

				55-1A-2 55-3-7 55-4-1 55-3-44 55-1-2 55-1-3 55-1-6 55-3-3	
3.	103	Distribution by Representation			
4.	104	Common Law of Trusts; Principles of Equity	106		No prior SD law
5.	105 105(b)(9)	Default & Mandatory Rules	105	55-4-37	Sub 8 & 9 of UTC not adopted
6.	106	Scope	102	55-3-1 55-1-2 55-1-6 55-1-7 55-1-8 55-1-9 55-1-10 55-1-11	Expand definition of settlor? (trustor, grantor) 106(c)-NEW c from Iowa 106(d)-NEW d from Iowa 106(e)-NEW e from Iowa
7.	107 107(a) 107(b) 107(c) 107(d) 107(e)	Governing Law	107	55-3-39 55-3-40	Added substantive provisions regarding real estate (b) is taken from UTC 107(2)
8.	108	Situs Requirements	108	55-3-39 55-3-41 55-3-42 55-3-43 55-3-44	108(d) check into status of qualified person for trusts 108(b), 108(c) is 55-3-39 108(e) – 55-3-43 108(f) – (j) - NEW 108(k) is "resettling" trusts from 2005 law.
9.	109	Knowledge	104		No prior South Dakota Law
10.	110	Methods & Waiver of Notice	109		No prior SD law
11.	111	Others Treated as Qualified Beneficiaries	110		No prior SD law
12.	112	Nonjudicial Settlement Agreements	111		No prior SD law

		Article 2. Creation, Validity, Modification, & Termination of Trust			
13.	201	Capacity of Settlor	601		Capacity is "contract"/not for will
14.	202	Methods of Creating Trust	401	55-3-2 55-3-4	55-1-7 to 11 in part b moved to 102
15.	203	Requirements for Creation	402	55-1-4 55-1-5 55-3-2 55-3-3 55-1-15	Repeal orig. 55-3-2 (a)(b)&(f) to reflect SD law
16.	204	Enforceability of No Contest Provision			No prior SD law
17.	205	Trust Purposes	404	55-1-1	UTC not adopted
18.	206	Charitable Purposes	405(a)	55-9-1	206 add "benevolent" purposes moved b & c to Article 14 – c is modified to be 55-9-4
19.	207	Trust for Care of Animal	408		2006 act is different
20.	208	Trusts Created in Other Jurisdictions	403		No prior SD law
21.	209	Creation of Trust Induced by Fraud, Duress or Undue Influence	406		No prior SD law
22.	210	Evidence of Oral Trust	407		Insert SDCL 43-10 reference No prior SD law
23.	211	Trust without Ascertainable Beneficiary	409	55-9-2 43-5	Delete last sentence (1) from UTC – d/n apply to SD No prior SD law (4) _____ include reference to 55-11 & 55-12 Added alienation provisions of 43-5, not in UTC otherwise as (4)
24.	212	Modification or Termination of Trust	410	55-3-23 55-3-30	
25.	213	Modification or Termination of an Irrevocable Trust	411	55-3-24 55-3-25	Take out non-charitable language (see UTC comment 411 on removal.) Clarify removal by beneficiary. Can repeal 55-3-23
26.	214	Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively	412	55-3-26	Add phrase "on petition by a trustee or beneficiary" to (a); Add "And in accordance with the settlor's probable intention to (c) - With addition to (a)(3) and subject to settlor's approval if alive and mentally competent 413(b) not adopted
27.	215	Cy Pres	413	55-14-7	No prior SD law (a), (c) & (d) taken from Iowa
28.	216	Modification or Termination of	414	55-3-27	

		Uneconomic Trust			
29.	217	Reformation to Correct Mistakes	415	55-3-28	Add “upon petition of trustee or beneficiaries”
30.	218	Modification to Achieve Settlor's Tax Objectives	416	55-3-28	Add “upon petition of trustee or beneficiaries”
31.	219	Combination & Division of Trusts	417	55-3-29	UTC version not adopted
32.	220	Effect of Omitting Children	none		NEW – Adopted from Iowa
33.	221	Effect of Divorce or Dissolution	none		NEW – Adopted from Iowa
		Article 3. Creditor's Claims: Spendthrift & Discretionary Trusts			
34.	301	Retention of the Common Law Distinction of a Discretionary Support Trust	504		
35.	302	General Provisions Applying to All Trusts			
36.	303	Spendthrift Provisions	502	55-1-16 55-1-17 55-1-19	
37.	304	Classifications of a Current Distribution Interest			304(d) comes from Iowa
38.	305	Power to Force Distribution & Judicial Review Standard			
39.	306	Creditors' Claims Against Settlor	505		UTC version not adopted
40.	307	Exercise of a Minor Beneficiary's Right to Request a Distribution	506		
41.	308	Trustee Termination when Foreign Court Attempts Action against Trustee		55-3-47	
		Article 4. – Qualified Dispositions to Trust			
42.	401	Qualified Disposition Definitions	none	55-16-1 55-16-3	Section (f) is 15-16-3
43.	402	Dispositions to Trust-Definition of a Trust Instrument-Incorporation of Laws-Irrevocable-Provisions not Deemed to be Revocable-Transfer of Property or Interest	none	55-16-2	
44.	403	Dispositions to Trust-Fiduciary-Appointment-Powers	none	55-16-4	

45.	404	Dispositions to Trust-Fiduciary-Transferor as a Fiduciary-Limitations on Powers	none	55-16-5	
46.	405	Dispositions to Trust-Qualified Trustee-Loss of Qualifications-Appointment of Successor by Circuit Court	none	55-16-6	
47.	406	Qualified Dispositions to Multiple Trustees	none	55-16-7	Grammatical modification only
48.	407	Transferors Retention of Powers Limited	none	55-16-8	Grammatical modification only
49.	408	Qualified Dispositions-Exempt from Actions or Attachment	none	55-16-9	Grammatical modification only
50.	409	Extinguishment of Creditors' Claims	none	55-16-10	Grammatical modification only
51.	410	Restrictions of Creditor's Claims against Qualified Dispositions	none	55-16-11	Grammatical modification only
52.	411	Creditor Claims-Limitation of Actions against Qualified Dispositions	none	55-16-12	Grammatical modification only
53.	412	Trustees, Fiduciaries, and Certain Persons Immune from Suit by Creditors	none	55-16-13	Grammatical modification only
54.	413	Subsequent Dispositions Disregarded in Determination under Section 609	none	55-16-14	Grammatical modification only
55.	414	Chapter Inapplicable to Certain Creditors	none	55-16-15	Grammatical modification only
56.	415	Dispositions Avoided under Certain Circumstances-Factors for Determination	none	55-16-16	Grammatical modification only
57.	416	Dispositions to Trust – Effective Date of Act	none	55-16-18	Can't find 18 but going with Frances' notes – wondering what happened to 17 however.
		Article 5. Revocable Trusts			
58.	501	Revocation or Amendment of Revocable Trust	602	55-3-6	(a)(3) added to include right to amend after death of first grantor (b) "may revoke or amend" is broader and requires only substantial compliance Expanded (e)
59.	502	Settlor's Powers; Powers of Withdrawal	603	55-4-30	Deleted "and the settlor has capacity to revoke the trust" – from UTC version - add (c) & (d) to include provisions of 55-4-30
60.	503	Limitation on Action Contesting Validity of Revocable Trust; Distribution of Trust Property	604		Added Tennessee language to (c) from UTC No prior SD law Talked about what needs to be included in "Notice" of 804(a)(2)

61.	504	Creditor's Claim against Trust			Drafted by Committee with input from Iowa Code – provides statute of limitations for claims
		Article 6. Charitable Trusts			
62.	601	Liberal Construction of Trust to Carry Out Intentions of Donor	none	55-9-3	
63.	602	Charitable Trust Enforcement	none	55-9-4 55-9-5	Combined & takes from 408(b) & (c) Changed “shall” to “may” in (a) and (c) AG only represents the <i>charitable</i> beneficiaries of a trust
64.	603	Restrictions to avoid Taxability of Income – Definition of Terms	none	55-9-6	
65.	604	Restrictions deemed Incorporated in Instrument Creating Charitable Trust or Foundation	none	55-9-7	
66.	605	Trustee Prohibitions	none	55-9-8 55-9-10 55-9-11 55-9-12	
67.	606	Distributions Required to avoid Taxes	none	55-9-9	
68.	607	Judicial Determination that Restrictive Provisions are Contrary to Instrument Creating Trust	none	55-9-13	
69.	608	State Supervisory Powers Unimpaired by Restrictions to avoid Taxability of Income	none	55-9-14	
		Article 7 –Trust Protectors & Trust Advisors			
70.	701	Definitions	none	55-1B-1 55-1-17	Added custodial account references and alphabetized definitions
71.	702	Trust Protector's Powers & Discretion	none	55-1B-6	
72.	703	Powers of Trust Protector Incorporated by Reference in Will or Trust Instrument	none	55-1B-8	
73.	704	Investment Trust Advisor's Powers & Discretions	none	55-1B-10	
74.	705	Distribution Trust Advisor's Powers & Discretions	none	55-1B-11	
75.	706	Investment Advisor & Distribution Trust	none	55-1B-9	

		Advisor Provided in Trust Instrument			
76.	707	Limited Abrogation of Trust Protector, Investment Trust Advisor & Distribution Trust Advisor Liability	none	55-1B-4 55-1B-5	Combined and intended to replace 55-1B-4 & 5.
77.	708	Liability Limits of Excluded Fiduciary	none	55-1B-2	Clarifies legislation in HB 1185 so non-liability under Section (b)(2) exists regardless of whether the excluded fiduciary proposed an action.
78.	709	Death of Settlor	none	55-1B-3	Revise current law.
79.	710	Submission to Court Jurisdiction – Effect on Trust Advisor or Trust Protector	none	55-1B-7	
		Article 8 – Total Return Trusts			
80.	801	Definitions		55-15-1	
81.	802	Trustee's Authority to Convert Income Trust, Total Return Trust – Calculate Trust Value – Conditions		55-15-2	
82.	803	Interested Trustee's Authority Over Actions Enumerated in § 55-15-2 – Conditions		55-15-3	
83.	804	Trustee may Petition Court – Appointment of Disinterested Person		55-15-4	
84.	805	Annual Valuation of Unitrust Amount		55-15-5	
85.	806	Calculation of Unitrust Amount		55-15-6	
86.	807	Minimum Amount as Net Income of Trust		55-15-7	
87.	808	Unitrust Amount as Net Income of Trust – Allocation of Capital Gains to Trust Income		55-15-8	
88.	809	Administration of Total Return Unitrust – Authority of Trustee		55-15-9	
89.	810	Distributions of Principal not Affected by Conversion		55-15-10	
90.	811	Spouse may compel Reconversion to Income Trust for Certain Trusts – Written instrument Required		55-15-11	
91.	812	Applicability of Chapter		55-15-12	
92.	813	Trustee acting in Good Faith not Liable – Remedy		55-15-13	
93.	814	No duty to act created		55-15-14	

		Article 9. Office of Trustee			
94.	901	Accepting or Declining Trusteeship	701		Change "reject" to "decline"; add (3) of Connecticut filing an acceptance Repeal 55-1-13
95.	902	Trustee's Bond	702	21-22-10 21-22-11	Add Utah provision as (d) – changes current law
96.	903	Co-Trustees	703	55-2-11 55-3-18 55-4-3	(e)-modified; keep SDCL 55-2-11 as f-g-h 903(a) – 55-4-3 Second sentence of 903(a) is from Iowa
97.	904	Vacancy in Trusteeship; Appointment of Successor	704	55-3-16 55-3-20 55-3-21 55-9-5	Add "located, is deceased" to (a)(2); add last sentence of 55-9-5 to beginning of (e) and delete "an additional"; add discharge to (a)(4) Repeal 21-22-12
98.	905	Resignation of Trustee	705		905(a)(2)(A) limits notice to adult qualified beneficiary
99.	906	Removal or Discharge of Trustee	706	55-3-17 55-3-20	Add "or settlor's agent" after settlor in (a) 906(d) added from 55-3-17 Removal not a material purpose, added Iowa terms in 906(b)(5) & (6)
100.	907	Delivery of Property by Former Trustee	707	55-3-19	Add "the remaining trustee(s)" "remaining" to b – add to include discharge
101.	908	Compensation of Trustee	708	55-3-14 55-3-15	Add (c) to ref. 29A-3-719(a) *changes SD law.
102.	909	Reimbursement of Expenses	709	55-3-13 55-3-15 55-1A-34 55-3-15	Delete (b) and add (c) as last sentence of 55-3-13, include "defense or" A(2) change "unlawful" to "unauthorized"
		Article 10. Duties & Powers of Trustee			
103.	1001	Duty to Administer Trust	801	55-2-1 55-3-5 55-4-32 55-4-38	Modify to have focus be settlor, not beneficiary UTC not adopted
104.	1002	Duty of Loyalty	802	55-2-2 55-2-3 55-2-4	1002(f) changed to include prospectus and clarify. 1002(b) & (c) changed to incorporate restriction in SD law. 55-4-17 & 18 referred to Real Property Committee

				55-2-5 55-1A-9 55-2-6 55-2-7 55-2-8 55-2-9 55-4-9 55-4-10 55-4-11 55-4-13 55-5-14	changes existing law 1002(j) 55-4-15 – urge repeal
105.	1003	Impartiality	803		No prior SD law
106.	1004	Collecting Trust Property	812	55-2-12	Add 55-2-12 as second sentence
107.	1005	Control & Protection of Trust Property	809		Added exclusion of possession
108.	1006	Record keeping & Identification of Trust Property	810		No prior SD law
109.	1007	Duty to Inform & Report	813	55-2-13 55-3-45 21-22-30	Used 55-2-13 for (a); delete (b); (c) to be 53-4-45; change (d) Modifies UTC
110.	1008	Enforcement & Defense of Creditor Claims	811		No prior SD law
111.	1009	Prudent Administration	804	55-5-6 55-3-10	"ordinary care & diligence" from S.D. std.
		Article 11 - Powers of Trustee			
112.	1101	General Powers of Trustee	815	55-1A-1 55-1A-38 55-3-7 55-4-2	(a)(3)-NEW 1013(c) – 55-4-2
113.	1102	Specific Powers of Trustee	816	55-1A-6 55-1A-11 55-1A-10 55-1A-23 55-1A-7 55-1A-21 55-1A-19 55-1A-22 55-1A-20	Add at beginning subject to limit of 55-9, 1014(2) include 55-1A-8, add to 4 – delete “service” (2) add “invest, reinvest” (5) add Utah language for definition of financial institution (6) add “create” (7) add stock options 55-3-2 recommend repeal (7) add language of 55-1A-21 (6 & 7) add including, “but not limited to”

				55-1A-14 55-1A-15 55-1A-16 55-1A-13 55-1A-18 55-1A-26 55-1A-27 55-1-A-9 55-1A-17 55-1A-28 55-1A-37 55-1A-39	(8) add “without consideration” on public grant; add valuation language (10) add “or exercise” (11) add “liability” (14) rewrite – include lien from 55-3-4-repeal this as unnecessary (15) change to reflect “its employee & agent” (17) insert “and exercise” at beginning, delete thereunder (18) delete last phrase (19) add “subject to 502” add 55-1A-33 as subpart (2) (20) add “ancillary” limit powers to include only “such powers as may be necessary” (21) add “agent” & “minor” (25) add “enter” & change to “accomplish” (26) change “wind up” to “complete” (27) new - 55-1A-17 (28) new - 55-1A-5 (29) new - 55-1A-28 (30) new - 55-1A-31 816(b) added from 55-1A-37 (32) new - 55-1A-39
114.	1103	Discretionary Powers	814	55-3-9 55-4-39 55-4-38 55-4-41	Delete "Tax Savings" Add 55-3-9 as (c)-NEW 55-2-4 to be repealed 55-2-5 & 6
115.	1104	Powers to Direct	808		Redraft to include new 55-1B-etc.
116.	1105	Costs of Administration	805	55-1A-34 55-3-13 55-5-11	Add language as second sentence -- reasonable - take out “only”
117.	1106	Distribution upon Termination	817		No prior SD law
118.	1107	Actions by Foreign Fiduciaries	818	55-5A-1 55-5A-2	
		Article 12. Prudent Investor Act			Recommended for insertion by National committee
119.	1201	Prudent Investor Rule		55-5-12	New is section (b)
120.	1202(a and b)	Standard of Care; Portfolio Strategy; Risk	806	55-5-6	

	1202(c) (1 - 6) 1202(c) 7 1202(c) 8 1202(d) 1202(e)	& Return Objectives		55-5-11 new 55-5-9 new 55-3-11	
121.	1203	Diversification		55-1A-5 55-5-8	Expands UTC – See Notes
122.	1204	Duties at Inception of Trusteeship		55-5-9	1 st sentence
123.	1205	Prudent Investment		55-5-7 55-5-10	Does not include second sentence of 55-5-7
124.	1206	Delegation of Investment & Management Functions	807	55-5-16	
125.	1207	Language Invoking Prudent Investor Rule		55-5-14	
		Article 13 – Uniform Principal & Income Act			
126.					We reserve this for the Governor's Trust Task Force, which is currently considering action would replace SDCL 55-13. Otherwise we would move SDCL 55-13 here.
		Article 14. Liability of Trustees & Rights of Persons Dealing with Trustee			
127.	1401	Remedies for Breach of Trust	1001	55-4-33 55-4-32 55-4-28 55-2-6	
128.	1402	Damages for Breach of Trust	1002	55-4-4 55-4-5 55-2-10 55-2-11 55-3-11 55-2-2	add (c) on liability from 55-2-11 55-2-10 is (b) (d) is 55-4-4 & 55-4-5
129.	1403	Damages in Absence of Breach	1003(b)	55-4-6	added to 1402 – omit (a) – recommend repeal 55-4-6
130.	1404	Limitation of Action Against Trustee	1005	55-2-13	180 days, 6 yrs – take out “or death” & add (d) add “an accounting or other” or should have known add “discharge” to (c)

131.	1405	Reliance on Trust Instrument	1006		No prior SD law
132.	1406	Event Affecting Administration or Distribution	1007		Add “including, but not limited to” and “attainment by beneficiary of certain age” No prior SD law
133.	1407	Exculpation of Trustee	1008	55-4-30	Change presumption: (b) to be non-UTC No prior SD law
134.	1408	Beneficiary's Consent, Release, or Ratification	1009	55-4-31	Change (2) “or could not have reasonably known” No prior SD law
135.	1409	Personal Liability of Trustee	1010	55-4-21 55-4-22 55-4-23	Revised 2 and add (4) as 55-4-21 Add section (B) to incorp. 55-4-22 & 55-4-23
136.	1410	Interest as General Partner	1011	55-4-37	Changed to 55-4-37 (write to probate code for separate statute)
137.	1411	Protection of Person Dealing with Trustee	1012	55-7-1	(b) is 55-7-1
138.	1412	Certificate of Trust	1013	55-4-42 55-4-43 55-4-44	
139.	1413	Certificate of Trust of Non-Testamentary Trust Relating to Real Property Transaction		55-4-46	
140.	1414	Certificate of Trust of Testamentary Trust relating to Real Property Transaction		55-4-47	
		Article 15. Judicial Proceedings			
141.	1501	Role of Court in Administration of Trust	201		No prior SD law
142.	1502	Jurisdiction over Trustee & Beneficiary	202		No prior SD law
143.	1503	Venue	204	21-22-5 21-22-9	Expands and clarifies existing SD law
144.	1504	Trust Requiring Court Supervision	none	21-22-2	
145.	1505	Requirements under Court Supervision	none	21-22-6 21-22-9	
146.	1506	Appointment of Agent to Receive Process	none	21-22-4	
147.	1507	Inventory-Time for Filing-Contents	none	21-22-3 21-22-9	
148.	1508	Petition to Dispense with Court Supervision-Grounds	none	21-22-7	Omitted portion regarding objections and left it up to the court.
149.	1509	Resumption of Court Supervision	none	21-22-8	
150.	1510(a)	Notice Requirements of Court Supervision	none	21-22-17	

	1510(b) 1510(c) 1510(d) 1510(e) 1510(f)			21-22-18 21-22-19 21-22-20 21-22-21 21-22-7.1	
151.	1511	Petition to Review Trust Activities	none	21-22-13	
152.	1512(a) 1512(b) 1512(c) 1512(d) 1512(e) 1512(f) 1512(g) 1512(h)	Accountings of Court Supervised Trust	none	21-22-14 21-22-15 21-22-16 21-22-30 21-22-22 21-22-23 21-22-24 21-22-25	“accounting” is defined in 1012(c)
153.	1513	Petition to Seal Court Action Involving a Trust	none	21-22-28	Re: contract & tort Eliminated verification of Petition
154.	1514	Action Against Trustee in Representation Capacity – Execution Against Trust Property – Intervention by Beneficiary	none	55-4-19 55-4-25	
155.	1515	Notice to Beneficiary of Action Against Trustee	none	55-4-20 55-4-27	Replaces 55-4-25
		Article 16. Representative – Notice & Consent			
156.	1601	Representation: Basic Effect	301	55-3-36 55-3-38 55-3-31	- intro
157.	1602	Representatives	302 303	55-3-32	Modify & delete "general" No prior SD law Add (7) &(8), changed "ward" to fit SD terminology Add last sentence of 55-3-32
158.	1603	Appointment of Representative	305		
159.	1604	Representation by Person having Substantially Identical Interest	304	55-3-31 55-3-32 55-3-33 55-3-35 55-3-37	Changed placement of phrase 55-3-31 – leave out notice to Department of Social Services – contrary to creditor protection 55-3-34 – move to probate code – add (b) to address ability to have court approve person who acts as representative.

					Parts of each simply state serving rep is service on underlying persons represented. Document should state who represented. Failure to include on document a person who may be represented not defective to bind unless person can show interests negatively affected or unrepresentation negatively affected outcome.
160.	1605	Service/Obtaining Consent From a Virtual Representative		55-3-33 55-3-35 55-3-38	
161.	1606	Service on a Virtual Representative			
162.	1607	Service Not Required			
163.					
		Article 17. Miscellaneous Provisions			
164.	1701	Electronic Records & Signatures	1102	55-12-3	Modified by 53-12-3(a) & (d)
165.	1702	Severability Clause	1103		
166.	1703	Effective Date	1104		
167.	1704	Application to Existing Relationships	1106		Revise
168.	1705	Validation of pre-July 1, 2007 Decrees/Accountings-Stale Claims Barred			
		UPC-6-102			Do we need to add this to South Dakota's UPC as recommended