

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Trusts and Trustees Act is amended by  
5 changing Sections 5.3 and 16.1 as follows:

6 (760 ILCS 5/5.3)

7 Sec. 5.3. Total return trusts.

8 (a) Conversion by trustee. A trustee may convert a trust to  
9 a total return trust as described in this Section if all of the  
10 following apply:

11 (1) The trust describes the amount that may or must be  
12 distributed to a beneficiary by referring to the trust's  
13 income, and the trustee determines that conversion to a  
14 total return trust will enable the trustee to better carry  
15 out the purposes of the trust and the conversion is in the  
16 best interests of the beneficiaries;

17 (2) conversion to a total return trust means the  
18 trustee will invest and manage trust assets seeking a total  
19 return without regard to whether that return is from income  
20 or appreciation of principal, and will make distributions  
21 in accordance with this Section (such a trust is called a  
22 "total return trust" in this Section);

23 (3) the trustee sends a written notice of the trustee's

1 decision to convert the trust to a total return trust,  
2 specifying a prospective effective date for the conversion  
3 and including a copy of this Section, to the following  
4 beneficiaries, determined as of the date the notice is sent  
5 and assuming nonexercise of all powers of appointment:

6 (A) all of the legally competent beneficiaries who  
7 are currently receiving or eligible to receive income  
8 from the trust; and

9 (B) all of the legally competent beneficiaries who  
10 would receive or be eligible to receive a distribution  
11 of principal or income if the current interests of  
12 beneficiaries currently receiving or eligible to  
13 receive income ended;

14 (4) there are one or more legally competent income  
15 beneficiaries under subdivision (3) (A) of this subsection  
16 (a) and one or more legally competent remainder  
17 beneficiaries under subdivision (3) (B) of this subsection  
18 (a), determined as of the date of sending the notice;

19 (5) no beneficiary objects to the conversion to a total  
20 return trust in a writing delivered to the trustee within  
21 60 days after the notice is sent; and

22 (6) the trustee has signed acknowledgments of receipt  
23 confirming that notice was received by each beneficiary  
24 required to be sent notice under subdivision (3) of this  
25 subsection (a).

26 (b) Conversion by agreement. Conversion to a total return

1 trust may be made by agreement between a trustee and (i) all  
2 primary beneficiaries, either individually or by their  
3 respective representatives in accordance with subsection  
4 16.1(a)(2) of this Act, or (ii) all beneficiaries currently  
5 eligible to receive income or principal from the trust and all  
6 beneficiaries who are presumptive remaindermen, either  
7 individually or by their respective representatives in  
8 accordance with subsection 16.1(a)(3) of this Act ~~all the~~  
9 ~~primary beneficiaries of the trust under the virtual~~  
10 ~~representation provisions of Section 16.1 of this Act if those~~  
11 ~~provisions otherwise apply.~~ The agreement may include any  
12 actions a court could properly order under subsection (g) of  
13 this Section; however, any distribution percentage determined  
14 by the agreement may not be less than 3% nor greater than 5%.

15 (c) Conversion or reconversion by court.

16 (1) The trustee may for any reason elect to petition  
17 the court to order conversion to a total return trust,  
18 including without limitation the reason that conversion  
19 under subsection (a) is unavailable because:

20 (A) a beneficiary timely objects to the conversion  
21 to a total return trust;

22 (B) there are no legally competent beneficiaries  
23 described in subdivision (3)(A) of subsection (a); or

24 (C) there are no legally competent beneficiaries  
25 described in subdivision (3)(B) of subsection (a).

26 (2) A beneficiary may request the trustee to convert to

1 a total return trust or adjust the distribution percentage.  
2 If the trustee declines or fails to act within 6 months  
3 after receiving a written request to do so, the beneficiary  
4 may petition the court to order the conversion or  
5 adjustment.

6 (3) The trustee may petition the court prospectively to  
7 reconvert from a total return trust or adjust the  
8 distribution percentage if the trustee determines that the  
9 reconversion or adjustment will enable the trustee to  
10 better carry out the purposes of the trust. A beneficiary  
11 may request the trustee to petition the court prospectively  
12 to reconvert from a total return trust or adjust the  
13 distribution percentage. If the trustee declines or fails  
14 to act within 6 months after receiving a written request to  
15 do so, the beneficiary may petition the court to order the  
16 reconversion or adjustment.

17 (4) In a judicial proceeding under this subsection (c),  
18 the trustee may, but need not, present the trustee's  
19 opinions and reasons (A) for supporting or opposing  
20 conversion to (or reconversion from or adjustment of the  
21 distribution percentage of) a total return trust,  
22 including whether the trustee believes conversion (or  
23 reconversion or adjustment of the distribution percentage)  
24 would enable the trustee to better carry out the purposes  
25 of the trust, and (B) about any other matters relevant to  
26 the proposed conversion (or reconversion or adjustment of

1 the distribution percentage). A trustee's actions in  
2 accordance with this subsection (c) shall not be deemed  
3 improper or inconsistent with the trustee's duty of  
4 impartiality unless the court finds from all the evidence  
5 that the trustee acted in bad faith.

6 (5) The court shall order conversion to (or  
7 reconversion prospectively from or adjustment of the  
8 distribution percentage of) a total return trust if the  
9 court determines that the conversion (or reconversion or  
10 adjustment of the distribution percentage) will enable the  
11 trustee to better carry out the purposes of the trust and  
12 the conversion (or reconversion or adjustment of the  
13 distribution percentage) is in the best interests of the  
14 beneficiaries.

15 (6) Notwithstanding any other provision of this  
16 Section, a trustee has no duty to inform beneficiaries  
17 about the availability of this Section and has no duty to  
18 review the trust to determine whether any action should be  
19 taken under this Section unless requested to do so in  
20 writing by a beneficiary described in subdivision (3) of  
21 subsection (a).

22 (d) Post conversion. While a trust is a total return trust,  
23 all of the following shall apply to the trust:

24 (1) the trustee shall make income distributions in  
25 accordance with the governing instrument subject to the  
26 provisions of this Section;

1           (2) the term "income" in the governing instrument means  
2           an annual amount (the "distribution amount") equal to a  
3           percentage (the "distribution percentage") of the net fair  
4           market value of the trust's assets, whether the assets are  
5           considered income or principal under the Principal and  
6           Income Act, averaged over the lesser of:

7                   (i) the 3 preceding years; or

8                   (ii) the period during which the trust has been in  
9           existence;

10          (3) the distribution percentage for any trust  
11          converted to a total return trust by a trustee in  
12          accordance with subsection (a) shall be 4%;

13          (4) the trustee shall pay to a beneficiary (in the case  
14          of an underpayment) and shall recover from a beneficiary  
15          (in the case of an overpayment) an amount equal to the  
16          difference between the amount properly payable and the  
17          amount actually paid, plus interest compounded annually at  
18          a rate per annum equal to the distribution percentage in  
19          the year or years while the underpayment or overpayment  
20          exists; and

21          (5) a change in the method of determining a reasonable  
22          current return by converting to a total return trust in  
23          accordance with this Section and substituting the  
24          distribution amount for net trust accounting income is a  
25          proper change in the definition of trust income  
26          notwithstanding any contrary provision of the Principal

1 and Income Act, and the distribution amount shall be deemed  
2 a reasonable current return that fairly apportions the  
3 total return of a total return trust.

4 (e) Administration. The trustee, in the trustee's  
5 discretion, may determine any of the following matters in  
6 administering a total return trust as the trustee from time to  
7 time determines necessary or helpful for the proper functioning  
8 of the trust:

9 (1) the effective date of a conversion to a total  
10 return trust;

11 (2) the manner of prorating the distribution amount for  
12 a short year in which a beneficiary's interest commences or  
13 ceases;

14 (3) whether distributions are made in cash or in kind;

15 (4) the manner of adjusting valuations and  
16 calculations of the distribution amount to account for  
17 other payments from or contributions to the trust;

18 (5) whether to value the trust's assets annually or  
19 more frequently;

20 (6) what valuation dates and how many valuation dates  
21 to use;

22 (7) valuation decisions about any asset for which there  
23 is no readily available market value, including:

24 (A) how frequently to value such an asset;

25 (B) whether and how often to engage a professional  
26 appraiser to value such an asset; and

1 (C) whether to exclude the value of such an asset  
2 from the net fair market value of the trust's assets  
3 under subdivision (d)(2) for purposes of determining  
4 the distribution amount. Any such asset so excluded is  
5 referred to as an "excluded asset" in this subsection  
6 (e), and the trustee shall distribute any net income  
7 received from the excluded asset as provided for in the  
8 governing instrument, subject to the following  
9 principles:

10 (i) unless the trustee determines there are  
11 compelling reasons to the contrary considering all  
12 relevant factors including the best interests of  
13 the beneficiaries, the trustee shall treat each  
14 asset for which there is no readily available  
15 market value as an excluded asset;

16 (ii) if tangible personal property or real  
17 property is possessed or occupied by a  
18 beneficiary, the trustee shall not limit or  
19 restrict any right of the beneficiary to use the  
20 property in accordance with the governing  
21 instrument whether or not the trustee treats the  
22 property as an excluded asset;

23 (iii) examples of assets for which there is a  
24 readily available market value include: cash and  
25 cash equivalents; stocks, bonds, and other  
26 securities and instruments for which there is an



1 established market on a stock exchange, in an  
2 over-the-counter market, or otherwise; and any  
3 other property that can reasonably be expected to  
4 be sold within one week of the decision to sell  
5 without extraordinary efforts by the seller;

6 (iv) examples of assets for which there is no  
7 readily available market value include: stocks,  
8 bonds, and other securities and instruments for  
9 which there is no established market on a stock  
10 exchange, in an over-the-counter market, or  
11 otherwise; real property; tangible personal  
12 property; and artwork and other collectibles; and

13 (8) any other administrative matters as the trustee  
14 determines necessary or helpful for the proper functioning  
15 of the total return trust.

16 (f) Allocations.

17 (1) Expenses, taxes, and other charges that would be  
18 deducted from income if the trust were not a total return  
19 trust shall not be deducted from the distribution amount.

20 (2) Unless otherwise provided by the governing  
21 instrument, the trustee shall fund the distribution amount  
22 each year from the following sources for that year in the  
23 order listed: first from net income (as the term would be  
24 determined if the trust were not a total return trust),  
25 then from other ordinary income as determined for federal  
26 income tax purposes, then from net realized short-term

1 capital gains as determined for federal income tax  
2 purposes, then from net realized long-term capital gains as  
3 determined for federal income tax purposes, then from trust  
4 principal comprised of assets for which there is a readily  
5 available market value, and then from other trust  
6 principal.

7 (g) Court orders. The court may order any of the following  
8 actions in a proceeding brought by a trustee or a beneficiary  
9 in accordance with subdivision (c) (1), (c) (2), or (c) (3):

10 (1) select a distribution percentage other than 4%;

11 (2) average the valuation of the trust's net assets  
12 over a period other than 3 years;

13 (3) reconvert prospectively from or adjust the  
14 distribution percentage of a total return trust;

15 (4) direct the distribution of net income (determined  
16 as if the trust were not a total return trust) in excess of  
17 the distribution amount as to any or all trust assets if  
18 the distribution is necessary to preserve a tax benefit; or

19 (5) change or direct any administrative procedure as  
20 the court determines necessary or helpful for the proper  
21 functioning of the total return trust.

22 Nothing in this subsection (g) limits the equitable powers  
23 of the court to grant other relief.

24 (h) Restrictions. Conversion to a total return trust does  
25 not affect any provision in the governing instrument:

26 (1) directing or authorizing the trustee to distribute

1 principal;

2 (2) directing or authorizing the trustee to distribute  
3 a fixed annuity or a fixed fraction of the value of trust  
4 assets;

5 (3) authorizing a beneficiary to withdraw a portion or  
6 all of the principal; or

7 (4) in any manner that would diminish an amount  
8 permanently set aside for charitable purposes under the  
9 governing instrument unless both income and principal are  
10 so set aside.

11 (i) Tax limitations. If a particular trustee is a  
12 beneficiary of the trust and conversion or failure to convert  
13 would enhance or diminish the beneficial interest of the  
14 trustee, or if possession or exercise of the conversion power  
15 by a particular trustee would alone cause any individual to be  
16 treated as owner of a part of the trust for income tax purposes  
17 or cause a part of the trust to be included in the gross estate  
18 of any individual for estate tax purposes, then that particular  
19 trustee may not participate as a trustee in the exercise of the  
20 conversion power; however:

21 (1) the trustee may petition the court under  
22 subdivision (c)(1) to order conversion in accordance with  
23 this Section; and

24 (2) if the trustee has one or more co-trustees to whom  
25 this subsection (i) does not apply, the co-trustee or  
26 co-trustees may convert the trust to a total return trust

1 in accordance with this Section.

2 (j) Releases. A trustee may irrevocably release the power  
3 granted by this Section if the trustee reasonably believes the  
4 release is in the best interests of the trust and its  
5 beneficiaries. The release may be personal to the releasing  
6 trustee or may apply generally to some or all subsequent  
7 trustees, and the release may be for any specified period,  
8 including a period measured by the life of an individual.

9 (k) Remedies. A trustee who reasonably and in good faith  
10 takes or omits to take any action under this Section is not  
11 liable to any person interested in the trust. If a trustee  
12 reasonably and in good faith takes or omits to take any action  
13 under this Section and a person interested in the trust opposes  
14 the act or omission, the person's exclusive remedy is to obtain  
15 an order of the court directing the trustee to convert the  
16 trust to a total return trust, to reconvert from a total return  
17 trust, to change the distribution percentage, or to order any  
18 administrative procedures the court determines necessary or  
19 helpful for the proper functioning of the trust. An act or  
20 omission by a trustee under this Section is presumed taken or  
21 omitted reasonably and in good faith unless it is determined by  
22 the court to have been an abuse of discretion. Any claim by any  
23 person interested in the trust that an act or omission by a  
24 trustee under this Section was an abuse of discretion is barred  
25 if not asserted in a proceeding commenced by or on behalf of  
26 the person within 2 years after the trustee has sent to the

1 person or the person's personal representative a notice or  
2 report in writing sufficiently disclosing facts fundamental to  
3 the claim such that the person knew or reasonably should have  
4 known of the claim. The preceding sentence shall not apply to a  
5 person who was under a legal disability at the time the notice  
6 or report was sent and who then had no personal representative.  
7 For purposes of this subsection (k), a personal representative  
8 refers to a court appointed guardian or conservator of the  
9 estate of a person.

10 (1) Application. This Section is available to trusts in  
11 existence on the effective date of this amendatory Act of the  
12 92nd General Assembly or created after that date. This Section  
13 shall be construed as pertaining to the administration of a  
14 trust and shall be available to any trust that is administered  
15 in Illinois under Illinois law or that is governed by Illinois  
16 law with respect to the meaning and effect of its terms unless:

17 (1) the trust is a trust described in Internal Revenue  
18 Code Section 642(c)(5), 664(d), 2702(a)(3), or 2702(b); or

19 (2) the governing instrument expressly prohibits use  
20 of this Section by specific reference to this Section. A  
21 provision in the governing instrument in the form: "Neither  
22 the provisions of Section 5.3 of the Trusts and Trustees  
23 Act nor any corresponding provision of future law may be  
24 used in the administration of this trust" or a similar  
25 provision demonstrating that intent is sufficient to  
26 preclude the use of this Section.

1 (m) Application to express trusts.

2 (1) This subsection (m) does not apply to a charitable  
3 remainder unitrust as defined by Section 664(d), Internal  
4 Revenue Code of 1986 (26 U.S.C. Section 664), as amended.

5 (2) In this subsection (m):

6 (A) "Unitrust" means a trust the terms of which  
7 require distribution of a unitrust amount, without  
8 regard to whether the trust has been converted to a  
9 total return trust in accordance with this Section or  
10 whether the trust is established by express terms of  
11 the governing instrument.

12 (B) "Unitrust amount" means an amount equal to a  
13 percentage of a trust's assets that may or must be  
14 distributed to one or more beneficiaries annually in  
15 accordance with the terms of the trust. The unitrust  
16 amount may be determined by reference to the net fair  
17 market value of the trust's assets as of a particular  
18 date or as an average determined on a multiple year  
19 basis.

20 (3) A unitrust changes the definition of income by  
21 substituting the unitrust amount for net trust accounting  
22 income as the method of determining current return and  
23 shall be given effect notwithstanding any contrary  
24 provision of the Principal and Income Act. By way of  
25 example and not limitation, a unitrust amount determined by  
26 a percentage of not less than 3% nor greater than 5% is

1 conclusively presumed a reasonable current return that  
2 fairly apportions the total return of a unitrust.

3 (4) The allocations provision of subdivision (2) of  
4 subsection (f) of Section 5.3 applies to a unitrust except  
5 to the extent its governing instrument expressly provides  
6 otherwise.

7 (Source: P.A. 92-838, eff. 8-22-02; 93-991, eff. 8-23-04.)

8 (760 ILCS 5/16.1)

9 Sec. 16.1. Virtual representation.

10 (a) Representation by person having substantially  
11 identical interest; contingent remainder beneficiaries.

12 (1) To the extent there is no conflict of interest  
13 between the representative and the person represented, a  
14 minor, disabled, or unborn person, or a person whose  
15 identity or location is unknown and not reasonably  
16 ascertainable, may be represented by and bound by another  
17 individual having a substantially identical interest with  
18 respect to the particular question or dispute; provided,  
19 however, that such person is not otherwise represented by a  
20 court appointed guardian as provided in the next sentence.  
21 If a person is represented by a court appointed guardian of  
22 the estate or, if none, by a court appointed guardian of  
23 the person, the actions of such guardian shall represent  
24 and bind that person for purposes of this subsection  
25 (a)(1).

1           (2) If all primary beneficiaries of a trust either are  
2           adults and not disabled, or have representatives in  
3           accordance with subsection (a)(1) who are adults and not  
4           disabled, the actions of such primary beneficiaries, or  
5           their respective representatives, shall represent and bind  
6           all other persons who have a successor, contingent, future,  
7           or other interest in the trust and who would become primary  
8           beneficiaries only by reason of surviving a primary  
9           beneficiary.

10           For purposes of this Section, "primary beneficiary"  
11           means a beneficiary who is either: (i) currently eligible  
12           to receive income or principal from the trust or (ii)  
13           assuming nonexercise of all powers of appointment, will be  
14           eligible to receive a distribution of principal from the  
15           trust if the beneficiary survives to the final date of  
16           distribution with respect to the beneficiary's share.

17           (3) If all presumptive remainder beneficiaries either  
18           are adults and not disabled, or have representatives in  
19           accordance with subsection (a)(1) who are adults and not  
20           disabled, the actions of such presumptive remainder  
21           beneficiaries, or their respective representatives, shall  
22           represent and bind all other beneficiaries who have a  
23           successor, contingent, or other future interest in the  
24           trust. For purposes of this Section, "presumptive  
25           remainder beneficiaries" means, as of the date of  
26           determination and assuming nonexercise of all powers of



1 appointment, all beneficiaries who either (A) would be  
2 eligible to receive a distribution of income or principal  
3 if the trust terminated on that date, or (B) would be  
4 eligible to receive a distribution of income or principal  
5 if the interests of all beneficiaries currently eligible to  
6 receive income or principal from the trust ended without  
7 causing the trust to terminate.

8 (4) The consent of a person who may represent and bind  
9 another person in accordance with this Section is binding  
10 on the person represented, and notice to a person who may  
11 represent and bind another person in accordance with this  
12 Section has the same effect as if notice were given  
13 directly to the other person.

14 (b) Total return trusts. This Section shall apply to enable  
15 conversion to a total return trust by agreement in accordance  
16 with subsection 5.3(b) of the total return trust provisions of  
17 Section 5.3 of this Act, whether such agreement is made between  
18 the trustee and (A) all primary beneficiaries, either  
19 individually or by their respective representatives in  
20 accordance with subsection (a)(1), or (B) all beneficiaries  
21 currently eligible to receive income or principal from the  
22 trust and all beneficiaries who are presumptive remaindermen of  
23 the trust, in each case either individually or by their  
24 respective representatives in accordance with subsection  
25 (a)(1).

26 (c) Representation of charity. If a trust provides a

1 beneficial interest or expectancy for one or more charities or  
2 charitable purposes that are not specifically named or  
3 otherwise represented (the "charitable interest"), the  
4 Illinois Attorney General may, in accordance with this Section,  
5 represent, bind, and act on behalf of the charitable interest  
6 with respect to any particular question or dispute, including  
7 without limitation representing the charitable interest in a  
8 nonjudicial settlement agreement or in an agreement to convert  
9 a trust to a total return trust in accordance with subsection  
10 5.3(b) of the total return trust provisions of Section 5.3 of  
11 this Act. This subsection (c) shall be construed as being  
12 declarative of existing law and not as a new enactment.  
13 Notwithstanding any other provision, nothing in this Section  
14 shall be construed to limit or affect the Illinois Attorney  
15 General's authority to file an action or take other steps as he  
16 or she deems advisable at any time to enforce or protect the  
17 general public interest as to a trust that provides a  
18 beneficial interest or expectancy for one or more charities or  
19 charitable purposes whether or not a specific charity is named  
20 in the trust.

21 (d) Nonjudicial settlement agreements.

22 (1) For purposes of this Section, "interested persons"  
23 means the trustee and all other persons and parties in  
24 interest whose consent or joinder would be required in  
25 order to achieve a binding settlement were the settlement  
26 to be approved by the court.

1           (2) Except as otherwise provided in subsection (d)(3),  
2           interested persons, or their respective representatives  
3           determined after giving effect to the preceding provisions  
4           of this Section, may enter into a binding nonjudicial  
5           settlement agreement with respect to any matter involving a  
6           trust.

7           (3) A nonjudicial settlement agreement is valid only to  
8           the extent its terms and conditions could be properly  
9           approved under applicable law by a court of competent  
10           jurisdiction.

11           (4) Matters that may be resolved by a nonjudicial  
12           settlement agreement include but are not limited to:

13                   (A) interpretation or construction of the terms of  
14                   the trust;

15                   (B) approval of a trustee's report or accounting;

16                   (C) exercise or nonexercise of any power by a  
17                   trustee;

18                   (D) the grant to a trustee of any necessary or  
19                   desirable administrative power;

20                   (E) questions relating to property or an interest  
21                   in property held by the trust;

22                   (F) resignation or appointment of a trustee;

23                   (G) determination of a trustee's compensation;

24                   (H) transfer of a trust's principal place of  
25                   administration;

26                   (I) liability or indemnification of a trustee for

1 an action relating to the trust;

2 (J) resolution of disputes or issues related to  
3 administration, investment, distribution or other  
4 matters;

5 (K) modification of terms of the trust pertaining  
6 to administration of the trust; and

7 (L) termination of the trust, provided that court  
8 approval of such termination must be obtained in  
9 accordance with subsection (d)(5), and the court must  
10 conclude continuance of the trust is not necessary to  
11 achieve any material purpose of the trust; upon such  
12 termination the court may order the trust property  
13 distributed as agreed by the parties to the agreement  
14 or otherwise as the court determines equitable  
15 consistent with the purposes of the trust.

16 (5) Any interested person may request the court to  
17 approve any part or all of a nonjudicial settlement  
18 agreement, including whether any representation is  
19 adequate and without conflict of interest, provided that  
20 the petition for such approval must be filed before or  
21 within 60 days after the effective date of the agreement.

22 (6) An agreement entered into in accordance with this  
23 Section shall be final and binding on the trustee and all  
24 beneficiaries of the trust, both current and future, as if  
25 ordered by a court with competent jurisdiction over all  
26 parties in interest.

1           (7) In the trustee's sole discretion, the trustee may,  
2           but is not required to, obtain and rely upon opinion of  
3           counsel on any matter relevant to this Section, including  
4           that any agreement proposed to be made in accordance with  
5           this Section could be properly approved by the court under  
6           applicable law, or that there is no conflict of interest  
7           between a representative and the person represented or  
8           among those being represented with respect to a particular  
9           question or dispute.

10          (e) Application. On and after its effective date, this  
11          Section applies to all existing and future trusts, judicial  
12          proceedings, or agreements entered into in accordance with this  
13          Section on or after the effective date.

14          ~~(a) If all primary beneficiaries of a trust are adults and~~  
15          ~~not incapacitated, except as provided in subsection (c), any~~  
16          ~~written agreement; including, without limitation, an agreement~~  
17          ~~construing any provision of the trust or an agreement regarding~~  
18          ~~any duty, power, responsibility, or action of the trustee,~~  
19          ~~between a trustee and all of the primary beneficiaries of a~~  
20          ~~trust shall be final and binding on the trustee and all~~  
21          ~~beneficiaries of the trust, both current and future, as if~~  
22          ~~ordered by a court with competent jurisdiction over all parties~~  
23          ~~in interest, if all other persons who have a contingent,~~  
24          ~~future, or other interest in the trust would become primary~~  
25          ~~beneficiaries only by reason of surviving a primary~~  
26          ~~beneficiary.~~

1       ~~(b) For purposes of this Section, "primary beneficiary"~~  
2       ~~means a beneficiary who is either: (1) currently entitled or~~  
3       ~~eligible to receive any portion of the trust income or~~  
4       ~~principal, or (2) assuming nonexercise of all powers of~~  
5       ~~appointment, will receive, or be entitled to withdraw, all or a~~  
6       ~~portion of the principal of the trust, if the beneficiary~~  
7       ~~survives to the final date of distribution with respect to the~~  
8       ~~beneficiary's share.~~

9       ~~(c) This Section shall not apply to an agreement that~~  
10       ~~accelerates the termination of a trust, in whole or in part.~~

11       ~~(d) In the trustee's sole discretion, the trustee may~~  
12       ~~obtain opinion of counsel that any agreement proposed to be~~  
13       ~~made under this Section is not clearly contrary to the express~~  
14       ~~terms of the trust instrument. The trustee may, but is not~~  
15       ~~required to, enter into an agreement under this Section. On and~~  
16       ~~after its effective date, this Section applies to all existing~~  
17       ~~and future trusts, but only as to agreements entered into on or~~  
18       ~~after the effective date.~~

19       (Source: P.A. 88-367.)