

CHAPTER.....

AN ACT relating to trust companies; revising provisions governing the management of a trust by a family trust company or licensed family trust company; specifying the applicability of the Uniform Prudent Investor Act to a trust managed by a family trust company or licensed family trust company; authorizing a family trust company or 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 family trust company or 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 family trust company and licensed family trust company to provide an annual report or certain information in lieu of an annual report to certain persons concerning the management of a trust; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires a trust company that has been appointed as the fiduciary of a trust to invest and manage the assets of the trust according to the Uniform Prudent Investor Act. (NRS 164.700-164.775) The prudent investor rule requires, among other things, that a fiduciary of a trust diversify the assets of the trust through various investments. (NRS 164.750) Existing law places further restrictions on the types of transactions that a trust company may engage in with the assets of a trust for which it is a fiduciary. (NRS 669A.230) **Section 15** of this bill provides an exception to the provisions of the Uniform Prudent Investor Act as it applies to the management of a trust by a family trust company or licensed family trust company. **Section 7** of this bill authorizes a family trust company or 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 family trust company or 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, a court order or a notice of proposed action. 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 family trust company or 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 family trust company or 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 family trust



company or 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 family trust company or 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 family trust company or licensed family trust company to refrain from taking an action that is authorized by a nonjudicial settlement agreement under certain circumstances.

**Section 11** of this bill requires a family trust company and licensed family trust company to provide annual reports to certain persons outlining any transactions taken by the family trust company or licensed family trust company while acting as the fiduciary of a trust and further authorizes the trust company to provide an interested person with certain other information in lieu of an annual report.

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

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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.** *Notwithstanding the provisions of any law to the contrary, a family trust company or licensed family trust company, or an employee or agent of a family trust company or licensed family trust company, is not liable to an interested person for any transaction, decision to act or decision to not act if the family trust company or licensed family trust company or employee or agent thereof acted in good faith and in reasonable reliance on the express terms of a trust instrument, a written consent agreement or a court order.*

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



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

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

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

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

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

**Sec. 6.** (Deleted by amendment.)

**Sec. 7.** *1. In addition to the transactions authorized by NRS 669A.230 and notwithstanding the provisions of any other law to the contrary, while acting as the fiduciary of a trust, a family trust company or licensed family trust company may:*

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

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

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

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

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

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

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

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



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

(j) Loan money to or borrow money from:

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

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

(3) A family affiliate;

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

(l) 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

(m) 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;

(3) The written consent of each interested person; or

(4) A notice of proposed action issued pursuant to NRS 164.725.

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

(a) A trust, estate, guardianship or conservatorship for which the family trust company or 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 family trust company or 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 family trust company or licensed family trust company entered into a fiduciary relationship pursuant to a trust instrument.*

*5. A transaction by or action of a family trust company or 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, release or pursuant to the issuance of a notice of proposed action issued pursuant to NRS 164.725; or*

*(e) The transaction or action occurred before the family trust company or 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 family trust company or 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 family trust company or 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 family trust company or 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 (m), 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 family trust company or 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 family trust company or 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 family trust company or 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 family trust company or 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 family trust company or 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 family trust company or 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.*

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

*6. Except as otherwise provided in subsection 5, if no interested person who is entitled to receive notice pursuant to this section objects to the nonjudicial settlement agreement within 1 year after receiving the notice, a family trust company or licensed family trust company is not liable to any interested person for*



*taking any action that is authorized by the nonjudicial settlement agreement.*

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

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

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

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

**Sec. 11.** *1. Except as otherwise provided in subsection 4, a family trust company or licensed family trust company, while acting as the fiduciary of a trust, shall provide an annual report to each interested person for each year of the existence of the trust until the trust is terminated, at which time the trust company shall provide to each interested 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 family trust company or 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 family trust company or licensed family trust company. An interested person who waives his or her right to a report may withdraw the waiver by submitting to the family trust company or licensed family trust company a written request for a report.*

4. *A family trust company or 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 family trust company or 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.*

6. *In lieu of the information that a trustee is required to provide to an interested person pursuant to subsection 2, a trustee may provide to an interested person a statement indicating the accounting period and a financial report of the trust which is prepared by a certified public accountant and which summarizes the information required by paragraphs (a) to (d), inclusive, of subsection 2. Upon request, the trustee shall make all the information used in the preparation of the financial report available to each interested person who was provided a copy of the financial report pursuant to this subsection.*

7. *For the purposes of this chapter, information provided by a trustee to an interested person pursuant to subsection 6 is deemed an annual report.*

8. *A trustee may provide an annual report to an interested person via electronic mail or through a secure Internet website.*

**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 own, directly or indirectly, a material interest in the company or entity, or 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. 13.5.** NRS 669A.230 is hereby amended to read as follows:

669A.230 1. Except as otherwise provided in subsection 2, the assets forming the minimum capital of a licensed family trust company pursuant to NRS 669A.160 must:

(a) Consist of:

- (1) Cash;
- (2) Governmental obligations or insured deposits that mature within 3 years after acquisition;
- (3) Readily marketable securities or other liquid, secure assets, bonds, sureties or insurance; or
- (4) Any combination thereof.

(b) Have an aggregate market value that equals or exceeds 100 percent of the company's required stockholders' equity.

2. A licensed family trust company may purchase or rent real or personal property for use in the conduct of the business and other activities of the company.

3. ~~[Notwithstanding]~~ *Except as otherwise provided in section 7 of this act, and notwithstanding* any other provisions of law to the contrary, a licensed family trust company may invest its funds for its own account, other than those required or permitted to be maintained by subsection 1 or 2, in any type or character of equity securities, debt securities or other asset provided the investment complies with the prudent investor standards set forth in NRS 164.700 to 164.775, inclusive.

4. ~~[Notwithstanding]~~ *Except as otherwise provided in section 7 of this act and notwithstanding* the provisions of any other law to the contrary, a family trust company is authorized while acting as a fiduciary to purchase for the fiduciary estate, directly from underwriters or distributors or in the secondary market:

(a) Bonds or other securities underwritten or distributed by the family trust company or an affiliate thereof or by a syndicate which includes the family trust company, provided that the family trust company discloses in any written communication or account statement reflecting the purchase of those bonds or securities the nature of the interest of the family trust company in the underwriting or distribution of those bonds and securities and whether the family trust company received any fee in connection with the purchase; and

(b) Securities of any investment company ~~[as defined under the Investment Company Act of 1940]~~ for which the family trust company acts as advisor, custodian, distributor, manager, registrar, shareholder servicing agent, sponsor or transfer agent, or provided



the family trust company discloses in any written communication or account statement reflecting the purchase of the securities the nature of the relationship and whether the family trust company received any fee for providing those services.

5. ~~[The]~~ *Except as otherwise provided in section 7 of this act, the* authority granted in subsection 4 may be exercised only if:

(a) The investment is not expressly prohibited by the instrument, judgment, decree or order establishing the fiduciary relationship;

(b) The family trust company discloses in writing to the person or persons to whom it sends account statements its intent to exercise the authority granted in subsection 4 before the first exercise of that authority; and

(c) The family trust company procures in writing the consent of its cofiduciaries with discretionary investment powers, if any, to the investment.

6. ~~[A]~~ *Except as otherwise provided in section 7 of this act, a* family trust company may:

(a) Invest in the securities of an investment company ~~[as defined under the federal Investment Company Act of 1940]~~ or investment trust, to which the family trust company or its affiliate provides services in a capacity other than as trustee. The investment is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor standards set forth in NRS 164.700 to 164.775, inclusive.

(b) Be compensated by an investment company or investment trust described in paragraph (a) for providing services in a capacity other than as trustee if the family trust company discloses at least annually to each person to whom it sends account statements the rate and method by which the compensation was determined.

7. ~~[Nothing]~~ *Except as otherwise provided in section 7 of this act, nothing* in subsections 4, 5 and 6 shall affect the degree of prudence which is required of fiduciaries under the laws of this State. Any bonds or securities purchased under authority of this section are not presumed to be affected by a conflict between the fiduciary's personal and fiduciary interest if the purchase of the bonds or securities:

(a) Is at a fair price;

(b) Is in accordance with:

(1) The interest of the beneficiaries; and

(2) The purposes of the trusts; and

(c) Complies with:

(1) The prudent investor standards set forth in NRS 164.700 to 164.775, inclusive; and



(2) The terms of the instrument, judgment, decree or order establishing the fiduciary relationship.

8. ~~[Notwithstanding]~~ *Except as otherwise provided in section 7 of this act and notwithstanding* the provisions of subsections 4 to 7, inclusive, a family trust company which is authorized to exercise trust powers in this State and which is acting as a fiduciary shall not purchase for the fiduciary estate any fixed income or equity security issued by the family trust company or an affiliate thereof unless:

(a) The family trust company is expressly authorized to do so by:

(1) The terms of the instrument creating the trust;

(2) A court order;

(3) The written consent of the grantor of the trust; or

(4) The written consent of every adult beneficiary of the trust who, at the time notice is provided pursuant to paragraph (b) of subsection 5, receives or is entitled to receive income under the trust or who would be entitled to receive a distribution of principal if the trust were terminated; or

(b) The purchase of the security:

(1) Is at a fair price; and

(2) Complies with:

(I) The prudent investor standards set forth in NRS 164.700 to 164.775, inclusive; and

(II) The terms of the instrument, judgment, decree or order establishing the fiduciary relationship.

*9. As used in this section:*

(a) *“Face-amount certificate” has the meaning ascribed to it in 15 U.S.C. § 80a-2(a)(15).*

(b) *“Government securities” has the meaning ascribed to it in 15 U.S.C. § 80a-2(a)(16).*

(c) *“Investment company” means any issuer which:*

(1) *Is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities;*

(2) *Is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or*

(3) *Is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of the total assets of the*



*issuer, exclusive of government securities and cash items, on an unconsolidated basis.*

*(d) “Issuer” has the meaning ascribed to it in 15 U.S.C. § 80a-2(a)(22).*

**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;
2. A depository institution;
3. A lawyer, accountant, engineer or teacher whose performance of investment advisory services is solely incidental to the practice of the person’s profession;
4. A broker-dealer whose performance of investment advisory services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for the investment advisory services;

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

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

*7. A family trust company or licensed family trust company or an employee or agent of a family trust company or licensed family trust company that is engaged in the business of a family trust company or licensed family trust company pursuant to chapter 669A of NRS, and that is exempt from registration as an investment adviser pursuant to the federal Investment Advisers Act of 1940; or*

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

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

164.740 ~~{A}~~ *Except as otherwise provided in chapter 669A of NRS, a* trustee who invests and manages trust property owes a duty to the beneficiaries of the trust to comply with the prudent investor



rule as set forth in NRS 164.700 to 164.775, inclusive, but a trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the terms of the trust.

**Sec. 16.** This act becomes effective upon passage and approval.

