

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 189**

Introduced By: Mines, 18

Read first time: January 9, 2007

Committee: Banking, Commerce and Insurance

A BILL

1       FOR AN ACT relating to the Nebraska Uniform Trust Code; to amend  
2               sections 30-3803 and 30-3867, Revised Statutes Cumulative  
3               Supplement, 2006; to redefine a term and change provisions  
4               relating to the duty of loyalty; to repeal the original  
5               sections; and to declare an emergency.  
6       Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 30-3803, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           30-3803. (UTC 103) In the Nebraska Uniform Trust Code:

4           (1) "Action", with respect to an act of a trustee, includes  
5 a failure to act.

6           (2) "Ascertainable standard" means a standard relating to an  
7 individual's health, education, support, or maintenance within the  
8 meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue  
9 Code of 1986, as defined in section 49-801.01.

10          (3) "Beneficiary" means a person that:

11           (A) has a present or future beneficial interest in a trust,  
12 vested or contingent; or

13           (B) in a capacity other than that of trustee, holds a power  
14 of appointment over trust property.

15           (4) "Charitable trust" means a trust, or portion of a trust,  
16 created for a charitable purpose described in subsection (a) of  
17 section 30-3831.

18           (5) "Conservator" means a person appointed by the court to  
19 administer the estate of a minor or adult individual.

20           (6) "Environmental law" means a federal, state, or local  
21 law, rule, regulation, or ordinance relating to protection of the  
22 environment.

23           (7) "Guardian" means a person who has qualified as a  
24 guardian of a minor or incapacitated person pursuant to testamentary  
25 or court appointment, but excludes one who is merely a guardian ad  
26 litem.

27           (8) "Interests of the beneficiaries" means the beneficial

1 interests provided in the terms of the trust.

2 (9) "Jurisdiction", with respect to a geographic area,  
3 includes a state or country.

4 (10) "Person" means an individual, corporation, business  
5 trust, estate, trust, partnership, limited liability company,  
6 association, joint venture, government; governmental subdivision,  
7 agency, or instrumentality; public corporation, or any other legal or  
8 commercial entity.

9 (11) "Power of withdrawal" means a presently exercisable  
10 general power of appointment other than a power: (A) which is  
11 exercisable by a trustee and limited by an ascertainable standard; or  
12 (B) which is exercisable by another person only upon consent of the  
13 trustee or a person holding an adverse interest.

14 (12) "Property" means anything that may be the subject of  
15 ownership, whether real or personal, legal or equitable, or any  
16 interest therein.

17 (13) "Qualified beneficiary" means a beneficiary who, on the  
18 date the beneficiary's qualification is determined:

19 (A) is a distributee or permissible distributee of trust  
20 income or principal;

21 (B) would be a distributee or permissible distributee of  
22 trust income or principal if the interests of the distributees  
23 described in subdivision (A) of this subdivision terminated on that  
24 date without causing the trust to terminate; or

25 (C) would be a distributee or permissible distributee of  
26 trust income or principal if the trust terminated on that date.

27 For purposes of the trustee determining qualified

1 beneficiaries of a trust in which a beneficial interest is subject to  
2 a power of appointment of any nature, the trustee may conclusively  
3 presume such power of appointment has not been exercised unless the  
4 trustee has been furnished by the powerholder or the legal  
5 representative of the powerholder or the powerholder's estate with  
6 the original or a copy of an instrument validly exercising such power  
7 of appointment, in which event the qualified beneficiaries shall be  
8 subsequently determined by giving due consideration to such exercise  
9 unless and until the trustee has been given notification in a similar  
10 manner of an instrument which validly revokes or modifies such  
11 exercise.

12 (14) "Regulated financial-service institution" means a  
13 state-chartered or federally chartered financial institution in which  
14 the monetary deposits are insured by the Federal Deposit Insurance  
15 Corporation.

16 (15) "Revocable", as applied to a trust, means revocable by  
17 the settlor without the consent of the trustee or a person holding an  
18 adverse interest.

19 (16) "Settlor" means a person, including a testator, who  
20 creates, or contributes property to, a trust. If more than one person  
21 creates or contributes property to a trust, each person is a settlor  
22 of the portion of the trust property attributable to that person's  
23 contribution except to the extent another person has the power to  
24 revoke or withdraw that portion.

25 (17) "Spendthrift provision" means a term of a trust which  
26 restrains both voluntary and involuntary transfer of a beneficiary's  
27 interest.

1           (18) "State" includes any state of the United States, the  
2     District of Columbia, the Commonwealth of Puerto Rico, and any  
3     territory or possession subject to the legislative authority of the  
4     United States.

5           (19) "Terms of a trust" means the manifestation of the  
6     settlor's intent regarding a trust's provisions as expressed in the  
7     trust instrument or as may be established by other evidence that would  
8     be admissible in a judicial proceeding.

9           (20) "Trust instrument" means an instrument executed by the  
10    settlor that contains terms of the trust, including any amendments  
11    thereto.

12          (21) "Trustee" includes an original, additional, and  
13    successor trustee, and a cotrustee.

14          Sec. 2. Section 30-3867, Revised Statutes Cumulative  
15    Supplement, 2006, is amended to read:

16           30-3867. (UTC 802) (a) A trustee shall administer the trust  
17    solely in the interests of the beneficiaries.

18           (b) Subject to the rights of persons dealing with or  
19    assisting the trustee as provided in section 30-38,101, a sale,  
20    encumbrance, or other transaction involving the investment or  
21    management of trust property entered into by the trustee for the  
22    trustee's own personal account or which is otherwise affected by a  
23    conflict between the trustee's fiduciary and personal interests is  
24    voidable by a beneficiary affected by the transaction unless:

25           (1) the transaction was authorized by the terms of the  
26    trust;

27           (2) the transaction was approved by the court;

1 (3) the beneficiary did not commence a judicial proceeding  
2 within the time allowed by section 30-3894;

3 (4) the beneficiary consented to the trustee's conduct,  
4 ratified the transaction, or released the trustee in compliance with  
5 section 30-3898; or

6 (5) the transaction involves a contract entered into or  
7 claim acquired by the trustee before the person became or contemplated  
8 becoming trustee.

9 (c) A sale, encumbrance, or other transaction involving the  
10 investment or management of trust property is presumed to be affected  
11 by a conflict between personal and fiduciary interests if it is  
12 entered into by the trustee with:

13 (1) the trustee's spouse;

14 (2) the trustee's descendants, siblings, parents, or their  
15 spouses;

16 (3) an agent or attorney of the trustee; or

17 (4) a corporation or other person or enterprise in which the  
18 trustee, or a person that owns a significant interest in the trustee,  
19 has an interest that might affect the trustee's best judgment.

20 (d) A transaction not concerning trust property in which the  
21 trustee engages in the trustee's individual capacity involves a  
22 conflict between personal and fiduciary interests if the transaction  
23 concerns an opportunity properly belonging to the trust.

24 (e)(1) The following transactions shall not be presumed to  
25 be affected by a conflict between the personal and fiduciary interests  
26 of a trustee, if the transaction and any investment made pursuant to  
27 the transaction complies with the prudent investor rule set forth in

1 section 30-3883 to 30-3889:

2 (A) an investment by a trustee in securities of an  
3 investment company or investment trust to which the trustee or its  
4 affiliate provides services in a capacity other than as trustee; or

5 (B) the placing of securities transactions by a trustee  
6 through a securities broker that is part of the same company as the  
7 trustee, is owned by the trustee, or is affiliated with the trustee.

8 (2) In addition to the trustee's fees charged to the trust,  
9 the trustee, its affiliate, or its associated entity may be  
10 compensated for any transaction or provision of services described in  
11 this subsection. However, with respect to any investment in  
12 securities of an investment company or investment trust to which the  
13 trustee or its affiliate provides investment advisory or investment  
14 management services, the trustee shall, at least annually, notify the  
15 persons entitled under section 30-3878 to receive a copy of the  
16 trustee's annual report of the rate and method by which the  
17 compensation was determined.

18 ~~(c) An investment by a trustee in securities of an~~  
19 ~~investment company or investment trust to which the trustee, or its~~  
20 ~~affiliate, provides services in a capacity other than as trustee is~~  
21 ~~not presumed to be affected by a conflict between personal and~~  
22 ~~fiduciary interests if the investment otherwise complies with the~~  
23 ~~prudent investor rule set forth in sections 30-3883 to 30-3889. In~~  
24 ~~addition to its compensation for acting as trustee, the trustee may~~  
25 ~~be compensated by the investment company or investment trust for~~  
26 ~~providing those services out of fees charged to the trust. If the~~  
27 ~~trustee receives compensation from the investment company or~~

~~1 investment trust for providing investment advisory or investment  
2 management services, the trustee shall at least annually notify the  
3 persons entitled under section 30-3878 to receive a copy of the  
4 trustee's annual report of the rate and method by which that  
5 compensation was determined.~~

6 (f) In voting shares of stock or in exercising powers of  
7 control over similar interests in other forms of enterprise, the  
8 trustee shall act in the best interests of the beneficiaries. If the  
9 trust is the sole owner of a corporation or other form of enterprise,  
10 the trustee shall elect or appoint directors or other managers who  
11 will manage the corporation or enterprise in the best interests of the  
12 beneficiaries.

13 (g) This section does not preclude the following  
14 transactions, if fair to the beneficiaries:

15 (1) an agreement between a trustee and a beneficiary  
16 relating to the appointment or compensation of the trustee;

17 (2) payment of reasonable compensation to the trustee;

18 (3) a transaction between a trust and another trust,  
19 decedent's estate, or conservatorship of which the trustee is a  
20 fiduciary or in which a beneficiary has an interest;

21 (4) a deposit of trust money in a regulated  
22 financial-service institution operated by the trustee; or

23 (5) an advance by the trustee of money for the protection of  
24 the trust.

25 (h) The court may appoint a special fiduciary to make a  
26 decision with respect to any proposed transaction that might violate  
27 this section if entered into by the trustee.

1                   Sec. 3. Original sections 30-3803 and 30-3867, Revised  
2 Statutes Cumulative Supplement, 2006, are repealed.

3                   Sec. 4. Since an emergency exists, this act takes effect  
4 when passed and approved according to law.