

ASSEMBLY BILL NO. 275—ASSEMBLYMAN NELSON

MARCH 12, 2015

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing trust companies.
(BDR 55-1013)

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

~

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

AN ACT relating to trust companies; authorizing a fiduciary or excluded fiduciary to delegate a duty of the fiduciary or excluded fiduciary to an agent; limiting the liability of an excluded fiduciary; revising the definition of “fiduciary” to exclude certain servicers or administrators of individual retirement accounts; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that a trust company which administers an individual retirement account is a fiduciary. (NRS 669.045) **Section 4** of this bill amends the definition of “fiduciary” to exclude a specific reference to certain servicers or administrators of individual retirement accounts. **Section 3** of this bill exempts an excluded fiduciary from certain fiduciary duties and limits his or her liability for certain acts or omissions. **Section 2** of this bill allows a fiduciary or excluded fiduciary to delegate a duty of the fiduciary or excluded fiduciary, as appropriate, to an agent and limits his or her liability when such delegation is made with the prior written approval of the trust beneficiaries or a court.

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

Section 1. Chapter 669 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.
Sec. 2. 1. *A fiduciary or excluded fiduciary may, as reasonable and prudent, delegate a duty of the fiduciary or excluded fiduciary, as appropriate, to an agent.*



2. Before delegating a duty pursuant to subsection 1, a fiduciary or excluded fiduciary may obtain the prior written approval of all beneficiaries or the court.

3. If written approval is obtained pursuant to subsection 2, the fiduciary or excluded fiduciary is not liable for the acts of the agent, except in cases of gross negligence or willful misconduct in the selection or monitoring of the agent.

Sec. 3. 1. An excluded fiduciary:

(a) Has no duty to review or evaluate any direction from a trust adviser, custodial account owner or authorized designee of a custodial account owner;

(b) Has no duty to advise or warn any beneficiary or third party where, in the judgment of the excluded fiduciary, providing the advice or warning is not advisable;

(c) Is not liable, individually or as a fiduciary, for any loss resulting from:

(1) Complying with a direction of a trust adviser, custodial account owner or authorized designee of a custodial account owner, including, without limitation, where the trust adviser is breaching his or her fiduciary responsibilities or acting beyond the scope of his or her authority;

(2) A failure to take any action proposed by an excluded fiduciary which requires prior authorization of the trust adviser if the excluded fiduciary timely sought but failed to obtain such authorization; or

(3) Any act or omission, except gross negligence or willful misconduct, when acting as a trust adviser or trust protector pursuant to the instrument or for any other reason; and

(d) Is not deemed to be conducting trust company business while acting within the scope of his or her duties as an excluded fiduciary.

2. As used in this section:

(a) "Custodial account owner" has the meaning ascribed to it in NRS 163.5535.

(b) "Excluded fiduciary" has the meaning ascribed to it in NRS 163.5539.

(c) "Trust adviser" has the meaning ascribed to it in NRS 163.5545.

Sec. 4. NRS 669.045 is hereby amended to read as follows:

669.045 ~~HH~~ "Fiduciary" means a trustee, executor, administrator, guardian of an estate, personal representative, conservator, assignee for the benefit of creditors, receiver, depositary or person that receives on deposit money or property from a public administrator under any provision of this chapter or from another fiduciary.



1 ~~{2. As used in this section, “administrator” includes servicers~~
2 ~~or administrators of individual retirement accounts within the~~
3 ~~meaning of section 408(a) of the Internal Revenue Code of 1986, 26~~
4 ~~U.S.C. § 408(a), where the servicer or administrator holds itself out~~
5 ~~to the public for performance of such services and holds or~~
6 ~~maintains an ownership interest in the servicing rights of such~~
7 ~~accounts, or possesses or controls any of the assets of such accounts,~~
8 ~~including cash.]~~

