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HOUSE BILL 182

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Al Park

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.--~~[This act]~~ 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

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1 relating to an individual's health, education, support or
2 maintenance within the meaning of Subparagraph (A) of Paragraph
3 (1) of Subsection (b) of Section 2041 and Paragraph (1) of
4 Subsection (c) of Section 2514 of the Internal Revenue Code of
5 1986, as amended;

6 [B-] C. "beneficiary" means a person that:

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

9 (2) in a capacity other than that of trustee,
10 holds a power of appointment over trust property;

11 [E-] D. "charitable trust" means a trust or portion
12 of a trust created for a charitable purpose described in
13 Subsection A of Section [~~4-405 of the Uniform Trust Code~~]
14 46A-4-405 NMSA 1978;

15 [D-] E. "conservator" means a person appointed by
16 the court to administer the estate of a minor or adult
17 individual;

18 [E-] F. "environmental law" means a federal, state
19 or local law, rule, regulation or ordinance relating to
20 protection of the environment;

21 [F-] G. "guardian" means a person appointed by the
22 court or a parent to make decisions regarding the support,
23 care, education, health and welfare of a minor or adult person.

24 [~~The term~~] "Guardian" does not include a guardian ad litem;

25 [G-] H. "interests of the beneficiaries" means the

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1 beneficial interests provided in the terms of the trust;

2 ~~[H.]~~ I. "jurisdiction", with respect to a
3 geographic area, includes a state or country;

4 ~~[I.]~~ J. "person" means an individual, corporation,
5 business trust, estate, trust, partnership, limited liability
6 company, association, joint venture, government, governmental
7 subdivision, agency or instrumentality, public corporation or
8 any other legal or commercial entity;

9 ~~[J.]~~ K. "power of withdrawal" means ~~[an]~~ a
10 presently exercisable general power of appointment other than a
11 power exercisable ~~[only upon consent of the trustee or a person~~
12 ~~holding an adverse interest]:~~

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

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

17 ~~[K.]~~ L. "property" means anything that may be the
18 subject of ownership, whether real or personal, legal or
19 equitable, or any interest therein;

20 ~~[L.]~~ M. "qualified beneficiary" means a beneficiary
21 who, on the date the beneficiary's qualification is determined:

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

24 (2) would be a distributee or permissible
25 distributee of trust income or principal if the interests of

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1 the distributees described in Paragraph (1) of this subsection
2 terminated on that date without causing the trust to terminate;
3 or

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

7 [~~M.~~] N. "revocable", as applied to a trust, means
8 revocable by the settlor without the consent of the trustee or
9 a person holding an adverse interest;

10 [~~N.~~] O. "settlor" means a person, including a
11 testator, who creates or contributes property to a trust. If
12 more than one person creates or contributes property to a
13 trust, each person is a settlor of the portion of the trust
14 property attributable to that person's contribution, except to
15 the extent another person has the power to revoke or withdraw
16 that portion;

17 [~~Ø.~~] P. "spendthrift provision" means a term of a
18 trust that restrains both voluntary and involuntary transfer of
19 a beneficiary's interest;

20 [~~P.~~] Q. "state" means a state of the United States,
21 the District of Columbia, Puerto Rico, the United States Virgin
22 Islands or any territory or insular possession subject to the
23 jurisdiction of the United States. [~~The term~~] "State" includes
24 an Indian tribe, pueblo, nation or band recognized by federal
25 law or formally acknowledged by a state;

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1 [Q-] R. "terms of a trust" means the manifestation
2 of the settlor's intent regarding a trust's provisions as
3 expressed in the trust instrument or as may be established by
4 other evidence that would be admissible in a judicial
5 proceeding;

6 [R-] S. "trust instrument" means an instrument
7 executed by the settlor that contains terms of the trust,
8 including any amendments thereto; and

9 [S-] T. "trustee" includes an original trustee, an
10 additional trustee, a successor trustee and a co-trustee."

11 Section 3. Section 46A-1-104 NMSA 1978 (being Laws 2003,
12 Chapter 122, Section 1-104) is amended to read:

13 "46A-1-104. KNOWLEDGE.--

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

16 (1) has actual knowledge [~~or should have~~
17 ~~knowledge of it~~];

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

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

22 B. An organization that conducts activities through
23 employees has notice or knowledge of a fact involving a trust
24 only from the time the information was received by an employee
25 having responsibility to act for the trust, or would have been

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1 brought to the employee's attention if the organization had
2 exercised reasonable diligence. An organization exercises
3 reasonable diligence if it maintains reasonable routines for
4 communicating significant information to the employee having
5 responsibility to act for the trust and there is reasonable
6 compliance with the routines. Reasonable diligence does not
7 require an employee of the organization to communicate
8 information unless the communication is part of the employee's
9 regular duties or the employee knows that a matter involving
10 the trust would be materially affected by the information."

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

13 "46A-1-105. DEFAULT AND MANDATORY RULES.--

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

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

20 (1) the requirements for creating a trust;

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

24 (3) the requirement that a trust and its terms
25 be for the benefit of its beneficiaries and that the trust have

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1 a purpose that is lawful, not contrary to public policy and
2 possible to achieve;

3 (4) the power of the court to modify or
4 terminate a trust under Sections [~~4-410 through 4-416 of the~~
5 ~~Uniform Trust Code~~] 46A-4-410 through 46A-4-416 NMSA 1978;

6 (5) the effect of a spendthrift provision and
7 the rights of certain creditors and assignees to reach a trust
8 as provided in Chapter 46A, Article 5 [~~of the Uniform Trust~~
9 ~~Code~~] NMSA 1978;

10 (6) the power of the court under Section
11 [~~7-702 of the Uniform Trust Code~~] 46A-7-702 NMSA 1978 to
12 require, dispense with or modify or terminate a bond;

13 (7) the power of the court under Subsection B
14 of Section [~~7-708 of the Uniform Trust Code~~] 46A-7-708 NMSA
15 1978 to adjust a trustee's compensation specified in the terms
16 of the trust that is unreasonably low or high;

17 (8) [~~except for a qualified beneficiary who~~
18 ~~has not attained twenty-five years of age~~] the duty under
19 Paragraphs (2) and (3) of Subsection B of Section [~~8-813 of the~~
20 ~~Uniform Trust Code~~] 46A-8-813 NMSA 1978 to notify qualified
21 beneficiaries of an irrevocable trust who have attained twenty-
22 five years of age of the existence of the trust, of the
23 identity of the trustee and of their right to request reports
24 of the trustee;

25 (9) except as otherwise provided in Subsection

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1 F of Section 46A-8-813 NMSA 1978, the duty under Subsection A
2 of Section [~~8-813 of the Uniform Trust Code~~] 46A-8-813 NMSA
3 1978 to respond to the request of a qualified beneficiary of an
4 irrevocable trust for a trustee's reports and other information
5 reasonably related to the administration of a trust;

6 (10) the effect of an exculpatory term under
7 Section [~~10-1007 of the Uniform Trust Code~~] 46A-10-1008 NMSA
8 1978;

9 (11) the rights under Sections [~~10-1008~~
10 ~~through 10-1012 of the Uniform Trust Code~~] 46A-10-1010 through
11 46A-10-1013 NMSA 1978 of a person other than a trustee or
12 beneficiary;

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

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

19 (14) the subject-matter jurisdiction of the
20 court and venue for commencing a proceeding as provided in
21 Sections [~~2-203 and 2-204 of the Uniform Trust Code~~] 46A-2-203
22 and 46A-2-204 NMSA 1978."

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

25 "46A-1-107. GOVERNING LAW.--The meaning and effect of the

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1 terms of a trust are determined by:

2 A. the law of the state designated in the terms;

3 ~~[A.]~~ B. the law of the jurisdiction that is not a
4 state designated in the terms unless the designation of that
5 jurisdiction's law is contrary to a strong public policy of
6 this state or the jurisdiction having the most significant
7 relationship to the matter at issue; or

8 ~~[B.]~~ C. in the absence of a controlling designation
9 in the terms of the trust, the law of the jurisdiction having
10 the most significant relationship to the matter at issue."

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

13 "46A-1-110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.--

14 ~~[A. Whenever notice to qualified beneficiaries of a~~
15 ~~trust is required under the Uniform Trust Code, the trustee~~
16 ~~must also give notice to any other beneficiary who has sent the~~
17 ~~trustee a request for notice.]~~

18 ~~[B.]~~ A. A charitable organization expressly
19 designated to receive distributions under the terms of a
20 charitable trust ~~[or]~~ has the rights of a qualified beneficiary
21 under the Uniform Trust Code if the charitable organization, on
22 the date the charitable organization's qualification is being
23 determined:

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

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

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

9 B. A person appointed to enforce a trust created
10 for the care of an animal or another noncharitable purpose as
11 provided in Section [~~4-408 or 4-409 of the Uniform Trust Code~~]
12 46A-4-408 or 46A-4-409 NMSA 1978 has the rights of a qualified
13 beneficiary under [~~that~~] the Uniform Trust Code.

14 C. The attorney general [~~of this state~~] has the
15 rights of a qualified beneficiary with respect to a charitable
16 trust having its principal place of administration or its
17 principal beneficiary in this state."

18 Section 7. Section 46A-2-203 NMSA 1978 (being Laws 2003,
19 Chapter 122, Section 2-203) is amended to read:

20 "46A-2-203. SUBJECT-MATTER JURISDICTION.--~~[A.]~~ The
21 district court has exclusive jurisdiction of all proceedings
22 [~~in this state brought by a trustee or beneficiary concerning~~
23 ~~the administration of]~~ involving a trust.

24 ~~[B. The district court has concurrent jurisdiction~~
25 ~~with other courts of this state of other proceedings involving~~

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1 ~~a trust.]"~~

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

4 "46A-2-204. [NEW MATERIAL] VENUE.--

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

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

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

19 "46A-3-301. REPRESENTATION--BASIC EFFECT.--

20 A. Notice to a person who may represent and bind
21 another person [~~under this article~~] pursuant to the provisions
22 of Chapter 46A, Article 3 NMSA 1978 has the same effect as if
23 notice were given directly to the other person.

24 B. The consent of a person who may represent and
25 bind another person [~~under this article~~] pursuant to the

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1 provisions of Chapter 46A, Article 3 NMSA 1978 is binding on
2 the person represented unless the person represented objects to
3 the representation before the consent would otherwise have
4 become effective.

5 C. Except as otherwise provided in Sections [~~4-411~~
6 ~~and 6-602 of the Uniform Trust Code~~] 46A-4-411 and 46A-6-602
7 NMSA 1978, a person who [~~under this article~~] pursuant to the
8 provisions of Chapter 46A, Article 3 NMSA 1978 may represent a
9 settlor who lacks capacity, may receive notice and give a
10 binding consent on the settlor's behalf.

11 D. A settlor may not represent or bind a
12 beneficiary pursuant to the provisions of Chapter 46A, Article
13 3 NMSA 1978 with respect to the termination or modification of
14 a trust under Subsection A of Section 46A-4-411 NMSA 1978."

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

17 "46A-4-411. MODIFICATION OR TERMINATION OF NONCHARITABLE
18 IRREVOCABLE TRUST BY CONSENT.--

19 A. A noncharitable irrevocable trust may be
20 modified or terminated upon consent of the settlor and all
21 beneficiaries, even if the modification or termination is
22 inconsistent with a material purpose of the trust. If upon
23 petition the court finds that the settlor and all beneficiaries
24 consent to the modification or termination of a noncharitable
25 irrevocable trust, the court shall approve the modification or

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1 termination even if the modification or termination is
2 inconsistent with a material purpose of the trust. A settlor's
3 power to consent to a trust's modification or termination may
4 be exercised by an agent under a power of attorney only to the
5 extent expressly authorized by the power of attorney or the
6 terms of the trust; by the settlor's conservator with the
7 approval of the court supervising the conservatorship if an
8 agent is not so authorized; or by the settlor's guardian with
9 the approval of the court supervising the guardianship if an
10 agent is not so authorized and a conservator has not been
11 appointed.

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

19 C. ~~[A spendthrift provision in the terms of the~~
20 ~~trust is not presumed to constitute a material purpose of the~~
21 ~~trust.]~~ For purposes of this section only, a spendthrift
22 provision in the terms of a trust is not presumed to constitute
23 either a material or an immaterial provision of the trust.

24 D. Upon termination of a trust under Subsection A
25 or B of this section, the trustee shall distribute the trust

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1 property as agreed by the beneficiaries.

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

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

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

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

14 "46A-4-412. MODIFICATION OR TERMINATION BECAUSE OF
15 UNANTICIPATED CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST
16 EFFECTIVELY.--

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

24 B. The court may modify the administrative terms of
25 a trust if continuation of the trust on its existing terms

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1 would be impracticable or wasteful or impair the trust's
2 administration.

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

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

8 "46A-5-501. RIGHTS OF BENEFICIARY'S CREDITOR OR
9 ASSIGNEE.--To the extent a beneficiary's interest is not
10 [~~protected by~~] subject to a spendthrift provision, the court
11 may authorize a creditor or assignee of the beneficiary to
12 reach the beneficiary's interest by attachment of present or
13 future distributions to or for the benefit of the beneficiary
14 or other means. The court may limit the award to such relief
15 as is appropriate under the circumstances."

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

18 "46A-5-503. EXCEPTIONS TO SPENDTHRIFT PROVISION.--

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

22 [~~B. Even if a trust contains a spendthrift~~
23 ~~provision, a beneficiary's child, spouse or former spouse who~~
24 ~~has a judgment or court order against the beneficiary for~~
25 ~~support or maintenance, or a judgment creditor who has provided~~

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1 ~~services for the protection of a beneficiary's interest in the~~
2 ~~trust, may obtain from a court an order attaching present or~~
3 ~~future distributions to or for the benefit of the beneficiary.~~

4 ~~C. A spendthrift provision is unenforceable against~~
5 ~~a claim of this state or the United States to the extent a~~
6 ~~statute of this state or federal law so provides.]~~

7 B. A spendthrift provision is unenforceable
8 against:

9 (1) a beneficiary's child, spouse or former
10 spouse who has a judgment or court order against the
11 beneficiary for support or maintenance;

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

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

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

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1 enforced."

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

4 "46A-5-504. DISCRETIONARY TRUSTS--EFFECT OF
5 STANDARD.--

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

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

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

16 (2) the trustee has abused the discretion.

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

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

23 (2) the court shall direct the trustee to pay
24 to the child, spouse or former spouse such amount as is
25 equitable under the circumstances but not more than the amount

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1 the trustee would have been required to distribute to or for
2 the benefit of the beneficiary had the trustee complied with
3 the standard or not abused the discretion.

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

8 E. If the trustee's or co-trustee's discretion to
9 make distributions for the trustee's or co-trustee's own
10 benefit is limited by an ascertainable standard, a creditor
11 shall not reach or compel distribution of the beneficial
12 interest except to the extent the interest would be subject to
13 the creditor's claim were the beneficiary not acting as trustee
14 or co-trustee."

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

17 "46A-5-506. OVERDUE DISTRIBUTION.--

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

24 B. As used in this section, "mandatory
25 distribution" means a distribution of income or principal that

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1 the trustee is required to make to a beneficiary under the
2 terms of the trust, including a distribution upon termination
3 of the trust. "Mandatory distribution" does not include a
4 distribution subject to the exercise of the trustee's
5 discretion even if the discretion is expressed in the form of a
6 standard of distribution or the terms of the trust authorizing
7 distribution combine language of discretion with language of
8 direction."

9 Section 16. Section 46A-6-602 NMSA 1978 (being Laws 2003,
10 Chapter 122, Section 6-602) is amended to read:

11 "46A-6-602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.--

12 A. Unless the terms of a trust expressly provide
13 that the trust is irrevocable, the settlor may revoke or amend
14 the trust. This subsection does not apply to a trust created
15 under an instrument executed before [~~the effective date of the~~
16 ~~Uniform Trust Code~~] July 1, 2003.

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

19 (1) to the extent the trust consists of
20 community property, the trust may be revoked by either spouse
21 acting alone but may be amended only by joint action of both
22 spouses; [~~and~~]

23 (2) to the extent the trust consists of
24 property other than community property, each settlor may revoke
25 or amend the trust with regard to the portion of the trust

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1 property attributable to that settlor's contribution; and
2 (3) upon the revocation or amendment of the
3 trust by fewer than all of the settlors, the trustee shall
4 promptly notify the other settlors of the revocation or
5 amendment.

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

8 (1) by substantial compliance with a method
9 provided in the terms of the trust; or

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

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

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

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

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

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

7 G. A trustee who does not know that a trust has
8 been revoked or amended is not liable to the settlor or
9 settlor's successors in interest for distributions made and
10 other actions taken on the assumption that the trust had not
11 been amended or revoked."

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

14 "46A-6-603. SETTLOR'S POWERS--POWERS OF WITHDRAWAL.--

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

19 ~~[B. If a revocable trust has more than one settlor,~~
20 ~~the duties of the trustee are owed to all of the settlors~~
21 ~~having capacity to revoke the trust.~~

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

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

3 "46A-6-604. [NEW MATERIAL] LIMITATION ON ACTION
4 CONTESTING VALIDITY OF REVOCABLE TRUST--DISTRIBUTION OF TRUST
5 PROPERTY.--

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

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

10 (2) one hundred twenty days after the trustee

11 sent the person a copy of the trust instrument and a notice

12 informing the person of the trust's existence, of the trustee's

13 name and address and of the time allowed for commencing a

14 proceeding.

15 B. Upon the death of the settlor of a trust that

16 was revocable at the settlor's death, the trustee may proceed

17 to distribute the trust property in accordance with the terms

18 of the trust. The trustee is not subject to liability for

19 doing so unless:

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

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

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

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

6 "46A-7-702. TRUSTEE'S BOND.--

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

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

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

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

20 "46A-7-705. RESIGNATION OF TRUSTEE.--

21 A. A trustee may resign:

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

25 (2) with the approval of the court.

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

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

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

10 "46A-8-802. DUTY OF LOYALTY.--

11 A. A trustee shall administer the trust solely in
12 the interests of the beneficiaries.

13 B. Subject to the rights of persons dealing with or
14 assisting the trustee as provided in Section [~~10-1011~~ of the
15 ~~Uniform Trust Code~~] 46A-10-1012 NMSA 1978, a sale, encumbrance
16 or other transaction involving the investment or management of
17 trust property entered into by the trustee for the trustee's
18 own personal account or [~~which~~] that is otherwise affected by a
19 conflict between the trustee's fiduciary and personal interests
20 is voidable by a beneficiary affected by the transaction
21 unless:

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

24 (2) the transaction was approved by the court;

25 (3) the beneficiary did not commence a

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1 judicial proceeding within the time allowed by Section
2 46A-10-1005 NMSA 1978;

3 [~~(3)~~] (4) the beneficiary consented to the
4 trustee's conduct, ratified the transaction or released the
5 trustee in compliance with Section [~~10-1008 of the Uniform~~
6 ~~Trust Code~~] 46A-10-1009 NMSA 1978; or

7 [~~(4)~~] (5) the transaction involved a contract
8 entered into or claim acquired by the trustee before the person
9 became or contemplated becoming trustee.

10 C. A sale, encumbrance or other transaction
11 involving the investment or management of trust property is
12 presumed to be affected by a conflict between personal and
13 fiduciary interests if it is entered into by the trustee with:

14 (1) the trustee's spouse;

15 (2) the trustee's descendants, siblings,
16 parents or the spouse of any of them;

17 (3) an agent or attorney of the trustee; or

18 (4) a corporation or other person or
19 enterprise in which the trustee, or a person that owns a
20 significant interest in the trustee, has an interest that might
21 affect the trustee's best judgment.

22 D. A transaction between a trustee and a
23 beneficiary that does not concern trust property but that
24 occurs during the existence of the trust or while the trustee
25 retains significant influence over the beneficiary and from

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1 which the trustee obtains an advantage is voidable by the
2 beneficiary unless the trustee establishes that the transaction
3 was fair to the beneficiary.

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

9 F. An investment by a trustee in securities of an
10 investment company or investment trust to which the trustee, or
11 its affiliate, provides services in a capacity other than as
12 trustee is not presumed to be affected by a conflict between
13 personal and fiduciary interests if the investment otherwise
14 complies with the Uniform Prudent Investor Act. In addition to
15 its compensation for acting as trustee, the trustee may be
16 compensated by the investment company or investment trust for
17 providing those services out of fees charged to the trust. If
18 the trustee receives compensation from the investment company
19 or investment trust for providing investment advisory or
20 investment services, the trustee at least annually [~~notifies~~]
21 shall notify the persons entitled under Section [~~8-813 of the~~
22 ~~Uniform Trust Code~~] 46A-8-813 NMSA 1978 to receive a copy of
23 the trustee's annual report of the rate and method by which the
24 compensation was determined.

25 G. In voting shares of stock or in exercising

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1 powers of control over similar interests in other forms of
2 enterprise, the trustee shall act in the best interests of the
3 beneficiaries. If the trust is the sole owner of a corporation
4 or other form of enterprise, the trustee shall elect or appoint
5 directors or other managers who will manage the corporation or
6 enterprise in the best interests of the beneficiaries.

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

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

12 (2) payment of reasonable compensation to the
13 trustee;

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

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

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

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

25 Section 22. Section 46A-8-813 NMSA 1978 (being Laws 2003,

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1 Chapter 122, Section 8-813) is amended to read:

2 "46A-8-813. DUTY TO INFORM AND REPORT.--

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

10 B. A trustee:

11 (1) upon request of a beneficiary, shall
12 promptly furnish to the beneficiary a copy of the trust
13 instrument;

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

18 (3) within sixty days after the date the
19 trustee acquires knowledge of the creation of an irrevocable
20 trust, or the date the trustee acquires knowledge that a
21 formerly revocable trust has become irrevocable, whether by the
22 death of the settlor or otherwise, shall notify the qualified
23 beneficiaries of the trust's existence, of the identity of the
24 settlor or settlors, of the right to request a copy of the
25 trust instrument and of the right to a trustee's report as

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1 provided in Subsection C of this section; and

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

5 C. A trustee shall send to the distributees or
6 permissible distributees of trust income or principal, and to
7 other qualified or nonqualified beneficiaries who request it,
8 at least annually and at the termination of the trust, a report
9 of the trust property, liabilities, receipts and disbursements,
10 including the source and amount of the trustee's compensation,
11 a listing of the trust assets and, if feasible, their
12 respective market values. Upon a vacancy in a trusteeship,
13 unless a co-trustee remains in office, a report must be sent to
14 the qualified beneficiaries by the former trustee. A personal
15 representative, conservator or guardian may send the qualified
16 beneficiaries a report on behalf of a deceased or incapacitated
17 trustee.

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

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

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1 July 1, 2003 or to a revocable trust that becomes irrevocable
2 before July 1, 2003.

3 F. A knowing waiver by a settlor of the duties of
4 the trustee to inform and report to beneficiaries under the
5 Uniform Trust Code is effective, but only while the trustee is
6 a regulated financial service institution qualified to do trust
7 business in New Mexico. The knowing waiver must be
8 conspicuous, must be contained in the terms of the trust or of
9 a separate affidavit signed by the settlor and must state that
10 the settlor has been informed of the risks and consequences of
11 the waiver and that the settlor nevertheless directs that the
12 reports and information be withheld by the trustee. As used in
13 this subsection, "conspicuous" means conspicuous as defined in
14 Section 55-1-201 NMSA 1978. The knowing waiver may direct that
15 the reports and information be withheld:

16 (1) in whole or in part;

17 (2) from one or more beneficiaries or classes
18 of beneficiaries, qualified or otherwise;

19 (3) in all events;

20 (4) until the occurrence of a date, event or
21 contingency;

22 (5) in the sole and absolute discretion of the
23 trustee or another person or both; or

24 (6) subject to more than one of the
25 restrictions in Paragraphs (1) through (5) of this subsection."

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

3 "46A-8-814. DISCRETIONARY POWERS--TAX SAVINGS.--

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

10 B. Subject to Subsection D of this section, and
11 unless the terms of the trust expressly indicate that a rule in
12 this subsection does not apply:

13 (1) a person other than a settlor who is a
14 beneficiary and trustee of a trust that confers on the trustee
15 a power to make discretionary distributions to or for the
16 trustee's personal benefit may exercise the power only in
17 accordance with an ascertainable standard [~~relating to the~~
18 ~~trustee's individual health, education, support or maintenance~~
19 ~~within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of~~
20 ~~the Internal Revenue Code of 1986, as amended~~]; and

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

24 C. A power whose exercise is limited or prohibited
25 by Subsection B of this section may be exercised by a majority

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1 of the remaining trustees whose exercise of the power is not so
2 limited or prohibited. If the power of all trustees is so
3 limited or prohibited, the court may appoint a special
4 fiduciary with authority to exercise the power.

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

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

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

12 (3) a trust if contributions to the trust
13 qualify for the annual exclusion under Section 2503(c) of the
14 Internal Revenue Code of 1986, as amended."

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

17 "46A-8-815. GENERAL POWERS OF TRUSTEE.--

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

20 (1) powers conferred by the terms of the
21 trust; ~~[or]~~ and

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

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

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1 property;

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

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

7 B. The exercise of a power is subject to the
8 fiduciary duties prescribed by [~~this article~~] Chapter 46A,
9 Article 8 NMSA 1978."

10 Section 25. Section 46A-10-1001 NMSA 1978 (being Laws
11 2003, Chapter 122, Section 10-1001) is amended to read:

12 "46A-10-1001. BREACH OF TRUST.--

13 A. A violation by a trustee of a duty the trustee
14 owes to a beneficiary is a breach of trust.

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

17 (1) compel the trustee to perform the
18 trustee's duties;

19 (2) enjoin the trustee from committing a
20 breach of trust;

21 (3) compel the trustee to redress a breach of
22 trust by paying money, restoring property or other means;

23 (4) order a trustee to account;

24 (5) appoint a special fiduciary to take
25 possession of the trust property and administer the trust;

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- 1 (6) suspend the trustee;
- 2 (7) remove the trustee as provided in Section
- 3 46A-7-706 NMSA 1978;
- 4 (8) reduce or deny compensation to the
- 5 trustee;
- 6 (9) subject to Section 46A-10-1012 NMSA 1978,
- 7 void an act of the trustee, impose a lien or a constructive
- 8 trust on trust property or trace trust property wrongfully
- 9 disposed of and recover the property or its proceeds; or
- 10 (10) order any other appropriate relief."

11 Section 26. Section 46A-10-1002 NMSA 1978 (being Laws
12 2003, Chapter 122, Section 10-1002) is amended to read:

13 "46A-10-1002. DAMAGES FOR BREACH OF TRUST.--

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

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

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

21 B. Except as otherwise provided in this subsection,
22 if more than one trustee is liable to the beneficiaries for a
23 breach of trust, a trustee is entitled to contribution from the
24 other trustee or trustees. A trustee is not entitled to
25 contribution if the trustee was substantially more at fault

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1 than another trustee or if the trustee committed the breach of
2 trust in bad faith or with reckless indifference to the
3 purposes of the trust or the interests of the beneficiaries. A
4 trustee who received a benefit from the breach of trust is not
5 entitled to contribution from another trustee to the extent of
6 the benefit received."

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

9 "46A-10-1005. [NEW MATERIAL] LIMITATION OF ACTION AGAINST
10 TRUSTEE.--

11 A. A beneficiary shall not commence a proceeding
12 against a trustee for breach of trust more than one year after
13 the date the beneficiary or a representative of the beneficiary
14 was sent a report that adequately disclosed the existence of a
15 potential claim for breach of trust and informed the
16 beneficiary of the time allowed for commencing a proceeding.

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

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

25 (1) the removal, resignation or death of the

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1 trustee;

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

4 (3) the termination of the trust."

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

7 "46A-10-1011. [NEW MATERIAL] INTEREST AS GENERAL
8 PARTNER.--

9 A. Except as otherwise provided in Subsection C of
10 this section or unless personal liability is imposed in the
11 contract, a trustee who holds an interest as a general partner
12 in a general or limited partnership is not personally liable on
13 a contract entered into by the partnership after the trust's
14 acquisition of the interest if the fiduciary capacity was
15 disclosed in the contract or in a statement previously filed or
16 recorded pursuant to the provisions of any version of the
17 Uniform Partnership Act or the Uniform Limited Partnership Act.

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

24 C. The immunity provided by this section does not
25 apply if an interest in the partnership is held by the trustee

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1 in a capacity other than that of trustee or is held by the
2 trustee's spouse or one or more of the trustee's descendants,
3 siblings or parents, or the spouse of any of them.

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

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

10 "46A-11-1105. [NEW MATERIAL] APPLICATION TO EXISTING
11 RELATIONSHIPS.--

12 A. Except as otherwise provided in this 2007 act:

13 (1) the provisions of this 2007 act apply to
14 all trusts created before, on or after July 1, 2007;

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

18 (3) the provisions of this 2007 act apply to
19 judicial proceedings concerning trusts commenced before July 1,
20 2007 unless the court finds that application of a particular
21 provision of this 2007 act would substantially interfere with
22 the effective conduct of the judicial proceedings or prejudice
23 the rights of the parties, in which case the particular
24 provision of this 2007 act does not apply and the superseded
25 law applies;

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

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

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

13 C. The provisions of this 2007 act do not apply to
14 the trust created by the Enabling Act for New Mexico of June
15 20, 1910, 36 Stat. 557, Ch. 310."

16 Section 30. TEMPORARY PROVISION--RECOMPILATION.--Sections
17 46A-10-1005 through 46A-10-1009 NMSA 1978 (being Laws 2003,
18 Chapter 122, Sections 10-1005 through 10-1009) are recompiled
19 as Sections 46A-10-1006 through 46A-10-1010 NMSA 1978.
20 Sections 46A-10-1011 and 46A-10-1012 NMSA 1978 (being Laws
21 2003, Chapter 122, Sections 10-1011 and 10-1012) are recompiled
22 as Sections 46A-10-1012 and 46A-10-1013 NMSA 1978.

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