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FLOOR DEBATE

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withdrawal" is considered a general power of appointment. These amendments would clarify that a power excusably...excusable (sic) by a trustee which is limited by an ascertainable standard does not constitute a power of withdrawal. This is to prevent an unintended inference relating to a discretionary power of attorney (sic) to make a distribution of the trustee's own benefit which is limited by an ascertainable standard. Section 42 of the committee amendments, which would amend Section 30-3849, relates to this issue and would add a clarifying new subsection (e) to that section, and you can see the description of Section 42 of the committee amendments. This section in Section 42 would amend the definition of "qualified beneficiary" in renumbered subsection (13) of Section 30-3803 to clarify that the subdivision (13)(B) relates to a continuation of the trust, and subdivision (13)(C) relates to the termination of that trust. Section 37 of the committee amendments would amend Section 30-3805 to make two important changes in the few mandatory provisions of the NUTC. The UTC is primarily a default code in that the provisions of the trust instrument control its legal consequences and the statutory rules merely supplement the provisions of the trust. This section would amend the mandatory requirements in subsections (b)(8) and (9) of Section 30-3805. These subdivisions relate to the extent that the trust instrument can waive notices and information the trustee is obligated to send or supply to the trust beneficiaries. A majority of the first states to enact the UTC significantly modified these provisions and NCCUSL has now bracketed them in the official text, which means the states may elect to enact these provisions without change, delete these provisions, or enact them with modifications. Following substantial further analysis by the legislative interim study group involved in the original Nebraska enactments and others:

- (1) This section would repeal subdivision (b)(8) of Section 30-3805 in its entirety. This subdivision currently makes mandatory the notices required under subdivisions (b)(2) and (3) of Section 30-3878 to be given to qualified beneficiaries within 60 days of establishment of an irrevocable trust. It is felt by practitioners that this instead should be left primarily to settlors and their trust planners.
- (2) This section would amend subdivision (b)(9) of Section 30-3805 to