

HOUSE BILL NO. HB0065

Uniform Trust Code Amendments.

Sponsored by: Representative(s) Simpson and Senator(s)
Hanes and Nicholas

A BILL

for

1 AN ACT relating to the Uniform Trust Code; amending
2 disclaimer provisions as specified; amending the investment
3 standards for fiduciaries; making technical corrections;
4 adding provisions to conform with recent changes to the
5 model Uniform Trust Code; clarifying powers of trust
6 advisors and trust protectors; amending definitions;
7 specifying applicability of provisions; and providing for
8 an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 4-10-718 is created to read:

13

14 **4-10-718. Directed trusts.**

15

1 (a) If a trust instrument provides that a fiduciary
2 is to follow the direction of a trust protector or trust
3 adviser and the fiduciary acts in accordance with such
4 direction, the fiduciary shall be treated as an excluded
5 fiduciary under the provisions of W.S. 4-10-715 and
6 4-10-717.

7

8 (b) Where one (1) or more persons are given authority
9 by a trust instrument or court order to either appoint a
10 trust protector or to direct, consent to or disapprove a
11 fiduciary's actual or proposed distribution decisions or
12 other noninvestment decisions of the fiduciary, the persons
13 or the persons appointed by them shall be considered to be
14 trust protectors under W.S. 4-10-103(a) (xxiii).

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16 (c) Where one (1) or more persons are given authority
17 by a trust instrument or court order to either appoint a
18 trust advisor or to direct, consent to or disapprove a
19 fiduciary's actual or proposed investment decisions, the
20 persons or the persons appointed by them shall be
21 considered to be trust advisors under W.S.
22 4-10-103(a) (xxii).

23

1 (d) If a court order provides that a fiduciary is to
2 follow the direction of a trust protector or trust advisor
3 and the fiduciary acts in accordance with the direction,
4 the fiduciary shall be treated as an excluded fiduciary
5 under the provisions of W.S. 4-10-715 and 4-10-717.

6
7 (e) Unless expressly prohibited by the trust
8 instrument, the qualified beneficiaries of a trust may
9 unanimously agree to designate a trust advisor with the
10 power to direct the fiduciary's investment decisions,
11 provided the trust does not have a serving trust advisor
12 with the power. If the written designation is furnished to
13 the fiduciary and the fiduciary acts in accordance with the
14 direction from the designated trust advisor, the fiduciary
15 shall be treated as an excluded fiduciary under the
16 provisions of W.S. 4-10-715 and 4-10-717. The designation
17 of a trust advisor with power to direct the fiduciary's
18 investment decisions may be revoked by unanimous written
19 consent of the qualified beneficiaries and once the
20 revocation has been delivered to the excluded fiduciary the
21 fiduciary is relieved of any responsibility to act upon any
22 outstanding or future directions from such trust advisor.

23

1 (f) For purposes of this section, "investment
2 decision" means with respect to any property, the
3 retention, purchase, sale, exchange, tender or other
4 transaction affecting the ownership thereof or rights
5 therein.

6
7 **Section 2.** W.S. 2-1-401, 2-1-402, 2-3-301(c),
8 2-3-805(a) and (b), 2-16-102(a)(x)(A), (B) and by creating
9 a new subparagraph (C), 4-10-103(a)(vi), (xiii), (xv),
10 (xxii), (xxiii) and by creating new paragraphs (xxvii) and
11 (xviii), 4-10-301(c) and by creating a new subsection (d),
12 4-10-412(a), 4-10-504 by creating a new subsection (e),
13 4-10-505(b)(ii), 4-10-710(a)(intro), 4-10-712(a)(intro),
14 4-10-715, 4-10-717, 4-10-802 by creating a new subsection
15 (k), 4-10-813(c), 4-10-814(b)(i), 4-10-816 by creating a
16 new subsection (b), 4-10-902 by creating a new subsection
17 (g) and 4-10-1103(a)(intro) and by creating a new
18 subsection (d) are amended to read:

19
20 **2-1-401. Right to disclaim.**

21
22 (a) Any person may disclaim any interest in property
23 which without a disclaimer he would receive by gift,
24 bequest, devise, inheritance, beneficiary designation, the

1 exercise of a power of appointment or would pass by right
2 of survivorship.

3
4 (b) Except to the extent a fiduciary's right to
5 disclaim is expressly restricted or limited by another
6 statute of this state or by the instrument creating the
7 fiduciary relationship, a fiduciary may disclaim any
8 interest in property which without a disclaimer he would
9 receive by gift, bequest, devise, inheritance, beneficiary
10 designation, the exercise of a power of appointment or
11 would pass by right of survivorship, whether acting in a
12 personal or representative capacity. A fiduciary acting
13 under a power of attorney shall have the right to disclaim
14 an interest in property if expressly authorized to disclaim
15 the interest under the terms of the instrument creating the
16 power of attorney.

17

18 **2-1-402. Definitions.**

19

20 (a) As used in Article 4:

21

22 (i) "Any interest in property" includes, but is
23 not limited to an undivided portion of an interest and a
24 power with respect to property; ~~and~~

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(ii) "Disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property;

(iii) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney or other person authorized to act as a fiduciary with respect to the property of another person.

2-3-301. Standard for fiduciaries; authority to acquire and retain property and investments.

(c) Any bank as defined by W.S. 13-1-101 or any trust company formed under W.S. 13-5-102, that is acting as a fiduciary or agent may, in its discretion or at the direction of another person who is authorized to direct the investment of money held by the bank or trust company, invest in the securities of an open end or closed end management investment company or investment trust that is registered under the federal Investment Company Act of 1940, as amended. The bank or trust company, or any affiliate thereof, may provide services to the investment trust or investment company, including acting as an

1 investment advisor, manager, sponsor, distributor,
2 custodian, transfer agent or registrar, and may receive
3 reasonable compensation for the services. Provided,
4 however, that with respect to any funds invested, the bank
5 or trust company or its affiliate shall disclose to the
6 persons to whom statements of the account are rendered ~~the~~
7 ~~rate, formula or other method by which the compensation~~
8 ~~paid is determined~~ consistent with the requirements of W.S.
9 4-10-802(f).

10
11 **2-3-805. Notice of proposed action; objections of**
12 **beneficiary; liability of trustee; proceedings.**

13
14 (a) Unless a trust instrument requires otherwise, a
15 trustee ~~shall~~ may give notice of proposed action regarding
16 a matter governed by this act as provided in this section.
17 For the purpose of this section, a proposed action includes
18 a course of action and a decision not to take action.

19
20 (b) If a trustee elects to give notice under this
21 section, the trustee shall mail notice of the proposed
22 action to all beneficiaries who are receiving, or are
23 entitled to receive, income under the trust or to receive a

1 distribution of principal if the trust were terminated at
2 the time the notice is given.

3

4 **2-16-102. Definitions.**

5

6 (a) As used in this act:

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8 (x) "Security account" means:

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10 (A) A reinvestment account associated with
11 a security, a securities account with a broker, a cash
12 balance in a brokerage account, cash, cash equivalents,
13 interest, earnings or dividends earned or declared on a
14 security in an account, a reinvestment account, or a
15 brokerage account, whether or not credited to the account
16 before the owner's death;~~or~~

17

18 (B) A cash balance or other property held
19 for or due to the owner of a security as a replacement for
20 or product of an account security, whether or not credited
21 to the account before the owner's death;~~or~~ or

22

23 (C) An investment management or custody
24 account with a trust company or a bank with trust powers,

1 including the securities in the account, a cash balance in
2 the account, and cash, cash equivalents, interest, earnings
3 or dividends earned or declared on a security in the
4 account, whether or not credited to the account before the
5 owner's death.

6
7 **4-10-103. Definitions.**

8
9 (a) As used in this act:

10
11 (vi) "Excluded fiduciary" means any fiduciary
12 excluded from exercising certain powers under the trust
13 instrument or by court order which powers may be exercised
14 by the settlor, trust advisor, trust protector or other
15 persons designated by the instrument or court order;

16
17 (xiii) "Power of withdrawal" means a presently
18 exercisable general power of appointment other than a power
19 exercisable by a trustee which is limited by an
20 ascertainable standard, or which is exercisable by another
21 person only upon consent of the trustee or a person holding
22 an adverse interest;

23

1 (xv) "Qualified beneficiary" means a beneficiary
2 who is currently entitled to distributions of income or
3 principal from the trust or has a vested remainder interest
4 in the residuary of the trust which is not subject to
5 divestment;

6
7 (xxii) "Trust advisor" means the settlor of a
8 trust instrument or other parties whose appointment is
9 provided in the trust instrument and whose powers are
10 defined ~~and limited~~ in W.S. 4-10-712;

11
12 (xxiii) "Trust protector" means any
13 disinterested party whose appointment is provided for in
14 the trust instrument or who is appointed by a court of
15 competent jurisdiction and whose powers are defined ~~and~~
16 ~~limited~~ in W.S. 4-10-710;

17
18 (xxvii) "Ascertainable standard" means a
19 standard relating to an individual's health, education,
20 support or maintenance within the meaning of Section
21 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of
22 1986, as in effect on July 1, 2005;

23

1 (xxviii) "Directed trust" means a trust where
2 either through the terms of the trust, an agreement of the
3 qualified beneficiaries or a court order, one (1) or more
4 persons is given the authority to direct, consent to or
5 disapprove a fiduciary's actual or proposed investment
6 decision, distribution decision or any other noninvestment
7 decision of the fiduciary.

8
9 **4-10-301. Representation; basic effect.**

10
11 (c) Except as otherwise provided in W.S. ~~4-10-413~~
12 4-10-412 and 4-10-602, a person who under this article may
13 represent a settlor who lacks capacity may receive notice
14 and give a binding consent on the settlor's behalf.

15
16 (d) A settlor may not represent and bind a
17 beneficiary under this article with respect to the
18 termination or modification of a trust under W.S.
19 4-10-412(a).

20
21 **4-10-412. Modification or termination of**
22 **noncharitable irrevocable trust by consent.**

23

1 (a) ~~A noncharitable irrevocable trust may be modified~~
2 ~~or terminated upon consent of the settlor and all~~
3 ~~beneficiaries.~~ If upon petition the court finds that the
4 settlor and all beneficiaries consent to the modification
5 or termination of a noncharitable irrevocable trust, the
6 court may enter an order approving the modification or
7 termination, even if the modification or termination is
8 inconsistent with a material purpose of the trust. A
9 settlor's power to consent to a modification or termination
10 of a trust may be exercised by an agent under a power of
11 attorney only to the extent expressly authorized by the
12 power of attorney or the terms of the trust or, if no agent
13 is so authorized, then by the settlor's conservator or
14 guardian. ~~or, if none, then by the settlor's conservator or~~
15 ~~guardian.~~ Exercise of the settlor's power to consent by an
16 agent, conservator or guardian shall be in each case with
17 the approval of the court ~~supervising the conservatorship~~
18 ~~or guardianship~~ upon a finding by the court that such
19 action is not inconsistent with the settlor's purpose or
20 intent.

21

22 **4-10-504. Discretionary trusts; effect of standard.**

23

1 (e) A creditor may not reach the interest of a
2 beneficiary who is also a trustee or cotrustee, or
3 otherwise compel a distribution, if the trustee's
4 discretion to make distributions for the trustee's own
5 benefit is limited by an ascertainable standard.

6
7 **4-10-505. Creditor's claim against settlor.**

8
9 (b) For purposes of this section:

10
11 (ii) Upon the lapse, release or waiver of the
12 power, the holder is no longer treated as the settlor of
13 the trust ~~only to the extent the value of~~ with respect to
14 the property affected by the lapse, release or waiver.
15 ~~exceeds the greater of the amount specified in Section~~
16 ~~2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986,~~
17 ~~or Section 2503(b) of the Internal Revenue Code of 1986, in~~
18 ~~each case as in effect on July 1, 2003.~~

19
20 **4-10-710. Trust protector.**

21
22 (a) The powers and discretions of a trust protector
23 shall be provided in the trust instrument or may be
24 established or modified by a judicial order, and may, in

1 the best interests of the trust, be exercised or not
2 exercised. The powers and discretions may include, but are
3 not limited to the following:

4

5 **4-10-712. Trust advisor.**

6

7 (a) The powers and discretions of a trust advisor
8 shall be provided in the trust instrument and may, in the
9 best interests of the trust, be exercised or not exercised
10 in the sole and absolute discretion of the trust advisor
11 and shall be binding on all other persons. Such powers and
12 discretions may include, but are not limited to the
13 following:

14

15 **4-10-715. No duty to review actions of trust advisor**
16 **or trust protector.**

17

18 Unless the trust instrument appointing, designating or
19 providing for a method for appointing a trust protector or
20 trust advisor or the court order appointing a trust
21 protector states otherwise, an excluded fiduciary is
22 relieved of any duty or responsibility to review the
23 actions of a ~~trust advisor or trust protector~~ duly named
24 and appointed ~~under the trust instrument~~ trust protector or

1 trust advisor. ~~The excluded fiduciary is further relieved~~
2 ~~of any liability resulting from breach of trust, failure to~~
3 ~~act, liability resulting from actions taken or any loss~~
4 ~~resulting from compliance with a direction by a trust~~
5 ~~advisor or trust protector.~~

6
7 **4-10-717. Fiduciary's liability for action or**
8 **inaction of trust advisor and trust protector.**

9
10 ~~If~~ Unless the trust instrument ~~appoints~~ appointing,
11 designating or providing for a method for appointing a
12 trust protector or trust advisor or the court order
13 appointing a trust protector states otherwise, the excluded
14 fiduciary is not liable for any loss resulting from any
15 action or inaction of the trust advisor or protector.

16
17 **4-10-802. Duty of loyalty.**

18
19 (k) There is no presumption of a conflict of interest
20 when a trustee:

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22 (i) Makes an investment in an insurance contract
23 purchased from an insurance agency owned by, or affiliated
24 with, the trustee, or any of its affiliates; or

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4-10-813. Duty to inform and report.

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(ii) Places securities through a securities broker that is part of the same company as the trustee, is owned by the trustee or is affiliated with the trustee provided the investment complies with the prudent investor rule contained in the Uniform Prudent Investor Act under W.S. 4-10-901 through 4-10-913 and the trustee at least annually notifies qualified beneficiaries of the rate and method by which the trustee receives compensation.

(c) A trustee shall send to qualified beneficiaries, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts and disbursements, including the amount of the trustee's compensation, except to the extent compensation has been disclosed consistent with the requirements of W.S. 4-10-802, the allocation of receipts, disbursements, trustee compensation and expenses of administration between income and principal, 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 shall be sent to the qualified beneficiaries by the

1 former trustee. A personal representative, conservator or
2 guardian of a deceased or incapacitated trustee may send
3 the qualified beneficiaries a report on the trustee's
4 behalf.

5

6 **4-10-814. Discretionary powers; tax savings.**

7

8 (b) Subject to subsection (d) of this section, and
9 unless the terms of the trust expressly indicate that a
10 rule in this subsection does not apply:

11

12 (i) A person other than a settlor who is a
13 beneficiary and trustee of a trust that confers on the
14 trustee a power to make discretionary distributions to or
15 for the trustee's personal benefit may exercise the power
16 only in accordance with an ascertainable standard; ~~relating~~
17 ~~to the trustee's individual health, education, support or~~
18 ~~maintenance within the meaning of Section 2041(b)(1)(A) or~~
19 ~~2514(c)(1) of the Internal Revenue Code of 1986, as in~~
20 ~~effect on July 1, 2003;~~ and

21

22 **4-10-816. Specific powers of trustee.**

23

1 (b) This section may be cited as the Uniform Trustee
2 Powers Act.

3
4 **4-10-902. Standard of care; portfolio strategy; risk**
5 **and return objectives.**

6
7 (g) Notwithstanding the foregoing provisions of this
8 section, a trustee who discloses the application of this
9 subsection and the limitation of the trustee's duties it
10 provides either in the trust instrument or in a separate
11 writing delivered to each insured at the inception of a
12 life insurance contract or thereafter, if the disclosure is
13 prior to an event giving rise to a claim thereunder, may
14 acquire or retain a life insurance contract upon the life
15 of the settlor or the settlor's spouse, or both, without
16 liability for a loss arising from the trustee's failure to
17 perform any of the following duties, unless the trust
18 instrument states or limits otherwise:

19
20 (i) Determine whether the contract is or remains
21 a proper investment;

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1 (ii) Investigate the financial strength or
2 changes in the financial strength of the life insurance
3 company;

4
5 (iii) Make a determination of whether to
6 exercise any policy option available under the contract;

7
8 (iv) Make a determination of whether to
9 diversify the contracts relative to one another or to other
10 assets, if any, administered by the trustee; or

11
12 (v) Inquire about changes in the health or
13 financial condition of the insured or insureds relative to
14 a contract.

15
16 **4-10-1103. Application to existing relationships.**

17
18 (a) Except as otherwise provided in this act and
19 ~~subsection~~ subsections (c) and (d) of this section, on July
20 1, 2003:

21
22 (d) The provisions of the prior Uniform Trustees
23 Powers Act and Uniform Prudent Investor Act that have been
24 incorporated into this act as W.S. 4-10-816 and 4-10-901

1 through 4-10-913, respectively, shall apply to any trust
2 created prior to April 1, 2003, unless the trust instrument
3 states otherwise.

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5 **Section 3.** This act is effective immediately upon
6 completion of all acts necessary for a bill to become law
7 as provided by Article 4, Section 8 of the Wyoming
8 Constitution.

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10

(END)