

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 62

Introduced by Landis, 46

Read first time January 7, 1999

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to trusts; to amend sections 30-3503, 30-3508,
2 30-3518, and 30-3519, Revised Statutes Supplement, 1998;
3 to change provisions relating to the Nebraska Uniform
4 Custodial Trust Act; to require compliance with the
5 Nebraska Uniform Prudent Investor Act; to repeal the
6 original sections; and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-3503, Revised Statutes Supplement,
2 1998, is amended to read:

3 30-3503. (a) A person may create a custodial trust of
4 property by a written transfer of the property to another person,
5 evidenced by registration ~~under sections 30-2801 to 30-2805~~ or by
6 other instrument of transfer, executed in any lawful manner, naming
7 as beneficiary, an individual who may be the transferor, in which
8 the transferee is designated, in substance, as the custodial
9 trustee under the Nebraska Uniform Custodial Trust Act.

10 (b) A person may create a custodial trust of property by
11 a written declaration, evidenced by registration of the property or
12 by other instrument of declaration, executed in any lawful manner,
13 describing the property and naming as beneficiary an individual
14 other than the declarant, in which the declarant as titleholder is
15 designated, in substance, as custodial trustee under the act. A
16 registration or other declaration of trust in which the declarant
17 is designated as custodial trustee for the sole benefit of the
18 declarant is not a custodial trust under the act.

19 (c) Title to custodial trust property is in the custodial
20 trustee and the beneficial interest is in the beneficiary.

21 (d) Except as provided in subsection (e) of this section,
22 a transferor may not terminate a custodial trust.

23 (e) The beneficiary, if not incapacitated, or the
24 conservator of an incapacitated beneficiary, may terminate a
25 custodial trust by delivering to the custodial trustee a writing
26 signed by the beneficiary or conservator declaring the termination.
27 If not previously terminated, the custodial trust terminates on the
28 death of the beneficiary.

1 (f) Any person may augment existing custodial trust
2 property by the addition of other property pursuant to the act.

3 (g) The transferor may designate, or authorize the
4 designation of, a successor custodial trustee in the trust
5 instrument.

6 (h) The act does not displace or restrict other means of
7 creating trusts. A trust whose terms do not conform to the act may
8 be enforceable according to its terms under other law.

9 Sec. 2. Section 30-3508, Revised Statutes Supplement,
10 1998, is amended to read:

11 30-3508. (a) If appropriate, a custodial trustee shall
12 register or record the instrument vesting title to custodial trust
13 property.

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

18 (2)(i) Prior to the effective date of this act, in the
19 absence of effective contrary direction by the beneficiary while
20 not incapacitated, the custodial trustee shall observe the standard
21 of care that would be observed by a prudent person dealing with
22 property of another and is not limited by any other law restricting
23 investments by fiduciaries. However, a custodial trustee, in the
24 custodial trustee's discretion, may retain any custodial trust
25 property received from the transferor. If a custodial trustee has
26 a special skill or expertise or is named custodial trustee on the
27 basis of representation of a special skill or expertise, the
28 custodial trustee shall use that skill or expertise.

1 (ii) On and after the effective date of this act, in the
2 absence of effective contrary direction by the beneficiary while
3 not incapacitated, the custodial trustee shall comply with the
4 Nebraska Uniform Prudent Investor Act and is not limited by any
5 other law restricting investments by fiduciaries. However, a
6 custodial trustee, in the custodial trustee's discretion, may
7 retain any custodial trust property received from the transferor.

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

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

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

27 Sec. 3. Section 30-3518, Revised Statutes Supplement,
28 1998, is amended to read:

1 30-3518. (a) Upon termination of a custodial trust, the
2 custodial trustee shall transfer the unexpended custodial trust
3 property:

4 (1) To the beneficiary, if not incapacitated or deceased;

5 (2) To the holder of the beneficiary's power of attorney;

6 (3) To the conservator or other recipient designated by
7 the court for an incapacitated beneficiary; or

8 (4) Upon the beneficiary's death, in the following order:

9 (i) As last directed in a writing signed by the deceased
10 beneficiary while not incapacitated and received by the custodial
11 trustee during the life of the deceased beneficiary;

12 (ii) To the survivor of multiple beneficiaries if
13 survivorship is provided for pursuant to section 30-3507;

14 (iii) As designated in the instrument creating the
15 custodial trust; or

16 (iv) To the estate of the deceased beneficiary.

17 (b) If, when the custodial trust would otherwise
18 terminate, the distributee is incapacitated, the custodial trust
19 continues for the use and benefit of the distributee as beneficiary
20 until the incapacity is removed or the custodial trust is otherwise
21 terminated.

22 (c) Death of a beneficiary does not terminate the power
23 of the custodial trustee to discharge obligations of the custodial
24 trustee or beneficiary incurred before the termination of the
25 custodial trust.

26 ~~(d) The writing described in subdivision (a)(4)(i) of~~
27 ~~this section or the instrument described in subdivision (a)(4)(iii)~~
28 ~~of this section must also be signed by at least two witnesses,~~

1 neither of whom is the custodial trustee or a beneficiary of the
 2 custodial trust property, and be acknowledged by the beneficiary or
 3 transferor before a notary public. Failure to comply with the
 4 witness or acknowledgment requirement shall not affect the validity
 5 of the custodial trust during the life of the beneficiary but shall
 6 invalidate only the direction or designation of the beneficiary on
 7 termination of the custodial trust under subdivision (a)(4)(i) of
 8 this section or subdivision (a)(4)(iii) of this section, and upon
 9 termination of the custodial trust the custodial trustee shall
 10 transfer the unexpended custodial trust property according to the
 11 remaining provisions of this section.

12 Sec. 4. Section 30-3519, Revised Statutes Supplement,
 13 1998, is amended to read:

14 30-3519. (a) If a transaction, including a declaration
 15 with respect to or a transfer of specific property, otherwise
 16 satisfies applicable law, the criteria of section 30-3503 are
 17 satisfied by:

18 (1) The execution and either delivery to the custodial
 19 trustee or recording of an instrument in substantially the
 20 following form:

21 TRANSFER UNDER THE NEBRASKA

22 UNIFORM CUSTODIAL TRUST ACT

23 I, (name of transferor or name and
 24 representative capacity if a fiduciary), transfer to
 25 (name of trustee other than transferor), as custodial trustee for
 26 (name of beneficiary) as beneficiary and
 27 as distributee on termination of the trust in absence of direction
 28 by the beneficiary under the Nebraska Uniform Custodial Trust Act,

1 the following: (Insert a description of the custodial trust
2 property legally sufficient to identify and transfer each item of
3 property).

4 Dated:

5

6 (Signature); or

7

.....

8 Witness

Witness

9 ACKNOWLEDGMENT

10 STATE OF)

11) ss.

12 COUNTY OF)

13 On this day of 19.... or 20...., before
14 me, a duly authorized notary public in and for the State of
15 County of personally appeared
16 (name of transferor or name and representative
17 capacity if a fiduciary), known to me to be the identical person
18 described in and who executed the above and foregoing transfer of
19 specific property in the presence of two witnesses, and he or she
20 acknowledged same to be his or her voluntary act and deed for the
21 purposes therein mentioned.

22 IN WITNESS WHEREOF, I have hereunder set my hand and
23 official seal the day and year last above written.

24

25 Notary Public, or

26 (2) The execution and the recording or giving notice of
27 its execution to the beneficiary of an instrument in substantially
28 the following form:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF TRUST UNDER THE NEBRASKA
UNIFORM CUSTODIAL TRUST ACT

I, (name of owner of property), declare that henceforth I hold as custodial trustee for (name of beneficiary other than transferor) as beneficiary and as distributee on termination of the trust in absence of direction by the beneficiary under the Nebraska Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated:

.....

(Signature)

.....

.....

Witness

Witness

ACKNOWLEDGMENT

STATE OF)

) ss.

COUNTY OF)

On this day of 19... or 20..., before me, a duly authorized notary public in and for the State of County of, personally appeared (name of owner of property), known to me to be the identical person described in and who executed the above and foregoing transfer of specific property in the presence of two witnesses, and he or she acknowledged same to be his or her voluntary act and deed for the purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunder set my hand and

1 ~~official seal the day and year last above written.~~

2 *

3 ~~Notary Public~~

4 (b) Customary methods of transferring or evidencing
5 ownership of property may be used to create a custodial trust,
6 including any of the following:

7 (1) Registration of a security in the name of a trust
8 company, an adult other than the transferor, or the transferor if
9 the beneficiary is other than the transferor, designated in
10 substance: "as custodial trustee for (name of
11 beneficiary) under the Nebraska Uniform Custodial Trust Act";

12 (2) Delivery of a certificated security, or a document
13 necessary for the transfer of an uncertificated security, together
14 with any necessary endorsement, to an adult other than the
15 transferor or to a trust company as custodial trustee, accompanied
16 by an instrument in substantially the form prescribed in
17 subdivision (a)(1) of this section;

18 (3) Payment of money or transfer of a security held in
19 the name of a broker or a financial institution or its nominee to a
20 broker or financial institution for credit to an account in the
21 name of a trust company, an adult other than the transferor, or the
22 transferor if the beneficiary is other than the transferor,
23 designated in substance: "as custodial trustee for
24 (name of beneficiary) under the Nebraska Uniform Custodial Trust
25 Act";

26 (4) Registration of ownership of a life or endowment
27 insurance policy or annuity contract with the issuer in the name of
28 a trust company, an adult other than the transferor, or the

1 transferor if the beneficiary is other than the transferor,
 2 designated in substance: "as custodial trustee for
 3 (name of beneficiary) under the Nebraska Uniform Custodial Trust
 4 Act";

5 (5) Delivery of a written assignment to an adult other
 6 than the transferor or to a trust company whose name in the
 7 assignment is designated in substance by the words: "as custodial
 8 trustee for (name of beneficiary) under the Nebraska
 9 Uniform Custodial Trust Act";

10 (6) Irrevocable exercise of a power of appointment,
 11 pursuant to its terms, in favor of a trust company, an adult other
 12 than the donee of the power, or the donee who holds the power if
 13 the beneficiary is other than the donee, whose name in the
 14 appointment is designated in substance: "as custodial trustee for
 15 (name of beneficiary) under the Nebraska Uniform
 16 Custodial Trust Act";

17 (7) Delivery of a written notification or assignment of a
 18 right to future payment under a contract to an obligor which
 19 transfers the right under the contract to a trust company, an adult
 20 other than the transferor, or the transferor if the beneficiary is
 21 other than the transferor, whose name in the notification or
 22 assignment is designated in substance: "as custodial trustee for
 23 (name of beneficiary) under the Nebraska Uniform
 24 Custodial Trust Act";

25 (8) Execution, delivery, and recordation of a conveyance
 26 of an interest in real property in the name of a trust company, an
 27 adult other than the transferor, or the transferor if the
 28 beneficiary is other than the transferor, designated in substance:

1 "as custodial trustee for (name of beneficiary) under
2 the Nebraska Uniform Custodial Trust Act";

3 (9) Issuance of a certificate of title by an agency of a
4 state or of the United States which evidences title to tangible
5 personal property:

6 (i) Issued in the name of a trust company, an adult other
7 than the transferor, or the transferor if the beneficiary is other
8 than the transferor, designated in substance: "as custodial trustee
9 for (name of beneficiary) under the Nebraska Uniform
10 Custodial Trust Act"; or

11 (ii) Delivered to a trust company or an adult other than
12 the transferor or endorsed by the transferor to that person,
13 designated in substance: "as custodial trustee for
14 (name of beneficiary) under the Nebraska Uniform Custodial Trust
15 Act"; or

16 (10) Execution and delivery of an instrument of gift to a
17 trust company or an adult other than the transferor, designated in
18 substance: "as custodial trustee for (name of
19 beneficiary) under the Nebraska Uniform Custodial Trust Act".

20 Sec. 5. Original sections 30-3503, 30-3508, 30-3518, and
21 30-3519, Revised Statutes Supplement, 1998, are repealed.

22 Sec. 6. Since an emergency exists, this act takes effect
23 when passed and approved according to law.