

**Amendment No. 318**

Assembly Amendment to Assembly Bill No. 275 (BDR 55-1013)

**Proposed by:** Assembly Committee on Commerce and Labor

**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

RAE/JRS



Date: 4/13/2015

A.B. No. 275—Revises provisions governing trust companies. (BDR 55-1013)



## ASSEMBLY BILL NO. 275—ASSEMBLYMAN NELSON

MARCH 12, 2015

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing ~~{trust companies;}~~ certain trusts.  
(BDR ~~{55-1013;}~~ 13-1013)

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 ~~{trust companies;}~~ directed trusts; authorizing a fiduciary or excluded fiduciary to delegate a duty of the fiduciary or excluded fiduciary to an agent ~~{;}~~ under certain circumstances; limiting the duties and 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 660.045) Section 4 of this bill amends the definition of “fiduciary” to exclude a specific reference to certain servicers or administrators of individual retirement accounts.}~~ sets forth provisions governing certain trusts, including, without limitation, the powers and duties of a fiduciary or excluded fiduciary under those trusts. (NRS 163.553-163.556) Section 3 of this bill exempts an excluded fiduciary from certain fiduciary duties. ~~{and}~~ Section 3.7 of this bill 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}~~ if the delegation is made with the prior written approval of the trust beneficiaries or a court. Section 5 of this bill provides that the amendatory provisions of the bill apply only to an administrative, civil or criminal cause of action that accrues on or after October 1, 2015.

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

**Section 1.** Chapter ~~{669}~~ 163 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~~ shall 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. ~~++~~ An excluded fiduciary ~~+~~

~~(a) Has no duty to~~ has no duty:

1. 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~~ or

2. 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. 3.5. NRS 163.553 is hereby amended to read as follows:

163.553 As used in NRS 163.553 to 163.556, inclusive, and sections 2 and 3 of this act, unless the context otherwise requires, the words and terms defined in NRS 163.5533 to 163.5547, inclusive, have the meanings ascribed to them in those sections.

Sec. 3.7. NRS 163.5549 is hereby amended to read as follows:

163.5549 1. An excluded fiduciary is not liable, individually or as a fiduciary for any loss which results from:

(a) 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;

(b) 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; ~~++~~

(c) 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; or

(d) Any action taken at the direction of a trust protector.

2. An excluded fiduciary is not liable for any obligation to perform an investment or suitability review, inquiry or investigation or to make any recommendation or evaluation with respect to any investment, to the extent that the

1 trust adviser, custodial account owner or authorized designee of a custodial account  
2 owner had authority to direct the acquisition, disposition or retention of such  
3 investment.

4 3. The provisions of this section do not impose an obligation or liability on a  
5 custodian of a custodial account for providing any authorization.

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

7 ~~669.045 [1.] "Fiduciary" means a trustee, executor, administrator, guardian  
8 of an estate, personal representative, conservator, assignee for the benefit of  
9 creditors, receiver, depository or person that receives on deposit money or property  
10 from a public administrator under any provision of this chapter or from another  
11 fiduciary.~~

12 ~~[2. As used in this section, "administrator" includes servicers or  
13 administrators of individual retirement accounts within the meaning of section  
14 408(a) of the Internal Revenue Code of 1986, 26 U.S.C. § 408(a), where the  
15 servicer or administrator holds itself out to the public for performance of such  
16 services and holds or maintains an ownership interest in the servicing rights of such  
17 accounts, or possesses or controls any of the assets of such accounts, including  
18 cash.]] (Deleted by amendment.)~~

19 **Sec. 5. The amendatory provisions of this act apply only to an**  
20 **administrative, civil or criminal cause of action that accrues on or after**  
21 **October 1, 2015.**