



Hundredth Legislature - First Session - 2007
Introducer's Statement of Intent
LB 189

Chairperson: Rich Pahls
Committee: Banking, Commerce and Insurance
Date of Hearing: February 6, 2007

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

LB 189 would amend provisions of the Nebraska Uniform Trust Code relating to a) the trustee's "duty to inform and report" to qualified beneficiaries and b) trustee's duty to administer a trust solely in the interest of the beneficiaries.

With regard to revisions to the trustee's "duty to inform and report" to qualified beneficiaries, LB 189 would clarify that in cases in which a trustee must determine qualified beneficiaries of a trust in which a beneficial interest is subject to a power of appointment of any nature, that the trustee may conclusively presume that a power of appointment has not been exercised unless the trustee has been furnished by the holder of the power of appointment with the original or a copy of an instrument validly exercising the power of appointment. In the event that the power of appointment has been validly exercised, the trustee may determine qualified beneficiaries giving due consideration to the exercise of the power unless and until the trustee has given notification of the revocation or modification of the power of appointment.

With respect to revisions to the trustee's duty to administer a trust solely in the interest of the beneficiaries, LB 189 would expand the transactions under the Uniform Trust Code which are not presumed to be affected by a conflict between the personal and fiduciary interests of the trustee to include the placing of securities transactions by a trustee through a securities broker that is part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee.

The provisions of Neb.Rev.Stat. § 30-3867(c)(4) currently provide that transactions involving the investment or management of trust property are presumed to be affected by a conflict between personal and fiduciary interests if entered into by a trustee with a corporation or other person or enterprise in which the trustee, or a person who owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

An exception to this presumption is provided under Neb.Rev.Stat. § 30-3867(e) which expressly provides that an investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the

investment complies with the “prudent investor rule” (Neb.Rev.Stat. §§ 30-3883 to 30-3889). The trustee is further required to at least annually notify the persons entitled to receive a copy of the trustee’s annual report of the rate and method by which the trustee’s compensation was determined.

LB 189 would expand the provisions of Neb.Rev.Stat. § 30-3867(e) to provide that the placing of securities transactions by a trustee through a securities broker that is part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee are not presumed to be affected by a conflict between the personal and fiduciary interests of a trustee if the transaction and any investment made pursuant to the transaction complies with the “prudent investor rule.”

LB 189 would allow trust beneficiaries to benefit from transactions conducted between a trustee and a company affiliated with the trustee which provide an economic benefit to the trust and its beneficiaries. Trust beneficiaries would continue to be protected by the existing requirements under Neb.Rev.Stat. § 30-3867(e) that such transactions and any investment made pursuant thereto comply with the “prudent investor rule.”

Principal Introducer:

_____ **Senator Mick Mines**