

ENROLLED ACT NO. 86, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

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

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

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

4-10-718. Directed trusts.

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

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

(c) Where one (1) or more persons are given authority by a trust instrument or court order to either appoint a trust advisor or to direct, consent to or disapprove a fiduciary's actual or proposed investment decisions, the persons or the persons appointed by them shall be

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considered to be trust advisors under W.S.
4-10-103(a) (xxii).

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

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

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

Section 2. W.S. 2-1-401, 2-1-402, 2-3-301(c), 2-3-805(a) and (b), 2-16-102(a)(x)(A), (B) and by creating a new subparagraph (C), 4-10-103(a)(vi), (xiii), (xv), (xxii), (xxiii) and by creating new paragraphs (xxvii) and

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(xviii), 4-10-301(c) and by creating a new subsection (d), 4-10-412(a), 4-10-504 by creating a new subsection (e), 4-10-505(b)(ii), 4-10-506(a)(ii), 4-10-710(a)(intro), 4-10-712(a)(intro), 4-10-715, 4-10-717, 4-10-802 by creating a new subsection (k), 4-10-813(c), 4-10-814(b)(i), 4-10-816 by creating a new subsection (b), 4-10-902 by creating a new subsection (g) and 4-10-1103(a)(intro) and by creating a new subsection (d) are amended to read:

2-1-401. Right to disclaim.

(a) Any person may disclaim any interest in property which without a disclaimer he would receive by gift, bequest, devise, inheritance, beneficiary designation, the exercise of a power of appointment or would pass by right of survivorship.

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

2-1-402. Definitions.

(a) As used in Article 4:

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

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

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

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2-3-805. Notice of proposed action; objections of beneficiary; liability of trustee; proceedings.

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

(b) If a trustee elects to give notice under this section, the trustee shall mail notice of the proposed action to all beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

2-16-102. Definitions.

(a) As used in this act:

(x) "Security account" means:

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

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

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(C) An investment management or custody account with a trust company or a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death.

4-10-103. Definitions.

(a) As used in this act:

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

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

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

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

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

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

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

4-10-301. Representation; basic effect.

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

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

4-10-412. Modification or termination of noncharitable irrevocable trust by consent.

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(a) ~~A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries. If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court may enter an order approving the modification or termination,~~ even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a modification or termination of a trust 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 or, if no agent is so authorized, then by the settlor's conservator or guardian. ~~or, if none, then by the settlor's conservator or guardian.~~ Exercise of the settlor's power to consent by an agent, conservator or guardian shall be in each case with the approval of the court ~~supervising the conservatorship or guardianship~~ upon a finding by the court that such action is not inconsistent with the settlor's purpose or intent.

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

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

4-10-505. Creditor's claim against settlor.

(b) For purposes of this section:

(ii) Upon the lapse, release or waiver of the power, the holder is no longer treated as the settlor of the trust ~~only to the extent the value of~~ with respect to

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the property affected by the lapse, release or waiver. ~~exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on July 1, 2003.~~

4-10-506. Limitation on action by creditors.

(a) Subject to the rights of persons dealing with a fiduciary as provided in W.S. 4-10-1013, a creditor may file a claim against the assets of the trust or commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(ii) One hundred twenty (120) days after a notice of the intent of the trustee to have the property of the settlor distributed as permitted under the terms of the trust has been published once per week for two (2) consecutive weeks in a newspaper of general circulation in the county or counties where venue of the trust is properly established as provided in W.S. 4-10-204; or

4-10-710. Trust protector.

(a) The powers and discretions of a trust protector shall be provided in the trust instrument or may be established or modified by a judicial order, and may, in the best interests of the trust, be exercised or not exercised. The powers and discretions may include, but are not limited to the following:

4-10-712. Trust advisor.

(a) The powers and discretions of a trust advisor shall be provided in the trust instrument and may, in the best interests of the trust, be exercised or not exercised

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in the sole and absolute discretion of the trust advisor and shall be binding on all other persons. Such powers and discretions may include, but are not limited to the following:

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

Unless the trust instrument appointing, designating or providing for a method for appointing a trust protector or trust advisor or the court order appointing a trust protector states otherwise, an excluded fiduciary is relieved of any duty or responsibility to review the actions of a ~~trust advisor or trust protector~~ duly named and appointed ~~under the trust instrument~~ trust protector or trust advisor. ~~The excluded fiduciary is further relieved of any liability resulting from breach of trust, failure to act, liability resulting from actions taken or any loss resulting from compliance with a direction by a trust advisor or trust protector.~~

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

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

4-10-802. Duty of loyalty.

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

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

(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.

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

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

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

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(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:

(i) 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 of 1986, as in effect on July 1, 2003;~~ and

4-10-816. Specific powers of trustee.

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

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

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

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

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

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

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

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

4-10-1103. Application to existing relationships.

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

(d) The provisions of the prior Uniform Trustees Powers Act and Uniform Prudent Investor Act that have been incorporated into this act as W.S. 4-10-816 and 4-10-901 through 4-10-913, respectively, shall apply to any trust created prior to April 1, 2003, unless the trust instrument states otherwise.

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____
DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk