

SB178 ENROLLED



1 SB178
2 U9E1VXG-2
3 By Senator Barfoot
4 RFD: Judiciary
5 First Read: 20-Jan-26



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1 Enrolled, An Act,

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4 Relating to trusts; to amend Section 19-3A-104, Code of
5 Alabama 1975, to permit trustees to adjust trust receipts and
6 disbursements between principal and income without express
7 authority of the terms of the trust instrument; and to make
8 nonsubstantive, technical revisions to update the existing
9 code language to current style.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Section 19-3A-104, Code of Alabama 1975, is
12 amended to read as follows:

13 "§19-3A-104

14 (a) A trustee may~~If the terms of the trust expressly~~
15 ~~provide by specific reference to this section, then a trustee~~
16 ~~may have the power to~~ adjust receipts and disbursements
17 between principal and income to the extent the trustee
18 considers necessary if ~~(1):~~ (i) the trustee invests and
19 manages trust assets as a prudent investor; ~~(2)~~ (ii) the terms
20 of the trust describe the amount that may or must be
21 distributed to a beneficiary by referring to the trust's
22 income~~;~~ ; and ~~(3)~~ (iii) the trustee determines, after applying
23 the rules in Section 19-3A-103(a), that the trustee is unable
24 to comply with Section 19-3A-103(b).

25 (b) In deciding whether and to what extent to exercise
26 the power conferred by subsection (a), a trustee shall
27 consider all factors relevant to the trust and its
28 beneficiaries, including, but not limited to:



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

31 (2) The intent of the settlor;

32 (3) The identity and circumstances of the
33 beneficiaries;

34 (4) The needs for liquidity for the trust;

35 (5) The regularity of income to the trust;

36 (6) The need for preservation and appreciation of
37 capital;

38 (7) The nature of the assets held in the trust and the
39 extent to which they consist of financial assets, interests in
40 closely held enterprises, tangible and intangible personal
41 property, or real property;

42 (8) The extent to which an asset is used by a
43 beneficiary;

44 (9) Whether an asset was purchased by the trustee or
45 received from the settlor;

46 (10) The net amount allocated to income under the other
47 sections of this chapter and the increase or decrease in the
48 value of the principal assets, which the trustee may estimate
49 as to assets for which market values are not readily
50 available;

51 (11) Whether and to what extent the terms of the trust
52 ~~a.:~~ (i) give the trustee the power to invade principal or
53 accumulate income, ~~or b.;~~ or (ii) prohibit the trustee from
54 invading principal or accumulating income;

55 (12) The extent to which the trustee has exercised a
56 power from time to time to invade principal or accumulate



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57 income;

58 (13) The actual and anticipated effect of economic
59 conditions, inflation, and deflation upon principal and
60 income; and

61 (14) The anticipated income and transfer tax
62 consequences of an adjustment.

63 (c) Notwithstanding the power conferred by subsection
64 (a), a trustee may not make an adjustment:

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

70 (2) That reduces the actuarial value of the income
71 interest in a trust to which a person transfers property with
72 the intent to qualify the transfer for a gift tax exclusion;

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

76 (4) That changes the amount that is permanently set
77 aside for charitable purposes under a will or the terms of a
78 trust, unless both income and principal are so set aside;

79 (5) If possessing or exercising the power to make an
80 adjustment causes an individual to be treated as the owner of
81 all or part of the trust for income tax purposes, and the
82 individual would not be treated as the owner if the trustee
83 did not possess the power to make an adjustment;

84 (6) If possessing or exercising the power to make an



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85 adjustment causes all or part of the trust assets to be
86 included for estate tax purposes in the estate of an
87 individual who has the power to remove a trustee or appoint a
88 trustee, or both, and the assets would not be included in the
89 estate of the individual if the trustee did not possess the
90 power to make an adjustment;

91 (7) If the trustee is not a beneficiary, but the
92 adjustment would benefit the trustee directly or indirectly;

93 (8) If the trustee is a beneficiary of the trust; or

94 (9) If the trust is an express unitrust under Section
95 19-3A-105 ~~(relating to express unitrusts)~~ or is a unitrust by
96 reason of a conversion under Section 19-3A-106 ~~(relating to~~
97 ~~power to convert to unitrust)~~.

98 (d) If ~~subsection~~ subdivision (c) (5), ~~subsection~~
99 (c) (6), ~~subsection~~ (c) (7), or ~~subsection~~ (c) (8) applies to a
100 trustee and there is more than one trustee, then the
101 co-trustee to whom the provision does not apply may make the
102 adjustment, unless the exercise of the power by the remaining
103 trustee or trustees is not permitted by the terms of the
104 trust.

105 (e) A trustee may release the entire power conferred by
106 subsection (a) or may release only the power to adjust from
107 income to principal or the power to adjust from principal to
108 income if the trustee is uncertain about whether possessing or
109 exercising the power will cause a result described in
110 ~~subsection~~ subdivisions (c) (1) through ~~subsection~~ (c) (7) or if
111 the trustee determines that possessing or exercising the power
112 will or may deprive the trust of a tax benefit or impose a tax



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113 burden not described in subsection (c). The release may be
114 permanent or for a specified period, including a period
115 measured by the life of an individual.

116 ~~(f) The trustee or any beneficiary of a trust covered~~
117 ~~by this chapter (or a trust to be created from a decedent's~~
118 ~~estate that is covered by this chapter) (1) may seek approval~~
119 ~~from a court of competent jurisdiction to be governed~~
120 ~~prospectively by this section, or (2) may at any time~~
121 ~~affirmatively elect to be governed prospectively by this~~
122 ~~section by obtaining the written consent of all of the current~~
123 ~~income beneficiaries and the presumptive remainder~~
124 ~~beneficiaries of the trust, and such written consent shall~~
125 ~~conclusively bind all persons who may have any interest in the~~
126 ~~affected trust, including all contingent remainder~~
127 ~~beneficiaries and potential appointees of the trust. Terms of~~
128 ~~a trust which limit the power of a trustee to make an~~
129 ~~adjustment between principal and income do not affect the~~
130 ~~application of this section unless it is clear from the terms~~
131 ~~of the trust that the terms are intended to deny the trustee~~
132 ~~the power of adjustment conferred by subsection (a)."~~

133 Section 2. This act shall become effective on October
134 1, 2026.



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB178
Senate 17-Mar-26
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 08-Apr-26

By: Senator Barfoot