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## FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 3/01/03 HB 48/HJCS

SHORT TITLE: Uniform Trust Code SB \_\_\_\_\_

ANALYST: Maloy

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI		NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Responses Received From  
Office of the Attorney General

### SUMMARY

#### Synopsis of Bill

1. House Bill 48 / HJCS enacts the Model Uniform Trust Code, a code intended to apply to express trusts, charitable or non-charitable, and trusts created pursuant to a state, judgment or decree that requires the trust be administered in a manner of an express trust.
2. The bill sets forth the following regarding the administration of trusts:
  - o establishes who may represent and bind a trust as a conservator (i.e., the individual assigned to administer the trust);
  - o establishes the vast duties and powers of a trustee and the rights and interests of beneficiaries;
  - o addresses designated jurisdiction vs. legal jurisdiction (in the absence of expressly designated jurisdiction) regarding trust matters;
  - o establishes the notice requirements, and the methods by which notice may be given to beneficiaries and interested parties;

- establishes the right of the New Mexico Attorney General to receive notice as a qualified beneficiary with respect to a charitable trust having its principal place of administration in New Mexico;
- sets forth trust matters that may be resolved by a non-judicial settlement agreement, such as “interpretation or construction of the terms of the trust, the approval of a trustee’s report or accounting, direction to a trustee to refrain from performing a particular act or the grant of any necessary or desirable power to a trustee, the resignation or appointment of a trustee, transfer of a trust’s principal place of administration, and liability of a trustee for an action relating to the trust”;
- establishes the roles and proceedings of the court in administration of the trust;
- establishes the jurisdiction over and representation of the trustee and beneficiary;
- allows representation by a holder of general testamentary power of appointment, and by fiduciaries and parents, to the extent there is no conflict of interest;
- addresses overdue distributions and the rights of a creditor or assignee of a beneficiary;
- makes clear that trust property is not subject to the personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt;
- addresses the creation, amendment and revocation of a revocable trust, as well as the rights of the beneficiaries in light of the control of and duties of the trustee being owned exclusively to the “settlor”;
- establishes the trustee’s ability to accept or decline a trusteeship, and the processes through which either is achieved;
- sets forth the requirements for a trustee’s bond to secure performance of the trustee’s duties, *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;
- addresses the processes through which co-trustees are to work in the event that a unanimous decision is not achievable, or a co-trustee is “unavailable” to perform his duties, or a trustee vacancy is in need of filling;
- establishes grounds for the removal of a trustee, including a serious breach of trust, lack of cooperation that substantially impairs the administration of the trust, unfitness, unwillingness or persistent failure to administer the trust effectively;
- provides for the “reasonable” compensation of the trustee(s), and reimbursement of the trustee out of trust property, with interest as appropriate, for expenses associated with administration of the trust;
- addresses specifically the trustee’s duty of loyalty, to administer the trust solely in

the interest of the beneficiaries and in accordance with the terms of the trust or orders of the court;

- addresses in great detail the trustee's fiduciary duties;
- establishes that in the event there may be two or more beneficiaries, the trustee must be fair, and that in all matters the trustee must act with prudence;
- sets forth the trustees required skill levels, and in some instances, areas of expertise;
- establishes the grounds and process for a trustee's delegation of his duties and powers, in light of a prudent trustee of comparable skill, and the requirement that the trustee act with reasonable care, skill and caution in designating an agent to act on his behalf under a delegation of duties and powers;
- establishes the duty of the trustee to control and protect the trust property, and to keep adequate records of the administration of the trust;
- makes clear the duty of the trustee to keep qualified beneficiaries of the trust reasonably informed about the administration of the trust, and the time frames in which the trustee must act to provide this information;
- establishes the trustee's discretionary powers, if acting in good faith;
- defines the distribution upon termination process;
- provides a detailed breakdown of the liability of trustees and the rights of persons dealing with trustees in the event of a breach of trust, as well as damages in the absence of breach;
- sets forth the limitation on personal liability of a trustee;
- establishes the process for certification of a trust; and
- provides miscellaneous provisions governing such technical, administrative matters as "uniformity of application and construction" (of provisions of the Act), "electronic records and signatures", "severability" (of provisions of the Act), and "application" (of the Act to trust matters commenced prior to its adoption).

### Significant Issues

1. Being a model code, it is likely that this code was developed through a national, group-review process.
2. According to the Office of the Attorney General, this bill passed in 2001 with amendments from House Judiciary and the Senate Floor, but was vetoed.
3. It is suggested that, when this bill is heard in committee, the Attorney General's Office be asked to appear before the committee to discuss this bill in greater detail, or to suggest

experts who can best inform the committee of this bill's comprehensive effect.

4. On its face, this bill appears to bring sound principles and consistency to the "trust arena".

### **FISCAL IMPLICATIONS**

HB 48 / HJCS does not have direct fiscal implications for the state. However, greater clarity and consistency in trust laws will likely make the resolution of such matters easier and more expedient for the courts.

### **OTHER SUBSTANTIVE ISSUES**

In its analysis, the Attorney General's Office noted:

The Attorney General's Office had requested certain language be added to the original HB 48 in order to clarify this office's continued role as the State's Charitable Registrar. This language was added in the Committee Substitute.

**SJM/njw**