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FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 3/18/05 HB 830 & 1020/HJCS

SHORT TITLE Amend Uniform Trust Code SB _____

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bills 830 and 1020 amends the Uniform Trust Code to adopt, in large part, the recent amendments to the model code promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

Significant Issues

Analyzing House Bill 830, the attorney general's office (AGO) wrote:

“New Mexico enacted the Uniform Trust Act (UTC) on July 1, 2003. Since then the NCCUSL met and adopted changes to certain sections in August, 2003 and August, 2004. This bill adopts those changes almost verbatim, with the exception of one section relating to spendthrift provisions. Specifically, the bill amends the Uniform Trust Code as follows:

1. Provides that the terms of a trust prevail over the UTC except with regard to a trustee's duty to act in good faith in accordance with the interests of the beneficiaries;
2. Elaborates on provisions relating to charitable organizations who are, or may become, beneficiaries.
3. Rewrites the provisions in NMSA Section 46A-5-503 regarding exceptions to spendthrift provisions. A spendthrift provision is a provision in the trust that prohibits a beneficiary from voluntarily, or involuntarily transferring his/her interest in the trust. These provisions

are used to prevent a beneficiary's interest in a trust from being used as security to obtain credit. They are also used to prevent a beneficiary from selling his/her interest in the trust. Those transfers could defeat the purpose of the trust (eg to provide for a child's maintenance, education, etc.). Spendthrift provisions also operate to prevent most creditors from compelling a trustee to pay debts owed. Current New Mexico law reflects the NCCUSL's recommended provision and allows those with child support or spousal maintenance orders and certain judgment creditors who have provided services for the protection of the beneficiary's interests to obtain a court order attaching present or future distributions to the beneficiary. However, this bill re-writes the current law and deviates from the NCCUSL language to provide that spendthrift provisions are "unenforceable" against a beneficiary's child, spouse, or former spouse with court orders for support, or judgment creditors described above. The amendment also allows the court to limit the award against the trust based upon those orders to "such relief as is appropriate under the circumstances". Although the amendments do not appear to change the substance of the current law, they may have a practical impact which is not apparent from this analysis.

4. Changes other provisions relating to mandatory distributions and the rights of creditors, a trustee's compensation and duty of loyalty."

The committee substitute also establishes the venue for judicial proceedings involving a trust as the district court for the county in which the trust's principal place of administration is or will be. If the trust is created by will and the estate is not yet closed, the venue is the district court for the county in which the decedent's estate is being administered. If the trust has no trustee, venue for judicial proceeding for the appointment of the trustee is the district court for the county in which a beneficiary resides, any trust property is located, or if created by will, the county in which the decedent's estate is being administered.

EF/lg:yr