

SENATE BILL NO. 259—SENATOR SCHNEIDER

MARCH 17, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing licensed family trust companies. (BDR 55-629)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to licensed family trust companies; revising provisions governing the management of a trust by a licensed family trust company; specifying the applicability of the Uniform Prudent Investor Act to a trust managed by a licensed family trust company; requiring a licensed family trust company to administer a trust in this State except under certain circumstances; authorizing a licensed family trust company to engage in certain transactions involving the assets of the trust or take certain actions if the transaction or action is in the interest of the beneficiaries and complies with certain other requirements; authorizing a licensed family trust company and an interested person to enter into a nonjudicial settlement agreement to resolve any matter related to the management, administration or interpretation of a trust; requiring a licensed family trust company to provide an annual report to certain persons concerning the management of a trust; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law requires a trust company that has been appointed as the fiduciary
- 2 of a trust to invest and manage the assets of the trust according to the Uniform
- 3 Prudent Investor Act. (NRS 164.700-164.775) The prudent investor rule requires,
- 4 among other things, that a fiduciary of a trust diversify the assets of the trust
- 5 through various investments. (NRS 164.750) Existing law places further restrictions
- 6 on the types of transactions that a trust company may engage in with the assets of a
- 7 trust for which it is a fiduciary. (NRS 669A.230) Existing law also requires a trust



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company to obtain a court order to transfer the principal place of administration of the trust to a jurisdiction outside of this State. (NRS 164.130)

Sections 4 and 15 of this bill provide that a trust that is managed by a licensed family trust company is subject only to certain provisions of the Uniform Prudent Investor Act as it applies to the management of the trust and those provisions of the Uniform Prudent Investor Act which are specifically incorporated by a term of the trust. **Section 7** of this bill authorizes a licensed family trust company to engage in activities and transactions involving the assets of a trust, including the acquisition of concentrated holdings of stocks, bonds, securities or other assets, which might otherwise be prohibited by the Uniform Prudent Investor Act. **Section 7** requires that such transactions or actions by a licensed family trust company be for a fair price, if applicable, be in the interest of the beneficiaries and comply with the terms of the trust, a written consent agreement or a court order. Furthermore, the transactions authorized by **section 7** are not prohibited by a conflict of interest between the parties to the transaction.

Section 8 of this bill authorizes a licensed family trust company and an interested person to enter into a nonjudicial settlement agreement with respect to any matter related to the management, administration or interpretation of a trust. **Section 8** also authorizes a licensed family trust company or an interested person to petition a court to approve a nonjudicial settlement agreement or to make certain other determinations related to the nonjudicial settlement agreement. **Section 9** of this bill requires a licensed family trust company that intends to execute a nonjudicial settlement agreement to meet certain notice requirements before executing the nonjudicial settlement agreement and also requires an interested person who receives such notice to object within a certain period to preserve the right to bring certain actions relating to the nonjudicial settlement agreement. **Section 9** also authorizes a licensed family trust company or an interested person who timely objects to petition the court to approve, disapprove, enforce or modify the nonjudicial settlement agreement. **Section 10** of this bill authorizes a licensed family trust company to refrain from taking an action that is authorized by a nonjudicial settlement agreement under certain circumstances.

Section 6 of this bill requires that a trust managed by a licensed family trust company be administered in this State and pursuant to any applicable laws of this State except under certain circumstances. **Section 11** of this bill requires a licensed family trust company to provide annual reports to certain persons outlining any transactions taken by the licensed family trust company while acting as the fiduciary of a trust.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 669A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this act.

Sec. 2. *“Interested person” means a person, other than the grantor of a trust, who is:*

1. A person who would be a necessary party to a judicial proceeding involving a trust; or

2. An authorized representative pursuant to NRS 164.038.

Sec. 3. *A licensed family trust company or an employee or agent of a licensed family trust company is not liable to an*



1 *interested person for any transaction, decision to act or decision to*
2 *not act if the licensed family trust company, employee or agent*
3 *acted in good faith and in reasonable reliance on the express*
4 *terms of a trust instrument, a written consent agreement or a court*
5 *order.*

6 **Sec. 4.** 1. *Except as otherwise provided in this chapter or by*
7 *specific statute, a licensed family trust company is subject to the*
8 *provisions of this chapter only to the extent that the licensed*
9 *family trust company is engaged in the business of a licensed*
10 *family trust company.*

11 2. *A trust that is managed by a licensed family trust company*
12 *pursuant to this chapter is subject only to the provisions of NRS*
13 *164.700 to 164.775, inclusive, which are specifically incorporated*
14 *by a term of the trust or which govern:*

15 (a) *The requirements for creating a trust;*

16 (b) *The requirement that a trust and its terms be for the benefit*
17 *of its beneficiaries;*

18 (c) *The requirement that a trust have a purpose that is lawful*
19 *and possible to achieve;*

20 (d) *The duty of a fiduciary to act in good faith and in*
21 *accordance with the terms and purposes of the trust;*

22 (e) *The duty of a fiduciary to act in the interest of the*
23 *beneficiaries; and*

24 (f) *The power of the court to take any action or exercise its*
25 *jurisdiction as provided by law.*

26 **Sec. 5.** *While acting as the fiduciary of a trust, a licensed*
27 *family trust company:*

28 1. *Shall administer and manage the trust in accordance with*
29 *the terms of the trust;*

30 2. *Shall administer and manage the trust in the interest of the*
31 *beneficiaries of the trust;*

32 3. *Shall administer and manage the trust in accordance with*
33 *the provisions of this chapter; and*

34 4. *May administer and manage the trust by the exercise of*
35 *discretionary power of administration given to the fiduciary by the*
36 *terms of the trust instrument.*

37 **Sec. 6.** 1. *Except as otherwise provided in subsection 2 and*
38 *section 4 of this act, a licensed family trust company that is the*
39 *fiduciary of a trust shall administer the trust in this State pursuant*
40 *to the provisions of chapter 164 of NRS and any other applicable*
41 *laws of this State.*

42 2. *A licensed family trust company that is the fiduciary of a*
43 *trust may administer the trust in a jurisdiction outside of this State*
44 *if:*



1 (a) The terms of the trust instrument authorize the fiduciary to
2 administer the trust in a jurisdiction outside of this State;

3 (b) The terms of the trust instrument require the trust to be
4 interpreted pursuant to the laws of a jurisdiction outside of this
5 State; or

6 (c) A court of competent jurisdiction in this State issues an
7 order transferring supervision of the administration of the trust to
8 a court outside of this State.

9 Sec. 7. 1. Notwithstanding the provisions of any other law
10 to the contrary, while acting as the fiduciary of a trust, a licensed
11 family trust company may:

12 (a) Invest in a security of an investment company or
13 investment trust for which the licensed family trust company or a
14 family affiliate provides services in a capacity other than as a
15 fiduciary;

16 (b) Place a security transaction using a broker that is a family
17 affiliate;

18 (c) Invest in an investment contract that is purchased from an
19 insurance company or carrier owned by or affiliated with the
20 licensed family trust company or a family affiliate;

21 (d) Enter into an agreement with a beneficiary or grantor of a
22 trust with respect to the appointment or compensation of the
23 fiduciary or a family affiliate;

24 (e) Transact with another trust, estate, guardianship or
25 conservatorship for which the licensed family trust company is a
26 fiduciary or in which a beneficiary has an interest;

27 (f) Make an equity investment in a closely held entity that may
28 or may not be marketable and that is owned or controlled, either
29 directly or indirectly, by one or more beneficiaries, family
30 members or family affiliates;

31 (g) Deposit trust money in a financial institution that is owned
32 or operated by a family affiliate;

33 (h) Delegate the authority to conduct any transaction or action
34 pursuant to this section to an agent of the licensed family trust
35 company or a family affiliate;

36 (i) Purchase, sell, hold, own or invest in any security, bond,
37 real or personal property, stock or other asset of a family affiliate;

38 (j) Loan money to or borrow money from:

39 (1) A family member of the trust or his or her legal
40 representative;

41 (2) Another trust managed by the licensed family trust
42 company; or

43 (3) A family affiliate;

44 (k) Enter into a nonjudicial settlement agreement pursuant to
45 section 8 of this act;



(l) Act as proxy in voting any shares of stock which are assets of the trust;

(m) Exercise any powers of control with respect to any interest in a company that is an asset of the trust, including, without limitation, the appointment of officers or directors who are family affiliates; and

(n) Receive reasonable compensation for its services or the services of a family affiliate.

2. A transaction or action authorized pursuant to subsection 1 must:

(a) Be for a fair price, if applicable;

(b) Be in the interest of the beneficiaries; and

(c) Comply with:

(1) The terms of the trust instrument establishing the fiduciary relationship;

(2) A judgment, decree or court order; or

(3) The written consent of each interested person.

3. Except as otherwise provided in subsection 2, nothing in this section prohibits a licensed family trust company from transacting business with or investing in any asset of:

(a) A trust, estate, guardianship or conservatorship for which the licensed family trust company is a fiduciary;

(b) A family affiliate; or

(c) Any other company, agent, entity or person for which a conflict of interest may exist.

4. A conflict of interest between the fiduciary duty and personal interest of a licensed family trust company does not void a transaction or action that:

(a) Complies with the provisions of this section; or

(b) Occurred before the licensed family trust company entered into a fiduciary relationship pursuant to a trust instrument.

5. A transaction by or action of a licensed family trust company authorized by this section is not voidable if:

(a) The transaction or action was authorized by the terms of the trust;

(b) The transaction or action was approved by a court or pursuant to a court order;

(c) No interested person commenced a legal action relating to the transaction or action pursuant to subsection 6;

(d) The transaction or action was authorized by a valid consent agreement or release; or

(e) The transaction or action occurred before the licensed family trust company entered into a fiduciary relationship pursuant to a trust instrument.



6. A legal action by an interested person alleging that a transaction or action by a licensed family trust company is voidable because of the existence of a conflict of interest must be commenced within 1 year after the date on which the interested person discovered, or by the exercise of due diligence should have discovered, the facts in support of his or her claim.

7. Notwithstanding the provisions of any other law to the contrary, a licensed family trust company is not required to obtain court approval for any transaction that otherwise complies with the provisions of this section.

Sec. 8. 1. A licensed family trust company and an interested person may enter into a nonjudicial settlement agreement with respect to any matter involving the management, administration or interpretation of a trust that is managed pursuant to this chapter.

2. A nonjudicial settlement agreement that is entered into pursuant to this section must not contain:

(a) Terms that violate a material purpose of the trust; or

(b) Terms or conditions that could not be approved by a court.

3. The matters that may be resolved by a nonjudicial settlement agreement which is entered into pursuant to this section include, without limitation:

(a) Those pertaining to any transaction or action authorized pursuant to paragraphs (a) to (n), inclusive, of subsection 1 of section 7 of this act;

(b) The investment or use of trust assets;

(c) The lending or borrowing of money;

(d) The addition, deletion or modification of a term or condition of the trust;

(e) The interpretation or construction of a term or condition of the trust;

(f) The designation or transfer of the principal place of administration of the trust;

(g) The approval of a report or accounting that is provided pursuant to section 11 of this act;

(h) Direction to a fiduciary to refrain from performing a particular act or the grant to a fiduciary of any necessary or desirable power;

(i) The resignation or appointment of a fiduciary;

(j) The liability of a fiduciary for an action related to the management of the trust; and

(k) The termination of the trust.

4. After notice has been provided pursuant to section 9 of this act, a licensed family trust company or an interested person may petition a court to approve a nonjudicial settlement agreement, to



determine whether the nonjudicial settlement agreement was accurately represented to each interested person or to determine whether the nonjudicial settlement agreement contains terms or conditions that the court could approve. A licensed family trust company is not liable to an interested person for taking an action that is authorized by a nonjudicial settlement agreement which has been approved by a court.

Sec. 9. 1. A licensed family trust company shall provide written notice by personal service or by certified mail to each interested person who is a necessary party to a nonjudicial settlement agreement entered into pursuant to section 8 of this act. A licensed family trust company is not required to provide notice to any interested person who has consented in writing to the nonjudicial settlement agreement.

2. The notice provided pursuant to this section must:

(a) Be provided at least 15 days before the execution of the nonjudicial settlement agreement;

(b) Include a true and correct copy of the nonjudicial settlement agreement;

(c) State that the notice is provided pursuant to this section and section 8 of this act;

(d) State the name and mailing address of the licensed family trust company;

(e) State the date by which an objection to the nonjudicial settlement agreement must be made; and

(f) State the date on which the nonjudicial settlement agreement is to be executed.

3. An interested person who receives notice pursuant to this section may object to any term or condition of, or any act that is authorized by, the nonjudicial settlement agreement by submitting his or her objection in writing to the licensed family trust company within 1 year after the date on which the interested person received the notice. Except as otherwise provided in subsection 5, if an interested person does not object within 1 year after receiving notice, his or her objection is waived, and the interested person may not bring any action relating to the terms and conditions of, or any act taken pursuant to, the nonjudicial settlement agreement.

4. An interested person who objects within the period specified in subsection 3 may petition the court for an order to approve, disapprove, enforce or modify the nonjudicial settlement agreement. The burden is on the interested person to prove that the nonjudicial settlement agreement should be approved, disapproved, enforced or modified.



1 5. *The provisions of subsection 3 do not prohibit an interested*
2 *person who has received notice pursuant to this section and who*
3 *fails to object to the nonjudicial settlement agreement within 1*
4 *year after receiving the notice from bringing an action alleging*
5 *that the nonjudicial settlement agreement was procured*
6 *fraudulently, or entered into by the licensed family trust company*
7 *in bad faith or in willful violation of the terms of the trust. A*
8 *person who brings such an action has the burden of proving by*
9 *clear and convincing evidence that the nonjudicial settlement*
10 *agreement was procured fraudulently, in bad faith or in willful*
11 *violation of the terms of the trust.*

12 6. *Except as otherwise provided in subsection 5, if no*
13 *interested person who is entitled to receive notice pursuant to this*
14 *section objects to the nonjudicial settlement agreement within 1*
15 *year after receiving the notice, a licensed family trust company is*
16 *not liable to any interested person for taking any action that is*
17 *authorized by the nonjudicial settlement agreement.*

18 **Sec. 10.** 1. *A licensed family trust company may refrain*
19 *from taking an action that is authorized by a nonjudicial*
20 *settlement agreement if the licensed family trust company*
21 *determines in good faith that the action is not in the interest of the*
22 *beneficiaries of the trust.*

23 2. *A licensed family trust company that refrains from taking*
24 *an action pursuant to subsection 1 shall provide written notice to*
25 *each interested person within 15 days after its decision not to take*
26 *the action and include in the notice the reasons for not taking the*
27 *action.*

28 3. *An interested person who receives notice pursuant to*
29 *subsection 2 may petition the court for an order requiring the*
30 *licensed family trust company to take the action authorized by*
31 *the nonjudicial settlement agreement. The burden is on the*
32 *beneficiary to prove that the proposed action is in the interest of*
33 *the beneficiaries of the trust and should be taken.*

34 4. *A licensed family trust company is not liable to an*
35 *interested person for not taking an action that is authorized by a*
36 *nonjudicial settlement agreement if the licensed family trust*
37 *company acted in good faith in not taking the action.*

38 **Sec. 11.** 1. *Except as otherwise provided in subsection 4, a*
39 *licensed family trust company, while acting as the fiduciary of a*
40 *trust, shall provide an annual report to each interested person for*
41 *each year of the existence of the trust until the trust is terminated,*
42 *at which time the trust company shall provide to each interested*
43 *person a final report.*



2. A report that is provided pursuant to this section must, for the year immediately preceding the report, provide an accounting of:

(a) Each asset and liability of the trust and its current market value or amount, if known;

(b) Each disbursement of income or principal, including the amount of the disbursement and to whom the disbursement was made;

(c) All payments of compensation from any source to the licensed family trust company or any other person for services rendered; and

(d) Any other transaction involving an asset of the trust.

3. An interested person who is entitled to a report pursuant to this section may waive his or her right to the report by submitting a written waiver to the licensed family trust company. An interested person who waives his or her right to a report may withdraw the waiver by submitting to the licensed family trust company a written request for a report.

4. A licensed family trust company is not required to provide a report pursuant to this section if the terms of the trust provide an exception to this requirement.

5. A licensed family trust company may require an interested person who is entitled to receive confidential information pursuant to this section to execute a confidentiality agreement before providing the person with any confidential information.

Sec. 12. NRS 669A.020 is hereby amended to read as follows:

669A.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 669A.030 to 669A.090, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 13. NRS 669A.060 is hereby amended to read as follows:

669A.060 "Family affiliate" means a company or other entity with respect to which ~~the~~ *one or more* family ~~member possesses,~~ *members or affiliates possess,* directly or indirectly, the power to direct or cause the direction of the management and policies of that company or entity, whether through the ownership of voting securities, by contract, power of direction or otherwise.

Sec. 14. NRS 90.250 is hereby amended to read as follows:

90.250 "Investment adviser" means any person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term does not include:

1. An employee of an adviser;



1 2. A depository institution;
2 3. A lawyer, accountant, engineer or teacher whose
3 performance of investment advisory services is solely incidental to
4 the practice of the person's profession;

5 4. A broker-dealer whose performance of investment advisory
6 services is solely incidental to the conduct of business as a broker-
7 dealer and who receives no special compensation for the investment
8 advisory services;

9 5. A publisher, employee or columnist of a newspaper, news
10 magazine or business or financial publication, or an owner, operator,
11 producer or employee of a cable, radio or television network, station
12 or production facility if, in either case, the financial or business
13 news published or disseminated is made available to the general
14 public and the content does not consist of rendering advice on the
15 basis of the specific investment situation of each client;

16 6. A person whose advice, analyses or reports relate only to
17 securities exempt under paragraph (a) of subsection 2 of NRS
18 90.520; ~~or~~

19 7. *A licensed family trust company or an employee or agent*
20 *of a licensed family trust company that is engaged in the business*
21 *of a licensed family trust company pursuant to chapter 669A of*
22 *NRS; or*

23 8. Any other person the Administrator by regulation or order
24 designates.

25 **Sec. 15.** NRS 164.740 is hereby amended to read as follows:

26 164.740 ~~1A~~ *Except as otherwise provided in chapter 669A of*
27 *NRS, a* trustee who invests and manages trust property owes a duty
28 to the beneficiaries of the trust to comply with the prudent investor
29 rule as set forth in NRS 164.700 to 164.775, inclusive, but a trustee
30 is not liable to a beneficiary to the extent that the trustee acted in
31 reasonable reliance on the terms of the trust.

