

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 928**

Introduced by Mines, 18

Read first time January 5, 2006

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Uniform Trust Code; to amend  
2 section 30-3867, Revised Statutes Supplement, 2005; to  
3 change provisions relating to compensation of trustees;  
4 to repeal the original section; and to declare and  
5 emergency.

6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 30-3867, Revised Statutes Supplement,  
2 2005, is amended to read:

3           30-3867 (UTC 802) (a) A trustee shall administer the  
4 trust solely in the interests of the beneficiaries.

5           (b) Subject to the rights of persons dealing with or  
6 assisting the trustee as provided in section 30-38,101, a sale,  
7 encumbrance, or other transaction involving the investment or  
8 management of trust property entered into by the trustee for the  
9 trustee's own personal account or which is otherwise affected by a  
10 conflict between the trustee's fiduciary and personal interests is  
11 voidable by a beneficiary affected by the transaction unless:

12           (1) the transaction was authorized by the terms of the  
13 trust;

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

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

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

20           (5) the transaction involves a contract entered into  
21 or claim acquired by the trustee before the person became or  
22 contemplated becoming trustee.

23           (c) A sale, encumbrance, or other transaction involving  
24 the investment or management of trust property is presumed to be  
25 affected by a conflict between personal and fiduciary interests if

1 it is entered into by the trustee with:

2 (1) the trustee's spouse;

3 (2) the trustee's descendants, siblings, parents, or  
4 their spouses;

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

6 (4) a corporation or other person or enterprise in which  
7 the trustee, or a person that owns a significant interest in the  
8 trustee, has an interest that might affect the trustee's best  
9 judgment.

10 (d) A transaction not concerning trust property in  
11 which the trustee engages in the trustee's individual capacity  
12 involves a conflict between personal and fiduciary interests if  
13 the transaction concerns an opportunity properly belonging to the  
14 trust.

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

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

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

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

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

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

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

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

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

24 (h) The court may appoint a special fiduciary to make  
25 a decision with respect to any proposed transaction that might

1 violate this section if entered into by the trustee.

2           Sec. 2. Original section 30-3867, Revised Statutes  
3 Supplement, 2005, is repealed.

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