

## LEGISLATIVE BILL 130

Approved by the Governor March 20, 2003

Introduced by Landis, 46

AN ACT relating to trusts; to amend sections 8-2202 to 8-2205, 8-2209 to 8-2211, 21-20,168, 25-2705, 25-2708, 30-2202, 30-2208, 30-2210 to 30-2212, 30-2214, 30-2222, 30-2352, 30-24,111, 30-2801 to 30-2803, 30-2805, 49-1544, 76-2004, and 76-2006, Reissue Revised Statutes of Nebraska, and sections 8-201, 12-1107, 24-517, 25-1901, 25-2728, 30-1601, 30-2464, 30-2628, 30-2637, 30-2646, 30-3119, 30-3201, 30-3205, 30-3508, and 30-3701 to 30-3706, Revised Statutes Supplement, 2002; to adopt the Nebraska Uniform Trust Code; to transfer and eliminate provisions of the Nebraska Uniform Prudent Investor Act; to eliminate the Nebraska Trustees' Powers Act and other provisions relating to trusts; to harmonize provisions; to provide an operative date; to provide severability; to repeal the original sections; and to outright repeal sections 8-2201, 8-2206 to 8-2208, 8-2212, 8-2213, 30-239, 30-240, 30-2804, 30-2806 to 30-2812, 30-2814 to 30-2818, and 30-2820 to 30-2826, Reissue Revised Statutes of Nebraska, and sections 30-2813 and 30-2819, Revised Statutes Supplement, 2002.

Be it enacted by the people of the State of Nebraska,

Section 1. (UTC 101) Sections 1 to 110 of this act shall be known and may be cited as the Nebraska Uniform Trust Code.

Sec. 2. (UTC 102) The Nebraska Uniform Trust Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

Sec. 3. (UTC 103) In the Nebraska Uniform Trust Code:

(1) "Action", with respect to an act of a trustee, includes a failure to act.

(2) "Beneficiary" means a person that:

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

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

(3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection (a) of section 31 of this act.

(4) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual.

(5) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(6) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(7) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(8) "Jurisdiction", with respect to a geographic area, includes a state or country.

(9) "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.

(10) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.

(11) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(12) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

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

(B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subdivision (A) of this subdivision terminated on that date; or

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

(13) "Regulated financial-service institution" means a state-chartered or federally chartered financial institution in which the monetary deposits are insured by the Federal Deposit Insurance Corporation.

(14) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(15) "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.

(16) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

(17) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(18) "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.

(19) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(20) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

Sec. 4. (UTC 104) (a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:

(1) has actual knowledge of it;

(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 individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

Sec. 5. (UTC 105) (a) Except as otherwise provided in the terms of the trust, the Nebraska 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 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 purposes of the trust;

(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 36 to 42 of this act;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 46 to 52 of this act;

(6) the power of the court under section 58 of this act to require, dispense with, or modify or terminate a bond;

(7) the power of the court under subsection (b) of section 64 of this act to adjust a trustee's compensation specified in the terms of the trust;

(8) the duty under subdivisions (b) (2) and (3) of section 78 of this act 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 trustee's reports;

(9) the duty under subsection (a) of section 78 of this act to respond to the request of a beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(10) the effect of an exculpatory term under section 97 of this act;  
(11) the rights under sections 99 to 107 of this act of a person other than a trustee or beneficiary;

(12) periods of limitation for commencing a judicial proceeding;  
(13) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice;

(14) the subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 14 and 15 of this act;

(15) the power of a court under subdivision (a)(1) of section 7 of this act; and

(16) the power of a court to review the action or the proposed action of the trustee for an abuse of discretion.

Sec. 6. (UTC 106) The common law of trusts and principles of equity supplement the Nebraska Uniform Trust Code, except to the extent modified by the code or another statute of this state.

Sec. 7. (UTC 107) (a) Except as provided in subsection (b) of this section, the meaning and effect of the terms of a trust are determined by:

(1) the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) 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.

(b) the meaning and effect of the terms of a trust that pertain to title to Nebraska real estate are determined by the law of Nebraska.

Sec. 8. (UTC 108) (a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur;

and

(5) the date, not less than sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 60 of this act.

Sec. 9. (UTC 109) (a) Notice to a person under the Nebraska Uniform Trust Code or the sending of a document to a person under the code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last-known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under the code or a document otherwise

required to be sent under the code need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under the code or the sending of a document under the code may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding may be given as provided in the applicable rules of civil procedure or as in section 30-2220.

Sec. 10. (UTC 110) (a) Whenever notice to qualified beneficiaries of a trust is required under the Nebraska Uniform Trust Code, the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice.

(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 34 or 35 of this act has the rights of a qualified beneficiary under the 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.

Sec. 11. (UTC 111) (a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under the Nebraska Uniform Trust Code or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

- (1) the interpretation or construction of the terms of the trust;
- (2) the approval of a trustee's report or accounting;
- (3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- (5) transfer of a trust's principal place of administration; and
- (6) liability of a trustee for an action relating to the trust.

(e) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in sections 22 to 26 of this act was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

Sec. 12. (UTC 201) (a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

Sec. 13. (UTC 202) (a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

Sec. 14. (a) To the full extent permitted by the Constitution of Nebraska, the county court has jurisdiction over all subject matter relating to trusts.

(b) The county court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

(c) Each proceeding before the court is independent of any other proceeding involving the same trust.

(d) Petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of the Nebraska Uniform Trust Code, no petition is defective because it fails to embrace all matters which might then be the subject of a final order.

(e) A proceeding for appointment of a trustee is concluded by an order making or declining the appointment.

(f) For purposes of this section, "proceeding" includes action at law and suit in equity.

Sec. 15. (UTC 204) (a) Except as otherwise provided in subsections (b) and (c) of this section, venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is or will be located and, 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) Except as provided in subsection (c) of this section, if a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, in a county in which the trust's principal place of administration was located before a vacancy in the office of trustee occurred, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

(c) If a trust is registered in Nebraska, unless the registration has been released, the venue is in the court in which the trust is registered, even if there is no trustee.

(d) (i) Where a proceeding under the Nebraska Uniform Trust Code could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(ii) If proceedings concerning the same trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(iii) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

Sec. 16. Section 30-2801, Reissue Revised Statutes of Nebraska, is amended to read:

~~30-2801.~~ The trustee of a trust having its principal place of administration in this state may register the trust in the county court of this state at the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he or she has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is (1) the usual place of business of the corporate trustee if there is but one corporate cotrustee, or (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate cotrustee, and otherwise (3) the usual place of business or residence of any of the cotrustees as agreed upon by them. The right to register under ~~this part~~ sections 16 to 20 of this act does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release.

Sec. 17. Section 30-2802, Reissue Revised Statutes of Nebraska, is amended to read:

~~30-2802.~~ Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere. The statement shall identify the trust: (1) in the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate; (2) in the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument; or (3) in the case of an oral trust, by information identifying the settlor or other source of funds and describing the time and manner of the trust's creation and the terms of the trust, including the subject matter, beneficiaries, and time of performance.

Sec. 18. The clerk of court shall keep a record for each trust involved in any document which may be filed with the court under sections 16 to 20 of this act, including petitions and applications, trust registrations, and of any orders or responses relating thereto by the court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law, the clerk must issue certified copies of any record or paper filed or recorded.

Sec. 19. Section 30-2803, Reissue Revised Statutes of Nebraska, is amended to read:

~~30-2803.~~ (a) By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court of registration in any proceeding under section ~~30-2806~~ of this code 12 of this act relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be delivered to the trustee or mailed to him or her by ordinary first-class mail at his or her address as listed in the registration or as thereafter reported to the court and to his or her address as then known to the petitioner.

(b) To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this state are subject to the jurisdiction of the court of registration for the purposes of proceedings under section ~~30-2806~~ 12 of this act, provided notice is given pursuant to section 30-2220.

Sec. 20. Section 30-2805, Reissue Revised Statutes of Nebraska, is amended to read:

~~30-2805.~~ A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains the principal place of administration of any trust within the state. A foreign cotrustee is not required to qualify in this state solely because its cotrustee maintains the principal place of administration in this state. Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage, or acquire property located in this state, or maintain litigation if the laws of the state of incorporation or residence of the foreign trustee grant the same authority to a trustee incorporated or resident in this state. Nothing in this section affects a determination of what other acts require qualification as doing business in this state.

Sec. 21. Appellate review under the Nebraska Uniform Trust Code shall be governed by section 30-1601.

Sec. 22. (UTC 301) (a) Notice to a person who may represent and bind another person under sections 22 to 26 of this act 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 under sections 22 to 26 of this act 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 37 and 54 of this act, a person who under sections 22 to 26 of this act may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

Sec. 23. (UTC 302) To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

Sec. 24. (UTC 303) To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) a conservator may represent and bind the estate that the conservator controls;

(2) a guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;

(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) a trustee may represent and bind the beneficiaries of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(6) a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed.

Sec. 25. (UTC 304) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by

another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

Sec. 26. (UTC 305) (a) If the court determines that an interest is not represented under sections 22 to 26 of this act, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(b) A representative may act on behalf of the individual represented with respect to any matter arising under the Nebraska Uniform Trust Code, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

Sec. 27. (UTC 401) A trust may be created by:

(1) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) except as required by a statute other than the Nebraska Uniform Trust Code, declaration by the owner of property that the owner holds identifiable property as trustee; or

(3) exercise of a power of appointment in favor of a trustee.

Sec. 28. (UTC 402) (a) A trust is created only if:

(1) the settlor has capacity to create a trust;

(2) the settlor indicates an intention to create the trust;

(3) the trust has a definite beneficiary or is:

(A) a charitable trust;

(B) a trust for the care of an animal, as provided in section 34 of this act; or

(C) a trust for a noncharitable purpose, as provided in section 35 of this act;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

Sec. 29. (UTC 403) A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode, or was a national; or

(2) except with respect to Nebraska real estate, (A) a trustee was domiciled or had a place of business; or (B) any trust property was located.

Sec. 30. (UTC 404) A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

Sec. 31. (UTC 405) (a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

Sec. 32. (UTC 406) A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

Sec. 33. (UTC 407) Except as required by a statute other than the Nebraska Uniform Trust Code, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms, or an amendment or revocation of an oral trust, may be established only by clear and convincing evidence.

Sec. 34. (UTC 408) (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the

death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Sec. 35. (UTC 409) Except as otherwise provided in section 34 of this act or Chapter 12, article 5, or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than twenty-one years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

Sec. 36. (UTC 410) (a) In addition to the methods of termination prescribed by sections 37 to 40 of this act, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections 37 to 42 of this act, or trust combination or division under section 43 of this act, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section 37 of this act may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 39 of this act.

Sec. 37. (UTC 411) (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. A settlor's power to consent to a trust's 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) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose 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.

Sec. 38. (UTC 412) (a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, 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.

Sec. 39. (UTC 413) (a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) the trust property is to revert to the settlor and the settlor is still living; or

(2) fewer than twenty-one years have elapsed since the date of the trust's creation.

Sec. 40. (UTC 414) (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of 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.

(d) This section does not apply to an easement for conservation or preservation.

Sec. 41. (UTC 415) The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

Sec. 42. (UTC 416) To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

Sec. 43. (UTC 417) After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

Sec. 44. A trust may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the trust, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must have an indication of the date of the writing or signing and, in the absence of such indication of date, be the only such writing or contain no inconsistency with any other like writing or permit determination of such date of writing or signing from the contents of such writing, from extrinsic circumstances, or from any other evidence, must either be in the handwriting of the settlor or be signed by him or her, and must describe the items and the beneficiaries or recipients with reasonable certainty. The writing may be referred to as one to be in existence at the time of the settlor's death; it may be prepared before or after the execution of the trust; it may be altered by the settlor after its preparation; and it may be a writing which has no significance apart from its effect upon the disposition made by the trust.

Sec. 45. Renunciations under the Nebraska Uniform Trust Code shall be governed by section 30-2352.

Sec. 46. (UTC 501) To the extent a beneficiary's interest is not protected by 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.

Sec. 47. (UTC 502) (a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in sections 46 to 52 of this act, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

Sec. 48. (UTC 503) (a) 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) Even if a trust contains a spendthrift provision, a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

(c) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.

Sec. 49. (UTC 504) (a) 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 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.

Sec. 50. (UTC 505) (a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after the death of the decedent.

Sums recovered by the personal representative of the settlor's estate must be administered as part of the decedent's estate. The liability created by this subdivision shall not apply to any assets to the extent that such assets are otherwise exempt under the laws of this state or under federal law.

(4) A beneficiary of a trust subject to subdivision (a)(3) of this section who receives one or more distributions from the trust after the death of the settlor against whom a proceeding to account is brought may join as a party to the proceeding any other beneficiary who has received a distribution from that trust or any other trust subject to subdivision (a)(3) of this section, any surviving owner or beneficiary under sections 30-2734 to 30-2745 of any other security or securities account of the decedent or proceeds thereof, or a surviving party or beneficiary of any account under sections 30-2716 to 30-2733.

(5) Unless a written notice asserting that a decedent's probate estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative before the distribution, a trustee is released from liability under this section on any assets distributed to the trust's beneficiaries.

(b) For purposes of this section:

(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2), 2503(b), or 2514(e) of the Internal Revenue Code as defined in section 49-801.01.

Sec. 51. (UTC 506) 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.

Sec. 52. (UTC 507) Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Sec. 53. (UTC 601) The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

Sec. 54. (UTC 602) (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 the operative date of this act.

(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; and

(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.

(c) The settlor may revoke or amend a written 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) an instrument evidencing an intent to amend or revoke the trust signed by the settlor, or in the settlor's name by some other individual in the presence of and by the direction of the settlor. The instrument must have an indication of the date of the writing or signing and, in the absence of such indication of the date, be the only such writing or contain no inconsistency with any other like writing or permit determination of such date of writing or signing from the content of such writing, from extrinsic circumstances, or from any other evidence.

(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 in reliance on the terms of the trust.

Sec. 55. (UTC 603) (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) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

(c) 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.

Sec. 56. (UTC 604) (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) one year 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 in receipt of property from a trust that is determined to have been invalid is liable to return:

(1) the property and its income since distribution, if the beneficiary has the property; or

(2) the value of the property as of the date of disposition of the property, and its income and gain received by the beneficiary, if the beneficiary has disposed of the property.

Sec. 57. (UTC 701) (a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) by substantially complying with a method of acceptance provided in the terms of the trust;

(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 accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship; or

(3) by registering the trust in accordance with established statutory procedures.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

Sec. 58. (UTC 702) (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 bank or trust company qualified to act as a trustee in this state need not give bond, even if required by the terms of the trust.

Sec. 59. (UTC 703) (a) Cotrustees who are unable to reach a

unanimous decision may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust;

and

(2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

Sec. 60. (UTC 704) (a) A vacancy in a trusteeship occurs if:

(1) a person designated as trustee rejects the trusteeship;

(2) a person designated as trustee cannot be identified or does not

exist;

(3) a trustee resigns;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a guardian or conservator is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) by a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) by a person designated in the terms of the trust to act as successor trustee;

(2) by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the Attorney General concurs in the selection; or

(3) by a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

Sec. 61. (UTC 705) (a) A trustee may resign:

(1) upon at least thirty days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; 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.

Sec. 62. (UTC 706) (a) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

- (1) the trustee has committed a serious breach of trust;
- (2) lack of cooperation among cotrustees substantially impairs the administration of the trust;
- (3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
- (4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection (b) of section 90 of this act as may be necessary to protect the trust property or the interests of the beneficiaries.

Sec. 63. (UTC 707) (a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

(c) Title to all trust property shall be owned by and vested in any successor trustee without any conveyance, transfer, or assignment by the prior trustee.

Sec. 64. (UTC 708) (a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

- (1) the duties of the trustee are substantially different from those contemplated when the trust was created; or
- (2) the compensation specified by the terms of the trust would be unreasonably low or high.

Sec. 65. (UTC 709) (a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

- (1) expenses that were properly incurred in the administration of the trust; and
- (2) to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

Sec. 66. (UTC 801) Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Nebraska Uniform Trust Code.

Sec. 67. (UTC 802) (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 101 of this act, 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 which 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 94 of this act;
- (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 98 of this act; or

(5) the transaction involves 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 their spouses;  
(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 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.

(e) 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 complies with the prudent investor rule set forth in sections 83 to 89 of this act. 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 at least annually notifies the persons entitled under section 78 of this act to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined.

(f) 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.

(g) 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.

(h) 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.

Sec. 68. (UTC 803) If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

Sec. 69. (UTC 804) A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

Sec. 70. (UTC 805) In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

Sec. 71. (UTC 806) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

Sec. 72. A trustee may delegate functions as provided in section 88 of this act.

Sec. 73. (UTC 808) (a) While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith

with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

Sec. 74. (UTC 809) A trustee shall take reasonable steps to take control of and protect the trust property.

Sec. 75. (UTC 810) (a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

Sec. 76. (UTC 811) A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

Sec. 77. (UTC 812) A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

Sec. 78. (UTC 813) (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 cotrustee 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) The duties of a trustee specified in this section are subject to the provisions of section 55 of this act.

(f) The requirements of subdivisions (b) (2) and (3) of this section apply only to trustees who accept a trusteeship on or after the operative date of this act and to trusts which become irrevocable on or after the operative date of this act.

Sec. 79. (UTC 814) (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 relating to the trustee's individual health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code as defined in section 49-801.01; 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(e) of the Internal Revenue Code as defined in section 49-801.01, 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 as defined in section 49-801.01.

Sec. 80. (UTC 815) (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 which 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 Nebraska Uniform Trust Code.

(b) The exercise of a power is subject to the fiduciary duties prescribed by sections 66 to 82 of this act.

Sec. 81. (UTC 816) Without limiting the authority conferred by section 80 of this act, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial-service institution;

(5) borrow money, including from the trustee, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depository or other regulated financial-service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee,

including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) paying it to the beneficiary's custodian under the Nebraska Uniform Transfers to Minors Act or custodial trustee under the Nebraska Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;

(C) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

Sec. 82. (UTC 817) (a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

Sec. 83. Section 8-2202, Reissue Revised Statutes of Nebraska, is amended to read:

~~8-2202.~~ (1) (a) Except as otherwise provided in subsection (2) (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in the Nebraska Uniform Prudent Investor Act sections 83 to 89 of this act.

(b) (2) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Sec. 84. Section 8-2203, Reissue Revised Statutes of Nebraska, is amended to read:

~~8-2203.~~ (a) (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) (2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) (3) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) (a) General economic conditions;

(2) (b) The possible effect of inflation or deflation;

(3) (c) The expected tax consequences of investment decisions or strategies;

(4) (d) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) (e) The expected total return from income and the appreciation of capital;

(6) (f) Other resources of the beneficiaries;

(7) (g) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) (h) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) (4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) (5) A trustee may invest in any kind of property or type of investment consistent with the standards of the Nebraska Uniform Prudent Investor Act.

(6) A trustee who has special skills or expertise, or is named

trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise prudent investor rule set forth in sections 83 to 89 of this act.

Sec. 85. Section 8-2204, Reissue Revised Statutes of Nebraska, is amended to read:

~~8-2204.~~ A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Sec. 86. Section 8-2205, Reissue Revised Statutes of Nebraska, is amended to read:

~~8-2205.~~ Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of the ~~Nebraska Uniform Prudent Investor Act~~ prudent investor rule set forth in sections 83 to 89 of this act.

Sec. 87. Section 8-2209, Reissue Revised Statutes of Nebraska, is amended to read:

~~8-2209.~~ Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Sec. 88. Section 8-2210, Reissue Revised Statutes of Nebraska, is amended to read:

~~8-2210.~~ ~~(1)~~ (a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

~~(a)~~ (1) Selecting an agent;  
~~(b)~~ (2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and  
~~(c)~~ (3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

~~(2)~~ (b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

~~(3)~~ (c) A trustee who complies with the requirements of subsection ~~(1)~~ (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

~~(4)~~ (d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Sec. 89. Section 8-2211, Reissue Revised Statutes of Nebraska, is amended to read:

~~8-2211.~~ The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under the ~~Nebraska Uniform Prudent Investor Act~~ prudent investor rule set forth in sections 83 to 89 of this act: Investments permissible by law for investment of trust funds, legal investments, authorized investments, using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital, prudent man rule, prudent trustee rule, prudent person rule, and prudent investor rule.

Sec. 90. (UTC 1001) (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 62 of this act;
- (8) reduce or deny compensation to the trustee;

(9) subject to section 101 of this act, 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.

Sec. 91. (UTC 1002) (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.

Sec. 92. (UTC 1003) (a) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

(b) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

Sec. 93. (UTC 1004) In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Sec. 94. (UTC 1005) (a) A beneficiary may 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 four 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.

Sec. 95. (UTC 1006) A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

Sec. 96. (UTC 1007) If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

Sec. 97. (UTC 1008) (a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

Sec. 98. (UTC 1009) A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

Sec. 99. (UTC 1010) (a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

Sec. 100. (UTC 1011) (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 pursuant to the Uniform Partnership Act of 1998 or the Nebraska 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.

Sec. 101. (UTC 1012) (a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

Sec. 102. Section 30-3701, Revised Statutes Supplement, 2002, is amended to read:

~~30-3701. (1)~~ (a) A trustee may present a certification of trust to any person other than a beneficiary in lieu of a copy of any trust instrument to establish the existence or terms of the trust. The trustee may present the certification of trust voluntarily or at the request of the person with whom he or she is dealing. Notwithstanding any provision of the Nebraska ~~Trustees' Powers Act~~ Uniform Trust Code to the contrary, no person is required to accept and rely solely on a certification of trust in lieu of a copy of, or excerpts from, the trust instrument itself.

~~(2)~~ (b) A certification of trust shall be in the form of an affidavit and signed and acknowledged by all acting trustees of the trust.

Sec. 103. Section 30-3702, Revised Statutes Supplement, 2002, is amended to read:

~~30-3702. (1)~~ (a) A certification of trust may confirm the following facts or contain the following information:

~~(a)~~ (1) The existence of a trust and, for an inter vivos trust, the date of execution or, for a testamentary trust, the date of death of the

decedent;

~~(b)~~ (2) The identity of the grantor, settlor, or testator and each currently acting trustee;  
~~(c)~~ (3) The powers of the trustee and any restrictions imposed upon the trustee in dealing with the assets of the trust;  
~~(d)~~ (4) The name or method of choosing successor trustees;  
~~(e)~~ (5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke it;  
~~(f)~~ (6) If there is more than one trustee, whether all of the currently acting trustees must, or if less than all, may, act to exercise identified powers of the trustee;  
~~(g)~~ (7) The identifying number of the trust and whether it is a social security number or an employer identification number;  
~~(h)~~ (8) The name of each beneficiary and the relationship to the grantor, settlor, or testator;  
~~(i)~~ (9) The state or other jurisdiction under which the trust was established; and  
~~(j)~~ (10) The form in which title to the assets of the trust is to be taken.

~~(2)~~ (b) The certification of trust shall contain a statement that the trust has not been revoked or amended to make any representations contained in the certification of trust incorrect and that the signatures are those of all the acting trustees.

Sec. 104. Section 30-3703, Revised Statutes Supplement, 2002, is amended to read:

~~30-3703.~~ A certification of trust need not contain the dispositive provisions of the trust, but the person to whom the certification of trust is presented may require copies of, or excerpts from, any trust instrument which designates the trustee or confers upon the trustee power to act in the pending transaction.

Sec. 105. Section 30-3704, Revised Statutes Supplement, 2002, is amended to read:

~~30-3704.~~ A person who acts in reliance upon a certification of trust without any knowledge that the representations contained in the certification of trust are incorrect is not liable to any person for such actions. A person who does not know that the representations contained in the certification of trust are incorrect may assume without inquiry the existence of the representations contained in the certification of trust. Knowledge may not be inferred solely from the fact that a copy of all or part of a trust instrument is held by the person relying upon the certification of trust.

Sec. 106. Section 30-3705, Revised Statutes Supplement, 2002, is amended to read:

~~30-3705.~~ A person's failure to demand a certification of trust, or his or her refusal to accept and rely solely on a certification of trust, shall not be considered an improper act, and no inference as to whether he or she has acted in good faith shall be drawn from the failure to demand, or the refusal to accept and rely upon, a certification of trust. This section creates no implication that a person is liable for acting in reliance upon a certification of trust under circumstances in which the requirements of sections ~~30-3701 to 30-3706~~ 102 to 107 of this act are not satisfied.

Sec. 107. Section 30-3706, Revised Statutes Supplement, 2002, is amended to read:

~~30-3706.~~ Sections ~~30-3701 to 30-3705~~ 102 to 106 of this act apply to all trusts whether established pursuant to Nebraska law or established pursuant to the law of another state or jurisdiction.

Sec. 108. (UTC 1101) In applying and construing the Nebraska Uniform Trust Code, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 109. (UTC 1102) The provisions of the Nebraska Uniform Trust Code governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7002, as such section existed on January 1 immediately preceding the operative date of this act, and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

Sec. 110. (UTC 1106) (a) Except as otherwise provided in the Nebraska Uniform Trust Code, on the operative date of this act:

(1) the code applies to all trusts created before, on, or after the operative date of this act;  
(2) the code applies to all judicial proceedings concerning trusts

commenced on or after the operative date of this act;

(3) the code applies to judicial proceedings concerning trusts commenced before the operative date of this act unless the court finds that application of a particular provision of the code 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 the code does not apply and the superseded law applies;

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

(5) an act done before the operative date of this act is not affected by the code.

(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 the operative date of this act, that statute continues to apply to the right even if it has been repealed or superseded.

(c) Any reference to the powers authorized under the Nebraska Trustees' Powers Act as such act existed prior to the operative date of this act is deemed to be a reference to the powers authorized under the Nebraska Uniform Trust Code.

Sec. 111. Section 8-201, Revised Statutes Supplement, 2002, is amended to read:

8-201. The Director of Banking and Finance shall have the power to issue to corporations desiring to transact business as trust companies charters of authority to transact trust company business as defined in the Nebraska Trust Company Act. He or she shall have general supervision and control over such trust companies. Any three or more persons may adopt articles of incorporation and become a body corporate for the purpose of engaging in and conducting the business of a trust company, upon complying with the requirements of the act and the general laws of this state relating to the organization of corporations and upon obtaining a charter to transact business as a trust company from the director.

Every corporation organized for and desiring to transact a trust company business shall, before commencing such business, make under oath and transmit to the Department of Banking and Finance a complete statement including:

- (1) The name of the proposed trust company;
- (2) A certified copy of the articles of incorporation;
- (3) The names of the stockholders;
- (4) The name of the county, city, or village in which the trust company is located;
- (5) The amount of paid-up capital stock; and
- (6) A statement sworn to by the president and secretary that the capital stock has been paid in as provided for.

The corporation shall also pay the fee prescribed by section 8-602 for investigation of such statement.

If upon investigation the department is satisfied that the parties requesting the charter are parties of integrity and responsibility, that the corporation will apply safe and sound methods for the purpose of carrying out trust company duties, and that the public necessity, convenience, and advantage will be promoted by permitting the corporation to transact business as a trust company, the department shall issue to the corporation a charter entitling it to transact the business provided for in the act. Upon payment of the required fees, the pledging of assets required by section 8-209, and the receipt of the charter, the corporation may begin to transact business as a trust company. It shall be unlawful for any corporation, except a foreign corporate trustee to the extent authorized under section ~~30-2805~~ 20 of this act, to engage in business as a trust company or to act in any other fiduciary capacity unless it has first obtained from the Department of Banking and Finance a charter of authority to do business.

The Department of Banking and Finance may adopt and promulgate rules and regulations to carry out the governance of trust companies under its supervision.

Sec. 112. Section 12-1107, Revised Statutes Supplement, 2002, is amended to read:

12-1107. (1) Banks which do not have a separate trust department and building and loan associations, industrial loan and investment companies, and credit unions acting as trustees under the Burial Pre-Need Sale Act shall accept trust funds only to the extent that the full amount of all of such funds is insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.



(2) Banks with a separate trust department and trust companies acting as trustees under the Burial Pre-Need Sale Act when investing or reinvesting trust funds shall have the power to deal with such funds as a prudent trustee would deal with the funds and shall have all of the powers granted to a trustee by the ~~Nebraska Trustees' Powers Act~~ Nebraska Uniform Trust Code, but the Uniform Principal and Income Act shall not be applicable and all income, whether from interest, dividends, capital gains, or any other source, shall be considered as income.

Sec. 113. Section 21-20,168, Reissue Revised Statutes of Nebraska, is amended to read:

21-20,168. (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:

- (a) Maintaining, defending, or settling any proceeding;
- (b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
- (c) Maintaining bank accounts;
- (d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;
- (e) Selling through independent contractors;
- (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (i) Owning, without more, real or personal property;
- (j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
- (k) Transacting business in interstate commerce; or
- (l) Acting as a foreign corporate trustee to the extent authorized under section ~~30-2805~~ 20 of this act.

(3) The list of activities in subsection (2) of this section shall not be construed as exhaustive.

(4) The requirements of the Business Corporation Act shall not be applicable to foreign or alien insurers which are subject to the requirements of Chapter 44.

Sec. 114. Section 24-517, Revised Statutes Supplement, 2002, is amended to read:

24-517. Each county court shall have the following jurisdiction:

- (1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in section 30-2486;
- (2) Exclusive original jurisdiction in all matters relating to the guardianship of a person, except if a separate juvenile court already has jurisdiction over a child in need of a guardian, concurrent original jurisdiction with the separate juvenile court in such guardianship;
- (3) Exclusive original jurisdiction of all matters relating to conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;
- (4) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;
- (5) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy is forty-five thousand dollars or less through June 30, 2005, and as set by the Supreme Court pursuant to subdivision (b) of this subdivision on and after July 1, 2005.

(a) When the pleadings or discovery proceedings in a civil action indicate that the amount in controversy is greater than the jurisdictional amount of subdivision (5) of this section, the county court shall, upon the request of any party, certify the proceedings to the district court as provided in section 25-2706. An award of the county court which is greater

than the jurisdictional amount of subdivision (5) of this section is not void or unenforceable because it is greater than such amount, however, if an award of the county court is greater than the jurisdictional amount, the county court shall tax as additional costs the difference between the filing fee in district court and the filing fee in county court.

(b) The Supreme Court shall adjust the jurisdictional amount for the county court every fifth year commencing July 1, 2005. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The jurisdictional amount shall be rounded to the nearest one-thousand-dollar amount;

(6) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction;

(7) Concurrent original jurisdiction with the district court in domestic relations matters as defined in section 25-2740 and with the district court and separate juvenile court in paternity determinations as provided in section 25-2740;

(8) Concurrent original jurisdiction with the district court in matters arising under the Nebraska Uniform Trust Code;

(9) Exclusive original jurisdiction in any action based on violation of a city or village ordinance;

(10) ~~(9)~~ Exclusive original jurisdiction in juvenile matters in counties which have not established separate juvenile courts;

(11) ~~(10)~~ Exclusive original jurisdiction in matters of adoption, except if a separate juvenile court already has jurisdiction over the child to be adopted, concurrent original jurisdiction with the separate juvenile court; and

(12) ~~(11)~~ All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

Sec. 115. Section 25-1901, Revised Statutes Supplement, 2002, is amended to read:

25-1901. A judgment rendered or final order made by any tribunal, board, or officer exercising judicial functions and inferior in jurisdiction to the district court may be reversed, vacated, or modified by the district court, except that the district court shall not have jurisdiction over appeals from a juvenile court as defined in section 43-245 or appeals from a county court in matters arising under the Nebraska Probate Code or the Nebraska Uniform Trust Code, in matters involving adoption or inheritance tax, or in domestic relations matters.

Sec. 116. Section 25-2705, Reissue Revised Statutes of Nebraska, is amended to read:

25-2705. Either party to any case in county court, except criminal cases arising under city or village ordinances, traffic infractions, other infractions, and any matter arising under the Nebraska Probate Code or the Nebraska Uniform Trust Code, may demand a trial by jury. In civil cases, the demand shall be in writing and shall be filed on or before answer day except as otherwise provided in section 25-2805. All provisions of law relating to juries in the district courts shall apply to juries in the county courts, and the district court jury list shall be used, except that juries in the county courts shall consist of six persons.

Sec. 117. Section 25-2708, Reissue Revised Statutes of Nebraska, is amended to read:

25-2708. In any proceeding in the county court involving (1) the probate of wills, (2) the administration of estates, (3) the determination of heirs, (4) the determination of inheritance tax, (5) guardianships, ~~e~~ (6) conservatorships, where real estate is any part of the assets of the estate or proceeding, or (7) trusts, where real estate is specifically described as an asset of the trust, the county judge before whom the proceeding is pending shall issue a certificate which shall be filed with the register of deeds of the county in which the real estate is located within ten days after the description of the real estate is filed in the proceeding. The certificate shall be in the following form:

This is to certify that there is pending in the county court of ..... County, a proceeding .....  
(describe proceeding and name of person involved)  
in which the following described real estate is involved, to wit:  
.....  
(describe real estate)

.....  
County Judge

Sec. 118. Section 25-2728, Revised Statutes Supplement, 2002, is amended to read:

25-2728. (1) Any party in a civil case and any defendant in a criminal case may appeal from the final judgment or final order of the county court to the district court of the county where the county court is located. In a criminal case, a prosecuting attorney may obtain review by exception proceedings pursuant to sections 29-2317 to 29-2319.

(2) Sections 25-2728 to 25-2738 shall not apply to:

(a) Appeals in eminent domain proceedings as provided in sections 76-715 to 76-723;

(b) Appeals in proceedings in the county court sitting as a juvenile court as provided in sections 43-287.01 to 43-287.06, 43-2,106, and 43-2,106.01;

(c) Appeals in matters arising under the Nebraska Probate Code as provided in section 30-1601;

(d) Appeals in matters arising under the Nebraska Uniform Trust Code;

(e) Appeals in adoption proceedings as provided in section 43-112;

~~(e)~~ (f) Appeals in inheritance tax proceedings as provided in section 77-2023; and

~~(f)~~ (g) Appeals in domestic relations matters as provided in section 25-2739.

Sec. 119. Section 30-1601, Revised Statutes Supplement, 2002, is amended to read:

30-1601. (1) In all matters arising under the Nebraska Probate Code and in all matters in county court arising under the Nebraska Uniform Trust Code, appeals may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

(2) An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

(3) When the appeal is by someone other than a personal representative, conservator, trustee, guardian, or guardian ad litem, the appealing party shall, within thirty days after the entry of the judgment or final order complained of, deposit with the clerk of the county court a supersedeas bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (6) of this section, unless the court directs that no bond or undertaking need be deposited. If an appellant fails to comply with this subsection, the Court of Appeals on motion and notice may take such action, including dismissal of the appeal, as is just.

(4) The appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, upon motion of any party to the action, the county court may remove the supersedeas or require the appealing party to deposit with the clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Once the appeal is perfected, the court having jurisdiction over the appeal may, upon motion of any party to the action, reimpose or remove the supersedeas or require the appealing party to deposit with the clerk of the court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Upon motion of any interested party or upon the court's own motion, the county court may appoint a special guardian or conservator pending appeal despite any supersedeas order.

(5) The judgment of the Court of Appeals shall not vacate the judgment in the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

(6) If it appears to the Court of Appeals that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee, to the adverse party in an amount fixed by the Court of Appeals, and any bond required under subsection (3) of this section shall be liable for the costs.

Sec. 120. Section 30-2202, Reissue Revised Statutes of Nebraska, is amended to read:

30-2202. (a) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this code are:

(1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;

(2) to discover and make effective the intent of a decedent in distribution of his or her property;

(3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his or her successors; and

(4) ~~to facilitate use and enforcement of certain trusts;~~

~~(5) to make uniform the law among the various jurisdictions.~~

Sec. 121. Section 30-2208, Reissue Revised Statutes of Nebraska, is amended to read:

30-2208. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, ~~or trustee,~~ including relief from liability or penalty for failure to post bond, ~~to register a trust,~~ or to perform other duties, ~~and for purposes of consenting to modification or termination of a trust or to deviation from its terms,~~ the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

Sec. 122. Section 30-2210, Reissue Revised Statutes of Nebraska, is amended to read:

30-2210. Except as otherwise provided in this code, this code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state, (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, (3) incapacitated persons and minors in this state, and (4) survivorship and related accounts in this state. ~~and (5) trusts subject to administration in this state.~~

Sec. 123. Section 30-2211, Reissue Revised Statutes of Nebraska, is amended to read:

30-2211. (a) To the full extent permitted by the Constitution of Nebraska, the court has jurisdiction over all subject matter relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and (2) protection of minors and incapacitated persons. ~~and (3) trusts.~~

(b) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Sec. 124. Section 30-2212, Reissue Revised Statutes of Nebraska, is amended to read:

30-2212. (a) Where a proceeding under this code could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(b) If proceedings concerning the same estate, protected person, or ward, ~~or trust~~ are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(c) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

Sec. 125. Section 30-2214, Reissue Revised Statutes of Nebraska, is amended to read:

30-2214. The clerk of court shall keep a record for each decedent, ward, or protected person ~~or trust~~ involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, ~~trust registrations,~~ and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law, the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

Sec. 126. Section 30-2222, Reissue Revised Statutes of Nebraska, is amended to read:

30-2222. In formal proceedings involving ~~trusts or~~ estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

(1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(i) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(ii) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he or she controls; orders binding a guardian bind the ward if no conservator of his or her estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his or her minor child.

(iii) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(i) Notice as prescribed by section 30-2220 shall be given to every interested person or to one who can bind an interested person as described in (2)(i) or (2)(ii) above. Notice may be given both to a person and to another who may bind him or her.

(ii) Notice is given to unborn or unascertained persons, who are not represented under (2)(i) or (2)(ii) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

Sec. 127. Section 30-2352, Reissue Revised Statutes of Nebraska, is amended to read:

30-2352. (a)(1) A person (or the representative of a deceased, incapacitated, or protected person) who is an heir, devisee, person succeeding to a renounced interest, donee, beneficiary under a testamentary or nontestamentary instrument, donee of a power of appointment, grantee, surviving joint owner or surviving joint tenant, beneficiary, or owner of an insurance contract or any incident of ownership therein, beneficiary or person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, person who has a statutory entitlement to or election with respect to property pursuant to the Nebraska Probate Code, or recipient of any beneficial interest under any testamentary or nontestamentary instrument, may renounce in whole or in part, or with reference to specific parts, fractional shares, undivided portions or assets thereof, by filing a written instrument of renunciation within the time and at the place hereinafter provided.

(2) The instrument shall (i) describe the property or part thereof or the interest therein renounced, (ii) be signed and acknowledged by the person renouncing in the manner provided for in the execution of deeds of real estate, (iii) declare the renunciation and the extent thereof, and (iv) declare that the renunciation is an irrevocable and unqualified refusal to accept the renounced interest.

(3) The appropriate court in a proceeding under section ~~30-2806~~ 12 of this act, may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce, ~~modify, amend, or otherwise deviate from~~ any restriction on or power of administration, management, or allocation of benefit upon finding that such restrictions on the exercise of such power may defeat or impair the accomplishment of the purposes of the trust whether by the imposition of tax or the allocation of beneficial interest inconsistent with such purposes or by other reason. Such authority shall be exercised

after hearing and upon notice to ~~all known persons~~ beneficially interested in such trust qualified beneficiaries as defined in section 3 of this act, in the manner directed by ~~said~~ the court.

(b) The instrument specified in (a) (1) and (a) (2) must be received by the transferor of the interest, his or her legal representative, the personal representative of a deceased transferor, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates. To be effective for purposes of determining inheritance and estate taxes under articles 20 and 21 of Chapter 77, the instrument must be received not later than the date which is nine months after the later of (i) the date on which the transfer creating the interest in such person is made, or (ii) the date on which such person attains age twenty-one. If the circumstances which establish the right of a person to renounce an interest arise as a result of the death of an individual, the instrument shall also be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. If an interest in real estate is renounced, a copy of the instrument shall also be recorded in the office of the register of deeds in the county in which ~~said~~ the real estate lies. No person entitled to a copy of the instrument shall be liable for any proper distribution or disposition made without actual notice of the renunciation and no such person making a proper distribution or disposition in reliance upon the renunciation shall be liable for any such distribution or disposition in the absence of actual notice that an action has been instituted contesting the validity of the renunciation.

(c) Unless the transferor of the interest has otherwise indicated in the instrument creating the interest, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent or had died prior to the date on which the transfer creating the interest in such person is made, as the case may be, if the renunciation is within the time periods set forth in subsection (b) and if not within such time periods the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had died on the date the interest was renounced. The person renouncing shall have no power to direct how the interest being renounced shall pass, except that the renunciation of an interest for which the right to renounce was established by the death of an individual shall, in the case of the spouse of the decedent, relate only to that statutory provision or that provision of the instrument creating the interest being renounced and shall not preclude the spouse from receiving the benefits of the renounced interest which may be derived as a result of the renounced interest passing pursuant to other statutory provisions or pursuant to other provisions of the instrument creating the interest unless such further benefits are also renounced. In every case when the renunciation is within the time periods set forth in subsection (b) the renunciation relates back for all purposes to the date of death of the decedent or the date on which the transfer creating the interest in such person is made, as the case may be.

(d) Any (1) assignment, conveyance, encumbrance, pledge, or transfer of property therein or any contract therefor, (2) written waiver of the right to renounce or any acceptance of property or benefits therefrom or an interest therein by an heir, devisee, person succeeding to a renounced interest, donee, beneficiary under a testamentary or nontestamentary instrument, donee of a power of appointment, grantee, surviving joint owner or surviving joint tenant, beneficiary or owner of an insurance contract or any incident of ownership therein, beneficiary or person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, person who has a statutory entitlement to or election with respect to property pursuant to the Nebraska Probate Code, or recipient of any beneficial interest under any testamentary or nontestamentary instrument, or (3) sale or other disposition of property pursuant to judicial process, made within the time periods set forth in subsection (b) shall not bar the right to renounce, but shall make a subsequent renunciation within the time period set forth in subsection (b) of this section ineffective for purposes of determination of inheritance and estate taxes under articles 20 and 21 of Chapter 77.

(e) Within thirty days of receipt of a written instrument of renunciation by the transferor of the interest, his or her legal representative, the personal representative of the decedent, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates, as the case may be,

such person shall attempt to notify in writing those persons who are known or ascertainable with reasonable diligence who shall be recipients or potential recipients of the renounced interest of the renunciation and the interest or potential interest such recipient shall receive as a result of the renunciation.

(f) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction. A trust beneficiary whose interest is subject to any limitation in the nature of a spendthrift provision or similar restriction may assign, sell, or otherwise convey such interest or any part thereof upon a finding by a court in a proceeding under section ~~30-2806~~, 12 of this act that the rights of other beneficiaries would not be impaired and that such assignment, sale, or other conveyance would not result in any substantial benefit to nonbeneficiaries of the trust at the expense of the trust or trust beneficiaries. Such finding may be made after hearing and upon notice to all known persons beneficially interested in such trust, in the manner directed by the court.

(g) This section does not abridge the right of any person to assign, convey, release, or renounce any property arising under any other section of this code or other statute.

(h) Any interest in property which exists on July 19, 1980, may be renounced after July 19, 1980, as provided herein. An interest which has arisen prior to July 19, 1980, in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section.

Sec. 128. Section 30-2464, Revised Statutes Supplement, 2002, is amended to read:

30-2464. (a) A personal representative is a fiduciary who shall ~~(1) prior to September 13, 1997, observe the standards of care applicable to trustees as described by section 30-2813 and (2) on and after September 13, 1997,~~ comply with the Nebraska Uniform Prudent Investor Act prudent investor rule set forth in sections 83 to 89 of this act. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He or she shall use the authority conferred upon him or her by this code, the terms of the will, if any, and any order in proceedings to which he or she is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his or her appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this code.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his or her death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his or her decedent had immediately prior to death.

Sec. 129. Section 30-24,111, Reissue Revised Statutes of Nebraska, is amended to read:

30-24,111. (a) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered requires registration and that the trustee inform the beneficiaries as provided in section ~~30-2814~~ 78 of this act.

(b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he or she apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he or she may withhold distribution until the court has acted.

(c) No inference of negligence on the part of the personal representative shall be drawn from his or her failure to exercise the authority conferred by subsections (a) and (b).

Sec. 130. Section 30-2628, Revised Statutes Supplement, 2002, is amended to read:

30-2628. (a) Except as limited by an order entered pursuant to section 30-2620, a guardian of an incapacitated person has the same powers, rights, and duties respecting his or her ward that a parent has respecting his or her unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as may be specified by order of the court:

(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he or she is entitled to custody of the person of his or her ward and may establish the ward's place of abode within or without this state. When establishing the ward's place of abode, a guardian shall make every reasonable effort to ensure that the placement is the least restrictive alternative. A guardian shall authorize a placement to a more restrictive environment only after careful evaluation of the need for such placement. The guardian may obtain a professional evaluation or assessment that such placement is in the best interest of the ward.

(2) If entitled to custody of his or her ward, he or she shall make provision for the care, comfort, and maintenance of his or her ward and, whenever appropriate, arrange for his or her training and education. Without regard to custodial rights of the ward's person, he or she shall take reasonable care of his or her ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his or her ward is in need of protection.

(3) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical, psychiatric, psychological, or other professional care, counsel, treatment, or service. When making such medical or psychiatric decisions, the guardian shall consider and carry out the intent of the ward expressed prior to incompetency to the extent allowable by law. Notwithstanding this provision or any other provision of the Nebraska Probate Code, the ward may authorize the release of financial, medical, and other confidential records pursuant to sections 20-161 to 20-166.

(4) If no conservator for the estate of the ward has been appointed, he or she may:

(i) Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his or her duty;

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but he or she may not use funds from his or her ward's estate for room and board which he or she, his or her spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He or she must exercise care to conserve any excess for the ward's needs; and

(iii) Exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property when authorized by a court acting under the authority of subsection (f) of section 54 of this act. In acting under the authority of subsection (f) of section 54 of this act, the court shall proceed in the same manner as provided under subdivision (3) of section 30-2637.

(5) A guardian is required to report the condition of his or her ward and of the estate which has been subject to his or her possession or control, at least every year and as required by the court or court rule. The court shall receive from any interested person, for a period of thirty days after the filing of the guardian's report, any comments with regard to the need for continued guardianship or amendment of the guardianship order. If the court has reason to believe that additional rights should be returned to the ward or assigned to the guardian, the court shall set a date for a hearing and may provide all protections as set forth for the original finding of incapacity and appointment of a guardian.

(6) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in the Nebraska Probate Code, and the guardian must account to the conservator for funds expended.

(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his or her services and for room and board furnished to the ward as agreed upon between him or her and the conservator,



provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(c) Nothing in subdivision (a)(3) of this section or in any other part of this section shall be construed to alter the decisionmaking authority of an attorney in fact designated and authorized under sections 30-3401 to 30-3432 to make health care decisions pursuant to a power of attorney for health care.

Sec. 131. Section 30-2637, Revised Statutes Supplement, 2002, is amended to read:

30-2637. The court has the following powers which may be exercised directly or through a conservator with respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his or her benefit or the benefit of his or her dependents.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, the minor's family, and members of the minor's household.

(3) After hearing and upon determining by clear and convincing evidence that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his or her household, all the powers over his or her estate and affairs which he or she could exercise if present and not under disability except the power to make a will. These powers include, but are not limited to, power to make gifts, to convey or release his or her contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his or her powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his or her disability or life, to exercise or release his or her powers as settlor of a revocable trust as provided in subsection (f) of section 54 of this act, to exercise options of the disabled person to purchase securities or other property, to exercise his or her rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his or her right to an elective share in the estate of his or her deceased spouse, and to renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he or she either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section determining by clear and convincing evidence that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person to make a will.

Sec. 132. Section 30-2646, Revised Statutes Supplement, 2002, is amended to read:

30-2646. In the exercise of his or her powers, a conservator is to act as a fiduciary and shall ~~(1) prior to September 13, 1997, observe the standards of care applicable to trustees as described by section 30-2813 and (2) on and after September 13, 1997, comply with the Nebraska Uniform Prudent Investor Act~~ prudent investor rule set forth in sections 83 to 89 of this act.

Sec. 133. Section 30-3119, Revised Statutes Supplement, 2002, is amended to read:

30-3119. (a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in subsection (a) of section 30-3118 and considering any power the trustee may have under the trust to invade principal or accumulate interest, that the trustee is unable

to comply with subsection (b) of section 30-3118.

(b) In deciding whether and to what extent to exercise the power to make adjustments under subsection (a) of this section, a trustee may consider, but is not limited to, any of the following:

- (1) the nature, purpose, and expected duration of the trust;
- (2) the intent of the settlor including the settlor's probable intent, which is the settlor's dominant plan and purpose as they appear from the entirety of the trust when read and considered in light of the present facts and circumstances;
- (3) the identity and circumstances of the beneficiaries;
- (4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
- (6) the net amount allocated to income under the other sections of the Uniform Principal and Income Act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
- (7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
- (8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and
- (9) the anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

- (1) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
- (2) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
- (3) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;
- (4) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;
- (5) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;
- (6) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment; or
- (7) if the trustee is a beneficiary of the trust.

(d) If subdivision (c) (5), (6), or (7) of this section applies (i) to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust or (ii) to the trustee and there is not more than one trustee, or to all trustees, any trustee or beneficiary may petition the court pursuant to section ~~30-2806~~ 12 of this act for appointment of a cotrustee to whom the provision does not apply who may make the adjustment unless the exercise of the power by the appointed trustee is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subdivisions (c) (1) through (6) of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an

adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a) of this section.

(g) Nothing in the Uniform Principal and Income Act shall give rise to liability for any exercise or failure to exercise a discretionary power under this section unless such exercise or failure to exercise constitutes an abuse of the trustee's discretion.

Sec. 134. Section 30-3201, Revised Statutes Supplement, 2002, is amended to read:

30-3201. Except as may be otherwise provided in section 8-318, or otherwise provided by law or by the instrument creating the fiduciary relationship involved, each and every trustee, guardian, conservator, executor, or administrator, whether appointed by the courts of this state, or acting under authority other than a court appointment, having funds for investment shall ~~(1) prior to September 13, 1997, invest the same in investments of the nature which persons of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the trustee, guardian, conservator, executor, or administrator has special skills or is named as fiduciary on the basis of representations of special skills or expertise, he or she is under a duty to use those skills, and (2) on and after September 13, 1997, comply with the Nebraska Uniform Prudent Investor Act~~ comply with the prudent investor rule set forth in sections 83 to 89 of this act.

Sec. 135. Section 30-3205, Revised Statutes Supplement, 2002, is amended to read:

30-3205. (1) A fiduciary holding funds for investment may invest such funds in securities of, or other interests in, any open-end or closed-end management-type investment company or investment trust registered pursuant to the federal Investment Company Act of 1940, as amended, if a court order, will, agreement, or other instrument creating or defining the investment powers of the fiduciary directs, requires, authorizes, or permits the investment of such funds in any of the following: (a) Such investments as the fiduciary may, in his or her discretion, select; (b) investments generally, other than those in which fiduciaries are by law authorized to invest trust funds; and (c) United States Government obligations if the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such obligations and if such investment company or investment trust takes delivery of the collateral, either directly or through an authorized custodian.

(2) A bank or trust company acting as a fiduciary, agent, or otherwise may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as a fiduciary, invest and reinvest interests in the securities of an open-end or closed-end management-type investment company or investment trust registered pursuant to the federal Investment Company Act of 1940, as amended, or may retain, sell, or exchange such interests so long as the portfolio of the investment company or investment trust as an entity consists substantially of investments not prohibited by the instrument governing the fiduciary relationship. The fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company or investment trust, such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for the services shall not preclude the bank or trust company from investing, reinvesting, retaining, or exchanging any interest held by the trust estate in the securities of any open-end or closed-end management-type investment company or investment trust registered pursuant to the federal Investment Company Act of 1940, as amended.

~~(3) The compensation received by a bank or trust company or affiliate of the bank or trust company for providing investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or other such services to the investment company or investment trust may be in addition to the compensation to which the bank or trust company or affiliate of the bank or trust company is otherwise entitled to receive from the trust if the basis on which the compensation from the investment company or investment trust is calculated is expressed by a percentage of the asset value, a percentage of the income earned, or the actual amount charged and is (a) consented to in writing by all persons entitled to receive statements of account activity and (b) disclosed initially by prospectus and at least annually thereafter to such persons by account, statement, or any other written means.~~

For purposes of this subsection, a conservator or other legal

guardian appointed by a court of competent jurisdiction shall represent any person entitled to receive statements of account activity. In addition, any person appointed to serve as agent under a valid durable power of attorney pursuant to the Uniform Durable Power of Attorney Act may represent any person entitled to receive statements of account activity. Person entitled to receive statements of account activity does not include any person who is not acting in a fiduciary capacity but has been designated by any beneficiary of a fiduciary account to receive statements of account activity on behalf of or in addition to such person.

Sec. 136. Section 30-3508, Revised Statutes Supplement, 2002, is amended to read:

30-3508. (a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b)(1) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property.

(2)(i) ~~Prior to February 11, 1999, in the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.~~

(ii) ~~On and after February 11, 1999, in~~ In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall comply with the ~~Nebraska Uniform Prudent Investor Act~~ prudent investor rule set forth in sections 83 to 89 of this act and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor.

(c) Subject to subsection (b) of this section, a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for ..... (name of beneficiary) under the Nebraska Uniform Custodial Trust Act".

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

Sec. 137. Section 49-1544, Reissue Revised Statutes of Nebraska, is amended to read:

49-1544. ~~The~~ Subject to the provisions of subsection (a) of section 37 of this act, the short form expression, Specific Authority for Trusts, shall mean that the principal generally authorizes and empowers the agent to alter, create, establish, make, or terminate with any corporate or other fiduciary any irrevocable or revocable disposition in trust for the benefit of any person or persons upon any conditions or other terms with or without any retained interest and otherwise to continue, modify, originate, or terminate any trust arrangement.

Sec. 138. Section 76-2004, Reissue Revised Statutes of Nebraska, is amended to read:

76-2004. Upon the petition of an interested person, a county court in a proceeding described in section 30-2211 or ~~30-2806~~ section 12 of this act or a district court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed by subdivision (a)(2), (b)(2), or (c)(2) of section 76-2002 if:

(1) A nonvested property interest or a power of appointment becomes invalid under section 76-2002;

(2) A class gift is not but might become invalid under section

76-2002 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by subdivision (a)(1) of section 76-2002 can vest but not within ninety years after its creation.

Sec. 139. Section 76-2006, Reissue Revised Statutes of Nebraska, is amended to read:

76-2006. (a) Except as extended by subsection (b) of this section, the Uniform Statutory Rule Against Perpetuities Act applies to a nonvested property interest or a power of appointment that is created on or after August 25, 1989. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) If a nonvested property interest or a power of appointment was created before August 25, 1989, and is determined in a judicial proceeding, commenced on or after such date, to violate this state's rule against perpetuities as that rule existed before such date, a county court in a proceeding described in section 30-2211 or ~~30-2806~~ section 12 of this act or a district court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

Sec. 140. This act becomes operative on the second January 1 following the effective date of this act.

Sec. 141. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 142. Original sections 8-2202 to 8-2205, 8-2209 to 8-2211, 21-20,168, 25-2705, 25-2708, 30-2202, 30-2208, 30-2210 to 30-2212, 30-2214, 30-2222, 30-2352, 30-24,111, 30-2801 to 30-2803, 30-2805, 49-1544, 76-2004, and 76-2006, Reissue Revised Statutes of Nebraska, and sections 8-201, 12-1107, 24-517, 25-1901, 25-2728, 30-1601, 30-2464, 30-2628, 30-2637, 30-2646, 30-3119, 30-3201, 30-3205, 30-3508, and 30-3701 to 30-3706, Revised Statutes Supplement, 2002, are repealed.

Sec. 143. The following sections are outright repealed: Sections 8-2201, 8-2206 to 8-2208, 8-2212, 8-2213, 30-239, 30-240, 30-2804, 30-2806 to 30-2812, 30-2814 to 30-2818, and 30-2820 to 30-2826, Reissue Revised Statutes of Nebraska, and sections 30-2813 and 30-2819, Revised Statutes Supplement, 2002.