

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

733M0636

HOUSE BILL NO. 1185

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, or custodial account,
7 created inter vivos or testamentary;

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10 (3) Repealed by SL 2005, ch 260, § 2.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 under any testamentary or other trust, a custodian of a custodial
12 account, an executor, administrator, or personal representative of a decedent's estate,
13 or any other party, including a trust advisor, a trust protector, or a trust committee,
14 who is acting in a fiduciary capacity for any person, trust, or estate;

15 (5) "Excluded fiduciary," any fiduciary excluded from exercising certain powers under
16 the instrument which powers may be exercised by the grantor, trust advisor, trust



1 protector, trust committee, custodial account owner, or other persons designated in
2 the trust instrument or custodial agreement;

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

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

7 (8) "Custodial account," as defined in 26 U.S.C. 408, as of January 1, 2006.

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

9 55-1B-2. An excluded fiduciary is not liable, either individually or as a fiduciary, for either
10 of the following:

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

13 (2) Any loss that results from a failure to take any action proposed by an excluded
14 fiduciary that requires a prior authorization of the trust advisor, custodial account
15 owner, or authorized designee under a custodial agreement if that excluded fiduciary
16 timely sought but failed to obtain that authorization.

17 Any excluded fiduciary is also relieved from any obligation to perform investment reviews
18 and make recommendations with respect to any investments to the extent the trust advisor,
19 custodial account owner, or authorized designee under a custodial agreement had authority to
20 direct the acquisition, disposition, or retention of any such investment.