to appoint a person to enforce the trust or to remove a person appointed.*

12 *(3) Property of a trust authorized by this section may be applied only to its intended*
13 *use, except to the extent the court determines that the value of the trust property*
14 *exceeds the amount required for the intended use. Except as otherwise provided*
15 *in the terms of the trust, property not required for the intended use shall be*
16 *distributed to the settlor, if then living, otherwise to the settlor's successors in*
17 *interest.*

18 ➔SECTION 31. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
19 386B IS CREATED TO READ AS FOLLOWS:

20 *Except as otherwise provided in Section 30 of this Act, Section 99 of this Act regarding*
21 *perpetual care and maintenance trusts for cemeteries, or by another statute, the*
22 *following rules apply:*

23 *(1) A trust may be created for a noncharitable purpose without a definite or*
24 *definitely ascertainable beneficiary or for a noncharitable but otherwise valid*
25 *purpose to be selected by the trustee;*

26 *(2) A trust authorized by this section may be enforced by a person appointed in the*
27 *terms of the trust or, if no person is so appointed, by a person appointed by the*

1 District Court; and
2 (3) Property of a trust authorized by this section may be applied only to its intended
3 use, except to the extent the court determines that the value of the trust property
4 exceeds the amount required for the intended use. Except as otherwise provided
5 in the terms of the trust, property not required for the intended use shall be
6 distributed to the settlor, if then living, otherwise to the settlor's successors in
7 interest.
8 ➔SECTION 32. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
9 386B IS CREATED TO READ AS FOLLOWS:
10 (1) In addition to the methods of termination prescribed by Sections 33, 34, 35, and
11 36 of this Act, a trust terminates to the extent the trust is revoked or expires
12 pursuant to its terms, no purpose of the trust remains to be achieved, or the
13 purposes of the trust have become unlawful, contrary to public policy, or
14 impossible to achieve.
15 (2) A proceeding to approve or disapprove a proposed modification or termination
16 under Sections 33, 34, 35, 36, 37, and 38 of this Act, or trust combination or
17 division under Section 39 of this Act, may be commenced by a trustee or
18 beneficiary, and a proceeding to approve or disapprove a proposed modification
19 or termination under Section 33 of this Act may be commenced by the settlor. The
20 settlor of a charitable trust may maintain a proceeding to modify the trust under
21 Section 35 of this Act.
22 ➔SECTION 33. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
23 386B IS CREATED TO READ AS FOLLOWS:
24 (1) Except as otherwise provided in the terms of the trust, a noncharitable
25 irrevocable trust may be modified or terminated upon consent of the settlor and
26 all beneficiaries, without court approval, even if the modification or termination
27 is inconsistent with a material purpose of the trust. A settlor's power to consent to

1 *a trust's modification or termination may be exercised:*
2 *(a) By an agent under a power of attorney only to the extent expressly*
3 *authorized by the power of attorney and not prohibited by the terms of the*
4 *trust;*
5 *(b) By the settlor's conservator with the approval of the court supervising the*
6 *conservatorship if an agent is not so authorized and the conservator is not*
7 *prohibited by the terms of the trust; or*
8 *(c) By the settlor's guardian with the approval of the court supervising the*
9 *guardianship if an agent is not so authorized and a conservator has not*
10 *been appointed and the guardian is not prohibited by the terms of the trust.*
11 *(2) A noncharitable irrevocable trust may be terminated upon consent of all of the*
12 *beneficiaries if the court concludes that continuance of the trust is not necessary*
13 *to achieve any material purpose of the trust. A noncharitable irrevocable trust*
14 *may be modified upon consent of all of the beneficiaries if the court concludes*
15 *that modification is not inconsistent with a material purpose of the trust.*
16 *(3) A spendthrift provision in the terms of the trust is not presumed to constitute a*
17 *material purpose of the trust.*
18 *(4) Upon termination of a trust under subsection (1) or (2) of this section, the trustee*
19 *shall distribute the trust property as agreed by the beneficiaries.*
20 *(5) If not all of the beneficiaries consent to a proposed modification or termination*
21 *of the trust under subsection (1) or (2) of this section, the modification or*
22 *termination may be approved by the court if the court is satisfied that:*
23 *(a) If all of the beneficiaries had consented, the trust could have been modified*
24 *or terminated under this section; and*
25 *(b) The interests of a beneficiary who does not consent will be adequately*
26 *protected.*
27 *(6) Subsection (1) of this section shall not apply to the following types of trusts:*

1 *(a) First party special needs or supplemental trusts created under KRS 387.855*
2 *to 387.910;*
3 *(b) Trusts created under 42 U.S.C. sec. 1396p(d)(4)(A)*
4 *(c) Trusts created under 42 U.S.C. sec. 1396p(d)(4)(C);*
5 *(d) Trusts created under 42 U.S.C. sec. 1396p(c)(2)(B); and*
6 *(e) Third party special needs or supplemental trusts established by a will, trust*
7 *or similar document and created under the common law or any other law of*
8 *the Commonwealth*
9 *(7) The District Court shall have exclusive jurisdiction over matters under subsection*
10 *(2) of this section.*
11 ➔SECTION 34. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
12 386B IS CREATED TO READ AS FOLLOWS:
13 *(1) The court may modify the administrative or dispositive terms of a trust or*
14 *terminate the trust if, because of circumstances not anticipated by the settlor,*
15 *modification or termination will further the purposes of the trust. To the extent*
16 *practicable, the modification shall be made in accordance with the settlor's*
17 *probable intention.*
18 *(2) The court may modify the administrative terms of a trust if continuation of the*
19 *trust on its existing terms would be impracticable or wasteful or impair the trust's*
20 *administration.*
21 *(3) Upon termination of a trust under this section, the trustee shall distribute the*
22 *trust property in a manner consistent with the purposes of the trust.*
23 *(4) The District Court shall have exclusive jurisdiction over matters under this*
24 *section.*
25 ➔SECTION 35. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
26 386B IS CREATED TO READ AS FOLLOWS:
27 *(1) Except as otherwise provided in subsection (2) of this section, if a particular*

1 *charitable purpose becomes unlawful, impracticable, impossible to achieve, or*
2 *wasteful:*
3 *(a) The trust shall not fail, in whole or in part;*
4 *(b) The trust property shall not revert to the settlor or the settlor's successors in*
5 *interest; and*
6 *(c) The court may apply cy pres to modify or terminate the trust by directing*
7 *that the trust property be applied or distributed, in whole or in part, in a*
8 *manner consistent with the settlor's charitable purposes.*
9 *(2) A provision in the terms of a charitable trust that would result in distribution of*
10 *the trust property to a noncharitable beneficiary prevails over the power of the*
11 *court under subsection (1) of this section to apply cy pres to modify or terminate*
12 *the trust only if, when the provision takes effect:*
13 *(a) The trust property is to revert to the settlor and the settlor is still living; or*
14 *(b) Fewer than twenty-one (21) years have elapsed since the date of the trust's*
15 *creation.*
16 *(3) The Circuit Court shall have exclusive jurisdiction over actions to identify a*
17 *charitable beneficiary of a trust.*
18 ➔SECTION 36. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
19 386B IS CREATED TO READ AS FOLLOWS:
20 *(1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust*
21 *property or a personal representative holding or controlling an amount directed*
22 *by will to be held in trust, having a total value less than one hundred thousand*
23 *dollars ($100,000) may terminate the trust if the trustee concludes that the value*
24 *of the trust property is insufficient to justify the cost of administration.*
25 *(2) The court may modify or terminate a trust or remove the trustee and appoint a*
26 *different trustee if it determines that the value of the trust property is insufficient*
27 *to justify the cost of administration.*

1 *(3) Upon termination of a trust under this section, the trustee or personal*
2 *representative shall distribute the trust property in a manner consistent with the*
3 *purposes of the trust.*
4 *(4) This section does not apply to an easement for conservation or preservation.*
5 *(5) The District Court shall have exclusive jurisdiction over matters under this*
6 *section.*
7 ➔SECTION 37. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
8 386B IS CREATED TO READ AS FOLLOWS:
9 *The court may reform the terms of a trust, even if unambiguous, to conform the terms*
10 *to the settlor's intention if it is proved by clear and convincing evidence what the*
11 *settlor's intention was and that the terms of the trust were affected by a mistake of fact*
12 *or law, whether in expression or inducement.*
13 ➔SECTION 38. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
14 386B IS CREATED TO READ AS FOLLOWS:
15 *To achieve the settlor's tax objectives, the court may modify the terms of a trust in a*
16 *manner that is not contrary to the settlor's probable intention. The court may provide*
17 *that the modification has retroactive effect. The District Court shall have exclusive*
18 *jurisdiction over matters under this section.*
19 ➔SECTION 39. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER
20 386B IS CREATED TO READ AS FOLLOWS:
21 *(1) After notice to the qualified beneficiaries, a trustee may combine two (2) or more*
22 *trusts into a single trust or divide a trust into two (2) or more separate trusts, if*
23 *the result does not impair rights of any beneficiary or adversely affect*
24 *achievement of the purposes of the trust.*
25 *(2) Any division of a trust shall be made on a fractional basis, and may be funded by*
26 *a non-pro rata distribution of assets to the separate trusts.*
27 *(3) The District Court shall have exclusive jurisdiction over matters under this*

1 ***section.***

2 ➔SECTION 40. SUBCHAPTER 5 OF KRS CHAPTER 386B IS
3 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
4 FOLLOWS:

5 ***(1) To the extent a beneficiary's interest is not subject to a spendthrift provision, the***
6 ***court may authorize a creditor or assignee of the beneficiary to reach the***
7 ***beneficiary's interest by attachment of present or future distributions to or for the***
8 ***benefit of the beneficiary or other means.***

9 ***(2) The court may limit the award to such relief as is appropriate under the***
10 ***circumstances.***

11 ➔SECTION 41. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER
12 386B IS CREATED TO READ AS FOLLOWS:

13 ***(1) As used in this section, unless the context otherwise requires, "spendthrift trust"***
14 ***means a trust in which by the terms of the instrument creating it a valid restraint***
15 ***on the voluntary and involuntary alienation of the interest of a beneficiary is***
16 ***imposed.***

17 ***(2) Estates of every kind held or possessed in trust shall be subject to the debts and***
18 ***charges of the beneficiaries thereof the same as if the beneficiaries also owned***
19 ***the similar legal interest in the property, unless the trust is a spendthrift trust.***

20 ***(3) Specific language shall not be necessary to create a spendthrift trust, and it shall***
21 ***be sufficient if the instrument creating the trust manifests an intention to create a***
22 ***spendthrift trust.***

23 ***(4) If an instrument creating a trust provides that a beneficiary is entitled to receive***
24 ***income of the trust and that his interest shall not be alienable by him and shall***
25 ***not be subject to alienation by operation of law or legal process, the restraint on***
26 ***the voluntary and involuntary alienation of his right to income due and to accrue***
27 ***shall be valid.***

1 *(5) If an instrument creating a trust provides that a beneficiary is entitled to receive*
2 *principal of the trust at a future time and that his interest shall not be alienable*
3 *by him and shall not be subject to alienation by operation of law or legal process,*
4 *the restraint on the voluntary and involuntary alienation of his right to principal*
5 *shall be valid.*
6 *(6) Although a trust is a spendthrift trust, the interest of the beneficiary shall be*
7 *subject to the satisfaction of an enforceable claim against the beneficiary:*
8 *(a) By the spouse or child of the beneficiary for support, or by the spouse for*
9 *maintenance;*
10 *(b) If the trust is not a trust described in subsection (7)(b) of this section, by*
11 *providers of necessary services rendered to the beneficiary or necessary*
12 *supplies furnished to him; and*
13 *(c) By the United States or this Commonwealth for taxes due from him or her*
14 *on account of his or her interest in the trust or the income therefrom.*
15 *(7) (a) If a person creates for his or her own benefit a trust with a provision*
16 *restraining the voluntary or involuntary alienation of his or her interest, his*
17 *or her interest nevertheless shall be subject to alienation by operation of law*
18 *or legal process.*
19 *(b) This subsection shall not be construed to subject to alienation any interest*
20 *in an individual retirement account or annuity, tax-sheltered annuity,*
21 *simplified employee pension, pension, profit-sharing, stock bonus, or other*
22 *retirement plan described in the Internal Revenue Code of 1986, as*
23 *amended, which qualifies for the deferral of current income tax until the*
24 *date benefits are distributed.*
25 *(c) For purposes of this subsection, a person has not created a trust for such*
26 *person's own benefit solely because a trustee who is not such person is*
27 *authorized under the trust instrument to pay or reimburse such person for,*

1 *or pay directly to the taxing authorities, any tax on trust income or principal*
2 *that is payable by such person under the law imposing the tax.*
3 *(8) (a) For the purposes of this section, amounts and property contributed to the*
4 *following trusts are not deemed to have been contributed by the settlor of*
5 *the trust, and a person who would otherwise be treated as a settlor or a*
6 *deemed settlor of the following trusts shall not be treated as a settlor:*
7 *1. An irrevocable inter vivos marital trust that is treated as qualified*
8 *terminable interest property under 26 U.S.C. sec. 2523(f), as amended,*
9 *if the settlor is a beneficiary of the trust after the death of the settlor's*
10 *spouse;*
11 *2. An irrevocable inter vivos marital trust that is treated as a general*
12 *power of appointment trust under 26 U.S.C. sec. 2523(e), as amended,*
13 *if the settler is a beneficiary of the trust after the death of the settlor's*
14 *spouse;*
15 *3. An irrevocable inter vivos trust for the spouse of the settlor that does*
16 *not qualify for the gift tax marital deduction if the settlor is a*
17 *beneficiary of the trust only after the death of the settlor's spouse;*
18 *4. A special needs trust as defined in KRS 387.860, including a trust*
19 *established pursuant to judicial action under KRS 387.855;*
20 *5. A trust created under 42 U.S.C. sec. 1396p(d)(4)(A) or (C); and*
21 *6. A trust created under 42 U.S.C. sec. 1396p(c)(2)(B).*
22 *(b) For the purposes of this subsection, a person is a beneficiary whether so*
23 *named under the initial trust instrument or through the exercise by that*
24 *person's spouse or by another person of a limited or general power of*
25 *appointment.*
26 *(c) For the purposes of this section, the settlor shall be any person who:*
27 *1. Created the trust;*

1 *2. Contributed property to the trust; or*

2 *3 Is deemed to have contributed property to the trust.*

3 ➔SECTION 42. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER

4 386B IS CREATED TO READ AS FOLLOWS:

5 *(1) As used in this section, "child" includes any person for whom an order or*

6 *judgment for child support has been entered in this Commonwealth or another*

7 *state.*

8 *(2) Except as otherwise provided in subsection (3) of this subsection, whether or not*

9 *a trust contains a spendthrift provision, a creditor of a beneficiary may not*

10 *compel a distribution that is subject to the trustee's discretion, even if:*

11 *(a) The discretion is expressed in the form of a standard of distribution; or*

12 *(b) The trustee has abused the discretion.*

13 *(3) To the extent a trustee has not complied with a standard of distribution or has*

14 *abused a discretion:*

15 *(a) A distribution may be ordered by the court to satisfy a judgment or court*

16 *order against the beneficiary for support or maintenance of the*

17 *beneficiary's child or spouse; and*

18 *(b) The court shall direct the trustee to pay to the child or spouse such amount*

19 *as is equitable under the circumstances, but not more than the amount the*

20 *trustee would have been required to distribute to or for the benefit of the*

21 *beneficiary had the trustee complied with the standard or not abused the*

22 *discretion.*

23 *(4) This section shall not limit the right of a beneficiary to maintain a judicial*

24 *proceeding against a trustee for an abuse of discretion or failure to comply with a*

25 *standard for distribution.*

26 *(5) If the trustee's or co-trustee's discretion to make distributions for the trustee's or*

27 *co-trustee's own benefit is limited by an ascertainable standard, a creditor may*

1 *not reach or compel distribution of the beneficial interest, except to the extent the*
2 *interest would be subject to the creditor's claim were the beneficiary not acting as*
3 *trustee or co-trustee.*
4 ➔SECTION 43. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER
5 386B IS CREATED TO READ AS FOLLOWS:
6 *(1) Subject to the statutory provisions of KRS Chapter 396 regarding claims against*
7 *decedents' estates, whether or not the terms of a trust contain a spendthrift*
8 *provision, the following rules apply:*
9 *(a) During the lifetime of the settlor, the property of a revocable trust is subject*
10 *to claims of the settlor's creditors;*
11 *(b) With respect to an irrevocable trust, a creditor or assignee of the settlor may*
12 *reach the maximum amount that can be distributed to or for the settlor's*
13 *benefit. If a trust has more than one (1) settlor, the amount the creditor or*
14 *assignee of a particular settlor may reach may not exceed the settlor's*
15 *interest in the portion of the trust attributable to that settlor's contribution;*
16 *and*
17 *(c) After the death of a settlor, and subject to the settlor's right to direct the*
18 *source from which liabilities shall paid, the property of a trust that was*
19 *revocable at the settlor's death is subject to claims of the settlor's creditors,*
20 *costs of administration of the settlor's estate, the expenses of the settlor's*
21 *funeral and disposal of remains, and statutory allowances to a surviving*
22 *spouse and children to the extent the settlor's probate estate is inadequate to*
23 *satisfy those claims, costs, expenses, and allowances, but no property added*
24 *to a revocable trust on account of the settlor's death from a source other*
25 *than the settlor's estate or another revocable trust created by the settlor*
26 *shall subject to claims of the settlor's creditors, costs of administration of*
27 *the settlor's estate, the expenses of the settlor's funeral and disposal of*

1 ***remains, and statutory allowances to a surviving spouse and children.***
2 ***(2) For purposes of this section:***
3 ***(a) During the period the power may be exercised, the holder of a power of***
4 ***withdrawal is treated in the same manner as the settlor of a revocable trust***
5 ***to the extent of the property subject to the power; and***
6 ***(b) Upon the lapse, release, or waiver of the power, the holder is not treated as***
7 ***the settlor of the trust.***
8 ➔SECTION 44. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER
9 386B IS CREATED TO READ AS FOLLOWS:
10 ***(1) As used in this section, "mandatory distribution" means a distribution of income***
11 ***or principal which the trustee is required to make to a beneficiary under the***
12 ***terms of the trust, including a distribution on termination of the trust. The term***
13 ***shall not include a distribution subject to the exercise of the trustee's discretion***
14 ***even if:***
15 ***(a) The discretion is expressed in the form of a standard of distribution; or***
16 ***(b) The terms of the trust authorizing a distribution couple language of***
17 ***discretion with language of direction.***
18 ***(2) Whether or not a trust contains a spendthrift provision, a creditor or assignee of***
19 ***a beneficiary may reach a mandatory distribution of income or principal,***
20 ***including a distribution on termination of the trust, if the trustee has not made***
21 ***the distribution to the beneficiary within a reasonable time after the designated***
22 ***distribution date.***
23 ➔SECTION 45. A NEW SECTION OF SUBCHAPTER 5 OF KRS CHAPTER
24 386B IS CREATED TO READ AS FOLLOWS:
25 ***Trust property is not subject to personal obligations of the trustee, even if the trustee***
26 ***becomes insolvent or bankrupt.***
27 ➔SECTION 46. SUBCHAPTER 6 OF KRS CHAPTER 386B IS

1 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
2 FOLLOWS:
3 ***The capacity required to create, amend, revoke, or add property to a revocable trust, or***
4 ***to direct the actions of the trustee of a revocable trust, is the same as that required to***
5 ***make a will.***
6 ➔SECTION 47. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER
7 386B IS CREATED TO READ AS FOLLOWS:
8 ***(1) Unless the terms of a trust expressly provide that the trust is irrevocable, the***
9 ***settlor may revoke or amend the trust. This subsection shall not apply to a trust***
10 ***created under an instrument signed before the effective date of this Act.***
11 ***(2) If a revocable trust is created or funded by more than one (1) settlor:***
12 ***(a) To the extent the trust consists of community property, the trust may be***
13 ***revoked by either spouse acting alone but may be amended only by joint***
14 ***action of both spouses;***
15 ***(b) To the extent the trust consists of property other than community property,***
16 ***each settlor may revoke or amend the trust with regard the portion of the***
17 ***trust property attributable to that settlor's contribution; and***
18 ***(c) On the revocation or amendment of the trust by fewer than all of the***
19 ***settlors, the trustee shall promptly notify the other settlors of the revocation***
20 ***or amendment.***
21 ***(3) The settlor may revoke or amend a revocable trust:***
22 ***(a) By substantial compliance with a method provided in the terms of the trust;***
23 ***or***
24 ***(b) If the terms of the trust do not provide a method or the method provided in***
25 ***the terms is not expressly made exclusive, by:***
26 ***1. A later will or codicil that expressly refers to the trust or specifically***
27 ***devises property that would otherwise have passed according to the***

1 *terms of the trust; or*

2 *2. Any other method manifesting clear and convincing evidence of the*

3 *settlor's intent.*

4 *(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as*

5 *the settlor directs.*

6 *(5) A settlor's powers with respect to revocation, amendment, or distribution of trust*

7 *property may be exercised by an agent under a power of attorney only to the*

8 *extent expressly authorized by the terms of the trust or the power.*

9 *(6) Except as otherwise provided in the terms of the trust, a conservator of the settlor*

10 *or, if no conservator has been appointed, a guardian of the settlor or, if neither a*

11 *conservator nor guardian has been appointed, a curator may exercise a settlor's*

12 *powers with respect to revocation, amendment, or distribution of trust property*

13 *only with the approval of the court supervising the conservatorship,*

14 *guardianship, or curatorship.*

15 *(7) A trustee who does not know that a trust has been revoked or amended is not*

16 *liable to the settlor or settlor's successors in interest for distributions made and*

17 *other actions taken on the assumption that the trust had not been amended or*

18 *revoked.*

19 ➔SECTION 48. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER

20 386B IS CREATED TO READ AS FOLLOWS:

21 *(1) While a trust is revocable and, in the reasonable belief of the trustee, the settlor*

22 *has capacity to revoke the trust, rights of the beneficiaries are subject to the*

23 *control of, and the duties of the trustee are owed exclusively to, the settlor.*

24 *(2) During the period the power may be exercised, the holder of a power of*

25 *withdrawal has the rights of a settlor of a revocable trust under this section to the*

26 *extent of the property subject to the power.*

27 ➔SECTION 49. A NEW SECTION OF SUBCHAPTER 6 OF KRS CHAPTER

1 386B IS CREATED TO READ AS FOLLOWS:

2 *(1) A person may commence a judicial proceeding to contest the validity of a trust*
3 *that was revocable at the settlor's death within the earlier of:*
4 *(a) Two (2) years after the settlor's death; or*
5 *(b) Ninety (90) days after the trustee sent the person a copy of the trust*
6 *instrument and a notice informing the person of the trust's existence, of the*
7 *trustee's name and address, and of the time allowed for commencing a*
8 *proceeding.*
9 *(2) Upon the death of the settlor of a trust that was revocable at the settlor's death,*
10 *the trustee may proceed to distribute the trust property in accordance with the*
11 *terms of the trust. The trustee is not subject to liability for doing so unless:*
12 *(a) The trustee knows of a pending judicial proceeding contesting the validity of*
13 *the trust; or*
14 *(b) A potential contestant has notified the trustee of a possible judicial*
15 *proceeding to contest the trust and a judicial proceeding is commenced*
16 *within sixty (60) days after the contestant sent the notification.*
17 *(3) A beneficiary of a trust that is determined to have been invalid is liable to return*
18 *any distribution received.*
19 ➔SECTION 50. SUBCHAPTER 7 OF KRS CHAPTER 386B IS
20 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
21 FOLLOWS:
22 *(1) Except as otherwise provided in subsection (3) of this section, a person designated*
23 *as trustee accepts the trusteeship:*
24 *(a) By substantially complying with a method of acceptance provided in the*
25 *terms of the trust; or*
26 *(b) If the terms of the trust do not provide a method or the method provided in*
27 *the terms is not expressly made exclusive, by accepting delivery of the trust*

1 *property, exercising powers or performing duties as trustee, or otherwise*
2 *indicating acceptance of the trusteeship.*
3 *(2) A person designated as trustee who has not yet accepted the trusteeship may*
4 *reject the trusteeship. A designated trustee who does not accept the trusteeship*
5 *within a reasonable time after knowing of the designation is deemed to have*
6 *rejected the trusteeship.*
7 *(3) A person designated as trustee, without accepting the trusteeship, may:*
8 *(a) Act to preserve the trust property if, within a reasonable time after acting,*
9 *the person sends a rejection of the trusteeship to the settlor or, if the settlor*
10 *is dead or lacks capacity, to a qualified beneficiary; and*
11 *(b) Inspect or investigate trust property to determine potential liability under*
12 *environmental or other law or for any other purpose.*
13 ➔SECTION 51. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER
14 386B IS CREATED TO READ AS FOLLOWS:
15 *(1) A trustee shall give bond to secure performance of the trustee's duties only if the*
16 *court finds that a bond is needed to protect the interests of the beneficiaries or is*
17 *required by the terms of the trust and the court has not dispensed with the*
18 *requirement.*
19 *(2) The court may specify the amount of a bond, its liabilities, and whether sureties*
20 *are necessary. The court may modify or terminate a bond at any time.*
21 *(3) A regulated financial institution qualified to do trust business in this*
22 *Commonwealth need not give bond, even if required by the terms of the trust.*
23 ➔SECTION 52. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER
24 386B IS CREATED TO READ AS FOLLOWS:
25 *(1) Co-trustees who are unable to reach a unanimous decision may act by majority*
26 *decision.*
27 *(2) If a vacancy occurs in a co-trusteeship, the remaining co-trustees may act for the*

1 *trust.*

2 *(3) A co-trustee shall participate in the performance of a trustee's function unless*

3 *the co-trustee is unavailable to perform the function because of absence, illness,*

4 *disqualification under other law, or other temporary incapacity or the co-trustee*

5 *has properly delegated the performance of the function to another trustee.*

6 *(4) If a co-trustee is unavailable to perform duties because of absence, illness,*

7 *disqualification under other law, or other temporary incapacity, and prompt*

8 *action is necessary to achieve the purposes of the trust or to avoid injury to the*

9 *trust property, the remaining co-trustee or a majority of the remaining co-trustees*

10 *may act for the trust.*

11 *(5) A trustee may not delegate to a co-trustee the performance of a function the*

12 *settler reasonably expected the trustees to perform jointly. Unless a delegation*

13 *was irrevocable, a trustee may revoke a delegation previously made.*

14 *(6) Except as otherwise provided in subsection (7) of this section, a trustee who does*

15 *not join in an action of another trustee is not liable for the action.*

16 *(7) Each trustee shall exercise reasonable care to:*

17 *(a) Prevent a co-trustee from committing a breach of trust; and*

18 *(b) Compel a co-trustee to redress a breach of trust.*

19 *(8) A dissenting trustee who joins in an action at the direction of the majority of the*

20 *trustees and who notified any co-trustee of the dissent at or before the time of the*

21 *action is not liable for the action unless the action is a breach of trust.*

22 ➔SECTION 53. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER

23 386B IS CREATED TO READ AS FOLLOWS:

24 *(1) A vacancy in a trusteeship occurs if:*

25 *(a) A person designated as trustee rejects the trusteeship;*

26 *(b) A person designated as trustee cannot be identified or does not exist;*

27 *(c) A trustee resigns;*

1 *(d) A trustee is disqualified or removed;*
2 *(e) A trustee dies; or*
3 *(f) A guardian, conservator, or curator is appointed for an individual serving*
4 *as trustee.*
5 *(2) If one (1) or more co-trustees remain in office, a vacancy in a trusteeship need*
6 *not be filled. A vacancy in a trusteeship shall be filled if the trust has no*
7 *remaining trustee.*
8 *(3) A vacancy in a trusteeship of a noncharitable trust that is required to be filled*
9 *shall be filled in the following order of priority:*
10 *(a) By a person designated in the terms of the trust to act as successor trustee;*
11 *(b) By a person appointed by unanimous agreement of the qualified*
12 *beneficiaries; or*
13 *(c) By a person appointed by the court.*
14 *(4) A vacancy in a trusteeship of a charitable trust that is required to be filled shall*
15 *be filled in the following order of priority:*
16 *(a) By a person designated in the terms of the trust to act as successor trustee;*
17 *(b) By a person selected by the charitable organizations expressly designated to*
18 *receive distributions under the terms of the trust if the Attorney General*
19 *concurs in the selection; or*
20 *(c) By a person appointed by the court.*
21 *(5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the*
22 *court may appoint an additional trustee or special fiduciary if the court considers*
23 *the appointment necessary for the administration of the trust.*
24 ➔SECTION 54. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER
25 386B IS CREATED TO READ AS FOLLOWS:
26 *(1) A trustee may resign:*
27 *(a) Upon at least thirty (30) days' notice to the qualified beneficiaries and all*

1 *co-trustees; or*

2 *(b) With the approval of the court.*

3 *(2) In approving a resignation, the court may issue orders and impose conditions*

4 *reasonably necessary for the protection of the trust property.*

5 *(3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts*

6 *or omissions of the trustee shall not be discharged or affected by the trustee's*

7 *resignation.*

8 ➔SECTION 55. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER

9 386B IS CREATED TO READ AS FOLLOWS:

10 *(1) The settlor, a co-trustee, or a beneficiary may request the court to remove a*

11 *trustee, or a trustee may be removed by the court on its own initiative.*

12 *(2) The court may remove a trustee if:*

13 *(a) The trustee has committed a breach of trust;*

14 *(b) Lack of cooperation among co-trustees substantially impairs the*

15 *administration of the trust;*

16 *(c) Because of unfitness, unwillingness, or persistent failure of the trustee to*

17 *administer the trust effectively, the court determines that removal of the*

18 *trustee best serves the interests of the beneficiaries;*

19 *(d) There has been a substantial change of circumstances or removal is*

20 *requested by all of the qualified beneficiaries, the court finds that removal*

21 *of the trustee best serves the interests of all of the beneficiaries and is not*

22 *inconsistent with a material purpose of the trust, and a suitable co-trustee*

23 *or successor trustee is available; or*

24 *(e) For a wholly charitable trust, removal is requested by all of the qualified*

25 *beneficiaries, notice is given to the Attorney General, and the court finds*

26 *that removal of the trustee best serves the interests of all of the*

27 *beneficiaries. This provision shall not limit the rights of the Attorney*

1 ***General under any common law statutory law of this Commonwealth.***
2 ***(3) Pending a final decision on a request to remove a trustee, or in lieu of or in***
3 ***addition to removing a trustee, the court may order such appropriate relief under***
4 ***subsection (2) of Section 79 of this Act as may be necessary to protect the trust***
5 ***property or the interests of the beneficiaries.***
6 ➔SECTION 56. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER
7 386B IS CREATED TO READ AS FOLLOWS:
8 ***(1) Unless a co-trustee remains in office or the court otherwise orders, and until the***
9 ***trust property is delivered to a successor trustee or other person entitled to it, a***
10 ***trustee who has resigned or been removed has the duties of a trustee and the***
11 ***powers necessary to protect the trust property.***
12 ***(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver***
13 ***the trust property within the trustee's possession to the co-trustee, successor***
14 ***trustee, or other person entitled to it.***
15 ➔SECTION 57. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER
16 386B IS CREATED TO READ AS FOLLOWS:
17 ***(1) If the terms of a trust do not specify the trustee's compensation, a trustee is***
18 ***entitled to compensation that is reasonable under the circumstances.***
19 ***(2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to***
20 ***be compensated as specified, but the court may allow more or less compensation***
21 ***if:***
22 ***(a) The duties of the trustee are substantially different from those contemplated***
23 ***when the trust was created; or***
24 ***(b) The compensation specified by the terms of the trust would be unreasonably***
25 ***low or high.***
26 ➔SECTION 58. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER
27 386B IS CREATED TO READ AS FOLLOWS:

1 *(1) A trustee is entitled to be reimbursed out of the trust property, with interest as*
2 *appropriate, for:*
3 *(a) Expenses that were properly incurred in the administration of the trust; and*
4 *(b) To the extent necessary to prevent unjust enrichment of the trust, expenses*
5 *that were not properly incurred in the administration of the trust.*
6 *(2) An advance by the trustee of money for the protection of the trust gives rise to a*
7 *lien against trust property to secure reimbursement with reasonable interest.*
8 ➔SECTION 59. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER
9 386B IS CREATED TO READ AS FOLLOWS:
10 *The District Court shall have exclusive jurisdiction over matters under this subchapter*
11 *relating to the office of the trustee.*
12 ➔SECTION 60. SUBCHAPTER 8 OF KRS CHAPTER 386B IS
13 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
14 FOLLOWS:
15 *Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in*
16 *accordance with its terms and purposes and the interests of the beneficiaries, and in*
17 *accordance with this chapter.*
18 ➔SECTION 61. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
19 386B IS CREATED TO READ AS FOLLOWS:
20 *(1) A trustee shall administer the trust solely in the interests of the beneficiaries.*
21 *(2) Subject to the rights of persons dealing with or assisting the trustee as provided in*
22 *Section 89 of this Act, a sale, encumbrance, or other transaction involving the*
23 *investment or management of trust property entered into by the trustee for the*
24 *trustee's own personal account or which is otherwise affected by a conflict*
25 *between the trustee's fiduciary and personal interests is voidable by a beneficiary*
26 *affected by the transaction unless:*
27 *(a) The transaction was authorized by the terms of the trust;*

1 *(b) The transaction was approved by the court;*
2 *(c) The beneficiary did not commence a judicial proceeding within the time*
3 *allowed by Section 83 of this Act;*
4 *(d) The beneficiary consented to the trustee's conduct, ratified the transaction,*
5 *or released the trustee in compliance with Section 87 of this Act; or*
6 *(e) The transaction involves a contract entered into or claim acquired by the*
7 *trustee before the person became or contemplated becoming trustee.*
8 *(3) A sale, encumbrance, or other transaction involving the investment or*
9 *management of trust property is presumed to be affected by a conflict between*
10 *personal and fiduciary interests if it is entered into by the trustee with:*
11 *(a) The trustee's spouse;*
12 *(b) The trustee's descendants, siblings, parents, or their spouses;*
13 *(c) An agent or attorney of the trustee; or*
14 *(d) A corporation or other person or enterprise in which the trustee, or a person*
15 *that owns a significant interest in the trustee, has an interest that might*
16 *affect the trustee's best judgment.*
17 *(4) A transaction between a trustee and a beneficiary that does not concern trust*
18 *property but that occurs during the existence of the trust or while the trustee*
19 *retains significant influence over the beneficiary and from which the trustee*
20 *obtains an advantage is voidable by the beneficiary unless the trustee establishes*
21 *that the transaction was fair to the beneficiary.*
22 *(5) A transaction not concerning trust property in which the trustee engages in the*
23 *trustee's individual capacity involves a conflict between personal and fiduciary*
24 *interests if the transaction concerns an opportunity properly belonging to the*
25 *trust.*
26 *(6) An investment by a trustee in securities of an investment company or investment*
27 *trust to which the trustee, or its affiliate, provides services in a capacity other*

1 *than as trustee is not presumed to be affected by a conflict between personal and*
2 *fiduciary interests if the investment otherwise complies with KRS 286.3-272*
3 *regarding investments in an associated company or trust. In addition to its*
4 *compensation for acting as trustee, the trustee may be compensated by the*
5 *investment company or investment trust for providing those services out of fees*
6 *charged to the trust. If the trustee receives compensation from the investment*
7 *company or investment trust for providing investment advisory or investment*
8 *management services, the trustee shall at least annually notify the persons*
9 *entitled under Section 72 of this Act to receive a copy of the trustee's annual*
10 *report of the rate and method by which that compensation was determined.*
11 *(7) In voting shares of stock or in exercising powers of control over similar interests*
12 *in other forms of enterprise, the trustee shall act in the best interests of the*
13 *beneficiaries. If the trust is the sole owner of a corporation or other form of*
14 *enterprise, the trustee shall elect or appoint directors or other managers who will*
15 *manage the corporation or enterprise in the best interests of the beneficiaries.*
16 *(8) This section shall not preclude the following transactions, if fair to the*
17 *beneficiaries:*
18 *(a) An agreement between a trustee and a beneficiary relating to the*
19 *appointment or compensation of the trustee;*
20 *(b) Payment of reasonable compensation to the trustee;*
21 *(c) A transaction between a trust and another trust, decedent's estate, or*
22 *conservatorship of which the trustee is a fiduciary or in which a beneficiary*
23 *has an interest;*
24 *(d) A deposit of trust money in a regulated financial institution operated by the*
25 *trustee;*
26 *(e) An advance by the trustee of money for the protection of the trust; or*
27 *(f) Any transaction authorized by any other statute under the laws of this*

1 ***Commonwealth.***

2 ***(9) The court may appoint a special fiduciary to make a decision with respect to any***

3 ***proposed transaction that might violate this section if entered into by the trustee.***

4 ➔SECTION 62. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER

5 386B IS CREATED TO READ AS FOLLOWS:

6 ***If a trust has two (2) or more beneficiaries, the trustee shall act impartially in***

7 ***investing, managing, and distributing the trust property, giving due regard to the***

8 ***beneficiaries' respective interests.***

9 ➔SECTION 63. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER

10 386B IS CREATED TO READ AS FOLLOWS:

11 ***A trustee shall administer the trust as a prudent person would, by considering the***

12 ***purposes, terms, distributional requirements, and other circumstances of the trust. In***

13 ***satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.***

14 ➔SECTION 64. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER

15 386B IS CREATED TO READ AS FOLLOWS:

16 ***In administering a trust, the trustee may incur only costs that are reasonable in***

17 ***relation to the trust property, the purposes of the trust, and the skills of the trustee.***

18 ➔SECTION 65. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER

19 386B IS CREATED TO READ AS FOLLOWS:

20 ***A trustee who has special skills or expertise, or is named trustee in reliance upon the***

21 ***trustee's representation that the trustee has special skills or expertise, shall use those***

22 ***special skills or expertise.***

23 ➔SECTION 66. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER

24 386B IS CREATED TO READ AS FOLLOWS:

25 ***(1) A trustee may delegate duties and powers that a prudent trustee of comparable***

26 ***skills could properly delegate under the circumstances. The trustee shall exercise***

27 ***reasonable care, skill, and caution in:***

1 *(a) Selecting an agent;*
2 *(b) Establishing the scope and terms of the delegation, consistent with the*
3 *purposes and terms of the trust; and*
4 *(c) Periodically reviewing the agent's actions in order to monitor the agent's*
5 *performance and compliance with the terms of the delegation.*
6 *(2) In performing a delegated function, an agent owes a duty to the trust to exercise*
7 *reasonable care to comply with the terms of the delegation.*
8 *(3) A trustee who complies with subsection (1) of this section is not liable to the*
9 *beneficiaries or to the trust for an action of the agent to whom the function was*
10 *delegated.*
11 *(4) By accepting a delegation of powers or duties from the trustee of a trust that is*
12 *subject to the law of this Commonwealth, an agent submits to the jurisdiction of*
13 *the courts of this state.*
14 ➔SECTION 67. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
15 386B IS CREATED TO READ AS FOLLOWS:
16 *(1) While a trust is revocable, the trustee may follow a direction of the settlor that is*
17 *contrary to the terms of the trust.*
18 *(2) If the terms of a trust confer upon a person other than the settlor of a revocable*
19 *trust power to direct certain actions of the trustee, the trustee shall act in*
20 *accordance with an exercise of the power unless the attempted exercise is*
21 *manifestly contrary to the terms of the trust or the trustee knows the attempted*
22 *exercise would constitute a breach of a fiduciary duty that the person holding the*
23 *power owes to the beneficiaries of the trust.*
24 *(3) The terms of a trust may confer upon a trustee or other person a power to direct*
25 *the modification or termination of the trust.*
26 *(4) A person, other than a beneficiary, who holds a power to direct is presumptively a*
27 *fiduciary who, as such, is required to act in good faith with regard to the*

1 ***purposes of the trust and the interests of the beneficiaries. The holder of a power***
2 ***to direct is liable for any loss that results from breach of a fiduciary duty.***
3 ➔SECTION 68. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
4 386B IS CREATED TO READ AS FOLLOWS:
5 ***A trustee shall take reasonable steps to take control of and protect the trust property.***
6 ➔SECTION 69. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
7 386B IS CREATED TO READ AS FOLLOWS:
8 ***(1) A trustee shall keep adequate records of the administration of the trust.***
9 ***(2) A trustee shall keep trust property separate from the trustee's own property.***
10 ***(3) Except as otherwise provided in subsection (4) of this section, a trustee shall***
11 ***cause the trust property to be designated so that the interest of the trust, to the***
12 ***extent feasible, appears in records maintained by a party other than a trustee or***
13 ***beneficiary.***
14 ***(4) If the trustee maintains records clearly indicating the respective interests, a***
15 ***trustee may invest as a whole the property of two (2) or more separate trusts.***
16 ➔SECTION 70. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
17 386B IS CREATED TO READ AS FOLLOWS:
18 ***A trustee shall take reasonable steps to enforce claims of the trust and to defend claims***
19 ***against the trust.***
20 ➔SECTION 71. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
21 386B IS CREATED TO READ AS FOLLOWS:
22 ***A trustee shall take reasonable steps to compel a former trustee or other person to***
23 ***deliver trust property to the trustee, and to redress a breach of trust known to the***
24 ***trustee to have been committed by a former trustee.***
25 ➔SECTION 72. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
26 386B IS CREATED TO READ AS FOLLOWS:
27 ***(1) Except as otherwise provided in the terms of the trust:***

1 *(a) A trustee shall keep the qualified beneficiaries of the trust reasonably*
2 *informed about the administration of the trust and of the material facts*
3 *necessary for them to protect their interests. Unless unreasonable under the*
4 *circumstances, a trustee shall promptly respond to a qualified beneficiary's*
5 *request for information related to the administration of the trust;*
6 *(b) A trustee:*
7 *1. Within sixty (60) days after accepting a trusteeship, shall notify the*
8 *qualified beneficiaries of the acceptance and of the trustee's name,*
9 *address, and telephone number;*
10 *2. Within sixty (60) days after the date the trustee acquires knowledge of*
11 *the creation of an irrevocable trust, or the date the trustee acquires*
12 *knowledge that a formerly revocable trust has become irrevocable,*
13 *whether by the death of the settlor or otherwise, shall notify the*
14 *qualified beneficiaries of the trust's existence, of the identity of the*
15 *settlor or settlors, of the right to request a copy of the trust instrument,*
16 *and of the right to a trustee's report as provided in paragraph (c) of*
17 *this subsection; and*
18 *3. Shall notify the qualified beneficiaries in advance of any change in*
19 *the method or rate of the trustee's compensation;*
20 *(c) A trustee, upon request of a qualified beneficiary, shall:*
21 *1. Promptly furnish to the qualified beneficiary a copy of the trust*
22 *instrument; and*
23 *2. Send to the qualified beneficiary, at least annually and at the*
24 *termination of the trust, a report of the trust property, liabilities,*
25 *receipts, and disbursements, including the source and amount of the*
26 *trustee's compensation, a listing of the trust assets and, if feasible,*
27 *their respective market values. Upon a vacancy in a trusteeship, unless*

1 *a co-trustee remains in office, a report shall be sent to the qualified*
2 *beneficiary by the former trustee. A personal representative,*
3 *conservator, guardian or curator may send the qualified beneficiary a*
4 *report on behalf of a deceased or incapacitated trustee; and*
5 *(d) A qualified beneficiary may waive the right to a trustee's report or other*
6 *information otherwise required to be furnished under this section. A*
7 *qualified beneficiary, with respect to future reports and other information,*
8 *may withdraw a waiver previously given; and*
9 *(2) Notwithstanding subsection (1) of this section and regardless of the terms of the*
10 *trust, the trustee shall have a duty to notify and to report to at least one (1)*
11 *qualified beneficiary of an irrevocable trust who has attained twenty-five (25)*
12 *years of age, or a designated person having a fiduciary relationship to a qualified*
13 *beneficiary, of the existence of the trust, of the identity of the trustee, and of his*
14 *or her right to request trustee's reports. If the terms of the trust mandate a trustee*
15 *to notify no one, then the trustee may designate a qualified beneficiary or person*
16 *having a fiduciary relationship to a qualified beneficiary to notify and report to,*
17 *and such designation by the trustee is not subject to any liability for breach of*
18 *trust or otherwise.*
19 *(3) Subsections (1)(b)1. and 2. and (2) of this section do not apply to a trustee who*
20 *accepts a trusteeship before the effective date of this Act, to an irrevocable trust*
21 *created before the effective date of this Act, or to a revocable trust that becomes*
22 *irrevocable before the effective date of this Act.*
23 *(4) The District Court shall have exclusive jurisdiction over matters under this*
24 *section.*
25 ➔SECTION 73. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
26 386B IS CREATED TO READ AS FOLLOWS:
27 *(1) The judicial standard of review for a discretionary power is that the trustee shall*

1 *exercise the power reasonably, in good faith, and in accordance with the terms*
2 *and purposes of the trust and the interests of the beneficiaries, except that a*
3 *reasonableness standard shall not be applied to the exercise of discretion by the*
4 *trustee if the terms of the trust so provide. The words "sole," "absolute,"*
5 *"uncontrolled," or words of similar import in the absence of any standards to*
6 *guide the trustee in exercising its discretion mean that a reasonableness standard*
7 *will not apply. The greater the grant of discretion by the settlor to the trustee, the*
8 *broader the range of permissible conduct by the trustee in exercising it.*
9 *(2) Subject to subsection (4) of this section, and unless the terms of the trust*
10 *expressly indicate that a rule in this subsection shall not apply:*
11 *(a) A person other than a settlor who is a beneficiary and trustee of a trust that*
12 *confers on the trustee a power to make discretionary distributions to or for*
13 *the trustee's personal benefit may exercise the power only in accordance*
14 *with an ascertainable standard; and*
15 *(b) A trustee may not exercise a power to make discretionary distributions to*
16 *satisfy a legal obligation of support that the trustee personally owes another*
17 *person.*
18 *(3) A power whose exercise is limited or prohibited by subsection (2) of this section*
19 *may be exercised by a majority of the remaining trustees whose exercise of the*
20 *power is not so limited or prohibited. If the power of all trustees is so limited or*
21 *prohibited, the court may appoint a special fiduciary with authority to exercise*
22 *the power.*
23 *(4) Subsection (2) of this section shall not apply to:*
24 *(a) A power held by the settlor's spouse who is the trustee of a trust for which a*
25 *marital deduction, as defined in 26 U.S.C. sec. 2056(b)(5) or 2523(e), as in*
26 *effect on the effective date of this Act, or as later amended, was previously*
27 *allowed;*

1 *(b) Any trust during any period that the trust may be revoked or amended by its*
2 *settlor; or*
3 *(c) A trust if contributions to the trust qualify for the annual exclusion under*
4 *26 U.S.C. sec. 2503(c), as in effect on the effective date of this Act, or as*
5 *later amended.*
6 ➔SECTION 74. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
7 386B IS CREATED TO READ AS FOLLOWS:
8 *(1) A trustee, without authorization by the court, may exercise:*
9 *(a) Powers conferred by the terms of the trust; and*
10 *(b) Except as limited by the terms of the trust:*
11 *1. All powers over the trust property which an unmarried competent*
12 *owner has over individually owned property;*
13 *2. Any other powers appropriate to achieve the proper investment,*
14 *management, and distribution of the trust property; and*
15 *3. Any other powers conferred by this chapter.*
16 *(2) The exercise of a power is subject to the fiduciary duties prescribed by this*
17 *subchapter.*
18 ➔SECTION 75. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
19 386B IS CREATED TO READ AS FOLLOWS:
20 *Without limiting the authority conferred by Section 74 of this Act, a trustee may:*
21 *(1) Collect trust property and accept or reject additions to the trust property from a*
22 *settler or any other person;*
23 *(2) Acquire or sell property, for cash or on credit, at public or private sale;*
24 *(3) Exchange, partition, or otherwise change the character of trust property,*
25 *including acquiring an undivided interest;*
26 *(4) Deposit trust money in an account in a regulated financial institution;*
27 *(5) Borrow money, with or without security, and mortgage or pledge trust property*

1 *for a period within or extending beyond the duration of the trust, advance money*
2 *for the protection of the trust, and for all expenses, losses, and liability sustained*
3 *in the administration of the trust or because of the holding or ownership of any*
4 *trust assets, for which advances with any interest the trustee has a lien on the*
5 *trust assets as against the beneficiary;*
6 *(6) With respect to an interest in a proprietorship, partnership, limited liability*
7 *company, business trust, corporation, or other form of business or enterprise,*
8 *continue the business or other enterprise and take any action that may be taken*
9 *by shareholders, members, or property owners, including merging, dissolving, or*
10 *otherwise changing the form of business organization or contributing additional*
11 *capital;*
12 *(7) With respect to stocks or other securities, exercise the rights of an absolute*
13 *owner, including the right to:*
14 *(a) Vote, or give proxies to vote, with or without power of substitution, or enter*
15 *into or continue a voting trust agreement;*
16 *(b) Hold a security in the name of a nominee or in other form without*
17 *disclosure of the trust so that title may pass by delivery;*
18 *(c) Pay calls, assessments, and other sums chargeable or accruing against the*
19 *securities, and sell or exercise stock subscription or conversion rights;*
20 *(d) Deposit the securities with a depositary or other regulated financial*
21 *institution;*
22 *(e) Sell or exchange stock subscription or conversion rights; and*
23 *(f) Consent directly or through a committee or other agent, to the*
24 *reorganization, consolidation, merger, dissolution, or liquidation of a*
25 *corporation or other business enterprise;*
26 *(8) With respect to an interest in real property, construct, or make ordinary or*
27 *extraordinary repairs to, alterations to, or improvements in, buildings or other*

1 *structures, demolish improvements, raze existing or erect new party walls or*
2 *buildings, subdivide or develop land, dedicate land to public use or grant public*
3 *or private easements, and make or vacate plats and adjust boundaries;*
4 *(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other*
5 *arrangement for exploration and removal of natural resources, with or without*
6 *the option to purchase or renew, for a period within or extending beyond the*
7 *duration of the trust;*
8 *(10) Grant an option involving a sale, lease, or other disposition of trust property or*
9 *acquire an option for the acquisition of property, including an option exercisable*
10 *beyond the duration of the trust, and exercise an option so acquired;*
11 *(11) Insure the property of the trust against damage or loss and insure the trustee, the*
12 *trustee's agents, and beneficiaries against liability arising from the*
13 *administration of the trust;*
14 *(12) Abandon or decline to administer property of no value or of insufficient value to*
15 *justify its collection or continued administration;*
16 *(13) With respect to possible liability for violation of environmental law:*
17 *(a) Inspect or investigate property the trustee holds or has been asked to hold,*
18 *or property owned or operated by an organization in which the trustee holds*
19 *or has been asked to hold an interest, for the purpose of determining the*
20 *application of environmental law with respect to the property;*
21 *(b) Take action to prevent, abate, or otherwise remedy any actual or potential*
22 *violation of any environmental law affecting property held directly or*
23 *indirectly by the trustee, whether taken before or after the assertion of a*
24 *claim or the initiation of governmental enforcement;*
25 *(c) Decline to accept property into trust or disclaim any power with respect to*
26 *property that is or may be burdened with liability for violation of*
27 *environmental law;*

1 *(d) Compromise claims against the trust which may be asserted for an alleged*
2 *violation of environmental law; and*
3 *(e) Pay the expense of any inspection, review, abatement, or remedial action to*
4 *comply with environmental law;*
5 *(14) Pay or contest any claim, settle a claim by or against the trust, and release, in*
6 *whole or in part, a claim belonging to the trust;*
7 *(15) Pay taxes, assessments, compensation of the trustee and of employees and agents*
8 *of the trust, and other expenses incurred in the administration of the trust;*
9 *(16) Exercise elections with respect to federal, state, and local taxes;*
10 *(17) Select a mode of payment under any employee benefit or retirement plan,*
11 *annuity, or life insurance payable to the trustee, exercise rights thereunder,*
12 *including exercise of the right to indemnification for expenses and against*
13 *liabilities, and take appropriate action to collect the proceeds;*
14 *(18) Make loans out of trust property, including loans to a beneficiary on terms and*
15 *conditions the trustee considers to be fair and reasonable under the*
16 *circumstances, and the trustee has a lien on future distributions for repayment of*
17 *those loans;*
18 *(19) Pledge trust property to guarantee loans made by others to the beneficiary;*
19 *(20) Appoint a trustee to act in another jurisdiction with respect to trust property*
20 *located in the other jurisdiction, confer upon the appointed trustee all of the*
21 *powers and duties of the appointing trustee, require that the appointed trustee*
22 *furnish security, and remove any trustee so appointed;*
23 *(21) Pay an amount distributable to a beneficiary who is under a legal disability or*
24 *who the trustee reasonably believes is incapacitated, by paying it directly to the*
25 *beneficiary or applying it for the beneficiary's benefit, or by:*
26 *(a) Paying it to the beneficiary's conservator or, if the beneficiary does not have*
27 *a conservator, the beneficiary's guardian;*

1 *(b) Paying it to the beneficiary's custodian under KRS 385.022 to 385.242, the*
2 *Kentucky Uniform Transfers to Minors Act or custodial trustee under the*
3 *Uniform Custodial Trust Act, if that Act is subsequently adopted by the*
4 *Commonwealth, and, for that purpose, creating a custodianship or*
5 *custodial trust;*
6 *(c) If the trustee does not know of a conservator, guardian, custodian, or*
7 *custodial trustee, paying it to an adult relative or other person having legal*
8 *or physical care or custody of the beneficiary, to be expended on the*
9 *beneficiary's behalf; or*
10 *(d) Managing it as a separate fund on the beneficiary's behalf, subject to the*
11 *beneficiary's continuing right to withdraw the distribution;*
12 *(22) On distribution of trust property or the division or termination of a trust, make*
13 *distributions in divided or undivided interests, allocate particular assets in*
14 *proportionate or disproportionate shares, value the trust property for those*
15 *purposes, and adjust for resulting differences in valuation;*
16 *(23) Resolve a dispute concerning the interpretation of the trust or its administration*
17 *by mediation, arbitration, or other procedure for alternative dispute resolution;*
18 *(24) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to*
19 *protect trust property and the trustee in the performance of the trustee's duties;*
20 *(25) Sign and deliver contracts and other instruments that are useful to achieve or*
21 *facilitate the exercise of the trustee's powers;*
22 *(26) Take such actions as are necessary to cause gains from the sale or exchange of*
23 *trust assets, as determined for federal income tax purposes, to be taxed for federal*
24 *income tax purposes as a part of a distribution of income, including the power to:*
25 *(a) Allocate such gains to income for the purpose of making discretionary*
26 *distributions; and*
27 *(b) Allocate such gains to income that has been increased by an adjustment*

1 *from principal to income pursuant to Section 106 of this Act, to a unitrust*
2 *distribution, or to a distribution of principal to a beneficiary;*
3 *(27) Invest and reinvest trust assets in accordance with the provisions of the trust or as*
4 *provided by law;*
5 *(28) Allocate items of income or expense to either trust income or principal, as*
6 *provided by law;*
7 *(29) In addition to the power to delegate under Section 66 of this Act, employ persons,*
8 *including attorneys, auditors, investment advisors, or agents, to:*
9 *(a) Advise or assist the trustee in the performance of his administrative duties;*
10 *(b) Act without independent investigation upon their recommendations; and*
11 *(c) Instead of acting personally, to employ one (1) or more agents to perform*
12 *any act of administration, whether or not discretionary; and*
13 *(30) On termination of the trust, exercise the powers appropriate to wind up the*
14 *administration of the trust and distribute the trust property to the persons entitled*
15 *to it within a reasonable amount of time.*
16 ➔SECTION 76. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
17 386B IS CREATED TO READ AS FOLLOWS:
18 *(1) Upon termination or partial termination of a trust, the trustee may send to the*
19 *beneficiaries a proposal for distribution. The right of any beneficiary to object to*
20 *the proposed distribution terminates if the beneficiary does not notify the trustee*
21 *of an objection within thirty (30) days after the proposal was sent, but only if the*
22 *proposal informed the beneficiary of the right to object and of the time allowed*
23 *for objection.*
24 *(2) Upon the occurrence of an event terminating or partially terminating a trust, the*
25 *trustee shall proceed expeditiously to distribute the trust property to the persons*
26 *entitled to it, subject to the right of the trustee to retain a reasonable reserve for*
27 *the payment of debts, expenses, and taxes.*

1 *(3) A release by a beneficiary of a trustee from liability for breach of trust is invalid*
2 *to the extent:*
3 *(a) It was induced by improper conduct of the trustee; or*
4 *(b) The beneficiary, at the time of the release, did not know of the beneficiary's*
5 *rights or of the material facts relating to the breach.*
6 ➔SECTION 77. A NEW SECTION OF SUBCHAPTER 8 OF KRS CHAPTER
7 386B IS CREATED TO READ AS FOLLOWS:
8 *(1) (a) When a trust terminates pursuant to the terms of the trust, and within a*
9 *reasonable amount of time after such termination, the trustee:*
10 *1. Shall provide to the qualified beneficiaries a statement showing the*
11 *fair market value of the net assets to be distributed and the amount of*
12 *any fees, including trustee fees, remaining to be paid, and notice that*
13 *the trust is terminating; and*
14 *2. May provide such statement and notice to any other person whom the*
15 *trustee reasonably believes may have an interest in the trust.*
16 *(b) The trustee shall distribute the assets as provided in the trust within forty-*
17 *five (45) days after sending the statement and notice unless within such time*
18 *the trustee has received an objection in writing from a person receiving*
19 *notice, in which case the trustee may file an accounting with the District*
20 *Court and charge the expense of such accounting to the trust.*
21 *(c) The trustee may rely upon the written statement of a person receiving notice*
22 *that such person does not object.*
23 *(2) (a) When a trustee is removed or resigns pursuant to the terms of the trust, and*
24 *within a reasonable time after such removal or resignation, the trustee:*
25 *1. Shall provide to the successor trustee a statement showing the net*
26 *assets to be distributed and the amount of any fees, including trustee*
27 *fees, remaining to be paid, and notice that the trustee has been*

1 *removed; and*

2 *2. May provide such statement and notice to any other person whom*

3 *trustee reasonably believes may have an interest in the trust.*

4 *(b) The trustee shall distribute the assets to the successor trustee within forty-*

5 *five (45) days after sending the statement and notice unless within such time*

6 *the trustee has received an objection in writing from a person receiving*

7 *notice, in which case trustee may file an accounting with the District Court*

8 *and charge the expense of such accounting to the trust.*

9 *(c) The trustee may rely upon the written statement of a person receiving notice*

10 *that such person does not object.*

11 *(3) When a trustee distributes assets of the trust pursuant to subsection (1) or (2) of*

12 *this section, the limitations in Sections 49 and 83 of this Act are waived by each*

13 *person who received notice and either consented or failed to object to the under*

14 *this section, and any such person is barred from bringing a claim against the*

15 *trustee for breach of trust.*

16 *(4) Notice provided under subsection (1) or (2) of this section shall clearly warn of*

17 *the impending bar of claims against a trustee under Sections 49 and 83 of this*

18 *Act that will result if an objection is not timely made.*

19 *(5) The District Court shall have exclusive jurisdiction over matters under this*

20 *section.*

21 ➔SECTION 78. SUBCHAPTER 9 OF KRS CHAPTER 386B IS

22 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS

23 FOLLOWS:

24 *All trustees acting under this chapter with respect to investments shall have the*

25 *authority and duties as set forth in KRS 286.3-277 to act as a prudent investor.*

26 ➔SECTION 79. SUBCHAPTER 10 OF KRS CHAPTER 386B IS

27 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS

1 FOLLOWS:

2 *(1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of*
3 *trust.*

4 *(2) To remedy a breach of trust that has occurred or may occur, the court may:*

5 *(a) Compel the trustee to perform the trustee's duties;*

6 *(b) Enjoin the trustee from committing a breach of trust;*

7 *(c) Compel the trustee to redress a breach of trust by paying money, restoring*
8 *property, or other means;*

9 *(d) Order a trustee to account;*

10 *(e) Appoint a special fiduciary to take possession of the trust property and*
11 *administer the trust;*

12 *(f) Suspend the trustee;*

13 *(g) Remove the trustee under Section 55 of this Act;*

14 *(h) Reduce or deny compensation to the trustee;*

15 *(i) Subject to Section 89 of this Act, void an act of the trustee, impose a lien or*
16 *a constructive trust on trust property, or trace trust property wrongfully*
17 *disposed of and recover the property or its proceeds; or*

18 *(j) Order any other appropriate relief.*

19 ➔SECTION 80. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
20 386B IS CREATED TO READ AS FOLLOWS:

21 *(1) A trustee who commits a breach of trust is liable to the beneficiaries affected for*
22 *the greater of:*

23 *(a) The amount required to restore the value of the trust property and trust*
24 *distributions to what they would have been had the breach not occurred; or*

25 *(b) The profit the trustee made by reason of the breach.*

26 *(2) Except as otherwise provided in this subsection, if more than one (1) trustee is*
27 *liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution*

1 *from the other trustee or trustees. A trustee is not entitled to contribution if the*
2 *trustee was substantially more at fault than another trustee or if the trustee*
3 *committed the breach of trust in bad faith or with reckless indifference to the*
4 *purposes of the trust or the interests of the beneficiaries. A trustee who received a*
5 *benefit from the breach of trust is not entitled to contribution from another*
6 *trustee to the extent of the benefit received.*
7 ➔SECTION 81. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
8 386B IS CREATED TO READ AS FOLLOWS:
9 *(1) A trustee is accountable to an affected beneficiary for any profit made by the*
10 *trustee arising from the administration of the trust, except the reasonable fee*
11 *charged by the trustee, even absent a breach of trust.*
12 *(2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or*
13 *depreciation in the value of trust property or for not having made a profit.*
14 ➔SECTION 82. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
15 386B IS CREATED TO READ AS FOLLOWS:
16 *In a judicial proceeding involving the administration of a trust, the court, as justice*
17 *and equity may require, may award costs and expenses, including reasonable*
18 *attorney's fees, to any party, to be paid by another party or from the trust that is the*
19 *subject of the controversy.*
20 ➔SECTION 83. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
21 386B IS CREATED TO READ AS FOLLOWS:
22 *(1) A beneficiary may not commence a proceeding against a trustee for breach of*
23 *trust more than one (1) year after the date the beneficiary or a representative of*
24 *the beneficiary was sent a report that adequately disclosed the existence of a*
25 *potential claim for breach of trust and informed the beneficiary of the time*
26 *allowed for commencing a proceeding.*
27 *(2) A report adequately discloses the existence of a potential claim for breach of trust*

1 *if it provides sufficient information so that the beneficiary or representative*
2 *knows of the potential claim or should have inquired into its existence.*
3 *(3) If subsection (1) of this section does not apply, a judicial proceeding by a*
4 *beneficiary against a trustee for breach of trust shall be commenced within five*
5 *(5) years after the first to occur of:*
6 *(a) The removal, resignation, or death of the trustee;*
7 *(b) The termination of the beneficiary's interest in the trust; or*
8 *(c) The termination of the trust.*
9 ➔SECTION 84. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
10 386B IS CREATED TO READ AS FOLLOWS:
11 *A trustee who acts in reasonable reliance on the terms of the trust as expressed in the*
12 *trust instrument is not liable to a beneficiary for a breach of trust to the extent the*
13 *breach resulted from the reliance.*
14 ➔SECTION 85. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
15 386B IS CREATED TO READ AS FOLLOWS:
16 *If the happening of an event, including marriage, divorce, performance of educational*
17 *requirements, or death, affects the administration or distribution of a trust, a trustee*
18 *who has exercised reasonable care to ascertain the happening of the event is not liable*
19 *for a loss resulting from the trustee's lack of knowledge.*
20 ➔SECTION 86. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
21 386B IS CREATED TO READ AS FOLLOWS:
22 *(1) A term of a trust relieving a trustee of liability for breach of trust is*
23 *unenforceable to the extent that it:*
24 *(a) Relieves the trustee of liability for breach of trust committed in bad faith or*
25 *with reckless indifference to the purposes of the trust or the interests of the*
26 *beneficiaries; or*
27 *(b) Was inserted as the result of an abuse by the trustee of a fiduciary or*

1 *confidential relationship to the settlor.*

2 *(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an*
3 *abuse of a fiduciary or confidential relationship unless the trustee proves that the*
4 *exculpatory term is fair under the circumstances and that its existence and*
5 *contents were adequately communicated to the settlor. The requirements of this*
6 *subsection are satisfied if the settlor was represented by independent counsel at*
7 *the time the exculpatory term was drafter or caused to be drafted.*

8 ➔SECTION 87. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
9 386B IS CREATED TO READ AS FOLLOWS:

10 *A trustee shall not be liable to a beneficiary for breach of trust if the beneficiary, while*
11 *having capacity, consented to the conduct constituting the breach, released the trustee*
12 *from liability for the breach, or ratified the transaction constituting the breach, unless:*

13 *(1) The consent, release, or ratification of the beneficiary was induced by improper*
14 *conduct of the trustee; or*

15 *(2) At the time of the consent, release, or ratification, the beneficiary did not know of*
16 *the beneficiary's rights or of the material facts relating to the breach.*

17 ➔SECTION 88. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
18 386B IS CREATED TO READ AS FOLLOWS:

19 *(1) Except as otherwise provided in the contract, a trustee is not personally liable on*
20 *a contract properly entered into in the trustee's fiduciary capacity in the course of*
21 *administering the trust if the trustee in the contract disclosed the fiduciary*
22 *capacity.*

23 *(2) A trustee is personally liable for torts committed in the course of administering a*
24 *trust, or for obligations arising from ownership or control of trust property,*
25 *including liability for violation of environmental law, only if the trustee is*
26 *personally at fault.*

27 *(3) A claim based on a contract entered into by a trustee in the trustee's fiduciary*

1 *capacity, on an obligation arising from ownership or control of trust property, or*
2 *on a tort committed in the course of administering a trust, may be asserted in a*
3 *judicial proceeding against the trustee in the trustee's fiduciary capacity, whether*
4 *or not the trustee is personally liable for the claim.*
5 *(4) The question of liability as between the trust estate and the trustee individually*
6 *may be determined in a proceeding for accounting, surcharge, or indemnification*
7 *or other appropriate proceeding.*
8 ➔SECTION 89. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
9 386B IS CREATED TO READ AS FOLLOWS:
10 *(1) A person other than a beneficiary who in good faith assists a trustee, or who in*
11 *good faith and for value deals with a trustee, without knowledge that the trustee*
12 *is exceeding or improperly exercising the trustee's powers is protected from*
13 *liability as if the trustee properly exercised the power.*
14 *(2) A person other than a beneficiary who in good faith deals with a trustee is not*
15 *required to inquire into the extent of the trustee's powers or the propriety of their*
16 *exercise.*
17 *(3) A person who in good faith delivers assets to a trustee need not ensure their*
18 *proper application.*
19 *(4) A person other than a beneficiary who in good faith assists a former trustee, or*
20 *who in good faith and for value deals with a former trustee, without knowledge*
21 *that the trusteeship has terminated is protected from liability as if the former*
22 *trustee were still a trustee.*
23 *(5) Comparable protective provisions of other laws relating to commercial*
24 *transactions or transfer of securities by fiduciaries prevail over the protection*
25 *provided by this section.*
26 ➔SECTION 90. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
27 386B IS CREATED TO READ AS FOLLOWS:

1 *(1) Instead of furnishing a copy of the trust instrument to a person other than a*
2 *beneficiary, the trustee may furnish to the person a certification of trust*
3 *containing the following information:*
4 *(a) That the trust exists and the date the trust instrument was signed;*
5 *(b) The identity of the settlor;*
6 *(c) The identity and address of the currently acting trustee;*
7 *(d) The powers of the trustee;*
8 *(e) The revocability or irrevocability of the trust and the identity of any person*
9 *holding a power to revoke the trust;*
10 *(f) The authority of co-trustees to sign or otherwise authenticate and whether*
11 *all or less than all are required in order to exercise powers of the trustee;*
12 *and*
13 *(g) The manner of taking title to trust property.*
14 *(2) A certification of trust may be signed or otherwise authenticated by any trustee.*
15 *(3) A certification of trust shall state that the trust has not been revoked, modified, or*
16 *amended in any manner that would cause the representations contained in the*
17 *certification of trust to be incorrect.*
18 *(4) A certification of trust need not contain the dispositive terms of a trust.*
19 *(5) A recipient of a certification of trust may require the trustee to furnish copies of*
20 *those excerpts from the original trust instrument and later amendments which*
21 *designate the trustee and confer upon the trustee the power to act in the pending*
22 *transaction.*
23 *(6) A person who acts in reliance upon a certification of trust without knowledge that*
24 *the representations contained therein are incorrect is not liable to any person for*
25 *so acting and may assume without inquiry the existence of the facts contained in*
26 *the certification. Knowledge of the terms of the trust may not be inferred solely*
27 *from the fact that a copy of all or part of the trust instrument is held by the*

1 *person relying upon the certification.*
2 *(7) A person who in good faith enters into a transaction in reliance upon a*
3 *certification of trust may enforce the transaction against the trust property as if*
4 *the representations contained in the certification were correct.*
5 *(8) A person making a demand for the trust instrument in addition to a certification*
6 *of trust or excerpts is liable for damages if the court determines that the person*
7 *did not act in good faith in demanding the trust instrument.*
8 *(9) This section shall not limit the right of a person to obtain a copy of the trust*
9 *instrument in a judicial proceeding concerning the trust.*
10 *(10) The District Court shall have exclusive jurisdiction over matters under this*
11 *section.*
12 ➔SECTION 91. SUBCHAPTER 11 OF KRS CHAPTER 386B IS
13 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
14 FOLLOWS:
15 *In applying and construing the Uniform Trust Code, as enacted in this chapter,*
16 *consideration shall be given to the need to promote uniformity of the law with respect*
17 *to its subject matter among states that enact it.*
18 ➔SECTION 92. A NEW SECTION OF SUBCHAPTER 11 OF KRS CHAPTER
19 386B IS CREATED TO READ AS FOLLOWS:
20 *The provisions of this chapter governing the legal effect, validity, or enforceability of*
21 *electronic records or electronic signatures, and of contracts formed or performed with*
22 *the use of such records or signatures, conform to the requirements of Section 102 of*
23 *the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7002,*
24 *and supersede, modify, and limit the requirements of the Electronic Signatures in*
25 *Global and National Commerce Act, 15 U.S.C. secs. 7001 et seq.*
26 ➔SECTION 93. A NEW SECTION OF SUBCHAPTER 11 OF KRS CHAPTER
27 386B IS CREATED TO READ AS FOLLOWS:

1 *If any provision of this chapter or its application to any person or circumstances is*
2 *held invalid, the invalidity does not affect other provisions or applications of this*
3 *chapter which can be given effect without the invalid provision or application, and to*
4 *this end the provisions of this chapter are severable.*
5 ➔SECTION 94. A NEW SECTION OF SUBCHAPTER 11 OF KRS CHAPTER
6 386B IS CREATED TO READ AS FOLLOWS:
7 *(1) Except as otherwise provided in this chapter, on the effective date of this Act:*
8 *(a) This chapter applies to all trusts created before, on, or after the effective*
9 *date of this Act;*
10 *(b) This chapter applies to all judicial proceedings concerning trusts*
11 *commenced on or after the effective date of this Act;*
12 *(c) This chapter applies to judicial proceedings concerning trusts commenced*
13 *before the effective date of this Act unless the court finds that application of*
14 *a particular provision of this chapter would substantially interfere with the*
15 *effective conduct of the judicial proceedings or prejudice the rights of the*
16 *parties, in which case the particular provision of this chapter shall not apply*
17 *and the superseded law applies;*
18 *(d) Any rule of construction or presumption provided in this chapter applies to*
19 *trust instruments executed before the effective date of the Act unless there is*
20 *a clear indication of a contrary intent in the terms of the trust; and*
21 *(e) An act done before the effective date of the this Act is not affected by this*
22 *chapter.*
23 *(2) If a right is acquired, extinguished, or barred upon the expiration of a prescribed*
24 *period that has commenced to run under any other statute before the effective*
25 *date of this Act, that statute continues to apply to the right even if it has been*
26 *repealed or superseded.*
27 *(3) This chapter shall not apply to trusts created under the following:*

1 ***(a) KRS 386.510 to 386.590, the Kentucky Fiduciary Investment Company Act;***
2 ***(b) KRS 386.370 to 386.440, the Kentucky Business Trusts Act; and***
3 ***(c) KRS Chapter 386A, the Kentucky Uniform Statutory Trust Act.***
4 ➔SECTION 95. A NEW SECTION OF SUBCHAPTER 11 OF KRS CHAPTER
5 386B IS CREATED TO READ AS FOLLOWS:
6 ***This chapter may be cited as the Uniform Trust Code.***
7 ➔Section 96. KRS 24A.120 is amended to read as follows:
8 District Court shall have exclusive jurisdiction in:
9 (1) Civil cases in which the amount in controversy does not exceed five thousand
10 dollars ($5,000), exclusive of interest and costs, except matters affecting title to real
11 estate and matters of equity; however, nothing herein shall prohibit execution levy
12 on real estate in enforcement of judgment of District Court;
13 (2) Matters involving probate, except matters contested in an adversary proceeding.
14 Such adversary proceeding shall be filed in Circuit Court in accordance with the
15 Kentucky Rules of Civil Procedure and shall not be considered an appeal;~~[and]~~
16 (3) Matters not provided for by statute to be commenced in Circuit Court shall be
17 deemed to be nonadversarial within the meaning of subsection (2) of this section
18 and therefore are within the jurisdiction of the District Court***; and***
19 ***(4) Matters involving trusts in accordance with Section 15 of this Act.***
20 ➔Section 97. KRS 142.050 is amended to read as follows:
21 (1) As used in this section, unless the context otherwise requires:
22 (a) "Deed" means any document, instrument, or writing other than a will and
23 other than a lease or easement, regardless of where made, executed, or
24 delivered, by which any real property in Kentucky, or any interest therein, is
25 conveyed, vested, granted, bargained, sold, transferred, or assigned.
26 (b) "Value" means:
27 1. In the case of any deed not a gift, the amount of the full actual

1 consideration therefor, paid or to be paid, including the amount of any
2 lien or liens thereon; and
3 2. In the case of a gift, or any deed with nominal consideration or without
4 stated consideration, the estimated price the property would bring in an
5 open market and under the then prevailing market conditions in a sale
6 between a willing seller and a willing buyer, both conversant with the
7 property and with prevailing general price levels.
8 (2) A tax upon the grantor named in the deed shall be imposed at the rate of fifty cents
9 ($0.50) for each $500 of value or fraction thereof, which value is declared in the
10 deed upon the privilege of transferring title to real property.
11 (3) (a) If any deed evidencing a transfer of title subject to the tax herein imposed is
12 offered for recordation, the county clerk shall ascertain and compute the
13 amount of the tax due thereon and shall collect the amount as prerequisite to
14 acceptance of the deed for recordation.
15 (b) The amount of tax shall be computed on the basis of the value of the
16 transferred property as set forth in the deed.
17 (c) The tax required to be levied by this section shall be collected only once on
18 each transaction and in the county in which the deed is required to be recorded
19 by KRS 382.110(1).
20 (4) The county clerk shall collect the amount due and certify the date of payment and
21 the amount of collection on the deed. The county clerk shall retain five percent (5%)
22 as his fee for collection and remit the balance every three (3) months to the county
23 treasurer, who shall deposit the money in the county general fund.
24 (5) The Department of Revenue may prescribe regulations necessary to carry out the
25 purposes of this section.
26 (6) Any county clerk who willfully shall record any deed upon which a tax is imposed
27 by this section without collecting the proper amount of tax and certifying the date

1 and amount of collection on the deed as required by this section based on the
2 declared value indicated in the affidavit appended to the deed shall, upon
3 conviction, be fined $50 for each offense.
4 (7) The tax imposed by this section shall not apply to a transfer of title:
5 (a) Recorded prior to March 27, 1968;
6 (b) To, in the event of a deed of gift or deed with nominal consideration, or from
7 the United States of America, this state, any city or county within this state, or
8 any instrumentality, agency, or subdivision hereof;
9 (c) Solely in order to provide or release security for a debt or obligation;
10 (d) Which confirms or corrects a deed previously recorded;
11 (e) Between husband and wife, or between former spouses as part of a divorce
12 proceeding;
13 (f) On sale for delinquent taxes or assessments;
14 (g) On partition;
15 (h) Pursuant to:
16 1. Merger or consolidation between and among corporations, partnerships,
17 limited partnerships, or limited liability companies; or
18 2. Any conversion of a partnership, limited partnership, corporation, or
19 limited liability company into a partnership, limited partnership,
20 corporation, or limited liability company;
21 (i) Between a subsidiary corporation and its parent corporation for no
22 consideration, nominal consideration, or in sole consideration of the
23 cancellation or surrender of either corporation's stock;
24 (j) 1. Under a foreclosure proceeding; or
25 2. Pursuant to a voluntary surrender under a mortgage in lieu of a
26 foreclosure proceeding;
27 (k) Between a person and a corporation, partnership, limited partnership or

1 limited liability company in an amount equal to the portion of the value of the
2 real property transferred that represents the proportionate interest of the
3 transferor of the property in the entity to which the property was transferred, if
4 the transfer was for nominal consideration;
5 (l) Between parent and child or grandparent and grandchild, with only nominal
6 consideration therefor;
7 (m) By a corporation, partnership, limited partnership, or limited liability company
8 to a person as owner or shareholder of the entity, upon dissolution of the
9 entity, in an amount equal to the portion of the value of the real property
10 transferred that represents the proportionate interest of the person to whom the
11 property was transferred, if the transfer was for nominal consideration;
12 (n) Between a trustee and a successor trustee; and
13 (o) Between a limited liability company and any of its members.
14 (8) The tax imposed by subsection (2) of this section shall not apply to transfers to a
15 trustee, to be held in trust, or from a trustee to a beneficiary of the trust if:
16 (a) The grantor is the sole beneficiary of the trust;
17 (b) The grantor is a beneficiary of the trust and a direct transfer from the grantor
18 of the trust to all other individual beneficiaries of the trust would have
19 qualified for an exemption from the tax pursuant to one (1) of the provisions
20 of subsection (7) of this section; or
21 (c) A direct transfer from the grantor of the trust to all other individual
22 beneficiaries of the trust would have qualified for an exemption from the tax
23 pursuant to one (1) of the provisions of subsection (7) of this section.
24 (9) As used in this section, "trust" shall have the same definition as contained in
25 ***Section 1 of this Act***[~~ KRS 386.800~~].
26 ➔Section 98. KRS 286.3-218 is amended to read as follows:
27 As used in KRS 286.3-219 and 286.3-220:

1 (1) "Life beneficiary" means a beneficiary who is a current permissible or mandatory
2 recipient of income or principal from the trust, or, if more than one (1), the
3 beneficiary or beneficiaries of the oldest generation;
4 (2) "Remainder beneficiary" means a beneficiary who would have received the trust
5 property in fee but for the continuation of the trust by the corporate trustee;
6 (3) "A portion or all of the trust" means a portion, including all, of any remainder
7 beneficiary's share of the trust to which the remainder beneficiary would be entitled
8 in fee following the death of the life beneficiary. The portion of each of the
9 remainder beneficiary's share that is continued shall be held as a separate trust;
10 (4) "Trust" has the same meaning as set forth in ***Section 1 of this Act***~~[KRS 386.800]~~;
11 and
12 (5) "Corporate trustee" means a trust company or a bank empowered as a fiduciary.
13 ➔Section 99. KRS 367.952 is amended to read as follows:
14 (1) Every seller of the items described in subsection (2)(a) of this section shall first
15 provide for the future care and maintenance of such items, and to accomplish this
16 purpose shall cause to be established in a financial institution authorized by law to
17 administer trust funds, or in any other financially sound entity with the prior written
18 approval of the Attorney General, an irrevocable trust fund to be known as a
19 perpetual care and maintenance fund. The income of such funds shall be used solely
20 for the general care, maintenance, and embellishment of the cemetery, except as
21 otherwise provided herein.
22 (2) (a) Every seller of the items described in this paragraph shall place the following
23 amounts into the perpetual care and maintenance fund of the cemetery in
24 which the item is located within thirty (30) days after each calendar quarter of
25 operations for each payment of each sale which occurs or contract of sale
26 entered into after July 13, 1984:
27 1. Twenty percent (20%) of the gross selling price of each grave space,

1 with a minimum of twenty dollars ($20) per grave space;
2 2. Underground crypt, five percent (5%) of the gross selling price with a
3 minimum of twenty-five dollars ($25) per crypt;
4 3. Mausoleum crypt, five percent (5%) of the gross selling price with a
5 minimum of fifty dollars ($50) per mausoleum crypt; and
6 4. Columbarium niche, ten percent (10%) of the gross selling price with a
7 minimum of fifteen dollars ($15) per niche.
8 (b) For the purposes of this section, "gross selling price" shall not include interest,
9 carrying charges or finance charges.
10 (c) Every cemetery company hereinafter established shall create and maintain a
11 perpetual care and maintenance fund, depositing therein an initial deposit as
12 listed below, and shall submit proof thereof to the Attorney General prior to
13 the offering for sale of any burial rights. Any payment required under
14 paragraph (a) of this subsection shall be credited against the initial deposit
15 until the required sum has been reached:
16 1. In counties of fewer than 50,000 persons, $20,000;
17 2. In counties of 50,000 to 99,999 persons, $30,000;
18 3. In counties of 100,000 or more persons, $50,000.
19 (3) In the event that a purchaser is in default of a contract purchasing any of the items
20 described in subsection (2)(a) of this section, the financial institution shall release to
21 the depositor the funds, plus interest, deposited on behalf of the defaulted contract
22 upon receiving from the depositor a sworn affidavit stating that the purchaser is in
23 default of the contract, the date of the default, an explanation of the default and that
24 the depositor mailed a copy of the affidavit to the purchaser's last known address at
25 least thirty (30) days prior to said request for release.
26 (4) This section does not apply to any cemetery that is owned and operated by a local
27 government. For the purposes of this section, "local government" means cities,

1 counties, urban-county governments, charter county governments, consolidated
2 local governments, and unified local governments.
3 (5) Any local government that has established a trust fund pursuant to subsection (1) of
4 this section may petition the Circuit Court pursuant to ***Sections 13*** ~~[KRS 386.675]~~
5 and ***15 of this Act***~~[386.680]~~ for termination of the trust and distribution of the
6 funds to the local government for use solely for the general care, maintenance, and
7 embellishment of the cemetery.
8 (6) Any funds distributed to the local government pursuant to subsection (5) of this
9 section shall be held separately from funds subject to the local government's general
10 power of appropriation.
11 ➔Section 100. KRS 386.010 is amended to read as follows:
12 As used in KRS 386.010 to ***386.175***~~[386.185]~~, unless the context requires otherwise:
13 (1) "Fiduciary" means any trustee, guardian, executor, administrator, conservator or
14 other individual or corporation holding funds or otherwise acting in a fiduciary
15 capacity.
16 (2) "Principal" means any person to whom a fiduciary, as such, owes an obligation.
17 ➔Section 101. KRS 386.020 is amended to read as follows:
18 (1) Any fiduciary holding funds for loan or investment may invest them in:
19 (a) Bonds or other interest-bearing obligations of the federal government;
20 (b) Bonds, state warrants, and other interest-bearing obligations of this state;
21 (c) Obligations issued separately or collectively by or for federal land banks,
22 federal intermediate credit banks, and banks for cooperatives under the Act of
23 Congress known as the Farm Credit Act of 1971, 85 Stat. 583, 12 U.S.C. sec.
24 2001 and amendments thereto;
25 (d) Notes and bonds secured by mortgage or trust deed insured by the federal
26 housing administrator, obligations issued or insured by the federal housing
27 administrator, and securities issued by national mortgage associations;

1 (e) Obligations representing loans and advances of credit that are eligible for
2 credit insurance by the federal housing administrator, and the fiduciary may
3 obtain such insurance;
4 (f) Loans secured by real property or leasehold, that the federal housing
5 administrator insures or makes a commitment to insure, and the fiduciary may
6 obtain such insurance;
7 (g) Real estate mortgage notes, bonds, and other interest-bearing or dividend-
8 paying securities, including securities of any open-end or closed-end
9 management type investment company or investment trust registered under
10 the Federal Investment Company Act of 1940 or units of common trust funds
11 managed by the fiduciary, which would be regarded by prudent businessmen
12 as a safe investment. The fact that the fiduciary is providing services to the
13 foregoing investment company or trust as investment advisor, custodian,
14 transfer agent, registrar, or otherwise shall not preclude the fiduciary from
15 investing in the securities of such investment or trust;
16 (h) Real estate, after obtaining the approval of the District Court for such
17 investment;
18 (i) Life insurance, endowment, and annuity contracts issued by legal reserve
19 companies authorized to do business in this state, after obtaining the approval
20 of the District Court for such investment. Said fiduciary may select any
21 optional settlement provided in a policy maturing by death or as an
22 endowment;
23 (j) Notes, other interest-bearing obligations, and purchases of participations in
24 such instruments, that are guaranteed in whole or in part by the United States
25 of America or by any agency or instrumentality thereof;
26 (k) Certificates of deposit and savings accounts of any state or national bank
27 whose deposits are insured by the Federal Deposit Insurance Corporation and

1 whose main office is in this state, including itself, if such fiduciary is a bank.
2 Any portion of such investments that is not insured by the Federal Deposit
3 Insurance Corporation shall be fully secured by:
4 1. An irrevocable letter of credit issued by the United States of America or
5 by an agency or instrumentality thereof;
6 2. A pledge of securities named in this subsection as collateral;
7 3. A surety bond; or
8 4. A combination of such irrevocable letters of credit, securities, and surety
9 bonds; and
10 (l) United States government securities or United States government agency
11 securities, the payment of the principal and interest on which the full faith and
12 credit of the United States is pledged, said investments being made under the
13 terms of a repurchase agreement between the fiduciary and any state or
14 national bank whose main office is in this state, including itself, if such
15 fiduciary is a bank.
16 (2) Fiduciaries holding funds for loan or investment may make loans with the securities
17 named in subsection (1) ***of this section*** as collateral.
18 (3) The fiduciary shall account for all interest or profit received.
19 ***(4) This section shall not apply to trustees.***
20 ➔Section 102. KRS 386.100 is amended to read as follows:
21 ***(1)*** Any person who in good faith pays or transfers to a fiduciary any money or other
22 property which the fiduciary as such is authorized to receive shall not be responsible
23 for the proper application thereof by the fiduciary, and any right or title acquired
24 from the fiduciary in consideration of the payment or transfer shall not be invalid
25 because of a misapplication by the fiduciary.
26 ***(2) This section shall not apply to trustees.***
27 ➔Section 103. KRS 386.175 is amended to read as follows:

1 (1) For the purposes of this section, the following definitions apply:
2 (a) "Current beneficiary" means a person who is a permissible distributee of trust
3 income or principal;
4 (b) "Original trust" means a trust established under an irrevocable trust instrument
5 pursuant to the terms of which a trustee has discretionary power to distribute
6 principal or income of the trust to or for the benefit of one (1) or more current
7 beneficiaries of the trust; and
8 (c) "Second trust" means a trust established under an irrevocable trust instrument,
9 the current beneficiaries of which are one (1) or more of the current
10 beneficiaries of the original trust. The second trust may be a trust created
11 under the same trust instrument as the original trust or under a different trust
12 instrument.
13 (2) A trustee of an original trust may, without authorization by the court, exercise the
14 discretionary power to distribute principal or income to or for the benefit of one (1)
15 or more current beneficiaries of the original trust by appointing all or part of the
16 principal or income of the original trust subject to the power in favor of the trustee
17 of a second trust. The trustee of the original trust may exercise this power whether
18 or not there is a current need to distribute principal or income under any standard
19 provided in the terms of the original trust. The trustee's special power to appoint
20 trust principal or income in further trust under this section includes the power to
21 create the second trust.
22 (3) The second trust may be a trust created or administered under the laws of any
23 jurisdiction, within or without the United States.
24 (4) The terms of the second trust shall be subject to all of the following:
25 (a) The beneficiaries of the second trust may include only beneficiaries of the
26 original trust;
27 (b) A beneficiary who has only a future beneficial interest, vested or contingent,

1 in the original trust cannot have the future beneficial interest accelerated to a
2 present interest in the second trust;
3 (c) The terms of the second trust may not reduce any fixed income, annuity, or
4 unitrust interest of a beneficiary in the assets of the original trust, including an
5 interest which is to take effect in the future;
6 (d) If any contribution to the original trust qualified for a marital or charitable
7 deduction for federal income, gift, or estate tax purposes under the Internal
8 Revenue Code, then the second trust shall not contain any provision that, if
9 included in the original trust, would have prevented the original trust from
10 qualifying for the deduction or that would have reduced the amount of the
11 deduction;
12 (e) If contributions to the original trust have been excluded from the gift tax by
13 the application of Sections 2503(b) and 2503(c) of the Internal Revenue Code,
14 then the second trust shall provide that the beneficiary's remainder interest in
15 the contributions shall vest and become distributable no later than the date
16 upon which the interest would have vested and become distributable under the
17 terms of the original trust;
18 (f) If any beneficiary of the original trust has a currently exercisable power of
19 withdrawal over trust property, then either:
20 a. The terms of the second trust shall provide a power of withdrawal in the
21 second trust identical to the power of withdrawal in the original trust; or
22 b. Sufficient trust property shall remain in the original trust to satisfy the
23 currently exercisable power of withdrawal;
24 (g) If the original trust holds stock of an S corporation, the terms of the second
25 trust shall not prevent or eliminate an election to be a qualified subchapter S
26 trust or an electing small business trust or result in the termination of the S
27 election of such corporation;

1 (h) If the power to distribute principal or income in the original trust is subject to
2 an ascertainable standard, then the power to distribute income or principal in
3 the second trust shall be subject to the same or a more restrictive ascertainable
4 standard as in the original trust when the trustee exercising the power
5 described in subsection (2) of this section is a possible beneficiary under the
6 standard; and
7 (i) The second trust may confer a power of appointment upon a beneficiary of the
8 original trust to whom or for the benefit of whom the trustee has the power to
9 distribute principal or income of the original trust. The permissible appointees
10 of the power of appointment conferred upon a beneficiary may include
11 persons who are not beneficiaries of the original or second trust. The power of
12 appointment conferred upon a beneficiary shall be subject to KRS 381.224,
13 381.225, and 381.226 covering the time at which the permissible period of the
14 rule against perpetuities and suspension of power of alienation begins and the
15 law that determines the permissible period of the rule against perpetuities and
16 suspension of power of alienation of the original trust.
17 (5) The court may appoint a special fiduciary with the authority to exercise the power to
18 appoint principal or income under subsection (2) of this section.
19 (6) The exercise of the power to appoint principal or income under subsection (2) of
20 this section:
21 (a) Shall be considered an exercise of a power of appointment, other than a power
22 to appoint to the trustee, the trustee's creditors, the trustee's estate, or the
23 creditors of the trustee's estate;
24 (b) Shall be subject to KRS 381.224, 381.225, and 381.226 covering the time at
25 which the permissible period of the rule against perpetuities and suspension of
26 power of alienation begins and the law that determines the permissible period
27 of the rule against perpetuities and suspension of power of alienation of the

1 original trust; and
2 (c) Is not prohibited by a spendthrift provision or by a provision in the original
3 trust instrument that prohibits amendment or revocation of the trust.
4 (7) To effect the exercise of the power to appoint principal or income under subsection
5 (2) of this section, all of the following shall apply:
6 (a) The exercise of the power to appoint shall be made by an instrument in
7 writing, signed and acknowledged by the trustee, setting forth the manner of
8 the exercise of the power, including the terms of the second trust and the
9 effective date of the exercise of the power. The instrument shall be filed with
10 the records of the original trust;
11 (b) The trustee shall give written notice of the trustee's intention to exercise the
12 power to all current beneficiaries of the original trust and all beneficiaries of
13 the oldest generation of remainder beneficiaries of the first trust, by certified
14 mail with restricted delivery and return receipt, at least sixty (60) days prior to
15 the effective date of the exercise of the power to appoint. The notice shall
16 include a copy of the instrument described in paragraph (a) of this subsection;
17 (c) If all beneficiaries entitled to notice have received the notice as evidenced by
18 the certified mail return receipt and waive the notice period by a signed
19 written instrument delivered to the trustee, the trustee's power to appoint
20 principal or income shall be exercisable after notice is waived by all such
21 beneficiaries, notwithstanding the effective date of the exercise of the power;
22 (d) A current beneficiary or a beneficiary who is not a current beneficiary but is a
23 member of the oldest generation of the remainder beneficiaries of the original
24 trust may, no later than thirty (30) days from the date of receiving notice under
25 paragraph (b) of this subsection, commence a judicial proceeding[~~ in District~~
26 ~~Court~~] pursuant to ***Section 13 of this Act***[~~KRS 386.675~~] to object to the
27 proposed exercise of the power under subsection (2) of this section. In such

1 case the proposed exercise of the power shall require consent of the[~~ District~~]
2 court[~~ as defined by KRS 386.450(3). Any determination of the District Court~~
3 ~~shall be subject to KRS 386.454(5)~~]; and
4 (e) In the event that a beneficiary did not receive the notice as evidenced by the
5 certified mail return receipt, and no other beneficiary has commenced a
6 proceeding under paragraph (d) of this subsection, the trustee may seek the
7 approval of the District Court to exercise the power.
8 (8) Nothing in this section shall be construed to create or imply a duty of the trustee to
9 exercise the power to distribute principal or income, and no inference of
10 impropriety shall be made as a result of a trustee not exercising the power to appoint
11 principal or income conferred under subsection (2) of this section. Nothing in this
12 section shall be construed to abridge the right of any trustee who has the power to
13 appoint property in further trust that arises under the terms of the original trust or
14 under any provision of law or under common law.
15 (9) This section shall not apply to any charitable remainder trust as defined in 26 U.S.C.
16 sec. 664(d).
17 (10) A trustee or beneficiary may commence a judicial proceeding[~~ in the District Court~~]
18 pursuant to ***Section 13 of this Act***[~~KRS 386.675~~] to approve or disapprove of a
19 proposed exercise of the trustee's special power to appoint to a second trust pursuant
20 to subsection (2) of this section.[~~ In such case approval by the District Court shall~~
21 ~~have the same meaning as provided in KRS 386.450(3) and the approval shall be~~
22 ~~subject to KRS 386.454(5).~~]
23 ➔Section 104. KRS 386.450 is amended to read as follows:
24 As used in KRS 386.450 to 386.504:
25 (1) "Accounting period" means a calendar year unless another twelve (12) month period
26 is selected by a fiduciary. The term includes a portion of a calendar year or other
27 twelve (12) month period that begins when an income interest begins or ends when

1 an income interest ends;
2 (2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and
3 devisee and, in the case of a trust, an income beneficiary and a remainder
4 beneficiary;
5 (3) "District Court approval" means the consent of the District Court having
6 jurisdiction over the fiduciary, with notice of the request for approval being given to
7 all current beneficiaries and all reasonably ascertainable remainder beneficiaries in
8 the oldest generation;
9 (4) "Fiduciary" means a personal representative or a trustee. The term includes an
10 executor, administrator, successor personal representative, and public administrator;
11 (5) "Income" means money or property that a fiduciary receives as current return from a
12 principal asset. The term includes a portion of receipts from a sale, exchange, or
13 liquidation of a principal asset, to the extent provided in Articles 4 and 5 of the
14 Kentucky Principal and Income Act;
15 (6) "Income beneficiary" means a person to whom net income of a trust is or may be
16 payable;
17 (7) "Income interest" means the right of an income beneficiary to receive all or part of
18 net income, whether the terms of the trust require it to be distributed or authorize it
19 to be distributed in the trustee's discretion;
20 (8) "Mandatory income interest" means the right of an income beneficiary to receive net
21 income that the terms of the trust require the fiduciary to distribute;
22 (9) "Net income" means the total receipts allocated to income during an accounting
23 period minus the disbursements made from income during the period, plus or minus
24 transfers under KRS 386.450 to 386.504 to or from income during the period;
25 (10) "Notice" means written notice of the time and place for a hearing on the request for
26 District Court approval that is placed postage prepaid in the United States mail at
27 least thirty (30) days prior to the hearing and addressed to the last known address of

1 the party to receive notice, and may be proved by an affidavit of the fiduciary or
2 fiduciary's counsel filed at the hearing stating the name and address to which notice
3 was mailed postage prepaid and the date of the mailing;
4 (11) "Principal" means property held in trust for distribution to a remainder beneficiary
5 when the trust terminates;
6 (12) "Remainder beneficiary" means a person entitled to receive principal when an
7 income interest ends;
8 (13) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with
9 respect to the trust, expressed in a manner that admits of its proof in a judicial
10 proceeding, whether by written or spoken words or by conduct;
11 (14) "Trustee" includes an original, additional, or successor trustee, whether or not
12 appointed or confirmed by a court; and
13 (15) "Unitrust" means both a trust converted into a unitrust KRS 386.454 and a trust
14 initially established as a unitrust. Unless inconsistent with the terms of the trust or
15 will, KRS 386.454*(2)*[~~(3)~~](f), (g), (h), (i), and (m) apply to the unitrust initially so
16 established.
17 ➔Section 105. KRS 386.452 is amended to read as follows:
18 (1) In allocating receipts and disbursements to or between principal and income, and
19 with respect to any matter within the scope of Articles 2 and 3 of the Kentucky
20 Principal and Income Act, a fiduciary:
21 (a) Shall administer a trust or estate in accordance with the terms of the trust or
22 the will, even if there is a different provision in KRS 386.450 to 386.504;
23 (b) May administer a trust or estate by the exercise of a discretionary power of
24 administration given to the fiduciary by the terms of the trust or the will, even
25 if the exercise of the power produces a result different from a result required
26 or permitted by KRS 386.450 to 386.504;
27 (c) Shall administer a trust or estate in accordance with KRS 386.450 to 386.504

1 if the terms of the trust or the will do not contain a different provision or do
2 not give the fiduciary a discretionary power of administration; and
3 (d) Shall add a receipt or charge a disbursement to principal to the extent that
4 neither the terms of the trust nor KRS 386.450 to 386.504 provide a rule for
5 allocating the receipt or disbursement to or between principal and income.
6 (2) In exercising the power to adjust under KRS 386.454***(1) or*** (2)~~[or (3)]~~ or a
7 discretionary power of administration regarding a matter within the scope of KRS
8 386.450 to 386.504, whether granted by the terms of a trust, a will, or KRS 386.450
9 to 386.504, a fiduciary shall administer a trust or estate impartially, based on what is
10 fair and reasonable to all of the beneficiaries, except to the extent that the terms of
11 the trust or the will clearly manifest a contrary intention. Except as provided in this
12 subsection, determination in accordance with KRS 386.450 to 386.504 shall be
13 presumed to be fair and reasonable to all of the beneficiaries.
14 ➔Section 106. KRS 386.454 is amended to read as follows:
15 (1)~~[Notwithstanding any provision of Kentucky law to the contrary, the fiduciary of a~~
16 ~~trust or estate to which by law KRS 286.3-277 does not apply may elect to have~~
17 ~~such provisions apply to the administration of the trust or estate by providing the~~
18 ~~notice as required under subsection (2)(g) of this section.~~
19 ~~(2)]~~ (a) A fiduciary may, after providing notice as required under paragraph (g) of this
20 subsection, adjust between principal and income to the extent the fiduciary
21 considers necessary~~[if KRS 286.3-277 applies by law or by election made~~
22 ~~under subsection (1) of this section]~~, the terms of the trust or will describe the
23 amount that may or shall be distributed to a beneficiary by referring to the
24 trust's or estate's income, and the fiduciary determines, after applying the rules
25 in KRS 386.452(1), that the fiduciary is unable to comply with KRS
26 386.452(2). Additionally, a fiduciary may reserve the right to convert the trust
27 to a unitrust under subsection ***(2)***~~[(3)]~~ of this section in the future.

1 (b) In deciding whether and to what extent to exercise the power conferred by this
2 subsection, a fiduciary shall consider all factors relevant to the trust or estate
3 and its beneficiaries, including the following factors to the extent they are
4 relevant:
5 1. The nature, purpose, and expected duration of the trust or estate;
6 2. The intent of the settlor or testator;
7 3. The identity and circumstances of the beneficiaries;
8 4. The needs for liquidity, regularity of income, and preservation and
9 appreciation of capital;
10 5. The assets held in the trust or estate and:
11 a. The extent to which they consist of financial assets, interests in
12 closely held enterprises, tangible and intangible personal property,
13 or real property;
14 b. The extent to which an asset is used by a beneficiary; and
15 c. Whether an asset was purchased by the fiduciary or received from
16 the settlor or testator;
17 6. The net amount allocated to income under the other sections in this
18 chapter and the increase or decrease in the value of the principal assets,
19 which the fiduciary may estimate as to assets for which market values
20 are not readily available;
21 7. Whether and to what extent the terms of the trust or will give the
22 fiduciary the power to invade principal or accumulate income or prohibit
23 the fiduciary from invading principal or accumulating income, and the
24 extent to which the fiduciary has exercised a power from time to time to
25 invade principal or accumulate income;
26 8. The actual and anticipated effect of economic conditions and market
27 volatility on principal and income and effects of inflation and deflation;

1 and

2 9. The anticipated tax consequences of an adjustment.

3 (c) A fiduciary shall not make an adjustment:

4 1. That diminishes the income interest in a trust that requires all of the
5 income to be paid at least annually to a spouse and for which an estate
6 tax or gift tax marital deduction would be allowed, in whole or in part, if
7 the fiduciary did not have the power to make the adjustment;

8 2. That reduces the actuarial value of the income interest in a trust to which
9 a person transfers property with the intent to qualify for a gift tax
10 exclusion;

11 3. That changes the amount payable to the beneficiary as a fixed annuity or
12 a fixed fraction of the value of the trust assets;

13 4. From any amount that is permanently set aside for charitable purposes
14 under a will or the terms of a trust unless both income and principal are
15 so set aside;

16 5. If possessing or exercising the power to make an adjustment causes an
17 individual to be treated as the owner of all or part of the trust or estate
18 for income tax purposes, and the individual would not be treated as the
19 owner if the fiduciary did not possess the power to make an adjustment;

20 6. If possessing or exercising the power to make an adjustment causes all
21 or part of the trust or estate assets to be included for estate tax purposes
22 in the estate of an individual who has the power to remove a fiduciary or
23 appoint a fiduciary, or both, and the assets would not be included in the
24 estate of the individual if the fiduciary did not possess the power to
25 make an adjustment;

26 7. If the fiduciary is a beneficiary of the trust or estate; or

27 8. If the fiduciary is not a beneficiary, but the adjustment would benefit the

1 fiduciary directly or indirectly; except that any effect on the fiduciary's
2 compensation shall not preclude an adjustment so long as the fiduciary's
3 fees are reasonable and otherwise comply with the applicable law.
4 (d) If paragraph (c)5., 6., 7., or 8. of this subsection applies to a fiduciary and
5 there is more than one (1) fiduciary or an additional fiduciary who is
6 appointed by court order, a binding agreement, or otherwise as provided by
7 law, a co-fiduciary to whom the provision does not apply may make an
8 adjustment unless the exercise of the power by the remaining fiduciary or
9 fiduciaries is not permitted by the terms of the trust or will. If paragraph (c)5.,
10 6., 7., or 8. of this subsection restricts all fiduciaries from possessing or
11 exercising a power under this section, the fiduciary may petition the District
12 Court for the court to effect the intended conversion or action.
13 (e) A fiduciary may release the entire power conferred by this subsection or may
14 release only the power to adjust from income to principal or the power to
15 adjust from principal to income if the fiduciary is uncertain about whether
16 possessing or exercising the power will cause a result described in paragraph
17 (c)1. to 6. of this subsection or if the fiduciary determines that possessing or
18 exercising the power will or may deprive the trust or estate of a tax benefit or
19 impose a tax burden not described in paragraph (c) of this subsection. The
20 release may be permanent or for a specified period, including a period
21 measured by the life of an individual. Further, a fiduciary may divide a trust or
22 estate into one (1) or more fractional shares if the division does not change the
23 beneficial interests.
24 (f) Terms of a trust or will that limit the power of a fiduciary to make an
25 adjustment between principal and income do not affect the application of this
26 section unless it is clear from the terms of the trust or will that the terms are
27 intended to deny the fiduciary the power of adjustment conferred by this

1 subsection.

2 (g) A fiduciary shall not make an election or adjustment under this section unless
3 all of the following apply:

4 1. A fiduciary shall give written notice of the fiduciary's intention to make
5 an adjustment,~~[or any intention to make an election to have the~~
6 ~~provisions of KRS 286.3-277, if applicable, apply to the trust,]~~ to each
7 beneficiary, by certified mail with restricted delivery and return receipt,
8 who, on the date the notice is given:

9 a. Is a distributee or permissible distributee of trust income or
10 principal; or

11 b. Would be a distributee or permissible distributee of principal if the
12 interests of the distributees described in subparagraph 1.a. of this
13 paragraph terminated and the trust then terminated immediately
14 before the notice was given and if no powers of appointment were
15 exercised;

16 2. There is at least one (1) beneficiary under subparagraph 1.a. of this
17 paragraph and at least one (1) other reasonably ascertainable person who
18 is a remainder beneficiary under subparagraph 1.b. of this paragraph;
19 and

20 3. Every beneficiary to whom notice was sent pursuant to subparagraph 1.
21 of this paragraph has received the notice as evidenced by the certified
22 mail return receipt and no beneficiary objects to the adjustment or
23 election in writing delivered to the fiduciary within thirty (30) days after
24 the notice is given under subparagraph 1. of this paragraph.

25 (h) The fiduciary may petition the District Court under this subsection to order an
26 adjustment or an election if any of the following apply:

27 1. A beneficiary timely objects to the adjustment or the election, or a

1 beneficiary has not received the notice as evidenced by the certified mail
2 return receipt;
3 2. There is no reasonably ascertainable beneficiary under paragraph (g)1.a.
4 of this subsection; or
5 3. There is no reasonably ascertainable beneficiary under paragraph (g)1.b.
6 of this subsection.
7 *(2)*[~~(3)~~] The following rules shall govern a fiduciary's conversion of a trust to a
8 unitrust:
9 (a) Unless expressly prohibited by the terms of a trust, a fiduciary may release the
10 power to make adjustments under subsection *(1)*[~~(2)~~] of this section and
11 convert to a unitrust as described in this subsection, if all of the following
12 apply:
13 1. The fiduciary determines that the conversion will enable the fiduciary
14 better to carry out the intent of the settlor or testator and the purposes of
15 the trust;
16 2. The fiduciary gives written notice of the fiduciary's intention to release
17 the power to adjust and to convert the trust into a unitrust and of how the
18 unitrust will operate, including what initial decisions the fiduciary will
19 make under this subsection, to each beneficiary, by certified mail with
20 restricted delivery and return receipt, who, on the date the notice is
21 given:
22 a. Is a distributee or permissible distributee of trust income or
23 principal; or
24 b. Would be a distributee or permissible distributee of trust principal
25 if the interests of the distributees described in subparagraph 2.a. of
26 this paragraph terminated and the trust then terminated
27 immediately before the notice was given and if no powers of

1 appointment were exercised;
2 3. There is at least one (1) beneficiary under subparagraph 2.a. of this
3 paragraph and at least one (1) other reasonably ascertainable person who
4 is a remainder beneficiary under subparagraph 2.b. of this paragraph;
5 and
6 4. Every beneficiary to whom notice was sent pursuant to subparagraph 2.
7 of this paragraph has received the notice as evidenced by the certified
8 mail return receipt and no beneficiary objects to the conversion to a
9 unitrust in a writing delivered to the fiduciary within thirty (30) days
10 after the notice is given under subparagraph 2. of this paragraph;
11 (b) The fiduciary may petition the District Court under this subsection to order a
12 conversion to a unitrust if any of the following apply:
13 1. A party timely objects to the conversion to a unitrust, or a beneficiary
14 has not received the notice as evidenced by the certified mail return
15 receipt;
16 2. There is no reasonably ascertainable beneficiary under paragraph (a)2.a.
17 of this subsection; or
18 3. There is no reasonably ascertainable beneficiary under paragraph (a)2.b.
19 of this subsection;
20 (c) Notwithstanding the provisions of paragraph (h) of this subsection, a
21 beneficiary may request a fiduciary to convert to a unitrust. If the fiduciary
22 does not convert, the beneficiary may petition the District Court to order the
23 conversion. The court shall approve the conversion or direct the requested
24 conversion if the court concludes that the conversion will enable the fiduciary
25 to better carry out the intent of the settlor or testator and the purposes of the
26 trust;
27 (d) In deciding whether to exercise a power to convert to a unitrust under this

1 section, a fiduciary may consider, among other things, the factors set forth in
2 subsection *(1)*[~~(2)~~](b) of this section;
3 (e) After a trust is converted to a unitrust, all of the following provisions shall
4 apply:
5 1. The fiduciary shall follow an investment policy seeking a total return for
6 the investments held by the trust, whether the return is to be derived:
7 a. From appreciation of principal;
8 b. From earnings and distributions from principal; or
9 c. From both;
10 2. The fiduciary shall make regular distributions in accordance with the
11 terms of the trust, or the terms of the will, as the case may be, construed
12 in accordance with the provisions of this section; and
13 3. Unless expressly prohibited by the terms of the trust, the term "income"
14 in the terms of a trust or will means an annual distribution, the "unitrust
15 distribution," equal to the percentage, the "payout percentage," that is no
16 less than three percent (3%) and no more than five percent (5%) and that
17 the fiduciary may determine in the fiduciary's discretion from time to
18 time, or, if the fiduciary makes no determination, that shall be four
19 percent (4%), of the net fair market value of the trust's assets, whether
20 such assets would be considered income or principal under other
21 provisions of this chapter, averaged over the lesser of:
22 a. The three (3) preceding years; or
23 b. The period which the trust has been in existence;
24 (f) The fiduciary may in the fiduciary's discretion from time to time determine all
25 of the following:
26 1. The effective date of a conversion to a unitrust;
27 2. The provisions for prorating a unitrust distribution for a short year in

1 which a beneficiary's right to payments commences or ceases;
2 3. The frequency of unitrust distributions during the year;
3 4. The effect of other payments from or contributions to the trust on the
4 trust's valuation;
5 5. Whether to value the trust's assets annually or more frequently;
6 6. What valuation dates to use;
7 7. How frequently to value nonliquid assets and whether to estimate their
8 value;
9 8. Whether to omit from the calculations trust property occupied or
10 possessed by a beneficiary; and
11 9. Any other matters necessary for the proper functioning of the unitrust;
12 (g) The following provisions regarding unitrust distribution shall apply:
13 1. Expenses which would be deducted from income if the trust were not a
14 unitrust shall not be deducted from the unitrust distribution;
15 2. Unless otherwise provided by the terms of the trust, the unitrust
16 distribution shall be paid from net income, as such term would be
17 determined if the trust were not a unitrust. To the extent net income is
18 insufficient, the unitrust distribution shall be paid from the net realized
19 short-term capital gains. To the extent net income and net realized short-
20 term capital gains are insufficient, the unitrust distribution shall be paid
21 from net realized long-term capital gains. To the extent net income and
22 net realized short-term and long-term capital gains are insufficient, the
23 unitrust distribution shall be paid from the principal of the trust; and
24 3. To the extent necessary to cause gains from the sale or exchange of
25 unitrust assets to be treated as income under any federal, state, or local
26 income tax, such as section 643 of the Internal Revenue Code and its
27 regulations, including Treasury Regulation sec. 1.643(b)-1, as amended

1 or renumbered, the fiduciary has the discretionary power to allocate the
2 gains to income, so long as the power is reasonably and impartially
3 exercised;
4 (h) Notwithstanding any other provision of this section to the contrary, a fiduciary
5 or beneficiary may petition the District Court:
6 1. To change the payout percentage;
7 2. To provide for a distribution of net income, as would be determined if
8 the trust were not a unitrust, in excess of the unitrust distribution if such
9 distribution is necessary to preserve a tax benefit;
10 3. To average the valuation of the trust's net assets over a period other than
11 three (3) years; and
12 4. To reconvert from a unitrust to the preconversion terms of the trust;
13 (i) Upon a reconversion, the power to adjust under subsection *(1)*[~~(2)~~] of this
14 section shall be revived, and a trustee shall not be precluded from seeking a
15 later unitrust conversion;
16 (j) A conversion to a unitrust does not affect a provision in the terms of a trust
17 directing or authorizing the fiduciary to distribute principal or authorizing a
18 beneficiary to withdraw a portion or all of the principal of the trust;
19 (k) A fiduciary shall not possess or exercise any power under this subsection in
20 any of the following circumstances:
21 1. The unitrust distribution would be made from any amount that is
22 permanently set aside for charitable purposes under the terms of a trust
23 and for which a charitable deduction from a federal gift or estate tax has
24 been taken unless both income and principal are so set aside;
25 2. The possession or exercise of the power would cause an individual to be
26 treated as the owner of all or part of the trust for federal income tax
27 purposes and the individual would not be treated as the owner if the

1 fiduciary did not possess or exercise the power;
2 3. The possession or exercise of the power would cause all or any part of
3 the trust estate to be subject to any federal gift or estate tax with respect
4 to the individual and the trust estate would not be subject to such
5 taxation if the fiduciary did not possess or exercise the power;
6 4. The possession or exercise of the power would result in the disallowance
7 of a federal gift or estate tax marital deduction which would be allowed
8 if the fiduciary did not have the power; or
9 5. The fiduciary is a beneficiary of the trust;
10 (l) If paragraph (k)2., 3., or 5. of this subsection applies to a fiduciary and there is
11 more than one (1) fiduciary or an additional fiduciary who is appointed by a
12 court order, binding agreement, or otherwise as provided by law, a co-
13 fiduciary to whom paragraph (k)2., 3., or 5. of this subsection does not apply
14 may possess and exercise the power unless the possession or exercise of the
15 power by the remaining fiduciary or fiduciaries is not permitted by the terms
16 of the trust or will. If paragraph (k)2., 3., or 5. of this subsection restricts all
17 fiduciaries from possessing or exercising a power under this section, the
18 fiduciary may petition the District Court for the court to effect the intended
19 conversion or action; and
20 (m) A fiduciary may release any power conferred by this section if any of the
21 following applies:
22 1. The fiduciary is uncertain about whether possessing or exercising the
23 power will cause a result described in paragraph (k)2., 3., or 5. of this
24 subsection; or
25 2. The fiduciary determines that possessing or exercising the power will or
26 may deprive the trust of a tax benefit or impose a tax burden not
27 described in paragraph (k) of this subsection.

1 The release may be permanent or for a specified period, including a period
2 measured by the life of an individual.
3 *(3)*[~~(4)~~] Unless a beneficiary has requested the fiduciary in writing that the
4 fiduciary consider an adjustment, unitrust conversion, or change in payout
5 percentage, nothing in this section imposes a duty on the fiduciary to make an
6 adjustment, conversion, or change in payout percentage under subsection
7 *(2)*[~~(3)~~](e)3. of this section, and the fiduciary is not liable for not considering
8 whether to make an adjustment, conversion, or change in payout percentage
9 under this section.
10 [~~(5) If there shall be a District Court order approving or disapproving an election~~
11 ~~to apply KRS 286.3-277 to a trust or to an estate under subsection (1) of this~~
12 ~~section or a power to adjust under subsection (2) of this section or converting~~
13 ~~a trust to a unitrust under subsection (3) of this section, then an aggrieved~~
14 ~~party, no later than thirty (30) days from the date of such order, may institute~~
15 ~~an adversary proceeding in Circuit Court pursuant to KRS 24A.120(2).~~]
16 *(4)*[~~(6)~~] This section is intended to further describe and clarify the powers previously
17 granted under the immediately preceding version of this section. These
18 clarifications and revisions shall apply to and be available for all applicable and
19 qualifying trusts, including any trust which may have previously sought relief under
20 a prior version of this section.
21 ➔Section 107. KRS 386.478 is amended to read as follows:
22 If a trustee determines that an allocation between principal and income required by KRS
23 386.480, 386.482, 386.484, or 386.486 is unsubstantial, the trustee may allocate the entire
24 amount to principal[~~ unless one (1) of the circumstances described in KRS 386.454(5)~~
25 ~~applies to the allocation. This power may be exercised by a cotrustee in the circumstances~~
26 ~~described in KRS 386.454(5) and may be released for the reasons and in the manner~~
27 ~~described in KRS 386.454(7)~~]. An allocation is presumed to be insubstantial if:

1 (1) The amount of the allocation would increase or decrease net income in an
2 accounting period, as determined before the allocation, by less than ten percent
3 (10%); or
4 (2) The value of the asset producing the receipt for which the allocation would be made
5 is less than ten percent (10%) of the total value of the trust's assets at the beginning
6 of the accounting period.
7 ➔Section 108. KRS 386.820 is amended to read as follows:
8 ~~[(1) KRS 386.805 to 386.840 do not affect the power of a court of competent~~
9 ~~jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and~~
10 ~~upon appropriate notice to the affected parties to relieve a trustee from any restrictions on~~
11 ~~his power that would otherwise be placed upon him by the trust or by this chapter.~~
12 ~~(2)]~~ If the duty of the trustee and~~[his individual interest or]~~ his interest as trustee of
13 another trust, conflict in the exercise of a trust power, the power may be exercised
14 only by court authorization~~[(except as provided in KRS 386.810, subsections~~
15 ~~(3)(a), (d), (f), (r), and (x))]~~ upon petition of the trustee.~~[Under this section,~~
16 ~~personal profit or advantage to an affiliated or subsidiary company or association is~~
17 ~~personal profit to any corporate trustee.]~~
18 ➔Section 109. KRS 387.880 is amended to read as follows:
19 The petition shall be docketed with the court and set for hearing unless the court shall
20 otherwise determine. Notice of the hearing shall be given to each interested party not less
21 than fourteen (14) days in advance, in accordance with ***Section 7 of this Act***~~[KRS~~
22 ~~386.655]~~, unless waived in writing. The court may assign a guardian ad litem to advise
23 the court with respect to the suitability of the special needs trust.
24 ➔Section 110. KRS 387.890 is amended to read as follows:
25 The court may enter an order modifying an existing trust, whether established by the court
26 under this chapter, or whether the trust has been otherwise established, upon petition
27 demonstrating to the court that there is just cause to modify the trust to preserve the trust

1 purposes of protecting the trust assets for the benefit of the special needs person. Any
2 such petition shall comport with KRS 387.870, 387.875, and 387.880. If the trust is
3 administered or registered in a county other than where the special needs person resides
4 when a petition is brought to modify a trust, jurisdiction and venue shall be determined in
5 accordance with ***Section 15 of this Act***~~[KRS 386.690]~~, except that no such order of
6 modification shall limit, modify, or defeat the trustee's duty, where required under 42
7 U.S.C., sec. 1396p, to reimburse the state from the trust assets for benefits paid on behalf
8 of the special needs person at the death of the special needs person, or the termination of
9 the trust during the lifetime of the special needs person, as the case may be.

10 ➔Section 111. KRS 395.001 is amended to read as follows:

11 The term "fiduciary" as used in this chapter***:***

12 ***(1)*** Means any person, association, or corporation meeting the requirements of KRS
13 395.005 (other than assignee or trustee for an insolvent debtor or a guardian under
14 the Uniform Veterans' Guardianship Act) appointed by, or under the control of, or
15 accountable to, the District Court, including executors, administrators,
16 administrators with the will annexed,~~[testamentary trustees,]~~ curators, guardians
17 and conservators***; and***

18 ***(2) Does not include testamentary trustees***.

19 ➔Section 112. KRS 395.130 is amended to read as follows:

20 (1) Every fiduciary, except as provided in KRS 286.3-220 ***and Section 51 of this Act***,
21 shall provide surety on his bond unless, on the petition of any interested party, the
22 court upon being satisfied that all interests are adequately protected excuses the
23 requirement of a surety, or unless, by the terms of the will or trust, surety is not
24 required. Subsequent to the qualification of a fiduciary and on motion of any
25 interested party the court may reduce the amount of the bond, release the surety, or
26 permit the substitution of another bond with the same or different sureties. If an
27 executor does not give bond when required to do so, he shall not be permitted to

1 qualify, and, if he has already qualified, he shall be removed.
2 (2) Whenever any personal representative, guardian, conservator~~[or other trustee]~~ or
3 fiduciary who is required by law to execute a bond for the faithful discharge of his
4 duties or fulfillment of his trust, procures as surety on his bond an incorporated
5 surety company authorized to do business in this state, the necessary and reasonable
6 cost incident to the bond shall be a lawful charge against the estate in the hands of
7 the fiduciary, as other expenses of administration, and in his settlement the fiduciary
8 shall be entitled to credit by the amount actually paid by him for that purpose,
9 subject to the approval of the court which has approved the bond.
10 ➔Section 113. KRS 395.195 is amended to read as follows:
11 Except as restricted or otherwise provided by the will, or by KRS 395.200, a personal
12 representative, acting reasonably for the benefit of the interested persons, may properly:
13 (1) Retain assets owned by the decedent pending distribution or liquidation including
14 those in which the representative is personally interested or which are otherwise
15 improper for trust investment;
16 (2) Receive assets from fiduciaries, or other sources;
17 (3) Perform, compromise or refuse performance for proper cause of the decedent's
18 contracts that continue as obligations of the estate, as he may determine under the
19 circumstances;
20 (4) Satisfy written charitable pledges of the decedent irrespective of whether the
21 pledges constituted binding obligations of the decedent or were properly presented
22 as claims, if in the judgment of the personal representative the decedent would have
23 wanted the pledges completed under the circumstances;
24 (5) If funds are not needed to meet debts and expenses currently payable and are not
25 immediately distributable, deposit or invest liquid assets of the estate, including
26 moneys received from the sale of other assets, in federally insured interest-bearing
27 accounts, readily marketable secured loan arrangements or other prudent

1 investments which would be reasonable for use by trustees generally;
2 (6) Acquire or dispose of an asset, other than land, for cash or on credit, at public or
3 private sale; and manage, exchange, or change the character of an estate asset;
4 (7) Enter for any purpose into a lease for personal property as lessor or lessee, with or
5 without option to purchase or renew, for a term within or extending beyond the
6 period of administration;
7 (8) Abandon personal property when, in the opinion of the personal representative, it is
8 valueless, or is so encumbered, or is in such condition that it is of no benefit to the
9 estate;
10 (9) Vote stocks or other securities in person or by general or limited proxy;
11 (10) Pay calls, assessments, and other sums chargeable or accruing against or on account
12 of securities, unless barred by the provisions relating to claims;
13 (11) Hold a security in the name of a nominee or in other form without disclosure of the
14 interest of the estate but the personal representative is liable for any act of the
15 nominee in connection with the security so held;
16 (12) Insure the assets of the estate against damage, loss and liability and himself against
17 liability as to third persons;
18 (13) Borrow money with or without security to be repaid from the probatable assets or
19 otherwise; and advance money for the protection of the estate;
20 (14) Effect a fair and reasonable compromise with any debtor or obligor, or extend,
21 renew or in any manner modify the terms of any obligation owing to the estate. If
22 the personal representative holds a mortgage, pledge or other lien upon property of
23 another person, he may, in lieu of foreclosure, accept a conveyance or transfer of
24 encumbered assets from the owner thereof in satisfaction of the indebtedness
25 secured by lien;
26 (15) Pay taxes, assessments, compensation of the personal representative, and other
27 expenses incident to the administration of the estate;

1 (16) Sell or exercise stock subscription or conversion rights; consent, directly or through
2 a committee or other agent, to the reorganization, consolidation, merger,
3 dissolution, or liquidation of a corporation or other business enterprise;
4 (17) Allocate items of income or expense to either estate income or principal, as
5 permitted or provided by law;
6 (18) Employ persons, including attorneys, auditors, investment advisors, or agents, to
7 advise or assist the personal representative in the performance of his administrative
8 duties; act without independent investigation upon their recommendations; and
9 instead of acting personally, employ one (1) or more agents to perform any act of
10 administration, whether or not discretionary;
11 (19) Prosecute or defend claims, or proceedings in any jurisdiction for the protection of
12 the estate and of the personal representative in the performance of his duties;
13 (20) Sell or mortgage any personal property or any interest therein for cash, credit, or for
14 part cash and part credit, and with or without security for unpaid balances;
15 (21) Provide for exoneration of the personal representative from personal liability in any
16 contract entered into on behalf of the estate;
17 (22) Satisfy, settle or compromise claims and distribute the estate as provided by law;
18 and
19 (23) Take such actions as are necessary to cause gains from the sale or exchange of
20 estate assets as determined for federal income tax purposes, to be taxed for federal
21 income tax purposes as a part of a distribution of income, including the power to
22 allocate such gains to income for the purpose of making discretionary distributions
23 and to allocate such gains to income which has been increased by an adjustment
24 from principal to income pursuant to KRS 386.454*(1)*[~~(2)~~], to a unitrust
25 distribution, or to a distribution of principal to a beneficiary.
26 ➔Section 114. KRS 395.325 is amended to read as follows:
27 (1) If any fiduciary resigns or is removed, he shall upon the appointment of his

1 successor settle his accounts.

2 (2) If any fiduciary becomes mentally disabled or dies, the personal representative of
3 his estate shall upon the appointment of a successor fiduciary for the mentally
4 disabled fiduciary or decedent settle for his decedent the accounts of the first
5 decedent.

6 ~~[(3) In appointing a successor trustee of a trust created by will, the court shall give~~
7 ~~preference to that person, or those persons, designated in the will as successor~~
8 ~~trustee. If there be no such designation or if the court finds the person or persons so~~
9 ~~designated are not best qualified to protect the interests of the beneficiaries, then the~~
10 ~~court shall give preference to the persons who apply for appointment, preferring the~~
11 ~~surviving husband or wife, or if the husband or wife does not nominate a suitable~~
12 ~~trustee, then such others as are next entitled to distribution or one (1) or more of~~
13 ~~them whom the court deems best qualified.]~~

14 ➔Section 115. KRS 395.600 is amended to read as follows:

15 The District Court shall make settlements with personal representatives,~~[trustees,]~~
16 assignees, conservators, curators and guardians in his county.

17 ➔Section 116. KRS 395.610 is amended to read as follows:

18 (1) Two (2) years after appointment and annually thereafter, unless otherwise provided
19 by law, every fiduciary as defined in KRS 395.001, other than~~[a testamentary~~
20 ~~trustee or]~~ a guardian or conservator of a mentally disabled person, shall render an
21 account of the execution of his trust to the court by which he was appointed,
22 including in the account an itemized statement of receipts and disbursements
23 supported by vouchers accompanying the account and a statement of all investments
24 on hand and changes in investments since the filing of his last account. The
25 settlements, when approved and confirmed by the court, shall be recorded and
26 indexed by the clerk, and the original and the vouchers carefully kept by him in his
27 office. An account shall be rendered by a fiduciary,~~[including a testamentary~~

1 ~~trustee,~~] at any other time upon order of the court upon its own motion or that of
2 any person interested in the trust, for good cause shown on affidavit. At the
3 expiration of his trust, the fiduciary shall fully account for and pay over the trust
4 estate to the person or persons entitled thereto. Every such account shall list all
5 unpaid creditors whose claims have been allowed and all creditors whose claims
6 have been disallowed. No account of a fiduciary, except of corporate fiduciaries
7 under the supervision of state or federal banking authorities, shall be approved until
8 there are exhibited to the court, for its examination, the security or securities shown
9 in the account as being in the hands of the fiduciary, or the certificate of a bank
10 having possession thereof or in which they have been deposited for safekeeping,
11 and a certified bank statement showing the funds to the credit of the trust.
12 (2) ~~[Testamentary trustees and]~~Guardians and conservators of mentally disabled
13 persons may be required to render accountings to the court under the provisions of
14 this section.~~[However, trustees may be required to file accounts pursuant to judicial~~
15 ~~proceedings under KRS 386.675]~~. Guardians and conservators of mentally disabled
16 persons shall comply with the reporting requirements of KRS Chapter 387.
17 ➔Section 117. KRS 395.655 is amended to read as follows:
18 The accounts of committees~~[and trustees]~~ may be settled in the same manner, and the
19 settlements shall have the same effect, as prescribed by KRS 395.600 and 395.640. The
20 District Court of the county in which the committee is appointed~~[, or in which the deed or~~
21 ~~will creating the trusts is recorded,]~~ shall have the jurisdiction of making the settlements.
22 ➔Section 118. The following KRS sections are repealed:
23 381.180 Estates in trust subject to debts of beneficiary -- Spendthrift trusts excepted --
24 Other exceptions.
25 386.070 Disposition of unauthorized securities.
26 386.185 Distribution of trusts of $50,000 or less.
27 386.650 "Court" defined.

1 386.651 "Trust" defined.

2 386.653 Applicability of KRS 386.650 to 386.735 to all trusts.

3 386.655 Trust registration -- Duty to register.

4 386.660 Procedures.

5 386.665 Effect of registration -- Notice of proceedings.

6 386.670 Failure to register.

7 386.675 Initiation of judicial proceedings.

8 386.680 Venue.

9 386.685 Proceedings relating to foreign trusts.

10 386.690 Jurisdiction of litigation involving trusts and third parties.

11 386.695 Review of agent's employment and compensation of trustee and employees.

12 386.700 Filing petition -- Notice requirements.

13 386.705 General duties not limited.

14 386.710 Standard of care and performance.

15 386.715 Duty to inform and account to beneficiaries.

16 386.720 Duty to provide surety on bond.

17 386.725 Appropriate place of administration -- Deviation.

18 386.730 Personal liability of trustee to third parties.

19 386.735 Limitations on proceedings against trustees after final account.

20 386.740 Power of fiduciary to use assets to prevent or remedy environmental violations -

21 - Limitation of personal liability of fiduciary.

22 386.800 Definitions.

23 386.805 Powers of trustee conferred by trust or by law.

24 386.810 Powers of trustees conferred by this chapter.

25 386.815 Trustee's office not transferable.

26 386.825 Powers exercisable by joint trustees -- Liability.

27 386.830 Third persons protected in dealing with trustee.

1 386.835 Application of KRS 386.805 to 386.840.

2 386.840 Uniformity of interpretation.

3 386.845 Short title.

4 395.326 Nomination of successor trustee by testamentary trustee.

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 4-7-14