

1 HB293
2 209389-2
3 By Representative Faulkner
4 RFD: Financial Services
5 First Read: 03-FEB-21

1 ENGROSSED

2
3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 Relating to trusts; to create the Alabama Qualified
9 Dispositions in Trust Act to govern certain transfers of trust
10 property.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Short title.

13 This act shall be known and may be cited as the
14 Alabama Qualified Dispositions in Trust Act.

15 Section 2. Definitions.

16 As used in this act, the following terms shall have
17 the following meanings:

18 (1) ADVISOR. A person who is given authority by the
19 terms of a trust instrument to remove or appoint, or both, one
20 or more trustees or to direct, consent to, approve, or veto a
21 trustee's actual or proposed investment or distribution
22 decisions. A person is considered an advisor even if the
23 person is denominated by another title, such as trust
24 protector. Any person may serve as an advisor.

25 (2) ASCERTAINABLE STANDARD. A standard relating to
26 an individual's health, education, support, or maintenance
27 within the meaning of 26 U.S.C. § 2041(b) (1) (A), as amended,

1 or 26 U.S.C. § 2514(c)(1), as amended, and any applicable
2 regulations.

3 (3) CLAIM. A right to payment, whether or not the
4 right is reduced to judgment, liquidated, unliquidated, fixed,
5 contingent, matured, unmatured, disputed, undisputed, legal,
6 equitable, secured, or unsecured.

7 (4) CREDITOR. With respect to a transferor, a person
8 who has a claim, whether directly or indirectly.

9 (5) DEBT. Liability on a claim.

10 (6) DISCRETIONARY TRUST PROVISION. A provision in a
11 trust, regardless of whether the terms of the trust provide a
12 standard for the exercise of the trustee's discretion and
13 regardless of whether the trust contains a spendthrift
14 provision, which provides that the trustee has discretion, or
15 words of similar import, to determine one or more of the
16 following:

17 a. Whether to distribute to or for the benefit of an
18 individual or a class of beneficiaries the income or
19 principal, or both, of the trust.

20 b. The amount, if any, of the income or principal,
21 or both, of the trust to distribute to or for the benefit of
22 an individual or a class of beneficiaries.

23 c. Who, if any, among a class of beneficiaries will
24 receive income or principal, or both, of the trust.

25 d. Whether the distribution of trust property is
26 from income or principal, or both, of the trust.

1 e. When to pay income or principal, except that a
2 power to determine when to distribute income or principal
3 within or with respect to a calendar or taxable year of the
4 trust is not a discretionary trust provision if the
5 distribution is required to be made.

6 (7) DISPOSITION. A transfer of property that either
7 creates a new fiduciary relationship between at least one
8 trustee and a trust beneficiary or subjects property to a
9 preexisting fiduciary relationship between at least one
10 trustee and a trust beneficiary. The term includes a transfer
11 by conveyance or assignment; by exercise of a power of
12 appointment, including a power to substitute a trustee for
13 another or to add one or more new trustees; by exercise of a
14 power of revocation or amendment; or, except as provided in
15 this subdivision, by disclaimer, release, or relinquishment.
16 The term does not include a disclaimer, release, or
17 relinquishment of property that was previously the subject of
18 a qualified disposition. For purposes of this subdivision, as
19 between a given trustee and a given beneficiary, a new
20 fiduciary relationship is created whenever the terms of the
21 governing trust instrument are materially altered, including
22 alteration by an irrevocable written election as described in
23 subsection (f) of Section 5 with respect to the trust
24 beneficiary in question.

25 (8) DISTRIBUTION DECISION. A decision regarding the
26 distribution of trust property to or for the benefit of a
27 trust beneficiary. The term includes a decision whether to

1 make or guarantee a loan to or for the benefit of a trust
2 beneficiary.

3 (9) FIDUCIARY DISPOSITION. A disposition made by a
4 trustee acting in a fiduciary capacity.

5 (10) FIDUCIARY QUALIFIED DISPOSITION. A qualified
6 disposition made by a trustee acting in a fiduciary capacity.

7 (11) GENERAL POWER OF APPOINTMENT. A power to
8 appoint trust property, the permissible appointees of which
9 include the power holder, his or her estate, his or her
10 creditors, or the creditors of his or her estate. The term
11 includes a power that is not expressly restricted as to
12 appointees. A power may be general as to some property and
13 special as to other property. The term does not include a
14 power exercisable in favor of the power holder, his or her
15 estate, his or her creditors, or the creditors of his or her
16 estate that is limited by an ascertainable standard.

17 (12) INVESTMENT DECISION. A decision regarding
18 whether to purchase, sell, exchange, tender, or pledge any
19 trust property. The term includes decisions regarding other
20 transactions affecting the ownership of or rights in any trust
21 property, other than distribution decisions. Unless otherwise
22 provided in the trust instrument, the term also includes a
23 decision regarding whether to make or guarantee a loan to or
24 on behalf of an entity in which the trust owns an interest,
25 directly or indirectly, in the entity's debt or equity.

26 (13) LIEN. A charge against or an interest in
27 property to secure payment of a debt or performance of an

1 obligation. The term includes a security interest created by
2 agreement, a judicial lien obtained by legal or equitable
3 process or proceedings, a common law lien, or a statutory
4 lien.

5 (14) ORGANIZATION. A person other than an
6 individual.

7 (15) PERSON. An individual, estate, partnership,
8 association, trust, business or nonprofit entity, public
9 corporation, government or governmental subdivision, agency,
10 or instrumentality, or other legal or commercial entity.

11 (16) PROPERTY. Anything that may be the subject of
12 ownership, whether real or personal, legal or equitable, or
13 any interest therein. The term includes choses in action,
14 claims, and interests created by a beneficiary designation
15 under policies of insurance, financial instruments, deferred
16 compensation, and other retirement arrangements, whether
17 revocable or irrevocable.

18 (17) QUALIFIED BENEFICIARY. A living trust
19 beneficiary to whom any of the following apply on the date of
20 the beneficiary's qualification:

21 a. The beneficiary is a distributee or permissible
22 distributee of trust income or principal.

23 b. The beneficiary would be a distributee or
24 permissible distributee of trust income or principal if the
25 interests of the distributees described in paragraph a.
26 terminated on that date, but the termination of those
27 interests would not cause the trust to terminate.

1 c. The beneficiary would be a distributee or
2 permissible distributee of trust income or principal if the
3 trust terminated on that date.

4 (18) QUALIFIED DISPOSITION. A disposition of
5 property to one or more trustees, at least one of whom is a
6 qualified trustee, which is governed by a trust instrument,
7 including, but not limited to, a trust instrument as modified
8 by an irrevocable written election described in subsection (f)
9 of Section 5, under which the transferor has no more rights,
10 powers, or interests than those permitted by Section 4. The
11 term does not include a disposition to the extent that, at the
12 time of the disposition, the transferor is in arrears on a
13 child support obligation by more than 30 days.

14 (19) QUALIFIED TRUSTEE. A person, other than the
15 transferor, who meets all of the following conditions:

16 a. Is an individual who is a resident of this state,
17 or is an organization that is authorized by the law of this
18 state to act as a trustee and whose activities are subject to
19 supervision by the Alabama State Banking Department, the
20 Federal Deposit Insurance Corporation, the Comptroller of the
21 Currency, or the Office of Thrift Supervision.

22 b. Maintains or arranges for custody in this state
23 of some or all of the property that is the subject of the
24 qualified disposition and administers all or part of the trust
25 in this state.

26 c. Whose usual place of business, where some of the
27 records pertaining to the trust are kept, is located in this

1 state or, if the person does not have such a place of
2 business, who is a resident of this state. For a corporate
3 trustee, the usual place of business is the business location
4 of the primary trust officer.

5 (20) RETIREMENT BENEFIT. An interest in one of the
6 following types of assets if payable to a trust as a
7 beneficiary or owned by the trust:

8 a. A qualified or nonqualified annuity.

9 b. A benefit under a qualified or nonqualified plan
10 of deferred compensation.

11 c. Any account in, or benefit payable under, any
12 pension, profit-sharing, stock bonus, or other qualified
13 retirement plan.

14 d. Any individual retirement account or trust.

15 e. Any benefit under a plan or arrangement
16 established under Section 401, 403, 408, 408A, or 457,
17 26 U.S.C §§ 401, 403, 408, 408A, and 457, or a similar
18 provision of the Internal Revenue Code of 1986.

19 (21) SETTLOR. A person, including a testator or
20 trustee, who creates a trust. If more than one person creates
21 a trust, each person is a settlor of the portion of the trust
22 property attributable to that person's contribution. The
23 lapse, release, or waiver of a power of appointment does not
24 cause the holder of the power to be treated as a settlor of
25 the trust.

26 (22) SPECIAL POWER OF APPOINTMENT. A power to
27 appoint trust property, the permissible appointees of which do

1 not include the power holder, his or her estate, his or her
2 creditors, or the creditors of his or her estate.

3 (23) SPENDTHRIFT PROVISION. A term of a trust which
4 restrains both voluntary and involuntary transfers of a
5 beneficiary's interest.

6 (24) SPOUSE or FORMER SPOUSE. An individual to whom
7 the transferor was married at or before the time a qualified
8 disposition is made.

9 (25) SUPPORT PROVISION. A provision in a trust that
10 requires the trustee to distribute income or principal, or
11 both, for the health, education, support, or maintenance of a
12 trust beneficiary, or language of similar meaning. The term
13 does not include a provision that provides that a trustee has
14 discretion whether to distribute income or principal, or both,
15 for these purposes or to select from among a class of
16 beneficiaries to receive distributions under the trust
17 provision.

18 (26) TRANSFEROR. Either of the following, as
19 applicable:

20 a. A person or, for more than one owner of undivided
21 interests, each of several persons who, as a beneficial owner
22 of certain property or as the holder of a general power of
23 appointment over certain property, directly or indirectly
24 makes a disposition of the property or causes a disposition to
25 be made.

26 b. For a fiduciary disposition, the person or
27 persons who, as of the time of the fiduciary disposition, most

1 recently fit the description in paragraph a. with respect to
2 the property subject to the fiduciary disposition.

3 (27) TRUST BENEFICIARY. The same meaning as the term
4 "beneficiary", as that term is defined in Section 19-3B-103,
5 Code of Alabama 1975.

6 (28) TRUST INSTRUMENT. An instrument appointing a
7 qualified trustee or qualified trustees for the property that
8 is the subject of a disposition to which all of the following
9 apply:

10 a. The instrument expressly incorporates the law of
11 this state to govern the validity, construction, and
12 administration of the trust.

13 b. The instrument is irrevocable.

14 c. The instrument provides that the interest of the
15 transferor or other trust beneficiary in trust property may
16 not be transferred, assigned, pledged, or mortgaged, whether
17 voluntarily or involuntarily, before the qualified trustee or
18 qualified trustees actually distribute trust property to the
19 trust beneficiary. Such a provision in a trust instrument is
20 considered a restriction on the transfer of the transferor's
21 beneficial interest in the trust that is enforceable under
22 applicable nonbankruptcy law within the meaning of 11 U.S.C. §
23 541(c)(2).

24 (29) VALID LIEN. A lien that is effective against
25 the holder of a judicial lien subsequently obtained by legal
26 or equitable process or proceedings.

27 Section 3. Jurisdiction and Venue.

1 (a) Except as provided in subsection (b), the
2 circuit court has exclusive jurisdiction over an action that
3 addresses either of the following questions:

4 (1) Whether a transfer is a qualified disposition.

5 (2) The extent of the transferor's interest in, or
6 the income from, a qualified disposition.

7 (b) A probate court granted statutory equitable
8 jurisdiction has concurrent jurisdiction with the circuit
9 court over questions described in subsection (a) and over an
10 action brought under subsection (b) of Section 5.

11 (c) Except to the extent otherwise provided by court
12 rule, venue for a proceeding under subsection (a) or (b) is in
13 the following order of priority:

14 (1) In any county where venue is proper for civil
15 actions generally, pursuant to Chapter 3 of Title 6.

16 (2) In a county in this state in which the current
17 qualified trustee has its usual place of business or
18 residence.

19 (3) In a county in this state in which the
20 immediately preceding qualified trustee had its usual place of
21 business or residence.

22 (4) In a county in this state in which any trust
23 property subject to the qualified disposition is located.

24 (5) In a county in this state in which a trust
25 beneficiary resides.

26 Section 4. Permitted Trust Powers of Transferor.

1 (a) A transferor has only the powers and rights that
2 are conferred by the trust instrument. Except as otherwise
3 provided in this act, a transferor does not have any power or
4 right with respect to property that is the subject of a
5 qualified disposition or income from the property and any
6 agreement or understanding that purports to grant or permit
7 the retention of any greater powers or rights is void.

8 (b) A trust instrument may provide for one or more
9 of the following rights, powers, or interests of a transferor:

10 (1) The power to direct the investment decisions of
11 the trust.

12 (2) The power to veto a distribution from the trust.

13 (3) A special power of appointment exercisable by
14 will or other written instrument of the transferor effective
15 only on the death of the transferor.

16 (4) The right to the potential or actual receipt of
17 income, including rights to income retained in the trust
18 instrument.

19 (5) The right to the potential or actual receipt of
20 income or principal from a charitable remainder unitrust or
21 charitable remainder annuity trust, as those terms are defined
22 in 26 U.S.C § 664; and the right, at any time by written
23 instrument delivered to the trustee, to release the
24 transferor's interest in the trust, in whole or in part, in
25 favor of a charitable organization that has a succeeding
26 beneficial interest in the trust.

1 (6) The right to the potential or actual receipt of
2 income or principal from a grantor-retained annuity trust or
3 grantor-retained unitrust as those terms are described in 26
4 U.S.C. § 2702, or the receipt each year of a percentage of the
5 value of the trust property, as provided in the trust
6 instrument. The amount may be described either as a
7 percentage, a fixed amount, or an amount determined from time
8 to time under the governing instrument and may not exceed five
9 percent of the value of the trust.

10 (7) The potential or actual receipt or use of
11 principal if the potential or actual receipt or use of
12 principal would be the result of a trustee acting under any of
13 the following:

- 14 a. A discretionary trust provision.
- 15 b. A support provision.
- 16 c. The direction of an advisor acting under a
17 discretionary trust provision or support provision.

18 (8) The right to remove a trustee or advisor and to
19 appoint a new trustee or advisor.

20 (9) The right to the potential or actual use of real
21 property held under a qualified personal residence trust
22 within the meaning of that term as described in 26 U.S.C. §
23 2702(c), or the possession and enjoyment of a qualified
24 annuity interest within the meaning of that term as described
25 in 26 C.F.R. § 25.2702-5(c)(8).

26 (10) The right to the potential or actual receipt of
27 income or principal to pay, in whole or in part, income taxes

1 due on income of the trust if the potential or actual receipt
2 of income or principal is under a provision in the trust
3 instrument that expressly provides for the payment of those
4 taxes and if the potential or actual receipt of income or
5 principal would be the result of a qualified trustee acting in
6 either of the following ways:

7 a. In the trustee's discretion or under a mandatory
8 direction in the trust instrument.

9 b. At the direction of an advisor who is acting in
10 the advisor's discretion.

11 (11) A trust instrument may authorize a qualified
12 trustee, after the death of the transferor, to pay the
13 transferor's debts, the expenses of administering the
14 transferor's estate, and any estate or inheritance tax imposed
15 on or with respect to the transferor's estate, without regard
16 to the source of the payment.

17 (12) The right to the actual or potential receipt of
18 a minimum required distribution, as defined in 26 U.S.C. §
19 4974(b), with respect to a retirement benefit.

20 (c) None of the powers described in subsection (b),
21 alone or in any combination, shall be deemed a power to
22 revoke.

23 Section 5. Right of action of creditor with respect
24 to a qualified disposition.

25 (a) Notwithstanding any other provision of this act,
26 with respect to any qualified disposition, a creditor has only
27 the rights provided in this section and Section 7.

1 (b) In an action brought by a creditor for an
2 attachment or other provisional remedy against property that
3 is the subject of a qualified disposition or for avoidance of
4 a qualified disposition, the following rules apply:

5 (1) Except for the limitation period provided under
6 subsection (c), the action may be brought only under Section
7 8-9B-5 or 8-9B-6, Code of Alabama 1975.

8 (2) For the claim of a creditor which arose after a
9 qualified disposition, the action may involve only a qualified
10 disposition that was made with actual intent to hinder, delay,
11 or defraud the creditor.

12 (3) The allegations in the action must be proven by
13 a preponderance of the evidence.

14 (c) A person may not bring or maintain an action
15 concerning a qualified disposition under subsection (b) unless
16 the action is commenced within either of the following
17 periods:

18 (1) If the claim arose before the qualified
19 disposition was made, or on the later of the following:

20 a. Two years after the qualified disposition was
21 made.

22 b. If the person who is or may be liable for any
23 claim fraudulently concealed the existence of the claim or the
24 identity of any person who is liable for the claim from the
25 knowledge of the person entitled to sue on the claim, the
26 earlier of one year after the qualified disposition was or
27 could reasonably have been discovered by the claimant, and the

1 time allowed under the application statute of limitations
2 under Section 8-9B-10, Code of Alabama 1975.

3 (2) If the claim arose concurrent with or after the
4 qualified disposition, two years after the qualified
5 disposition was made.

6 (d) If a trust beneficiary who has an interest in a
7 qualified disposition or in property that is subject to a
8 qualified disposition is a party to an action for annulment of
9 a marriage, divorce, or separate maintenance, the following
10 rules apply:

11 (1) If the trust beneficiary is not the transferor
12 of the qualified disposition, the interest of the trust
13 beneficiary in the qualified disposition or in property that
14 is the subject of the qualified disposition is not considered
15 marital property, is not considered, directly or indirectly,
16 part of the trust beneficiary's real or personal estate, and
17 may not be awarded to the trust beneficiary's spouse in a
18 judgment for annulment of a marriage, divorce, or separate
19 maintenance.

20 (2) If the trust beneficiary is the transferor of
21 the qualified disposition, the interest of the trust
22 beneficiary in the qualified disposition or in property that
23 is the subject of the qualified disposition is not considered
24 marital property, is not considered, directly or indirectly,
25 part of the trust beneficiary's real or personal estate, and
26 may not be awarded to the trust beneficiary's spouse in a

1 judgment for annulment of a marriage, divorce, or separate
2 maintenance if any of the following apply:

3 a. The trust beneficiary transferred the property
4 that is the subject of the qualified disposition more than 30
5 days before the commencement of the marriage that is the
6 subject of the action.

7 b. The parties to the marriage agree that this
8 subdivision applies to the qualified disposition.

9 c. The parties to the marriage agree that the
10 property is not considered marital property, is not
11 considered, directly or indirectly, part of the trust
12 beneficiary's real or personal estate, and may not be awarded
13 to the trust beneficiary's spouse in a judgment for annulment
14 of a marriage, divorce, or separate maintenance.

15 (3) If neither subdivision (1) nor (2) applies,
16 subsections (b) and (c) do not limit the transferor's spouse's
17 property division claims.

18 (e) Except as otherwise provided in subdivision (1),
19 a fiduciary qualified disposition is deemed made as of the
20 time the property that is subject to the disposition was first
21 transferred to the trustee who is making the disposition, or
22 any predecessor of that trustee in an unbroken succession of
23 fiduciary ownership of the property, in a form that meets
24 either of the following requirements:

25 (1) If the property that is subject to the qualified
26 disposition was first transferred to the trustee making the
27 disposition or the predecessor trustee before the effective

1 date of this act, in a form that would otherwise meet the
2 requirements of a qualified disposition, the qualified
3 disposition is deemed to have been made as of the effective
4 date of this act.

5 (2) The requirements to be considered a qualified
6 disposition or its equivalent under the laws of another state;
7 provided, that the transferor has no more rights, powers, or
8 interests than those permitted under Section 4, as modified by
9 an irrevocable written election described in subsection (f),
10 and, at the time of the disposition, the transferor was not in
11 arrears on a child support obligation by more than 30 days.

12 (f) If a trustee of an existing trust proposes to
13 make a disposition that, but for the exercise of authority
14 granted in this subsection, would not be a qualified
15 disposition because of a nonconforming power of appointment of
16 the transferor, the trustee may modify the trust instrument by
17 delivering to the qualified trustee an irrevocable written
18 election to modify the nonconforming power of appointment to
19 conform to the requirements of subdivision (3) or subdivision
20 (11) of subsection (b) of Section 4. An irrevocable written
21 election described in this subsection shall include both of
22 the following:

23 (1) A description of the modified power of
24 appointment.

25 (2) The transferor's written consent to the
26 modification. The transferor's consent is not a disposition.

1 (g) With respect to a qualified disposition, a
2 creditor does not have a claim or cause of action against any
3 of the following:

4 (1) The trustee of a trust that is the subject of a
5 qualified disposition.

6 (2) An advisor of a trust that is the subject of a
7 qualified disposition.

8 (3) A person involved in the counseling, drafting,
9 preparation, execution, or funding of a trust that is the
10 subject of a qualified disposition.

11 (h) If more than one qualified disposition is made
12 by means of the same trust instrument, the following rules
13 apply:

14 (1) With respect to a prior qualified disposition,
15 both of the following apply:

16 a. The making of a subsequent qualified disposition
17 is disregarded in determining whether a creditor's claim is
18 commenced within the time requirements specified in subsection
19 (c).

20 b. The making of a subsequent qualified disposition
21 is disregarded in determining pursuant to subsection (d)
22 whether a trust beneficiary's interest in a qualified
23 disposition or in property that is the subject of a qualified
24 disposition is considered marital property, is considered part
25 of a trust beneficiary's real or personal estate, or may be
26 awarded to the trust beneficiary's spouse in a judgment for
27 annulment of a marriage, divorce, or separate maintenance.

1 (2) A distribution to a trust beneficiary is
2 considered to have been made from the most recent qualified
3 disposition.

4 (i) In an action against a trustee who received
5 property in a qualified disposition, if a court takes any
6 action declining to apply the law of this state in determining
7 the validity, construction, or administration of the trust, or
8 the effect of a spendthrift provision in the trust instrument,
9 the trustee, without the further order of any court, shall
10 immediately cease to be trustee of the trust. The former
11 trustee does not have any power described in subsection (b) of
12 Section 4 except to convey the trust property to the successor
13 trustee, to petition the court for appointment of a successor
14 trustee, and to collect the former trustee's attorney fees,
15 costs, and expenses. If the trust instrument does not provide
16 for a successor trustee and the trust would otherwise be
17 without a trustee, the following rules apply:

18 (1) A court with jurisdiction over the trust under
19 Chapter 3B of Title 19 of the Code of Alabama 1975, on the
20 request of a qualified beneficiary of the trust, shall appoint
21 a successor trustee on the terms and conditions the court
22 determines to be consistent with the purposes of the trust and
23 this act.

24 (2) The former trustee may, but has no duty to,
25 petition the court to appoint a successor trustee if a
26 petition for appointment of a successor trustee is not brought
27 by a qualified beneficiary within 30 days after the date on

1 which the former trustee ceased to be a trustee of the trust.
2 If the former trustee elects to petition for the appointment
3 of a successor trustee, the former trustee shall be entitled
4 to reimbursement for all attorney fees, costs, and expenses
5 associated with the petition, and the amount of the attorney
6 fees, costs, and expenses shall be a lien against the trust's
7 property.

8 (j) A valid lien attaching to property before a
9 qualified disposition of the property survives the
10 disposition. The trustee takes title to the property subject
11 to the valid lien and is subject to any agreements that
12 created or perfected the valid lien.

13 (k) A written agreement between a transferor and a
14 creditor may provide for any of the following:

15 (1) The transferor will have a continuing or
16 periodic obligation to disclose to the creditor any qualified
17 dispositions.

18 (2) A qualified disposition requires the prior
19 written approval of the creditor.

20 (3) The transferor is under any other obligation as
21 the creditor may require with respect to a qualified
22 disposition of the property.

23 (4) In the event the transferor made an express or
24 implied representation regarding an asset in order to create a
25 debt to a creditor prior to December 31, 2021, the transferor
26 is deemed to have entered into an agreement with the creditor,
27 which as to the debt, a disposition of the asset would not be

1 a qualified disposition as to the creditor, unless the
2 disposition had the written approval of the creditor as to the
3 disposition.

4 (1) If a transfer that would otherwise be a
5 qualified disposition violates an agreement with a creditor
6 described in subsection (k), with respect to the creditor
7 only, the transfer is not a qualified disposition and this act
8 does not affect the rights of the creditor.

9 Section 6. Qualified affidavit.

10 (a) Except as provided in subsection (f), for
11 purposes of this section, a "qualified affidavit" means an
12 affidavit in which the transferor states that at the time of
13 the transfer of the property to the trust, all of the
14 following apply:

15 (1) The transferor has full right, title, and
16 authority to transfer the property to the trust.

17 (2) The transfer of the property to the trust will
18 not render the transferor insolvent.

19 (3) The transferor does not intend to defraud a
20 creditor by transferring the property to the trust.

21 (4) The transferor does not know of or have reason
22 to know of any pending or threatened court actions against the
23 transferor, except for those court actions identified by the
24 transferor on an attachment to the affidavit.

25 (5) The transferor is not involved in any
26 administrative proceedings, except for those administrative
27 proceedings identified on an attachment to the affidavit.

1 (6) The transferor is not currently in arrears on a
2 child support obligation by more than 30 days.

3 (7) The transferor does not contemplate filing for
4 relief under the Bankruptcy Code, 11 U.S.C. §§ 101 to 1532,
5 inclusive.

6 (8) The property being transferred to the trust was
7 not derived from unlawful activities.

8 (b) The transferor shall sign a qualified affidavit
9 before a qualified disposition is made.

10 (c) A qualified affidavit is defective if it
11 materially fails to meet the criteria provided in subsection
12 (a), except that a qualified affidavit is not defective
13 because of any of the following:

14 (1) Nonsubstantive variances from the language
15 provided in subsection (a).

16 (2) Statements or representations in addition to
17 those provided in subsection (a) if the statements or
18 representations do not contradict those required by subsection
19 (a).

20 (3) Technical errors in administering an oath if the
21 errors were not the fault of the transferor and the transferor
22 reasonably relied on another person to prepare or administer
23 the oath.

24 (d) A qualified affidavit is not required in any of
25 the following circumstances:

26 (1) From the settlor for a fiduciary qualified
27 disposition.

1 (2) From a transferor who is not the settlor of the
2 qualified disposition, except to the extent the transferor is
3 a beneficiary of the qualified disposition and the property
4 subject to the qualified disposition was not previously
5 subject to a qualified disposition with respect to which the
6 transferor signed a qualified affidavit.

7 (3) In connection with a disposition that is part
8 of, required by, or the direct result of, a prior qualified
9 disposition supported by a qualified affidavit that otherwise
10 complies with the requirements of subsection (a).

11 (e) If a qualified affidavit is required by this
12 section and a transferor fails to sign timely a qualified
13 affidavit or signs a defective affidavit, the failure or
14 defect may be considered as evidence in an action described in
15 subsection (b) of Section 5 to the extent permitted by the
16 Alabama Rules of Evidence, but the validity of the qualified
17 disposition is not affected in any other way because of the
18 failure or defect.

19 (f) If subdivision (d)(2) applies, the required
20 affidavit shall omit the statements described in subdivisions
21 (1) and (3) of subsection (a), and include a statement that
22 the qualified disposition is not intended to defraud any
23 creditor.

24 Section 7. Rights of trustee and beneficiary in
25 regard to an avoided qualified disposition.

26 (a) A qualified disposition may be avoided only to
27 the extent necessary to satisfy or provide for the present

1 value, taking into consideration any uncertainty of the
2 transferor's debt to the creditor at whose instance the
3 disposition had been avoided.

4 (b) If all or any portion of a qualified disposition
5 is avoided, the following rules apply:

6 (1) If the court is satisfied that a trustee has
7 acted in good faith in accepting or administering the property
8 that is the subject of the qualified disposition, both of the
9 following apply:

10 a. The trustee has a lien against the property that
11 is the subject of the qualified disposition in an amount equal
12 to the entire cost, including attorney fees, incurred in
13 connection with an action dealing with the qualified
14 disposition. The lien has priority over all other liens
15 against the property, whether or not the other liens accrued
16 or were recorded before the accrual of the lien created by
17 this paragraph.

18 b. The qualified disposition is avoided subject to
19 the fees, costs, preexisting rights, claims, and interests of
20 the trustee who has acted in good faith and of any predecessor
21 trustee who has acted in good faith.

22 (2) If the court is satisfied that a trust
23 beneficiary acted in good faith, the avoidance of the
24 qualified disposition is subject to the right of the trust
25 beneficiary to retain any distribution received before the
26 creditor's commencement of an action to avoid the qualified
27 disposition. The mere creation of the trust or acceptance of a

1 distribution made under the terms of the trust by the trust
2 beneficiary, including a trust beneficiary who is also a
3 transferor of the trust, shall not be considered as evidence
4 that the trust beneficiary failed to act in good faith.

5 (3) For purposes of this subsection, the mere
6 acceptance of property with or without a qualified affidavit,
7 or the making of any distribution under the terms of the
8 trust, shall not be considered as evidence that a trustee
9 failed to act in good faith.

10 (c) A creditor has the burden of proving by a
11 preponderance of the evidence that a trustee or trust
12 beneficiary failed to act in good faith. This subsection
13 provides substantive, not procedural, rights.

14 (d) With respect to a qualified disposition, a levy,
15 attachment, garnishment, notice of lien, sequestration, or
16 other legal or equitable process is permitted only in those
17 circumstances permitted by this act.

18 (e) Notwithstanding any other provision of this act,
19 a creditor does not have a right against the interest of a
20 trust beneficiary in property in a trust or portion of a trust
21 that was the subject of qualified disposition solely because
22 the trust beneficiary has the right to authorize or direct the
23 trustee to pay all or part of the trust property in
24 satisfaction of estate or inheritance taxes imposed on or with
25 respect to the trust beneficiary's postdeath estate, the debts
26 of the trust beneficiary's postdeath estate, or the expenses
27 of administering the trust beneficiary's postdeath estate,

1 unless the trust beneficiary actually directs the payment of
2 the taxes, debts, or expenses, and then only to the extent of
3 the direction.

4 (f) (1) Except as otherwise provided in the trust
5 instrument, if a married couple makes a qualified disposition
6 of property and, immediately before the qualified disposition,
7 the property, any part of the property, or any accumulation to
8 the property, under applicable law, was owned by the married
9 couple as tenants in common for life with cross contingent
10 remainder to the survivor in fee, then notwithstanding the
11 qualified disposition, the property, any part of the property,
12 or any accumulation to the property, while held in trust
13 during the lifetime of both spouses, is treated as though it
14 is property held in tenancy in common for life with cross
15 contingent remainder to the survivor in fee.

16 (2) In an action concerning whether a creditor of
17 either or both spouses may recover the debt from the trust, on
18 avoidance of the qualified disposition, the sole remedy
19 available to the creditor with respect to trust property
20 treated as though it were tenancy in common for life with
21 cross contingent remainder to the survivor in fee property is
22 an order directing the trustee to transfer the property to
23 both spouses as tenants in common for life with cross
24 contingent remainder to the survivor in fee.

25 (g) Except as otherwise provided in subsection (f),
26 on avoidance of a qualified disposition to the extent
27 permitted under subsection (a), the sole remedy available to

1 the creditor is an order directing the trustee to transfer to
2 the transferor the amount necessary to satisfy the
3 transferor's debt to the creditor at whose instance the
4 disposition has been avoided.

5 Section 8. Cessation of a qualified trustee and
6 successor.

7 (a) (1) If a person serving as a qualified trustee
8 ceases to meet the requirements of a qualified trustee and
9 there remains no trustee that meets the requirements of a
10 qualified trustee, the person serving as qualified trustee is
11 considered to have resigned as of the time of the cessation
12 and the successor qualified trustee provided for in the trust
13 instrument becomes a qualified trustee of the trust on the
14 successor qualified trustee's acceptance of trusteeship.

15 (2) In the absence of a successor qualified trustee
16 provided for in the trust instrument, the court having
17 jurisdiction, on petition of a qualified beneficiary, shall
18 appoint a successor qualified trustee.

19 (b) A disposition that was a qualified disposition
20 does not cease to be a qualified disposition as a result of a
21 subsequent vacancy in the position of qualified trustee if a
22 successor qualified trustee is appointed or a proceeding for
23 the appointment of a successor qualified trustee is commenced
24 within a reasonable time after a person with authority to
25 appoint a qualified trustee or commence a proceeding to
26 appoint a qualified trustee knows of the vacancy.

1 Section 9. Rights of creditor of trust beneficiary
2 in a trust or a portion of a trust that is a qualified
3 distribution.

4 (a) A trust beneficiary does not have the power or
5 capacity to transfer any of the income from property of a
6 trust or portion of a trust which is the subject of a
7 qualified disposition by his or her order, voluntary or
8 involuntary, or by an order or direction of a court.

9 (b) Except as otherwise provided in this act, the
10 interest of a beneficiary in a trust or portion of a trust
11 that is a qualified disposition is not subject to a process of
12 attachment issued against the beneficiary and may not be taken
13 in execution under any form of legal process directed against
14 the beneficiary, trustee, trust estate, or any part of the
15 income of the trust estate. The whole of the trust estate and
16 the income of the trust estate shall go to and be applied by
17 the trustee solely for the benefit of the beneficiary, free,
18 clear, and discharged of all obligations of the beneficiary.

19 (c) The trustee of a qualified disposition shall
20 disregard and oppose an assignment or other act, voluntary or
21 involuntary, that is attempted contrary to this section. The
22 trustee is entitled to reimbursement for all attorneys fees,
23 costs, and expenses associated with carrying out this duty and
24 the amount of the attorneys fees, costs, and expenses is a
25 lien against the property that is the subject of the qualified
26 disposition. A trustee is not liable, and a trust beneficiary
27 or any successor trust beneficiary does not have a claim or

1 cause of action against a trustee, for a breach of this duty
2 unless the trustee's breach was not done in good faith or was
3 the result of reckless indifference to the purposes of the
4 trust or the interests of the trust beneficiaries.

5 (d) This section does not prohibit a beneficiary
6 from disclaiming an interest in a trust or portion of a trust
7 that is a qualified disposition or from exercising a power of
8 appointment.

9 Section 10. Application; relation to other laws.

10 (a) Subject to subsection (e) Section 5, this act
11 applies to qualified dispositions made on or after the
12 effective date of this act.

13 (b) If any provision of this act conflicts with any
14 provision of the Alabama Uniform Trust Code, Sections
15 19-3B-101 to 19-3B-1305, inclusive, Code of Alabama 1975, or
16 the Alabama Uniform Voidable Transactions Act, Sections 8-9B-1
17 to 8-9B-17, inclusive, Code of Alabama 1975, the provision of
18 this act prevails.

19 Section 11. Unless otherwise displaced by the
20 provisions of this act, the principles of law and equity,
21 including the law merchant and the law relating to principal
22 and agent, estoppel, laches, fraud, misrepresentation, duress,
23 coercion, mistake, insolvency, and other validating or
24 invalidating clauses, supplement its provisions.

25 Section 12. This act shall become effective
26 immediately following its passage and approval by the
27 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Financial Ser-
vices..... 03-FEB-21

Read for the second time and placed
on the calendar 1 amendment 23-FEB-21

Read for the third time and passed
as amended..... 16-MAR-21

Yeas 96, Nays 0, Abstains 3

Jeff Woodard
Clerk