

AN ACT

RELATING TO TRUSTS; AMENDING THE UNIFORM TRUST CODE; AMENDING,  
RECOMPILING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 46A-1-101 NMSA 1978 (being Laws  
2003, Chapter 122, Section 1-101) is amended to read:

"46A-1-101. SHORT TITLE.--Chapter 46A NMSA 1978 may be  
cited as the "Uniform Trust Code"."

Section 2. Section 46A-1-103 NMSA 1978 (being Laws  
2003, Chapter 122, Section 1-103) is amended to read:

"46A-1-103. DEFINITIONS.--As used in the Uniform Trust  
Code:

A. "action", with respect to an act of a trustee,  
includes a failure to act;

B. "ascertainable standard" means a standard  
relating to an individual's health, education, support or  
maintenance within the meaning of Subparagraph (A) of  
Paragraph (1) of Subsection (b) of Section 2041 and Paragraph  
(1) of Subsection (c) of Section 2514 of the Internal Revenue  
Code of 1986, as amended;

C. "beneficiary" means a person that:

(1) has a present or future beneficial  
interest in a trust, vested or contingent; or

(2) in a capacity other than that of

trustee, holds a power of appointment over trust property;

D. "charitable trust" means a trust or portion of a trust created for a charitable purpose described in Subsection A of Section 46A-4-405 NMSA 1978;

E. "conservator" means a person appointed by the court to administer the estate of a minor or adult individual;

F. "environmental law" means a federal, state or local law, rule, regulation or ordinance relating to protection of the environment;

G. "guardian" means a person appointed by the court or a parent to make decisions regarding the support, care, education, health and welfare of a minor or adult person. "Guardian" does not include a guardian ad litem;

H. "interests of the beneficiaries" means the beneficial interests provided in the terms of the trust;

I. "jurisdiction", with respect to a geographic area, includes a state or country;

J. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity;

K. "power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable:

(1) by a trustee and limited by an ascertainable standard; or

(2) by another person only upon consent of the trustee or a person holding an adverse interest;

L. "property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein;

M. "qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(1) is a distributee or permissible distributee of trust income or principal;

(2) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in Paragraph (1) of this subsection terminated on that date without causing the trust to terminate; or

(3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;

N. "revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest;

O. "settlor" means a person, including a testator, who creates or contributes property to a trust. If more than

one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution, except to the extent another person has the power to revoke or withdraw that portion;

P. "spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest;

Q. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe, pueblo, nation or band recognized by federal law or formally acknowledged by a state;

R. "terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding;

S. "trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto; and

T. "trustee" includes an original trustee, an additional trustee, a successor trustee and a co-trustee."

2003, Chapter 122, Section 1-104) is amended to read:

"46A-1-104. KNOWLEDGE.--

A. Subject to Subsection B of this section, a person has knowledge of a fact if the person:

(1) has actual knowledge;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

B. An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the employee's regular duties or the employee knows that a matter involving the trust would be materially affected by the information."

Section 4. Section 46A-1-105 NMSA 1978 (being Laws 2003, Chapter 122, Section 1-105) is amended to read:

"46A-1-105. DEFAULT AND MANDATORY RULES.--

A. Except as otherwise provided in the terms of the trust, the Uniform Trust Code governs the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

B. The terms of a trust prevail over any provision of the Uniform Trust Code except:

(1) the requirements for creating a trust;

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

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

(4) the power of the court to modify or terminate a trust under Sections 46A-4-410 through 46A-4-416 NMSA 1978;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Chapter 46A, Article 5 NMSA 1978;

(6) the power of the court under Section 46A-7-702 NMSA 1978 to require, dispense with or modify or

terminate a bond;

(7) the power of the court under Subsection B of Section 46A-7-708 NMSA 1978 to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high;

(8) the duty under Paragraphs (2) and (3) of Subsection B of Section 46A-8-813 NMSA 1978 to notify qualified beneficiaries of an irrevocable trust who have attained twenty-five years of age of the existence of the trust, of the identity of the trustee and of their right to request reports of the trustee;

(9) except as otherwise provided in Subsection F of Section 46A-8-813 NMSA 1978, the duty under Subsection A of Section 46A-8-813 NMSA 1978 to respond to the request of a qualified beneficiary of an irrevocable trust for a trustee's reports and other information reasonably related to the administration of a trust;

(10) the effect of an exculpatory term under Section 46A-10-1008 NMSA 1978;

(11) the rights under Sections 46A-10-1010 through 46A-10-1013 NMSA 1978 of a person other than a trustee or beneficiary;

(12) periods of limitation for commencing a judicial proceeding; provided, however, any such period may be increased;

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

(14) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 46A-2-203 and 46A-2-204 NMSA 1978."

Section 5. Section 46A-1-107 NMSA 1978 (being Laws 2003, Chapter 122, Section 1-107) is amended to read:

"46A-1-107. GOVERNING LAW.--The meaning and effect of the terms of a trust are determined by:

- A. the law of the state designated in the terms;
- B. the law of the jurisdiction designated in the terms, which jurisdiction is not a state, unless the designation of that jurisdiction's law is contrary to a strong public policy of this state or the state jurisdiction having the most significant relationship to the matter at issue; or
- C. in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue."

Section 6. Section 46A-1-110 NMSA 1978 (being Laws 2003, Chapter 122, Section 1-110) is amended to read:

"46A-1-110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.--

- A. A charitable organization expressly designated to receive distributions under the terms of a charitable trust



has the rights of a qualified beneficiary under the Uniform Trust Code if the charitable organization, on the date the charitable organization's qualification is being determined:

(1) is a distributee or permissible distributee of trust income or principal;

(2) would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

(3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

B. A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in Section 46A-4-408 or 46A-4-409 NMSA 1978 has the rights of a qualified beneficiary under the Uniform Trust Code.

C. The attorney general has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state or its charitable beneficiary or beneficiaries that receive or are eligible to receive in the aggregate the trust's largest distribution in this state."

2003, Chapter 122, Section 2-203) is amended to read:

"46A-2-203. SUBJECT-MATTER JURISDICTION.--The district court has exclusive jurisdiction of all proceedings involving a trust."

Section 8. A new section of the Uniform Trust Code, Section 46A-2-204 NMSA 1978, is enacted to read:

"46A-2-204. VENUE.--

A. Except as otherwise provided in Subsection B of this section, venue for a judicial proceeding involving a trust is in the county of New Mexico in which the trust's principal place of administration is or will be located or, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

B. If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of New Mexico in which a beneficiary resides, in a county in which any trust property is located or, if the trust is created by will, in the county in which the decedent's estate was or is being administered."

Section 9. Section 46A-3-301 NMSA 1978 (being Laws 2003, Chapter 122, Section 3-301) is amended to read:

"46A-3-301. REPRESENTATION--BASIC EFFECT.--

A. Notice to a person who may represent and bind another person pursuant to the provisions of Chapter 46A,

Article 3 NMSA 1978 has the same effect as if notice were given directly to the other person.

B. The consent of a person who may represent and bind another person pursuant to the provisions of Chapter 46A, Article 3 NMSA 1978 is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

C. Except as otherwise provided in Sections 46A-4-411 and 46A-6-602 NMSA 1978, a person who pursuant to the provisions of Chapter 46A, Article 3 NMSA 1978 may represent a settlor who lacks capacity, may receive notice and give a binding consent on the settlor's behalf.

D. A settlor may not represent or bind a beneficiary pursuant to the provisions of Chapter 46A, Article 3 NMSA 1978 with respect to the termination or modification of a trust under Subsection A of Section 46A-4-411 NMSA 1978."

Section 10. Section 46A-4-411 NMSA 1978 (being Laws 2003, Chapter 122, Section 4-411) is amended to read:

"46A-4-411. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT.--

A. A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. If upon petition the court finds that the settlor and all

beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

B. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

C. For purposes of this section only, a spendthrift provision in the terms of a trust is not presumed to constitute either a material or an immaterial provision of the trust.

D. Upon termination of a trust under Subsection A

or B of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

E. If not all of the beneficiaries consent to a proposed modification or termination of the trust under Subsection A or B of this section, the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected."

Section 11. Section 46A-4-412 NMSA 1978 (being Laws 2003, Chapter 122, Section 4-412) is amended to read:

"46A-4-412. MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY.--

A. The court may modify the administrative or dispositive terms of a trust or terminate the trust if it is established by clear and convincing evidence that there are circumstances not anticipated by the settlor and modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

B. The court may modify the administrative terms

of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

C. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust."

Section 12. Section 46A-5-501 NMSA 1978 (being Laws 2003, Chapter 122, Section 5-501) is amended to read:

"46A-5-501. RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE.--To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances."

Section 13. Section 46A-5-503 NMSA 1978 (being Laws 2003, Chapter 122, Section 5-503) is amended to read:

"46A-5-503. EXCEPTIONS TO SPENDTHRIFT PROVISION.--

A. As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

B. A spendthrift provision is unenforceable against:

(1) a beneficiary's child, spouse or former

spouse who has a judgment or court order against the beneficiary for support or maintenance;

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

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

C. A claimant against whom a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. The order attaching present or future distributions to or for the benefit of the beneficiary shall be the exclusive remedy available to a claimant against whom a spendthrift provision cannot be enforced."

Section 14. Section 46A-5-504 NMSA 1978 (being Laws 2003, Chapter 122, Section 5-504) is amended to read:

"46A-5-504. DISCRETIONARY TRUSTS--EFFECT OF STANDARD.--

A. As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

B. Except as otherwise provided in Subsection C of HB 182  
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this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

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

(2) the trustee has abused the discretion.

C. To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

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

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

D. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

E. If the trustee's or co-trustee's discretion to make distributions for the trustee's or co-trustee's own



benefit is limited by an ascertainable standard, a creditor shall not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or co-trustee."

Section 15. Section 46A-5-506 NMSA 1978 (being Laws 2003, Chapter 122, Section 5-506) is amended to read:

"46A-5-506. OVERDUE DISTRIBUTION.--

A. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

B. As used in this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. "Mandatory distribution" does not include a distribution subject to the exercise of the trustee's discretion even if the discretion is expressed in the form of a standard of distribution or the terms of the trust authorizing distribution combine language of discretion with language of direction."

Section 16. Section 46A-6-602 NMSA 1978 (being Laws

2003, Chapter 122, Section 6-602) is amended to read:

"46A-6-602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.--

A. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before July 1, 2003.

B. If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

C. The settlor may revoke or amend a revocable trust:

(1) by substantial compliance with a method

provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(a) a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(b) any other method manifesting clear and convincing evidence of the settlor's intent.

D. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

E. A settlor's powers with respect to revocation, amendment or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

F. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

G. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or

settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked."

Section 17. Section 46A-6-603 NMSA 1978 (being Laws 2003, Chapter 122, Section 6-603) is amended to read:

"46A-6-603. SETTLOR'S POWERS--POWERS OF WITHDRAWAL.--

A. While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

B. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power."

Section 18. A new section of the Uniform Trust Code, Section 46A-6-604 NMSA 1978, is enacted to read:

"46A-6-604. LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST--DISTRIBUTION OF TRUST PROPERTY.--

A. A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) three years after the settlor's death;

or

(2) one hundred twenty days after the

trustee sent the person a copy of the trust instrument and a

notice informing the person of the trust's existence, of the trustee's name and address and of the time allowed for commencing a proceeding.

B. Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

C. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received."

Section 19. Section 46A-7-702 NMSA 1978 (being Laws 2003, Chapter 122, Section 7-702) is amended to read:

"46A-7-702. TRUSTEE'S BOND.--

A. A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

B. The court may specify the amount of a bond, its liabilities and whether sureties are necessary. The court may modify or terminate a bond at any time.

C. A regulated financial service institution qualified to do trust business in New Mexico need not give bond, even if required by the terms of the trust."

Section 20. Section 46A-7-705 NMSA 1978 (being Laws 2003, Chapter 122, Section 7-705) is amended to read:

"46A-7-705. RESIGNATION OF TRUSTEE.--

A. A trustee may resign:

(1) upon at least thirty days' notice to the qualified beneficiaries, the settlor, if living, and all co-trustees; or

(2) with the approval of the court.

B. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

C. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation."

Section 21. Section 46A-8-802 NMSA 1978 (being Laws 2003, Chapter 122, Section 8-802) is amended to read:

"46A-8-802. DUTY OF LOYALTY.--

A. A trustee shall administer the trust solely in

the interests of the beneficiaries.

B. Subject to the rights of persons dealing with or assisting the trustee as provided in Section 46A-10-1012 NMSA 1978, a sale, encumbrance or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the terms of the trust;

(2) the transaction was approved by the court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by Section 46A-10-1005 NMSA 1978;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction or released the trustee in compliance with Section 46A-10-1009 NMSA 1978; or

(5) the transaction involved a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

C. A sale, encumbrance or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and

fiduciary interests if it is entered into by the trustee with:

- (1) the trustee's spouse;
- (2) the trustee's descendants, siblings, parents or the spouse of any of them;
- (3) an agent or attorney of the trustee; or
- (4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

D. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

E. A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

F. 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 otherwise complies with the Uniform Prudent Investor Act. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment services, the trustee at least annually shall notify the persons entitled under Section 46A-8-813 NMSA 1978 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined.

G. In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

H. This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

I. The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee."

Section 22. Section 46A-8-813 NMSA 1978 (being Laws 2003, Chapter 122, Section 8-813) is amended to read:

"46A-8-813. DUTY TO INFORM AND REPORT.--

A. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

B. A trustee:

(1) upon request of a beneficiary, shall

promptly furnish to the beneficiary a copy of the trust instrument;

(2) within sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address and telephone number;

(3) within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument and of the right to a trustee's report as provided in Subsection C of this section; and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

C. A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if

feasible, their respective market values. Upon a vacancy in a trusteeship, unless a co-trustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

D. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

E. Paragraphs (2) and (3) of Subsection B of this section do not apply to a trustee who accepts a trusteeship before July 1, 2003, to an irrevocable trust created before July 1, 2003 or to a revocable trust that becomes irrevocable before July 1, 2003.

F. A knowing waiver by a settlor of the duties of the trustee to inform and report to beneficiaries under the Uniform Trust Code is effective, but only while the trustee is a regulated financial service institution qualified to do trust business in New Mexico. The knowing waiver must be conspicuous, must be contained in the terms of the trust or of a separate affidavit signed by the settlor and must state that the settlor has been informed of the risks and consequences of the waiver and that the settlor nevertheless directs that the

reports and information be withheld by the trustee. As used in this subsection, "conspicuous" means conspicuous as defined in Section 55-1-201 NMSA 1978. The knowing waiver may direct that the reports and information be withheld:

- (1) in whole or in part;
- (2) from one or more beneficiaries or classes of beneficiaries, qualified or otherwise;
- (3) in all events;
- (4) until the occurrence of a date, event or contingency;
- (5) in the sole and absolute discretion of the trustee or another person or both; or
- (6) subject to more than one of the restrictions in Paragraphs (1) through (5) of this subsection."

Section 23. Section 46A-8-814 NMSA 1978 (being Laws 2003, Chapter 122, Section 8-814) is amended to read:

"46A-8-814. DISCRETIONARY POWERS--TAX SAVINGS.--

A. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole" or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

B. Subject to Subsection D of this section, and

unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

C. A power whose exercise is limited or prohibited by Subsection B of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

D. Subsection B of this section does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(b)(5) of the Internal Revenue Code of 1986, as amended, was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the

Internal Revenue Code of 1986, as amended."

Section 24. Section 46A-8-815 NMSA 1978 (being Laws 2003, Chapter 122, Section 8-815) is amended to read:

"46A-8-815. GENERAL POWERS OF TRUSTEE.--

A. A trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust:

(a) all powers over the trust property that an unmarried competent owner has over individually owned property;

(b) any other powers appropriate to achieve the proper investment, management and distribution of the trust property; and

(c) any other powers conferred by the Uniform Trust Code.

B. The exercise of a power is subject to the fiduciary duties prescribed by Chapter 46A, Article 8 NMSA 1978."

Section 25. Section 46A-10-1001 NMSA 1978 (being Laws 2003, Chapter 122, Section 10-1001) is amended to read:

"46A-10-1001. BREACH OF TRUST.--

A. A violation by a trustee of a duty the trustee

owes to a beneficiary is a breach of trust.

B. To remedy a breach of trust that has occurred or may occur, the court may:

- (1) compel the trustee to perform the trustee's duties;
- (2) enjoin the trustee from committing a breach of trust;
- (3) compel the trustee to redress a breach of trust by paying money, restoring property or other means;
- (4) order a trustee to account;
- (5) appoint a special fiduciary to take possession of the trust property and administer the trust;
- (6) suspend the trustee;
- (7) remove the trustee as provided in Section 46A-7-706 NMSA 1978;
- (8) reduce or deny compensation to the trustee;
- (9) subject to Section 46A-10-1012 NMSA 1978, void an act of the trustee, impose a lien or a constructive trust on trust property or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- (10) order any other appropriate relief."

Section 26. Section 46A-10-1002 NMSA 1978 (being Laws 2003, Chapter 122, Section 10-1002) is amended to read:



"46A-10-1002. DAMAGES FOR BREACH OF TRUST.--

A. A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(2) the profit the trustee made by reason of the breach.

B. Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received."

Section 27. A new section of the Uniform Trust Code, Section 46A-10-1005 NMSA 1978, is enacted to read:

"46A-10-1005. LIMITATION OF ACTION AGAINST TRUSTEE.--

A. A beneficiary shall not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the

beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

B. A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

C. If Subsection A of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within five years after the first to occur of:

(1) the removal, resignation or death of the trustee;

(2) the termination of the beneficiary's interest in the trust; or

(3) the termination of the trust."

Section 28. A new section of the Uniform Trust Code, Section 46A-10-1011 NMSA 1978, is enacted to read:

"46A-10-1011. INTEREST AS GENERAL PARTNER.--

A. Except as otherwise provided in Subsection C of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable

on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed or recorded pursuant to the provisions of any version of the Uniform Partnership Act or the Uniform Limited Partnership Act.

B. Except as otherwise provided in Subsection C of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

C. The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings or parents, or the spouse of any of them.

D. If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner."

Section 29. A new section of the Uniform Trust Code, Section 46A-11-1105 NMSA 1978, is enacted to read:

"46A-11-1105. APPLICATION TO EXISTING RELATIONSHIPS.--

A. Except as otherwise provided in this 2007 act: HB 182  
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(1) the provisions of this 2007 act apply to all trusts created before, on or after July 1, 2007;

(2) the provisions of this 2007 act apply to all judicial proceedings concerning trusts commenced on or after July 1, 2007;

(3) the provisions of this 2007 act apply to judicial proceedings concerning trusts commenced before July 1, 2007 unless the court finds that application of a particular provision of this 2007 act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this 2007 act does not apply and the superseded law applies;

(4) any rule of construction or presumption provided in this 2007 act applies to trust instruments executed before July 1, 2007 unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) an act done before the effective date of this 2007 act is not affected by the provisions of this 2007 act.

B. If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2007, that statute continues to apply to the right even if it has been repealed or superseded.

C. The provisions of this 2007 act do not apply to the trust created by the Enabling Act for New Mexico of June 20, 1910, 36 Stat. 557, Ch. 310."

Section 30. TEMPORARY PROVISION--RECOMPILATION.--  
Sections 46A-10-1005 through 46A-10-1009 NMSA 1978 (being Laws 2003, Chapter 122, Sections 10-1005 through 10-1009) are recompiled as Sections 46A-10-1006 through 46A-10-1010 NMSA 1978. Sections 46A-10-1011 and 46A-10-1012 NMSA 1978 (being Laws 2003, Chapter 122, Sections 10-1011 and 10-1012) are recompiled as Sections 46A-10-1012 and 46A-10-1013 NMSA 1978.

Section 31. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007. \_\_\_\_\_