

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 114

Introduced By: Pahls, 31;
Read first time: January 8, 2007
Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Uniform Trust Code; to amend
2 sections 30-3805, 30-3846, 30-3848, 30-3849, 30-3851, and
3 30-38,110, Revised Statutes Cumulative Supplement, 2006; to
4 change provisions relating to the code; to define a term; to
5 harmonize provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-3805, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 30-3805. (UTC 105) (a) Except as otherwise provided in the
4 terms of the trust, the Nebraska Uniform Trust Code governs the duties
5 and powers of a trustee, relations among trustees, and the rights and
6 interests of a beneficiary.

7 (b) The terms of a trust prevail over any provision of the
8 code except:

9 (1) the requirements for creating a trust;

10 (2) the duty of a trustee to act in good faith and in
11 accordance with the terms and purposes of the trust and the
12 interests of the beneficiaries

13 (3) the requirement that a trust and its terms be for the
14 benefit of its beneficiaries, and that the trust have a purpose that
15 is lawful, not contrary to public policy, and possible to achieve;

16 (4) the power of the court to modify or terminate a trust
17 under sections 30-3836 to 30-3842;

18 (5) the effect of a spendthrift provision and the rights of
19 certain creditors and assignees to reach a trust as provided in
20 sections 30-3846 to 30-3852;

21 (6) the power of the court under section 30-3858 to require,
22 dispense with, or modify or terminate a bond;

23 (7) the power of the court under subsection (b) of section
24 30-3864 to adjust a trustee's compensation specified in the terms of
25 the trust;

26 (8) the duty under subsection (a) of section 30-3878 to keep
27 the qualified beneficiaries of the trust reasonably informed about the

1 administration of the trust and of the material facts necessary for
2 them to protect their interests, and to respond to the request of a
3 qualified beneficiary of an irrevocable trust for trustee's reports
4 and other information reasonably related to the administration of a
5 trust;

6 (9) the effect of an exculpatory term under section 30-3897;

7 (10) the rights under sections 30-3899 to 30-38,107 of a
8 person other than a trustee or beneficiary;

9 (11) periods of limitation for commencing a judicial
10 proceeding;

11 (12) the power of the court to take such action and exercise
12 such jurisdiction as may be necessary in the interests of justice;

13 (13) the subject matter jurisdiction of the court and venue
14 for commencing a proceeding as provided in sections 30-3814 and
15 30-3815;

16 (14) the power of a court under subdivision (a)(1) of
17 section 30-3807; and

18 (15) the power of a court to review the action or the
19 proposed action of the trustee for an abuse of discretion.

20 Sec. 2. Section 30-3846, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 30-3846. (UTC 501) To the extent a beneficiary's interest is
23 not ~~protected by~~ subject to a spendthrift provision, the court may
24 authorize a creditor or assignee of the beneficiary to reach the
25 beneficiary's interest by attachment of present or future
26 distributions to or for the benefit of the beneficiary or other means.
27 The court may limit the award to such relief as is appropriate under

1 the circumstances.

2 Sec. 3. Section 30-3848, Revised Statutes Cumulative
3 Supplement, 2006, is amended to read:

4 30-3848. (UTC 503) (a) In this section, "child" includes any
5 person for whom an order or judgment for child support has been
6 entered in this or another state.

7 ~~(b) Even if a trust contains a spendthrift provision, a~~
8 ~~beneficiary's child, spouse, or former spouse who has a judgment or~~
9 ~~court order against the beneficiary for support or maintenance, or a~~
10 ~~judgment creditor who has provided services for the protection of a~~
11 ~~beneficiary's interest in the trust, may obtain from a court an order~~
12 ~~attaching present or future distributions to or for the benefit of~~
13 ~~the beneficiary.~~

14 ~~(c) A spendthrift provision is unenforceable against a~~
15 ~~claim of this state or the United States to the extent a statute of~~
16 ~~this state or federal law so provides.~~

17 (b) A spendthrift provision is unenforceable against:

18 (1) a beneficiary's child, spouse, or former spouse who has
19 a judgment or court order against the beneficiary for support or
20 maintenance;

21 (2) a judgment creditor who has provided services for the
22 protection of a beneficiary's interest in the trust; and

23 (3) a claim of this state or the United States to the
24 extent a statute of this state or federal law so provides.

25 (c) A claimant against which a spendthrift provision cannot
26 be enforced may obtain from a court an order attaching present or
27 future distributions to or for the benefit of the beneficiary. The

1 court may limit the award to such relief as is appropriate under the
2 circumstances.

3 Sec. 4. Section 30-3849, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 30-3849. (UTC 504) (a) In this section, "child" includes any
6 person for whom an order or judgment for child support has been
7 entered in this or another state.

8 (b) Except as otherwise provided in subsection (c) of this
9 section, whether or not a trust contains a spendthrift provision, a
10 creditor of a beneficiary may not compel a distribution that is
11 subject to the trustee's discretion, even if:

12 (1) the discretion is expressed in the form of a standard of
13 distribution; or

14 (2) the trustee has abused the discretion.

15 (c) To the extent a trustee has not complied with a standard
16 of distribution or has abused a discretion:

17 (1) a distribution may be ordered by the court to satisfy a
18 judgment or court order against the beneficiary for support or
19 maintenance of the beneficiary's child, spouse, or former spouse; and

20 (2) the court shall direct the trustee to pay to the child,
21 spouse, or former spouse such amount as is equitable under the
22 circumstances but not more than the amount the trustee would have been
23 required to distribute to or for the benefit of the beneficiary had
24 the trustee complied with the standard or not abused the discretion.

25 (d) This section does not limit the right of a beneficiary
26 to maintain a judicial proceeding against a trustee for an abuse of
27 discretion or failure to comply with a standard for distribution.

1 (e) If the trustee's or cotrustee's discretion to make
2 distributions for the trustee's or cotrustee's own benefit is limited
3 by an ascertainable standard, a creditor may not reach or compel
4 distribution of the beneficial interest except to the extent the
5 interest would be subject to the creditor's claim were the
6 beneficiary not acting as trustee or cotrustee. A creditor may not
7 reach the interest of a beneficiary who is also a trustee or
8 cotrustee, or otherwise compel a distribution, if the trustee's
9 discretion to make distributions for the trustee's own benefit is
10 limited by an ascertainable standard.

11 Sec. 5. Section 30-3851, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 30-3851. (UTC 506) (a) In this section, "mandatory
14 distribution" means a distribution of income or principal which the
15 trustee is required to make to a beneficiary under the terms of the
16 trust, including a distribution upon termination of the trust. The
17 term does not include a distribution subject to the exercise of the
18 trustee's discretion even if (1) the discretion is expressed in the
19 form of a standard of distribution or (2) the terms of the trust
20 authorizing a distribution couple language of discretion with
21 language of direction.

22 (b) Whether or not a trust contains a spendthrift
23 provision, a creditor or assignee of a beneficiary may reach a
24 mandatory distribution of income or principal, including a
25 distribution upon termination of the trust, if the trustee has not
26 made the distribution to the beneficiary within a reasonable time
27 after the designated distribution date.

1 Sec. 6. Section 30-38,110, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 30-38,110. (UTC 1106) (a) Except as otherwise provided in
4 the Nebraska Uniform Trust Code, on January 1, 2005:

5 (1) the code applies to all trusts created before, on, or
6 after January 1, 2005;

7 (2) the code applies to all judicial proceedings concerning
8 trusts commenced on or after January 1, 2005;

9 (3) the code applies to judicial proceedings concerning
10 trusts commenced before January 1, 2005, unless the court finds that
11 application of a particular provision of the code would substantially
12 interfere with the effective conduct of the judicial proceedings or
13 prejudice the rights of the parties, in which case the particular
14 provision of the code does not apply and the superseded law applies;
15 and

16 (4) an act done before January 1, 2005, is not affected by
17 the code.

18 (b) If a right is acquired, extinguished, or barred upon the
19 expiration of a prescribed period that has commenced to run under any
20 other statute before January 1, 2005, that statute continues to apply
21 to the right even if it has been repealed or superseded.

22 (c) Any reference to the powers authorized under the
23 Nebraska Trustees' Powers Act as such act existed prior to January 1,
24 2005, is deemed to be a reference to the powers authorized under the
25 Nebraska Uniform Trust Code.

26 (d) Subsection (a) of section 30-3838, section 30-3839,
27 ~~subsection (b) of~~ section 30-3848, subsection (c) of section

1 30-3849, and subdivision (b)(1) of section 30-3879 apply only to
2 trusts which become irrevocable on or after January 1, 2005.

3 Sec. 7. Original sections 30-3805, 30-3846, 30-3848,
4 30-3849, 30-3851, and 30-38,110, Revised Statutes Cumulative
5 Supplement, 2006, are repealed.