

One Hundred Second Legislature - Second Session - 2012

Introducer's Statement of Intent

LB784

Chairperson: Senator Rich Pahls

Committee: Banking, Commerce and Insurance

Date of Hearing: January 24, 2012

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

LB 784 will bring provisions of the Nebraska Uniform Trust Code into alignment with the provisions of the Nebraska Probate Code by amending the Uniform Trust Code in two sections which deal with powers of appointment.

The holder of a power of appointment can be granted complete or partial control over the ultimate disposition of assets of a trust and who the beneficiaries will be. The power of appointment is created by the person who has created the trust and may be a power which has been retained by that same individual or a power which is granted another individual.

Sections 30-2208 and 30-2222(2)(i) of the Nebraska Probate Code essentially provide that to the extent a power holder may affect the potential beneficial interests of other persons and even to select those persons who will ultimately receive beneficial interests, the power holder is the appropriate person to represent the interests of the potential beneficiaries.

The changes made by this legislative bill are intended to provide more uniformity and consistency between the Nebraska Probate Code and the Nebraska Uniform Trust Code. Section 30-3823 has been changed to eliminate the "conflict of interest" provision between the holder of the power of appointment, and other potential recipients of beneficial interests in the absence of exercise of the power. In numerous instances, the holder of a power of appointment may appoint himself or herself as the taker and alter or completely eliminate the interests of permissive appointees or takers in default of appointment. As such, the conflict of interest language contained in current law is inconsistent with the Nebraska Probate Code and is inconsistent with what most individuals who create powers of appointment would want or expect.

The amendments contained in section 2 of the bill provide that if there is a holder of a power of appointment, the duties of the trustee are owed to the person holding the power of appointment and is consistent with provisions of the Nebraska Probate Code.

Principal Introducer: _____

Senator John Wightman