



Sen. Kirk W. Dillard

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09800SB2984sam001

LRB098 12960 HEP 56767 a

1 AMENDMENT TO SENATE BILL 2984

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2984 by replacing  
3 everything after the enacting clause with the following:

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;

1           (2) conversion to a total return trust means the  
2 trustee will invest and manage trust assets seeking a total  
3 return without regard to whether that return is from income  
4 or appreciation of principal, and will make distributions  
5 in accordance with this Section (such a trust is called a  
6 "total return trust" in this Section);

7           (3) the trustee sends a written notice of the trustee's  
8 decision to convert the trust to a total return trust,  
9 specifying a prospective effective date for the conversion  
10 and including a copy of this Section, to the following  
11 beneficiaries, determined as of the date the notice is sent  
12 and assuming nonexercise of all powers of appointment:

13           (A) all of the legally competent beneficiaries who  
14 are currently receiving or eligible to receive income  
15 from the trust; and

16           (B) all of the legally competent beneficiaries who  
17 would receive or be eligible to receive a distribution  
18 of principal or income if the current interests of  
19 beneficiaries currently receiving or eligible to  
20 receive income ended;

21           (4) there are one or more legally competent income  
22 beneficiaries under subdivision (3) (A) of this subsection  
23 (a) and one or more legally competent remainder  
24 beneficiaries under subdivision (3) (B) of this subsection  
25 (a), determined as of the date of sending the notice;

26           (5) no beneficiary objects to the conversion to a total

1 return trust in a writing delivered to the trustee within  
2 60 days after the notice is sent; and

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

7 (b) Conversion by agreement. Conversion to a total return  
8 trust may be made by agreement between a trustee and ~~(i)~~ all  
9 primary beneficiaries, acting either individually or by their  
10 respective representatives in accordance with Section  
11 ~~subsection 16.1(a)(2)~~ of this Act, ~~or (ii) all beneficiaries~~  
12 ~~currently eligible to receive income or principal from the~~  
13 ~~trust and all beneficiaries who are presumptive remaindermen,~~  
14 ~~either individually or by their respective representatives in~~  
15 ~~accordance with subsection 16.1(a)(3) of this Act.~~ The  
16 agreement may include any actions a court could properly order  
17 under subsection (g) of this Section; however, any distribution  
18 percentage determined by the agreement may not be less than 3%  
19 nor greater than 5%.

20 (c) Conversion or reconversion by court.

21 (1) The trustee may for any reason elect to petition  
22 the court to order conversion to a total return trust,  
23 including without limitation the reason that conversion  
24 under subsection (a) is unavailable because:

25 (A) a beneficiary timely objects to the conversion  
26 to a total return trust;

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

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

5 (2) A beneficiary may request the trustee to convert to  
6 a total return trust or adjust the distribution percentage.  
7 If the trustee declines or fails to act within 6 months  
8 after receiving a written request to do so, the beneficiary  
9 may petition the court to order the conversion or  
10 adjustment.

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

22 (4) In a judicial proceeding under this subsection (c),  
23 the trustee may, but need not, present the trustee's  
24 opinions and reasons (A) for supporting or opposing  
25 conversion to (or reconversion from or adjustment of the  
26 distribution percentage of) a total return trust,

1 including whether the trustee believes conversion (or  
2 reconversion or adjustment of the distribution percentage)  
3 would enable the trustee to better carry out the purposes  
4 of the trust, and (B) about any other matters relevant to  
5 the proposed conversion (or reconversion or adjustment of  
6 the distribution percentage). A trustee's actions in  
7 accordance with this subsection (c) shall not be deemed  
8 improper or inconsistent with the trustee's duty of  
9 impartiality unless the court finds from all the evidence  
10 that the trustee acted in bad faith.

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

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

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

3 (1) the trustee shall make income distributions in  
4 accordance with the governing instrument subject to the  
5 provisions of this Section;

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

12 (i) the 3 preceding years; or

13 (ii) the period during which the trust has been in  
14 existence;

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

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

26 (5) a change in the method of determining a reasonable

1 current return by converting to a total return trust in  
2 accordance with this Section and substituting the  
3 distribution amount for net trust accounting income is a  
4 proper change in the definition of trust income  
5 notwithstanding any contrary provision of the Principal  
6 and Income Act, and the distribution amount shall be deemed  
7 a reasonable current return that fairly apportions the  
8 total return of a total return trust.

9 (e) Administration. The trustee, in the trustee's  
10 discretion, may determine any of the following matters in  
11 administering a total return trust as the trustee from time to  
12 time determines necessary or helpful for the proper functioning  
13 of the trust:

14 (1) the effective date of a conversion to a total  
15 return trust;

16 (2) the manner of prorating the distribution amount for  
17 a short year in which a beneficiary's interest commences or  
18 ceases;

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

20 (4) the manner of adjusting valuations and  
21 calculations of the distribution amount to account for  
22 other payments from or contributions to the trust;

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

25 (6) what valuation dates and how many valuation dates  
26 to use;

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

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

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

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

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

21           (ii) if tangible personal property or real  
22 property is possessed or occupied by a  
23 beneficiary, the trustee shall not limit or  
24 restrict any right of the beneficiary to use the  
25 property in accordance with the governing  
26 instrument whether or not the trustee treats the



1 property as an excluded asset;

2 (iii) examples of assets for which there is a  
3 readily available market value include: cash and  
4 cash equivalents; stocks, bonds, and other  
5 securities and instruments for which there is an  
6 established market on a stock exchange, in an  
7 over-the-counter market, or otherwise; and any  
8 other property that can reasonably be expected to  
9 be sold within one week of the decision to sell  
10 without extraordinary efforts by the seller;

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

18 (8) any other administrative matters as the trustee  
19 determines necessary or helpful for the proper functioning  
20 of the total return trust.

21 (f) Allocations.

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

25 (2) Unless otherwise provided by the governing  
26 instrument, the trustee shall fund the distribution amount

1 each year from the following sources for that year in the  
2 order listed: first from net income (as the term would be  
3 determined if the trust were not a total return trust),  
4 then from other ordinary income as determined for federal  
5 income tax purposes, then from net realized short-term  
6 capital gains as determined for federal income tax  
7 purposes, then from net realized long-term capital gains as  
8 determined for federal income tax purposes, then from trust  
9 principal comprised of assets for which there is a readily  
10 available market value, and then from other trust  
11 principal.

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

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

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

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

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

24 (5) change or direct any administrative procedure as  
25 the court determines necessary or helpful for the proper  
26 functioning of the total return trust.

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

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

5                 (1) directing or authorizing the trustee to distribute  
6 principal;

7                 (2) directing or authorizing the trustee to distribute  
8 a fixed annuity or a fixed fraction of the value of trust  
9 assets;

10                (3) authorizing a beneficiary to withdraw a portion or  
11 all of the principal; or

12                (4) in any manner that would diminish an amount  
13 permanently set aside for charitable purposes under the  
14 governing instrument unless both income and principal are  
15 so set aside.

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

26                (1) the trustee may petition the court under

1 subdivision (c)(1) to order conversion in accordance with  
2 this Section; and

3 (2) if the trustee has one or more co-trustees to whom  
4 this subsection (i) does not apply, the co-trustee or  
5 co-trustees may convert the trust to a total return trust  
6 in accordance with this Section.

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

14 (k) Remedies. A trustee who reasonably and in good faith  
15 takes or omits to take any action under this Section is not  
16 liable to any person interested in the trust. If a trustee  
17 reasonably and in good faith takes or omits to take any action  
18 under this Section and a person interested in the trust opposes  
19 the act or omission, the person's exclusive remedy is to obtain  
20 an order of the court directing the trustee to convert the  
21 trust to a total return trust, to reconvert from a total return  
22 trust, to change the distribution percentage, or to order any  
23 administrative procedures the court determines necessary or  
24 helpful for the proper functioning of the trust. An act or  
25 omission by a trustee under this Section is presumed taken or  
26 omitted reasonably and in good faith unless it is determined by

1 the court to have been an abuse of discretion. Any claim by any  
2 person interested in the trust that an act or omission by a  
3 trustee under this Section was an abuse of discretion is barred  
4 if not asserted in a proceeding commenced by or on behalf of  
5 the person within 2 years after the trustee has sent to the  
6 person or the person's personal representative a notice or  
7 report in writing sufficiently disclosing facts fundamental to  
8 the claim such that the person knew or reasonably should have  
9 known of the claim. The preceding sentence shall not apply to a  
10 person who was under a legal disability at the time the notice  
11 or report was sent and who then had no personal representative.  
12 For purposes of this subsection (k), a personal representative  
13 refers to a court appointed guardian or conservator of the  
14 estate of a person.

15 (1) Application. This Section is available to trusts in  
16 existence on the effective date of this amendatory Act of the  
17 92nd General Assembly or created after that date. This Section  
18 shall be construed as pertaining to the administration of a  
19 trust and shall be available to any trust that is administered  
20 in Illinois ~~under Illinois law~~ or that is governed by Illinois  
21 law with respect to the meaning and effect of its terms unless:

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

24 (2) the governing instrument expressly prohibits use  
25 of this Section by specific reference to this Section. A  
26 provision in the governing instrument in the form: "Neither

1 the provisions of Section 5.3 of the Trusts and Trustees  
2 Act nor any corresponding provision of future law may be  
3 used in the administration of this trust" or a similar  
4 provision demonstrating that intent is sufficient to  
5 preclude the use of this Section.

6 (m) Application to express trusts.

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

10 (2) In this subsection (m):

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

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

25 (3) A unitrust changes the definition of income by  
26 substituting the unitrust amount for net trust accounting

1 income as the method of determining current return and  
2 shall be given effect notwithstanding any contrary  
3 provision of the Principal and Income Act. By way of  
4 example and not limitation, a unitrust amount determined by  
5 a percentage of not less than 3% nor greater than 5% is  
6 conclusively presumed a reasonable current return that  
7 fairly apportions the total return of a unitrust.

8 (4) The allocations provision of subdivision (2) of  
9 subsection (f) of Section 5.3 applies to a unitrust except  
10 to the extent its governing instrument expressly provides  
11 otherwise.

12 (Source: P.A. 96-479, eff. 1-1-10.)

13 (760 ILCS 5/16.1)

14 Sec. 16.1. Virtual representation.

15 (a) Representation by a beneficiary with a person having  
16 substantially similar ~~identical~~ interest, by the primary  
17 beneficiaries and by others; ~~contingent remainder~~  
18 ~~beneficiaries.~~

19 (1) To the extent there is no conflict of interest  
20 between the representative and the ~~person~~ represented  
21 beneficiary with respect to the particular question or  
22 dispute, a beneficiary who is a minor, or a disabled, or  
23 unborn beneficiary person, or a beneficiary person whose  
24 identity or location is unknown and not reasonably  
25 ascertainable (hereinafter referred to as an

1 "unascertainable beneficiary"), may for all purposes be  
2 represented by and bound by another beneficiary individual  
3 having a substantially similar ~~identical~~ interest with  
4 respect to the particular question or dispute; provided,  
5 however, that the represented beneficiary ~~such person~~ is  
6 not otherwise represented by a ~~court appointed~~ guardian or  
7 agent in accordance with subdivision (a) (4) or by a parent  
8 in accordance with subdivision (a) (5) ~~as provided in the~~  
9 ~~next sentence. If a person is represented by a court~~  
10 ~~appointed guardian of the estate or, if none, by a court~~  
11 ~~appointed guardian of the person, the actions of such~~  
12 ~~guardian shall represent and bind that person for purposes~~  
13 ~~of this subsection (a) (1).~~

14 (2) If all primary beneficiaries of a trust either have  
15 legal capacity ~~are adults and not disabled,~~ or have  
16 representatives in accordance with this subsection (a) ~~(1)~~  
17 who have legal capacity ~~are adults and not disabled,~~ the  
18 actions of such primary beneficiaries, in each case either  
19 by the beneficiary or by the beneficiary's representative  
20 ~~or their respective representatives,~~ shall represent and  
21 bind all other beneficiaries ~~persons~~ who have a successor,  
22 contingent, future, or other interest in the trust ~~and who~~  
23 ~~would become primary beneficiaries only by reason of~~  
24 ~~surviving a primary beneficiary.~~

25 ~~For purposes of this Section, "primary beneficiary"~~  
26 ~~means a beneficiary who is either: (i) currently eligible~~



1 ~~to receive income or principal from the trust or (ii)~~  
2 ~~assuming nonexercise of all powers of appointment, will be~~  
3 ~~eligible to receive a distribution of principal from the~~  
4 ~~trust if the beneficiary survives to the final date of~~  
5 ~~distribution with respect to the beneficiary's share.~~

6 (3) For purposes of this Act:

7 (A) "Primary beneficiary" means a beneficiary of a  
8 trust who as of the date of determination is either:  
9 (i) currently eligible to receive income or principal  
10 from the trust, or (ii) a presumptive remainder  
11 beneficiary. If all presumptive remainder  
12 beneficiaries either are adults and not disabled, or  
13 have representatives in accordance with subsection  
14 (a)(1) who are adults and not disabled, the actions of  
15 such presumptive remainder beneficiaries, or their  
16 respective representatives, shall represent and bind  
17 all other beneficiaries who have a successor,  
18 contingent, or other future interest in the trust. For  
19 purposes of this Section, "presumptive remainder  
20 beneficiaries" means,

21 (B) "Presumptive remainder beneficiary" means a  
22 beneficiary of a trust, as of the date of determination  
23 and assuming nonexercise of all powers of appointment,  
24 all beneficiaries who either: (i) (A) would be eligible  
25 to receive a distribution of income or principal if the  
26 trust terminated on that date, or (ii) (B) would be

1 eligible to receive a distribution of income or  
2 principal if the interests of all beneficiaries  
3 currently eligible to receive income or principal from  
4 the trust ended on that date without causing the trust  
5 to terminate.

6 (C) "Disabled person" as of any date means either a  
7 disabled person within the meaning of Section 11a-2 of  
8 the Probate Act of 1975 or a person who, within the 365  
9 days immediately preceding that date, was examined by a  
10 licensed physician who determined that the person  
11 lacked the capacity to make prudent financial  
12 decisions, and the physician made a written record of  
13 the physician's determination and signed the written  
14 record within 90 days after the examination.

15 (D) A person has legal capacity unless the person  
16 is a minor or a disabled person.

17 (4) If a trust beneficiary is represented by a court  
18 appointed guardian of the estate or, if none, guardian of  
19 the person, the guardian shall represent and bind the  
20 beneficiary. If a trust beneficiary is a disabled person,  
21 an agent under a power of attorney for property who has  
22 authority to act with respect to the particular question or  
23 dispute and who does not have a conflict of interest with  
24 respect to the particular question or dispute may represent  
25 and bind the principal. An agent is deemed to have such  
26 authority if the power of attorney grants the agent the

1 power to settle claims and to exercise powers with respect  
2 to trusts and estates, even if the powers do not include  
3 powers to make a will, to revoke or amend a trust, or to  
4 require the trustee to pay income or principal. Absent a  
5 court order pursuant to the Illinois Power of Attorney Act  
6 directing a guardian to exercise powers of the principal  
7 under an agency that survives disability, an agent under a  
8 power of attorney for property who in accordance with this  
9 subdivision has authority to represent and bind a disabled  
10 principal takes precedence over a court appointed guardian  
11 unless the court specifies otherwise. This subdivision  
12 applies to all agencies, whenever and wherever executed.  
13 ~~The consent of a person who may represent and bind another~~  
14 ~~person in accordance with this Section is binding on the~~  
15 ~~person represented, and notice to a person who may~~  
16 ~~represent and bind another person in accordance with this~~  
17 ~~Section has the same effect as if notice were given~~  
18 ~~directly to the other person.~~

19 (5) If a trust beneficiary is a minor or a disabled or  
20 unborn person and is not represented by a guardian or agent  
21 in accordance with subdivision (a) (4), then a parent of the  
22 beneficiary may represent and bind the beneficiary,  
23 provided that there is no conflict of interest between the  
24 represented person and either of the person's parents with  
25 respect to the particular question or dispute. If a  
26 disagreement arises between parents who otherwise qualify

1 to represent a child in accordance with this subsection (a)  
2 and who are seeking to represent the same child, the parent  
3 who is a lineal descendant of the settlor of the trust that  
4 is the subject of the representation is entitled to  
5 represent the child; or if none, the parent who is a  
6 beneficiary of the trust is entitled to represent the  
7 child.

8 (6) A guardian, agent or parent who is the  
9 representative for a beneficiary under subdivision (a) (4)  
10 or (a) (5) may, for all purposes, represent and bind any  
11 other beneficiary who is a minor or a disabled, unborn, or  
12 unascertainable beneficiary who has an interest, with  
13 respect to the particular question or dispute, that is  
14 substantially similar to the interest of the beneficiary  
15 represented by the representative, but only to the extent  
16 that there is no conflict of interest between the  
17 beneficiary represented by the representative and the  
18 other beneficiary with respect to the particular question  
19 or dispute; provided, however, that the other beneficiary  
20 is not otherwise represented by a guardian or agent in  
21 accordance with subdivision (a) (4) or by a parent in  
22 accordance with subdivision (a) (5).

23 (7) The action or consent of a representative who may  
24 represent and bind a beneficiary in accordance with this  
25 Section is binding on the beneficiary represented, and  
26 notice or service of process to the representative has the

1        same effect as if the notice or service of process were  
2        given directly to the beneficiary represented.

3        (8) Nothing in this Section limits the discretionary  
4        power of a court in a judicial proceeding to appoint a  
5        guardian ad litem for any minor, disabled, unborn, or  
6        unascertainable beneficiary with respect to a particular  
7        question or dispute, but appointment of a guardian ad litem  
8        need not be considered and is not necessary if such  
9        beneficiary is otherwise represented in accordance with  
10       this Section.

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

25       (c) Representation of charity. If a trust provides a  
26 beneficial interest or expectancy for one or more charities or

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

24 (d) Nonjudicial settlement agreements.

25 (1) For purposes of this Section, "interested persons"  
26 means the trustee and all beneficiaries, or their

1 respective representatives determined after giving effect  
2 to the preceding provisions of this Section, ~~other persons~~  
3 ~~and parties in interest~~ whose consent or joinder would be  
4 required in order to achieve a binding settlement were the  
5 settlement to be approved by the court. "Interested  
6 persons" also includes a trust advisor, investment  
7 advisor, distribution advisor, trust protector or other  
8 holder, or committee of holders, of fiduciary or  
9 nonfiduciary powers, if the person then holds powers  
10 material to a particular question or dispute to be resolved  
11 or affected by a nonjudicial settlement agreement in  
12 accordance with this Section or by the court.

13 (2) Interested ~~Except as otherwise provided in~~  
14 ~~subsection (d)(3), interested persons, or their respective~~  
15 ~~representatives determined after giving effect to the~~  
16 ~~preceding provisions of this Section, may enter into a~~  
17 ~~binding nonjudicial settlement agreement with respect to~~  
18 ~~any matter involving a trust as provided in this Section.~~

19 (3) (Blank). ~~A nonjudicial settlement agreement is~~  
20 ~~valid only to the extent its terms and conditions could be~~  
21 ~~properly approved under applicable law by a court of~~  
22 ~~competent jurisdiction.~~

23 (4) The following matters ~~Matters that~~ may be resolved  
24 by a nonjudicial settlement agreement ~~include but are not~~  
25 ~~limited to:~~

26 (A) Validity, interpretation, or construction of

1 the terms of the trust.~~†~~

2 (B) Approval ~~approval~~ of a trustee's report or  
3 accounting.~~†~~

4 (C) Exercise ~~exercise~~ or nonexercise of any power  
5 by a trustee.~~†~~

6 (D) The ~~the~~ grant to a trustee of any necessary or  
7 desirable administrative power, provided the grant  
8 does not conflict with a clear material purpose of the  
9 trust.~~†~~

10 (E) Questions ~~questions~~ relating to property or an  
11 interest in property held by the trust, provided the  
12 resolution does not conflict with a clear material  
13 purpose of the trust.~~†~~

14 (F) Removal, appointment, or removal and  
15 appointment of a trustee, trust advisor, investment  
16 advisor, distribution advisor, trust protector or  
17 other holder, or committee of holders, of fiduciary or  
18 nonfiduciary powers, including without limitation  
19 designation of a plan of succession or procedure to  
20 determine successors to any such office. ~~resignation~~  
21 ~~or appointment of a trustee;~~

22 (G) Determination ~~determination~~ of a trustee's  
23 compensation.~~†~~

24 (H) Transfer ~~transfer~~ of a trust's principal place  
25 of administration, including without limitation to  
26 change the law governing administration of the trust.~~†~~



1 (I) Liability ~~liability~~ or indemnification of a  
2 trustee for an action relating to the trust.~~†~~

3 (J) Resolution of bona fide ~~resolution of~~ disputes  
4 ~~or issues~~ related to administration, investment,  
5 distribution or other matters.~~†~~

6 (K) Modification ~~modification~~ of terms of the  
7 trust pertaining to administration of the trust.~~†~~ ~~and~~

8 (L) Termination ~~termination~~ of the trust, provided  
9 that court approval of such termination must be  
10 obtained in accordance with subdivision ~~subsection~~  
11 (d) (5) of this Section, and the court must conclude  
12 continuance of the trust is not necessary to achieve  
13 any clear material purpose of the trust.~~†~~ ~~upon~~ The  
14 court may consider spendthrift provisions as a factor  
15 in making a decision under this subdivision, but a  
16 spendthrift provision is not necessarily a clear  
17 material purpose of a trust, and the court is not  
18 precluded from modifying or terminating a trust  
19 because the trust instrument contains a spendthrift  
20 provision. Upon such termination the court may order  
21 the trust property distributed as agreed by the parties  
22 to the agreement or otherwise as the court determines  
23 equitable consistent with the purposes of the trust.

24 (M) Any other matter involving a trust to the  
25 extent the terms and conditions of the nonjudicial  
26 settlement agreement could be properly approved under

1           applicable law by a court of competent jurisdiction.

2           (4.5) If a charitable interest or a specifically named  
3           charity is a current beneficiary, is a presumptive  
4           remainder beneficiary, or has any vested interest in a  
5           trust, the parties to any proposed nonjudicial settlement  
6           agreement affecting the trust shall deliver to the Attorney  
7           General's Charitable Trust Bureau written notice of the  
8           proposed agreement at least 60 days prior to its effective  
9           date. The Bureau need take no action, but if it objects in  
10           a writing delivered to one or more of the parties prior to  
11           the proposed effective date, the agreement shall not take  
12           effect unless the parties obtain court approval.

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

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

26           (7) In the trustee's sole discretion, the trustee may,

1 but is not required to, obtain and rely upon an opinion of  
2 counsel on any matter relevant to this Section, including  
3 without limitation: (i) where required by this Section,  
4 that ~~the any~~ agreement proposed to be made in accordance  
5 with this Section ~~does not conflict with a clear material~~  
6 purpose of the trust or could be properly approved by the  
7 court under applicable law; (ii) in the case of a trust  
8 termination, that continuance of the trust is not necessary  
9 to achieve any clear material purpose of the trust; (iii) ~~r~~  
10 ~~or~~ that there is no conflict of interest between a  
11 representative and the person represented ~~with respect to~~  
12 the particular question or dispute; or (iv) that the  
13 representative and the person represented have  
14 substantially similar interests with respect to the ~~or~~  
15 ~~among those being represented with respect to a~~ particular  
16 question or dispute.

17 (e) Application. On and after its effective date, this  
18 Section applies to all existing and future trusts, judicial  
19 proceedings, or agreements entered into in accordance with this  
20 Section on or after the effective date.

21 (f) This Section shall be construed as pertaining to the  
22 administration of a trust and shall be available to any trust  
23 that is administered in this State or that is governed by  
24 Illinois law with respect to the meaning and effect of its  
25 terms, except to the extent the governing instrument expressly  
26 prohibits the use of this Section by specific reference to this

1 Section. A provision in the governing instrument in the form:  
2 "Neither the provisions of Section 16.1 of the Illinois Trusts  
3 and Trustees Act nor any corresponding provision of future law  
4 may be used in the administration of this trust", or a similar  
5 provision demonstrating that intent, is sufficient to preclude  
6 the use of this Section.

7 (g) The changes made by this amendatory Act of the 98th  
8 General Assembly apply to all trusts in existence on the  
9 effective date of this amendatory Act of the 98th General  
10 Assembly or created after that date, and are applicable to  
11 judicial proceedings and nonjudicial matters involving such  
12 trusts. For purposes of this Section:

13 (i) judicial proceedings include any proceeding before  
14 a court or administrative tribunal of this State and any  
15 arbitration or mediation proceedings; and

16 (ii) nonjudicial matters include, but are not limited  
17 to, nonjudicial settlement agreements entered into in  
18 accordance with this Section and the grant of any consent,  
19 release, ratification, or indemnification.

20 (Source: P.A. 96-479, eff. 1-1-10.)".