

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

733M0636

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1185 - 02/03/2006

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representative Rave and Senator Schoenbeck

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding directed trusts to
2 include custodial accounts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 55-1B-1 be amended to read as follows:

5 55-1B-1. Terms used in this chapter mean:

6 (1) "Instrument," any revocable or irrevocable trust document created inter vivos or
7 testamentary or any custodial account agreement;

8 (2) "Trust protector," any disinterested third party whose appointment is provided for in
9 the ~~trust~~ instrument;

10 (3) Repealed by SL 2005, ch 260, § 2.

11 (4) "Fiduciary," a trustee or custodian under any ~~testamentary or other trust instrument~~,
12 an executor, administrator, or personal representative of a decedent's estate, or any
13 other party, including a trust advisor, a trust protector, or a trust committee, who is
14 acting in a fiduciary capacity for any person, trust, or estate;

15 (5) "Excluded fiduciary," any fiduciary excluded from exercising certain powers under



the instrument which powers may be exercised by the grantor, custodial account owner, trust advisor, trust protector, trust committee, or other persons designated in the ~~trust~~ instrument;

(6) "Investment trust advisor," a fiduciary, given authority by the ~~trust~~ instrument to exercise all or any portions of the powers and discretions set forth in § 55-1B-10;

(7) "Distribution trust advisor," a fiduciary, given authority by the ~~trust~~ instrument to exercise all or any portions of the powers and discretions set forth in § 55-1B-11;

(8) "Custodial account," an account, established by a party with a bank as defined in 26 U.S.C. 408(n), as of January 1, 2006, or with another person approved by the Internal Revenue Service as satisfying the requirements to be a nonbank trustee or a nonbank passive trustee set forth in U.S. Treasury Regulations promulgated under 26 U.S.C. 408, that is governed by an instrument concerning the establishment or maintenance, or both, of an individual retirement account, qualified retirement plan, Archer medical savings account, health savings account, Coverdell education savings account, or any similar retirement or savings vehicle permitted under the Internal Revenue Code of 1986, as of January 1, 2006;

(9) "Custodial account owner," any party who establishes a custodial account; or has the power to designate the beneficiaries or appoint the custodian of the custodial account; or otherwise is the party who possesses the power to direct the investment, disposition, or retention of any assets in the custodial account or name an authorized designee to effect the same.

Section 2. That § 55-1B-2 be amended to read as follows:

55-1B-2. An excluded fiduciary is not liable, either individually or as a fiduciary, for either of the following:

1 (1) Any loss that results from compliance with a direction of the trust advisor, custodial
2 account owner, or authorized designee of a custodial account owner;

3 (2) Any loss that results from a failure to take any action proposed by an excluded
4 fiduciary that requires a prior authorization of the trust advisor if that excluded
5 fiduciary timely sought but failed to obtain that authorization.

6 Any excluded fiduciary is also relieved from any obligation to perform investment or
7 suitability reviews and, inquiries, or investigations or to make recommendations or evaluations
8 with respect to any investments to the extent the trust advisor, custodial account owner, or
9 authorized designee of a custodial account owner had authority to direct the acquisition,
10 disposition, or retention of any such investment.

11 Nothing in subdivision (2) imposes an obligation or liability with respect to a custodian of
12 a custodial account.