

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 764

Introduced by Lindstrom, 18.

Read first time January 08, 2020

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to trust companies; to amend sections 8-224.01
- 2 and 30-3205, Reissue Revised Statutes of Nebraska; to provide
- 3 exceptions from certain prohibited investments; to authorize
- 4 investments in certain securities, shares, and interests; to
- 5 harmonize provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-224.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 8-224.01 (1) No charge shall be allowed against an estate or trust
4 for legal services performed by an attorney who is a salaried employee of
5 the trust company or when a portion of the charge for legal service is
6 retained by the trust company. Any officer or employee of the trust
7 company causing or consenting to such division of fee for legal service
8 shall be guilty of a Class I misdemeanor. No investments of an estate or
9 trust shall be made in the capital stock or securities of the trust
10 company, in the stock or securities of its affiliated companies, or in
11 obligations, either direct or indirect, of any director, officer, or
12 employee of the trust company. The trust company shall not substitute any
13 of the assets of an estate or trust under its control for securities of
14 the trust company. A trust company may administer, in a fiduciary
15 capacity, an estate or trust which contains such capital stock,
16 securities, or obligations as part of its assets if such assets are
17 received in kind from the grantor of the estate or trust and retention of
18 such capital stock, securities, or obligations is properly authorized by
19 the terms of the governing document. Any officer or employee of the trust
20 company making such an investment or consenting to such an investment or
21 causing such substitution or consenting to such substitution shall be
22 guilty of a Class III felony.

23 (2) No loan of the assets of the trust company shall be made to any
24 officer or director of such corporation. No trust company shall cause or
25 allow funds of any account entrusted to the trust company to be loaned,
26 directly or indirectly, to any director, officer, or employee of the
27 trust company except when the director, officer, or employee has a
28 specific beneficial interest in the account and such loans are allowed in
29 governing account documents and are not prohibited by other state or
30 federal law. Any director, officer, or employee of the trust company
31 causing, consenting to, or receiving funds from a loan made in violation

1 of this section shall be guilty of a Class III felony.

2 (3) This section shall not apply to investments authorized in
3 section 30-3205.

4 Sec. 2. Section 30-3205, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 30-3205 (1) Notwithstanding the prohibition on investments in
7 section 8-224.01, a A fiduciary holding funds for investment may invest
8 such funds in securities of, or other interests in, individual portfolios
9 of investment holdings; shares or interests in a private investment fund,
10 including a private investment fund organized as a limited partnership, a
11 limited liability company, a trust, a statutory or common-law business
12 trust, a real estate investment trust, a joint venture, any general or
13 limited partnership, or any other form of legal entity; or securities of,
14 or other interests in, any open-end or closed-end management-type
15 investment company or investment trust registered, unregistered, or
16 exempt from registration under pursuant to the federal Investment Company
17 Act of 1940, as amended, if a court order, will, agreement, or other
18 instrument creating or defining the investment powers of the fiduciary
19 directs, requires, authorizes, or permits the investment of such funds in
20 any of the following:

21 (a) Such investments as the fiduciary may, in his or her discretion,
22 select;

23 (b) Investments ~~investments~~ generally, other than those in which
24 fiduciaries are by law authorized to invest trust funds; and

25 (c) United States Government obligations if the portfolio of such
26 investment company or investment trust is limited to United States
27 Government obligations and to repurchase agreements fully collateralized
28 by such obligations and if such investment company or investment trust
29 takes delivery of the collateral, either directly or through an
30 authorized custodian.

31 (2)(a) Notwithstanding the prohibition on investments in section

1 8-224.01, a (2)—A bank or trust company acting as a fiduciary, agent, or
2 otherwise may, in the exercise of its investment discretion or at the
3 direction of another person authorized to direct investment of funds held
4 by the bank or trust company as a fiduciary, invest and reinvest
5 interests in the securities of, or other interests in, individual
6 portfolios of investment holdings; shares or interests in a private
7 investment fund, including a private investment fund organized as a
8 limited partnership, a limited liability company, a trust, a statutory or
9 common-law business trust, a real estate investment trust, a joint
10 venture, any general or limited partnership, or any other form of legal
11 entity; or securities of, or other interests in, an open-end or closed-
12 end management-type investment company or investment trust registered,
13 unregistered, or exempt from registration under pursuant to the federal
14 Investment Company Act of 1940, as amended, or may retain, sell, or
15 exchange such interests so long as the portfolio of the investment
16 company or investment trust as an entity consists substantially of
17 investments not prohibited by the instrument governing the fiduciary
18 relationship.

19 (b) The fact that the bank or trust company or an affiliate of the
20 bank or trust company provides services to the investment company, or
21 investment trust, or private investment fund, such as that of an
22 investment advisor, custodian, transfer agent, registrar, sponsor,
23 distributor, manager, or otherwise, and is receiving reasonable
24 compensation for the services shall not preclude the bank or trust
25 company from investing, reinvesting, retaining, or exchanging any
26 interest held by the trust estate in the securities of, or other
27 interests in, individual portfolios of investment holdings; shares or
28 interests in a private investment fund, including a private investment
29 fund organized as a limited partnership, a limited liability company, a
30 trust, a statutory or common-law business trust, a real estate investment
31 trust, a joint venture, any general or limited partnership, or any other

1 form of legal entity; or securities of, or other interests in, any open-
2 end or closed-end management-type investment company or investment trust
3 registered, unregistered, or exempt from registration under pursuant to
4 the federal Investment Company Act of 1940, as amended.

5 Sec. 3. Original sections 8-224.01 and 30-3205, Reissue Revised
6 Statutes of Nebraska, are repealed.