

SENATE BILL NO. 384—SENATOR KIECKHEFER

MARCH 17, 2015

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revising provisions relating to family trust companies. (BDR 55-279)

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 family trust companies; providing for the appointment of guardians for certain family members and beneficiaries; providing for the designation of representatives of beneficiaries; providing for the confidentiality of certain trust documents and communications; providing for a rebuttable presumption of good faith for the actions of certain fiduciaries; authorizing certain transactions by certain fiduciaries; revising reporting requirements for certain fiduciaries; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the regulation of family trust companies. (Chapter 669A of NRS) **Section 3** of this bill authorizes a court to appoint a guardian for minors or incompetents who are family members or beneficiaries of a trust or estate represented by a family trust company. **Section 4** of this bill provides for the designation of a person to represent and bind a beneficiary of a trust administered by a family trust company. **Section 5** of this bill provides that newly enacted duties of fiduciaries in other titles of NRS shall not apply to family trust companies, and existing provisions only apply to the extent they are not incompatible with existing law governing family trusts or any terms of the trust. **Section 6** of this bill provides for the liberal construction of provisions relating to family trust companies to give maximum effect to the intent of the trust settlor. **Section 7** of this bill allows a family trust company to petition a court to seal certain trust documents in a court proceeding to protect their confidentiality. **Section 8** of this bill provides that the communications between an attorney and a family trust company are confidential and provides for the disclosure of those communications under certain circumstances. **Section 10** of this bill provides that a licensed family trust company is subject to the supervision of the Commissioner of Financial Institutions.



Section 11 of this bill provides that a family trust company enjoys a rebuttable presumption of good faith in their transactions and dealings. **Section 13** of this bill provides that certain transactions by a family trust company shall be presumed to not be conflicts of interest. Finally, **section 14** of this bill revises certain reporting requirements for family trust companies.

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 1.5 to 8, inclusive, of this act.

Sec. 1.5. *"Beneficiary" has the meaning ascribed to it in NRS 132.050.*

Sec. 2. *"Fiduciary" means:*

- 1. A person described in NRS 132.145;*
- 2. A person described in NRS 163.554;*
- 3. An excluded fiduciary as defined in NRS 163.5539; and*
- 4. A trust protector as defined in NRS 163.5547,*
↪ who may not be acting as a fiduciary under the terms of the trust instrument or will.

Sec. 3. *Any court of competent jurisdiction may appoint a guardian of the estate or guardian ad litem for incompetents or minors who are not residents of this State and who are family members or beneficiaries of a trust or an estate for which a family trust company or licensed family trust company administers the trust or estate in this State.*

Sec. 4. 1. *Except as otherwise provided in subsections 2 and 3, if specifically nominated in the trust instrument, one or more persons may be designated to represent and bind a beneficiary of a trust administered by a family trust company or licensed family trust company and to receive any notice, information, accounting or report regarding the trust. The trust instrument may also authorize any person or persons, other than a trustee, to designate one or more persons to represent and bind a beneficiary and to receive any notice, information, accounting or report.*

2. A person designated to represent and bind a beneficiary of a trust, as provided in subsection 1, may not represent and bind a beneficiary while that person is serving as a trustee of that trust.

3. Notwithstanding any provision of law to the contrary, a person designated to represent and bind a beneficiary of a trust, as provided in subsection 1, may not represent and bind a beneficiary if that person is also a beneficiary, unless that person is:

(a) Specifically nominated in the trust instrument;



(b) *The beneficiary's spouse; or*

(c) *A parent, grandparent or descendant of a grandparent of the beneficiary or the beneficiary's spouse.*

4. *A person designated to represent and bind a beneficiary of a trust, as provided in subsection 1, is not liable to that beneficiary or his or her agent or successor for any acts or omissions made in good faith.*

Sec. 5. 1. *Except as otherwise specified in the trust or in this chapter, a family trust company or licensed family trust company shall comply with the provisions of NRS 165.147.*

2. *Any fiduciary duties required pursuant to title 12 or 13 of NRS after October 1, 2015, apply only to a trust or estate administered by a family trust company or licensed family trust company in this State which was created, commenced or became irrevocable after the enactment of such duties. Such duties shall only apply to the extent that they are not inconsistent or contrary with any provision of this chapter or any terms of the trust.*

Sec. 6. *The rule that statutes in derogation of the common law are to be strictly construed has no application to this chapter. This chapter must be liberally construed to give maximum effect to the principle of freedom of disposition and to the enforceability of trust instruments. This chapter will control over any contrary provisions of law.*

Sec. 7. 1. *In any court proceeding relating to a trust or estate, the family trust company, licensed family trust company, other fiduciary of the trust, settlor or any beneficiary, may petition the court to order the following trust documents to be sealed:*

(a) *Any trust instruments;*

(b) *Any inventories;*

(c) *Any accounts;*

(d) *Any statements filed by a fiduciary;*

(e) *Any annual reports of a fiduciary;*

(f) *Any final reports of a fiduciary;*

(g) *All petitions, exhibits, objections, pleadings and motions relevant to the trust or its administration; and*

(h) *All court orders.*

2. *Any documents sealed by a court pursuant to subsection 1 may not be made part of the public record but are available to the court, any fiduciary of the trust, the beneficiaries or settlor of the trust or their attorneys, and to other interested parties as the court may order upon a showing of good cause.*

Sec. 8. 1. *Any communication between an attorney and a family trust company or licensed family trust company acting as a fiduciary is privileged and protected from disclosure to the same extent as if the client were acting in his or her individual capacity.*



2. *The privilege is not waived by:*

(a) *A fiduciary relationship between the family trust company or licensed family trust company and a beneficiary of a trust; or*

(b) *The use of trust property to compensate the attorney for legal services rendered to the family trust company or licensed family trust company as a fiduciary.*

3. *The attorney-client relationship between an attorney and a family trust company or licensed family trust company acting as a fiduciary shall not extend to a successor fiduciary to the family trust company or licensed family trust company.*

4. *A family trust company or licensed family trust company acting as a fiduciary and its successor fiduciary may, pursuant to an agreement, share privileged communications relating to the trust or estate. The disclosure of privileged communications under the agreement does not waive the disclosing party's privilege. Unless otherwise specified in the agreement, privileged communications disclosed under the agreement shall not be disclosed to a third party without the disclosing party's consent.*

5. *This section does not abridge, limit, impair, create, enlarge or otherwise affect the law governing exceptions to the attorney-client privilege relative to a claimant through the same deceased person.*

Sec. 9. 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 sections 1.5 and 2 of this act* have the meanings ascribed to them in those sections.

Sec. 10. NRS 669A.110 is hereby amended to read as follows:

669A.110 A family trust company:

1. Is not required to be licensed pursuant to this chapter or chapter 669 of NRS.

2. May apply for a license as:

(a) A trust company pursuant to chapter 669 of NRS; or

(b) A licensed family trust company pursuant to this chapter.

3. Is subject to the supervision of the Commissioner under this chapter if licensed as a licensed family trust company pursuant to this chapter.

Sec. 11. NRS 669A.135 is hereby amended to read as follows:

669A.135 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 ~~H~~ , *a nonjudicial settlement agreement or a written waiver contained in a trust instrument or in a separate written instrument such as a waiver of any duty to diversify. Good faith shall be presumed unless rebutted by clear and convincing evidence to the contrary.*

Sec. 12. NRS 669A.220 is hereby amended to read as follows:

669A.220 1. A family trust company may, but only for family members:

(a) Act as a fiduciary ~~H, including as a personal representative,~~ within and outside this State ~~H~~ *as permitted by law and as consistent with the trust or will.*

(b) Act within and outside this State as advisory agent, agent, assignee, assignee for the benefit of creditors, attorney-in-fact, authenticating agent, bailee, bond or indenture trustee, conservator, conversion agent, curator, custodian, escrow agent, exchange agent, fiscal or paying agent, financial advisor, investment advisor, investment manager, managing agent, purchase agent, receiver, registrar, safekeeping agent, subscription agent, transfer agent except for public companies, warrant agent, or in similar capacities generally performed by corporate trustees, and in so acting to possess, purchase, sell, invest, reinvest, safekeep or otherwise manage or administer real or personal property of other persons.

(c) Exercise the powers of a business corporation or a limited-liability company organized or qualified as a foreign corporation or a limited-liability company under the laws of this State and any incidental powers that are reasonably necessary to enable it to fully exercise, in accordance with commonly accepted customs and usages, a power conferred in this chapter.

(d) Do and perform all acts necessary or incidental to exercise the powers enumerated in this section or authorized by this chapter and any other applicable laws of this State.

2. A family trust company shall not engage in any:

(a) Banking with the public; or

(b) Trust company business with the public unless licensed pursuant to chapter 669 of NRS.

Sec. 13. NRS 669A.225 is hereby amended to read as follows:

669A.225 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 , ~~for~~ borrow money from ~~it~~ **or guaranty indebtedness on behalf of:**

(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 **or not be inconsistent** 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.

8. Notwithstanding the provisions of any other law to the contrary, any transaction between a family trust company or a licensed family trust company and a beneficiary of a trust or the spouse or family member of a beneficiary shall not be presumed to be a conflict of interest or a violation of fiduciary duty.

Sec. 14. NRS 669A.255 is hereby amended to read as follows:

669A.255 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~~ *beneficiary who is entitled to an account under the terms of the trust or applicable law* for each year of the existence of the trust until the trust is terminated, at which time the *family* trust company shall provide to each ~~interested person~~ *such beneficiary* a final report. *The annual report or final report may be in the form of a report as described in subsection 2 or 6, an account as provided in chapter 165 of NRS or any other law applicable to the trust. An annual report or final report provided pursuant to this section is deemed to be an account for the purposes of chapter 165 of NRS.*

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~~ *A beneficiary* 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~~ *Any beneficiary* 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.~~ *otherwise.*

5. A family trust company or licensed family trust company may require ~~an interested person~~ *a beneficiary* 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}~~ **a beneficiary** pursuant to subsection 2, a trustee may provide to ~~{an interested person}~~ **a beneficiary** 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}~~ **annual or final** report available to each ~~{interested person}~~ **beneficiary** 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}~~ **a beneficiary** pursuant to subsection 6 is deemed an annual report.

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

9. Notwithstanding the provisions of any other law to the contrary, any beneficiary of a trust administered by a family trust company or licensed family trust company not otherwise entitled to receive an account or annual report under the terms of the trust or applicable law shall have no right to demand an account or annual report of the trust.

10. A family trust company or licensed family trust company acting as trustee shall allocate to income the portion of compensation to the trustee and any person providing investment or custodial services to the trustee as determined by the family trust company or licensed family trust company, except as otherwise provided in:

(a) NRS 164.800;

(b) The trust;

(c) A court order;

(d) A nonjudicial settlement agreement; or

(e) A notice of proposed action.

Sec. 15. This act becomes effective upon passage and approval.

