



Ninety-Ninth Legislature - Second Session - 2006
Introducer's Statement of Intent
LB 1123

Chairperson: Mick Mines
Committee: Banking, Commerce and Insurance
Date of Hearing: February 6, 2006

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The bill would amend the Nebraska Uniform Trust Code (NUTC), Neb. Rev. Stat. Sections 30-3801 to 30-38,110 (Cum. Supp. 2004 and Supp. 2005) (Uniform Trust Code (UTC) Sections 101 to 1106) to reflect clarifying amendments to the UTC (2000) approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in August 2004 (section 4 of the bill) and July 2005 (sections 1 to 3 and 5 of the bill). Nebraska enacted the NUTC in 2003 and it became operative on January 1, 2005.

Section 1 would amend subdivision (b)(2) of Section 30-3805 (UTC Section 105(b)(2)) to provide that the terms of a trust may not eliminate a trustee's duty to act in good faith in accordance with the "terms" as well as the purposes of the trust "and in the interests of the beneficiaries". These amendments would make the provisions of this subdivision consistent with the provisions of Section 30-3866 (UTC Section 801) (Duty to administer a trust) and subsection (a) of Section 30-3879 (UTC Section 814(a)) (Discretionary powers) which require that a trustee act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. According to the updated Comments to the UTC by NCCUSL, "The purpose of the amendment is to make the language consistent, not to change the substance of the section. Absent some other restriction, a settlor is always free to specify the trust's terms to which the trustee must comply. Also, 'interests of the beneficiaries' is a defined term in [UTC] Section 103(8) [subdivision (8) of Section 30-3803] meaning the beneficial interests as provided in the terms of the trust, which the settlor is also free to specify."

Section 2 would amend Section 30-3846 (UTC Section 501) to provide that to the extent a beneficiary's interest is not "subject to" rather than "protected by" a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of distributions or other means. According to the updated Comments to the UTC by NCCUSL, "No substantive change is intended."

Section 3 would amend subsections (b) and (c) of Section 30-3848 (UTC Section 503(b) and (c)) in order to restructure and clarify their provisions. This section provides that certain creditors (a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance; or a judgment creditor who has provided

services for the protection of a beneficiary's interest in the trust) may obtain a court order attaching trust distributions to or for the benefit of the beneficiary.

Section 4 would amend subsection (e) of Section 30-3849 (UTC Section 504(e)) in order to enact the latest version of this subsection as adopted by NCCUSL in 2004. Nebraska enacted a new subsection (e), but the language in the bill (Laws 2005, LB 533, section 42) was not the absolute last 2004 version from NCCUSL. This subsection, as updated, would provide that "If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard [defined in subdivision (2) of Section 30-3803 (UTC Section 103(2))], a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as a trustee or cotrustee." According to the updated Comments to the UTC by NCCUSL, adoption of subsection (e) provides that "the provisions of this section, which generally prohibit a creditor of a beneficiary from reaching a beneficiary's discretionary interest, apply even if the beneficiary is also a trustee or cotrustee. The beneficiary-trustee is protected from creditor claims to the extent the beneficiary-trustee's discretion is protected by an ascertainable standard as defined in the relevant Internal Revenue Code sections."

Section 5 would amend Section 30-3851 (UTC Section 506) to provide in a new subsection (a) for a clarifying definition of "mandatory distribution" which would, in part, read: "a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust." According to the updated Comments to the UTC by NCCUSL, "The amendment . . . is clarifying. No change of substance is intended by this amendment. This amendment merely clarifies that a mandatory distribution is to be understood in its traditional sense such as a provision requiring that the beneficiary receive an income or receive principal upon termination of the trust."

Section 6 would amend subsection (d) of Section 30-38,110 (UTC Section 1106) to update an internal reference to Section 30-3848 as amended by section 3 of the bill. (Subsection (d) of section 30-38,110 is a non-uniform provision.)

Principal Introducer:

Senator Mick Mines