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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

DISCUSSION DRAFT

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PROPERTY; ENACTING THE UNIFORM DIRECTED TRUST ACT;
MAKING CONFORMING AND TECHNICAL AMENDMENTS TO THE UNIFORM TRUST
DECANTING ACT AND THE UNIFORM TRUST CODE; REPEALING SECTION
46A-8-808 NMSA 1978 (BEING LAWS 2003, CHAPTER 122, SECTION
8-808).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 18 of this act may be cited as the "Uniform Directed
Trust Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Uniform Directed Trust Act:

A. "breach of trust" includes a violation by a
trust director or trustee of a duty imposed on that director or
trustee by the terms of the trust, by the Uniform Directed

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1 Trust Act or by another law of New Mexico pertaining to trusts;

2 B. "directed trust" means a trust for which the
3 terms of the trust grant a power of direction;

4 C. "directed trustee" means a trustee that is
5 subject to a trust director's power of direction;

6 D. "person" means an individual; estate; business
7 or nonprofit entity; public corporation; government;
8 governmental subdivision, agency or instrumentality; or other
9 legal entity;

10 E. "power of direction":

11 (1) means a power over a trust granted to a
12 person by the terms of the trust to the extent the power is
13 exercisable while the person is not serving as a trustee;

14 (2) includes a power over the investment,
15 management or distribution of trust property or other matters
16 of trust administration; and

17 (3) excludes the powers described in
18 Subsection B of Section 5 of the Uniform Directed Trust Act;

19 F. "settlor" means a person, including a testator,
20 that creates, or contributes property to, a trust. If more
21 than one person creates or contributes property to a trust,
22 each person is a settlor of the portion of the trust property
23 attributable to that person's contribution except to the extent
24 another person has the power to revoke or withdraw that
25 portion;

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1 G. "state" means a state of the United States, the
2 District of Columbia, Puerto Rico, the United States Virgin
3 Islands or any other territory or possession subject to the
4 jurisdiction of the United States;

5 H. "terms of a trust" means:

6 (1) except as otherwise provided in Paragraph
7 (2) of this subsection, the manifestation of the settlor's
8 intent regarding a trust's provisions as:

9 (a) expressed in the trust instrument;
10 or

11 (b) established by other evidence that
12 would be admissible in a judicial proceeding; or

13 (2) the trust's provisions as established,
14 determined or amended by:

15 (a) a trustee or trust director in
16 accordance with applicable law;

17 (b) court order; or

18 (c) a nonjudicial settlement agreement
19 under Section 46A-1-111 NMSA 1978;

20 I. "trust director" means a person that is granted
21 a power of direction by the terms of a trust to the extent the
22 power is exercisable while the person is not serving as a
23 trustee. The person is a trust director whether or not the
24 terms of the trust refer to the person as a trust director and
25 whether or not the person is a beneficiary or settlor of the

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1 trust; and

2 J. "trustee" includes an original, additional and
3 successor trustee and a cotrustee.

4 SECTION 3. [NEW MATERIAL] APPLICATION--PRINCIPAL PLACE OF
5 ADMINISTRATION.--

6 A. The Uniform Directed Trust Act applies to a
7 trust, whenever created, that has its principal place of
8 administration in New Mexico, subject to the following rules:

9 (1) if the trust was created before January 1,
10 2019, that act applies only to a decision or action occurring
11 on or after that date; and

12 (2) if the principal place of administration
13 of the trust is changed to New Mexico on or after January 1,
14 2019, that act applies only to a decision or action occurring
15 on or after the date of the change.

16 B. Without precluding other means to establish a
17 sufficient connection with the designated jurisdiction in a
18 directed trust, the terms of the trust that designate the
19 principal place of administration of the trust are valid and
20 controlling if:

21 (1) a trustee's principal place of business is
22 located in, or a trustee is a resident of, the designated
23 jurisdiction;

24 (2) a trust director's principal place of
25 business is located in, or a trust director is a resident of,

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1 the designated jurisdiction; or

2 (3) all or part of the administration occurs
3 in the designated jurisdiction.

4 SECTION 4. [NEW MATERIAL] COMMON LAW AND PRINCIPLES OF
5 EQUITY.--The common law and principles of equity supplement the
6 Uniform Directed Trust Act, except to the extent modified by
7 that act or another law of New Mexico.

8 SECTION 5. [NEW MATERIAL] EXCLUSIONS.--

9 A. As used in this section, "power of appointment"
10 means a power that enables a person acting in a nonfiduciary
11 capacity to designate a recipient of an ownership interest in,
12 or another power of appointment over, trust property.

13 B. The Uniform Directed Trust Act does not apply to
14 a:

- 15 (1) power of appointment;
- 16 (2) power to appoint or remove a trustee or
17 trust director;
- 18 (3) power of a settlor over a trust to the
19 extent the settlor has a power to revoke the trust;
- 20 (4) power of a beneficiary over a trust to the
21 extent the exercise or nonexercise of the power affects the
22 beneficial interest of:

- 23 (a) the beneficiary; or
- 24 (b) another beneficiary represented by
25 the beneficiary under Sections 46A-3-301 through 46A-3-305 NMSA

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1 1978 with respect to the exercise or nonexercise of the power;
2 or

3 (5) power over a trust if:

4 (a) the terms of the trust provide that
5 the power is held in a nonfiduciary capacity; and

6 (b) the power must be held in a
7 nonfiduciary capacity to achieve the settlor's tax objectives
8 under the United States Internal Revenue Code of 1986, as
9 amended, and regulations issued thereunder, as amended.

10 C. Unless the terms of a trust provide otherwise, a
11 power granted to a person to designate a recipient of an
12 ownership interest in, or power of appointment over, trust
13 property that is exercisable while the person is not serving as
14 a trustee is a power of appointment and not a power of
15 direction.

16 SECTION 6. [NEW MATERIAL] POWERS OF TRUST DIRECTOR.--

17 A. Subject to Section 7 of the Uniform Directed
18 Trust Act, the terms of a trust may grant a power of direction
19 to a trust director.

20 B. Unless the terms of a trust provide otherwise:

21 (1) a trust director may exercise any further
22 power appropriate to the exercise or nonexercise of a power of
23 direction granted to the director under Subsection A of this
24 section; and

25 (2) trust directors with joint powers shall

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1 act by majority decision.

2 SECTION 7. [NEW MATERIAL] LIMITATIONS ON TRUST

3 DIRECTOR.--A trust director is subject to the same rules as a
4 trustee in a like position and under similar circumstances in
5 the exercise or nonexercise of a power of direction or further
6 power under Paragraph (1) of Subsection B of Section 6 of the
7 Uniform Directed Trust Act regarding:

8 A. a payback provision in the terms of the trust
9 necessary to comply with the reimbursement requirements of
10 medicaid law in Section 1917 of the Social Security Act, 42
11 U.S.C. Section 1396p(d)(4)(A), as amended, and regulations
12 issued thereunder, as amended; and

13 B. a charitable interest in the trust, including
14 notice regarding the interest to the attorney general.

15 SECTION 8. [NEW MATERIAL] DUTY AND LIABILITY OF TRUST

16 DIRECTOR.--

17 A. Subject to Subsection B of this section, with
18 respect to a power of direction or a further power under
19 Paragraph (1) of Subsection B of Section 6 of the Uniform
20 Directed Trust Act:

21 (1) a trust director has the same fiduciary
22 duty and liability in the exercise or nonexercise of the power:

23 (a) if the power is held individually,
24 as a sole trustee in a like position and under similar
25 circumstances; or

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1 (b) if the power is held jointly with a
2 trustee or another trust director, as a cotrustee in a like
3 position and under similar circumstances; and

4 (2) the terms of the trust may vary the
5 director's duty or liability to the same extent the terms of
6 the trust could vary the duty or liability of a trustee in a
7 like position and under similar circumstances.

8 B. Unless the terms of a trust provide otherwise,
9 if a trust director is licensed, certified or otherwise
10 authorized or permitted by law other than the Uniform Directed
11 Trust Act to provide health care in the ordinary course of the
12 director's business or practice of a profession, to the extent
13 the director acts in that capacity, the director has no duty or
14 liability under that act.

15 C. The terms of a trust may impose a duty or
16 liability on a trust director in addition to the duties and
17 liabilities imposed by the Uniform Directed Trust Act.

18 SECTION 9. [NEW MATERIAL] DUTY AND LIABILITY OF DIRECTED
19 TRUSTEE.--

20 A. Subject to Subsection B of this section, a
21 directed trustee shall take reasonable action to comply with a
22 trust director's exercise or nonexercise of a power of
23 direction or further power under Paragraph (1) of Subsection B
24 of Section 6 of the Uniform Directed Trust Act, and the trustee
25 is not liable for the action.

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1 B. A directed trustee shall not comply with a trust
2 director's exercise or nonexercise of a power of direction or
3 further power under Paragraph (1) of Subsection B of Section 6
4 of the Uniform Directed Trust Act to the extent that, by
5 complying, the trustee would engage in willful misconduct.

6 C. An exercise of a power of direction under which
7 a trust director may release a trustee or another trust
8 director from liability for breach of trust is not effective
9 if:

10 (1) the breach involved the trustee's or other
11 director's willful misconduct;

12 (2) the release was induced by improper
13 conduct of the trustee or other director in procuring the
14 release; or

15 (3) at the time of the release, the director
16 did not know the material facts relating to the breach.

17 D. A directed trustee that has reasonable doubt
18 about its duty under this section may petition the district
19 court for instructions.

20 E. The terms of a trust may impose a duty or
21 liability on a directed trustee in addition to the duties and
22 liabilities imposed by the Uniform Directed Trust Act.

23 **SECTION 10. [NEW MATERIAL] DUTY TO PROVIDE INFORMATION TO**
24 **TRUST DIRECTOR OR TRUSTEE.--**

25 A. Subject to Section 11 of the Uniform Directed

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1 Trust Act, a trustee shall provide information to a trust
2 director to the extent the information is reasonably related
3 both to:

- 4 (1) the powers or duties of the trustee; and
- 5 (2) the powers or duties of the director.

6 B. Subject to Section 11 of the Uniform Directed
7 Trust Act, a trust director shall provide information to a
8 trustee or another trust director to the extent the information
9 is reasonably related both to:

- 10 (1) the powers or duties of the director; and
- 11 (2) the powers or duties of the trustee or
12 other director.

13 C. A trustee that acts in reliance on information
14 provided by a trust director is not liable for a breach of
15 trust to the extent the breach resulted from the reliance,
16 unless by so acting the trustee engages in willful misconduct.

17 D. A trust director that acts in reliance on
18 information provided by a trustee or another trust director is
19 not liable for a breach of trust to the extent the breach
20 resulted from the reliance, unless by so acting the trust
21 director engages in willful misconduct.

22 SECTION 11. [NEW MATERIAL] NO DUTY TO MONITOR, INFORM OR
23 ADVISE.--

- 24 A. Unless the terms of a trust provide otherwise:
 - 25 (1) a trustee does not have a duty to:

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1 (a) monitor a trust director; or
2 (b) inform or give advice to a settlor,
3 beneficiary, trustee or trust director concerning an instance
4 in which the trustee might have acted differently than the
5 director; and

6 (2) by taking an action described in Paragraph
7 (1) of this subsection, a trustee does not assume the duty
8 excluded by that paragraph.

9 B. Unless the terms of a trust provide otherwise:

10 (1) a trust director does not have a duty to:

11 (a) monitor a trustee or another trust
12 director; or

13 (b) inform or give advice to a settlor,
14 beneficiary, trustee or another trust director concerning an
15 instance in which the director might have acted differently
16 than a trustee or another trust director; and

17 (2) by taking an action described in Paragraph
18 (1) of this subsection, a trust director does not assume the
19 duty excluded by that paragraph.

20 SECTION 12. [NEW MATERIAL] APPLICATION TO COTRUSTEE.--The
21 terms of a trust may relieve a cotrustee from duty and
22 liability with respect to another cotrustee's exercise or
23 nonexercise of a power of the other cotrustee to the same
24 extent that, in a directed trust, a directed trustee is
25 relieved from duty and liability with respect to a trust

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1 director's power of direction under Sections 9 through 11 of
2 the Uniform Directed Trust Act.

3 SECTION 13. [NEW MATERIAL] LIMITATION OF ACTION AGAINST
4 TRUST DIRECTOR.--

5 A. An action against a trust director for breach of
6 trust shall be commenced within the same limitation period
7 provided for in Section 46A-10-1005 NMSA 1978 for an action for
8 breach of trust against a trustee in a like position and under
9 similar circumstances.

10 B. A report or accounting has the same effect on
11 the limitation period for an action against a trust director
12 for breach of trust that the report or accounting would have
13 under Section 46A-10-1005 NMSA 1978 in an action for breach of
14 trust against a trustee in a like position and under similar
15 circumstances.

16 SECTION 14. [NEW MATERIAL] DEFENSES IN ACTION AGAINST
17 TRUST DIRECTOR.--In an action against a trust director for
18 breach of trust, the director may assert the same defenses a
19 trustee in a like position and under similar circumstances
20 could assert in an action for breach of trust against the
21 trustee.

22 SECTION 15. [NEW MATERIAL] JURISDICTION OVER TRUST
23 DIRECTOR.--

24 A. By accepting appointment as a trust director of
25 a trust subject to the Uniform Directed Trust Act, the director

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1 submits to the personal jurisdiction of the courts of New
2 Mexico regarding any matter related to a power or duty of the
3 director.

4 B. This section does not preclude other methods of
5 obtaining jurisdiction over a trust director.

6 SECTION 16. [NEW MATERIAL] OFFICE OF TRUST DIRECTOR.--
7 Unless the terms of a trust provide otherwise, the rules
8 applicable to a trustee apply to a trust director regarding the
9 following matters:

10 A. acceptance under Section 46A-7-701 NMSA 1978;

11 B. giving of bond to secure performance under
12 Section 46A-7-702 NMSA 1978;

13 C. reasonable compensation under Section 46A-7-708
14 NMSA 1978;

15 D. resignation under Section 46A-7-705 NMSA 1978;

16 E. removal under Section 46A-7-706 NMSA 1978; and

17 F. vacancy and appointment of successor under
18 Section 46A-7-704 NMSA 1978.

19 SECTION 17. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND
20 CONSTRUCTION.--In applying and construing the Uniform Directed
21 Trust Act, consideration shall be given to the need to promote
22 uniformity of the law with respect to its subject matter among
23 states that enact it.

24 SECTION 18. [NEW MATERIAL] RELATION TO ELECTRONIC
25 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform

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1 Directed Trust Act modifies, limits or supersedes the
2 Electronic Signatures in Global and National Commerce Act, 15
3 U.S.C. Section 7001 et seq., but does not modify, limit or
4 supersede Section 101(c) of that act, 15 U.S.C. Section
5 7001(c), or authorize electronic delivery of any of the notices
6 described in Section 103(b) of that act, 15 U.S.C. Section
7 7003(b).

8 SECTION 19. Section 46-12-102 NMSA 1978 (being Laws 2016,
9 Chapter 72, Section 1-102) is amended to read:

10 "46-12-102. DEFINITIONS.--As used in the Uniform Trust
11 Decanting Act:

12 A. "appointive property" means the property or
13 property interest subject to a power of appointment;

14 B. "ascertainable standard" means a standard
15 relating to an individual's health, education, support or
16 maintenance within the meaning of 26 U.S.C. Section
17 2041(b)(1)(A), as amended, or 26 U.S.C. Section 2514(c)(1), as
18 amended, and any applicable regulations;

19 C. "authorized fiduciary" means:

20 (1) a trustee or other fiduciary, other than a
21 settlor, that has discretion to distribute, or direct a trustee
22 to distribute, part or all of the principal of the first trust
23 to one or more current beneficiaries;

24 (2) a special fiduciary appointed under
25 Section [~~1-109 of the Uniform Trust Decanting Act~~] 46-12-109

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1 NMSA 1978; or

2 (3) a special-needs fiduciary under Section
3 [~~1-113 of the Uniform Trust Decanting Act~~] 46-12-113 NMSA 1978;

4 D. "beneficiary" means a person that:

5 (1) has a present or future, vested or
6 contingent, beneficial interest in a trust;

7 (2) holds a power of appointment over trust
8 property; or

9 (3) is an identified charitable organization
10 that will or may receive distributions under the terms of the
11 trust;

12 E. "charitable interest" means an interest in a
13 trust that:

14 (1) is held by an identified charitable
15 organization and makes the organization a qualified
16 beneficiary;

17 (2) benefits only charitable organizations
18 and, if the interest were held by an identified charitable
19 organization, would make the organization a qualified
20 beneficiary; or

21 (3) is held solely for charitable purposes
22 and, if the interest were held by an identified charitable
23 organization, would make the organization a qualified
24 beneficiary;

25 F. "charitable organization" means:

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1 (1) a person, other than an individual,
2 organized and operated exclusively for charitable purposes; or

3 (2) a government or governmental subdivision,
4 agency or instrumentality, to the extent it holds funds
5 exclusively for a charitable purpose;

6 G. "charitable purpose" means the relief of
7 poverty, the advancement of education or religion, the
8 promotion of health, a municipal or other governmental purpose
9 or another purpose the achievement of which is beneficial to
10 the community;

11 H. "court" means the district court;

12 I. "current beneficiary" means a beneficiary that,
13 on the date the beneficiary's qualification is determined, is a
14 distributee or permissible distributee of trust income or
15 principal. "Current beneficiary":

16 (1) includes the holder of a presently
17 exercisable general power of appointment; and

18 (2) does not include a person that is a
19 beneficiary only because the person holds any other power of
20 appointment;

21 J. "decanting power" or "the decanting power" means
22 the power of an authorized fiduciary under the Uniform Trust
23 Decanting Act to distribute property of a first trust to one or
24 more second trusts or to modify the terms of the first trust;

25 K. "expanded distributive discretion" means a

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1 discretionary power of distribution that is not limited to an
2 ascertainable standard or a reasonably definite standard;

3 L. "first trust" means a trust over which an
4 authorized fiduciary may exercise the decanting power;

5 M. "first-trust instrument" means the trust
6 instrument for a first trust;

7 N. "general power of appointment" means a power of
8 appointment exercisable in favor of a powerholder, the
9 powerholder's estate, a creditor of the powerholder or a
10 creditor of the powerholder's estate;

11 O. "jurisdiction", with respect to a geographic
12 area, includes a state or country;

13 P. "person" means an individual; an estate; a
14 business or nonprofit entity; a public corporation; a
15 government or governmental subdivision, agency or
16 instrumentality; or another legal entity;

17 Q. "power of appointment" means a power that
18 enables a powerholder acting in a nonfiduciary capacity to
19 designate a recipient of an ownership interest in or another
20 power of appointment over the appointive property. "Power of
21 appointment" does not include a power of attorney;

22 R. "powerholder" means a person in which a donor
23 creates a power of appointment;

24 S. "presently exercisable power of appointment"
25 means a power of appointment exercisable by the powerholder at

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1 the relevant time. "Presently exercisable power of
2 appointment":

3 (1) includes a power of appointment
4 exercisable only after the occurrence of a specified event, the
5 satisfaction of an ascertainable standard or the passage of a
6 specified time only after:

7 (a) the occurrence of the specified
8 event;

9 (b) the satisfaction of the
10 ascertainable standard; or

11 (c) the passage of the specified time;
12 and

13 (2) does not include a power exercisable only
14 at the powerholder's death;

15 T. "qualified beneficiary" means a beneficiary that
16 on the date the beneficiary's qualification is determined:

17 (1) is a distributee or permissible
18 distributee of trust income or principal;

19 (2) would be a distributee or permissible
20 distributee of trust income or principal if the interests of
21 the distributees described in Paragraph (1) of this subsection
22 terminated on that date without causing the trust to terminate;
23 or

24 (3) would be a distributee or permissible
25 distributee of trust income or principal if the trust

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1 terminated on that date;

2 U. "reasonably definite standard" means a clearly
3 measurable standard under which a holder of a power of
4 distribution is legally accountable within the meaning of 26
5 U.S.C. Section 674(b)(5)(A), as amended, and any applicable
6 regulations;

7 V. "record" means information that is inscribed on
8 a tangible medium or that is stored in an electronic or other
9 medium and is retrievable in perceivable form;

10 W. "second trust" means:

11 (1) a first trust after modification under the
12 Uniform Trust Decanting Act; or

13 (2) a trust to which a distribution of
14 property from a first trust is or may be made under the Uniform
15 Trust Decanting Act;

16 X. "second-trust instrument" means the trust
17 instrument for a second trust;

18 Y. "settlor", except as otherwise provided in
19 Section ~~[1-125 of the Uniform Trust Decanting Act]~~ 46-12-125
20 NMSA 1978, means a person, including a testator, that creates
21 or contributes property to a trust. If more than one person
22 creates or contributes property to a trust, each person is a
23 settlor of the portion of the trust property attributable to
24 the person's contribution except to the extent that another
25 person has power to revoke or withdraw that portion;

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1 Z. "sign" means, with present intent to
2 authenticate or adopt a record:

- 3 (1) to execute or adopt a tangible symbol; or
4 (2) to attach to or logically associate with
5 the record an electronic symbol, sound or process;

6 AA. "state" means a state of the United States, the
7 District of Columbia, Puerto Rico, the United States Virgin
8 Islands or any territory or insular possession subject to the
9 jurisdiction of the United States. "State" includes an Indian
10 tribe, pueblo, nation or band located within the United States
11 and recognized by federal law or formally acknowledged by a
12 state of the United States;

13 BB. "terms of the trust" means:

14 (1) except as otherwise provided in Paragraph
15 (2) of this subsection, the manifestation of the settlor's
16 intent regarding a trust's provisions as:

17 (a) expressed in the trust instrument;
18 [~~as may be~~] or

19 (b) established by other evidence that
20 would be admissible in a judicial proceeding; or

21 (2) the trust's provisions as [~~may be~~]
22 established, determined or amended by:

23 (a) a trustee or trust director in
24 accordance with applicable law;

25 (b) court order; or

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1 (c) a nonjudicial settlement agreement
2 under Section 46A-1-111 NMSA 1978; and

3 CC. "trust instrument" means a record executed by
4 the settlor to create a trust or by any person to create a
5 second trust that contains some or all of the terms of the
6 trust, including any amendments."

7 SECTION 20. Section 46A-1-103 NMSA 1978 (being Laws 2003,
8 Chapter 122, Section 1-103, as amended) is amended to read:

9 "46A-1-103. DEFINITIONS.--As used in the Uniform Trust
10 Code:

11 A. "action", with respect to an act of a trustee,
12 includes a failure to act;

13 B. "ascertainable standard" means a standard
14 relating to an individual's health, education, support or
15 maintenance within the meaning of Subparagraph (A) of Paragraph
16 (1) of Subsection (b) of Section 2041 and Paragraph (1) of
17 Subsection (c) of Section 2514 of the Internal Revenue Code of
18 1986, as amended;

19 C. "beneficiary" means a person that:
20 (1) has a present or future beneficial
21 interest in a trust, vested or contingent; or
22 (2) in a capacity other than that of trustee,
23 holds a power of appointment over trust property;

24 D. "charitable trust" means a trust or portion of a
25 trust created for a charitable purpose described in Subsection

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1 A of Section 46A-4-405 NMSA 1978;

2 E. "conservator" means a person appointed by the
3 court to administer the estate of a minor or adult individual;

4 F. "environmental law" means a federal, state or
5 local law, rule, regulation or ordinance relating to protection
6 of the environment;

7 G. "guardian" means a person appointed by the court
8 or a parent to make decisions regarding the support, care,
9 education, health and welfare of a minor or adult person.

10 "Guardian" does not include a guardian ad litem;

11 H. "interests of the beneficiaries" means the
12 beneficial interests provided in the terms of the trust;

13 I. "jurisdiction", with respect to a geographic
14 area, includes a state or country;

15 J. "person" means an individual, corporation,
16 business trust, estate, trust, partnership, limited liability
17 company, association, joint venture, government, governmental
18 subdivision, agency or instrumentality, public corporation or
19 any other legal or commercial entity;

20 K. "power of withdrawal" means a presently
21 exercisable general power of appointment other than a power
22 exercisable:

23 (1) by a trustee and limited by an
24 ascertainable standard; or

25 (2) by another person only upon consent of the

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1 trustee or a person holding an adverse interest;

2 L. "property" means anything that may be the
3 subject of ownership, whether real or personal, legal or
4 equitable, or any interest therein;

5 M. "qualified beneficiary" means a beneficiary who,
6 on the date the beneficiary's qualification is determined:

7 (1) is a distributee or permissible
8 distributee of trust income or principal;

9 (2) would be a distributee or permissible
10 distributee of trust income or principal if the interests of
11 the distributees described in Paragraph (1) of this subsection
12 terminated on that date without causing the trust to terminate;
13 or

14 (3) would be a distributee or permissible
15 distributee of trust income or principal if the trust
16 terminated on that date;

17 N. "revocable", as applied to a trust, means
18 revocable by the settlor without the consent of the trustee or
19 a person holding an adverse interest;

20 O. "settlor" means a person, including a testator,
21 who creates or contributes property to a trust. If more than
22 one person creates or contributes property to a trust, each
23 person is a settlor of the portion of the trust property
24 attributable to that person's contribution, except to the
25 extent another person has the power to revoke or withdraw that

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1 portion;

2 P. "spendthrift provision" means a term of a trust
3 that restrains both voluntary and involuntary transfer of a
4 beneficiary's interest;

5 Q. "state" means a state of the United States, the
6 District of Columbia, Puerto Rico, the United States Virgin
7 Islands or any territory or insular possession subject to the
8 jurisdiction of the United States. "State" includes an Indian
9 tribe, pueblo, nation or band recognized by federal law or
10 formally acknowledged by a state;

11 R. "terms of a trust" means:

12 (1) except as otherwise provided in Paragraph
13 (2) of this subsection, the manifestation of the settlor's
14 intent regarding a trust's provisions as:

15 (a) expressed in the trust instrument;
16 or ~~[as may be]~~

17 (b) established by other evidence that
18 would be admissible in a judicial proceeding; or

19 (2) the trust's provisions as established,
20 determined or amended by:

21 (a) a trustee or trust director in
22 accordance with applicable law;

23 (b) court order; or

24 (c) a nonjudicial settlement agreement
25 under Section 46A-1-111 NMSA 1978;

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1 S. "trust instrument" means an instrument executed
2 by the settlor that contains terms of the trust, including any
3 amendments thereto; and

4 T. "trustee" includes an original trustee, an
5 additional trustee, a successor trustee and a co-trustee."

6 SECTION 21. Section 46A-1-105 NMSA 1978 (being Laws 2003,
7 Chapter 122, Section 1-105, as amended) is amended to read:

8 "46A-1-105. DEFAULT AND MANDATORY RULES.--

9 A. Except as otherwise provided in the terms of the
10 trust, the Uniform Trust Code governs the duties and powers of
11 a trustee, relations among trustees and the rights and
12 interests of a beneficiary.

13 B. The terms of a trust prevail over any provision
14 of the Uniform Trust Code except:

15 (1) the requirements for creating a trust;

16 (2) subject to Sections 9, 11 and 12 of the
17 Uniform Directed Trust Act, the duty of a trustee to act in
18 good faith and in accordance with the terms and purposes of the
19 trust and the interests of the beneficiaries;

20 (3) the requirement that a trust and its terms
21 be for the benefit of its beneficiaries and that the trust have
22 a purpose that is lawful, not contrary to public policy and
23 possible to achieve;

24 (4) the power of the court to modify or
25 terminate a trust under Sections 46A-4-410 through 46A-4-416

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1 NMSA 1978;

2 (5) the effect of a spendthrift provision and
3 the rights of certain creditors and assignees to reach a trust
4 as provided in Chapter 46A, Article 5 NMSA 1978;

5 (6) the power of the court under Section
6 46A-7-702 NMSA 1978 to require, dispense with or modify or
7 terminate a bond;

8 (7) the power of the court under Subsection B
9 of Section 46A-7-708 NMSA 1978 to adjust a trustee's
10 compensation specified in the terms of the trust that is
11 unreasonably low or high;

12 (8) the duty under Paragraphs (2) and (3) of
13 Subsection B of Section 46A-8-813 NMSA 1978 to notify qualified
14 beneficiaries of an irrevocable trust who have attained twenty-
15 five years of age of the existence of the trust, of the
16 identity of the trustee and of their right to request reports
17 of the trustee;

18 (9) except as otherwise provided in Subsection
19 F of Section 46A-8-813 NMSA 1978, the duty under Subsection A
20 of Section 46A-8-813 NMSA 1978 to respond to the request of a
21 qualified beneficiary of an irrevocable trust for a trustee's
22 reports and other information reasonably related to the
23 administration of a trust;

24 (10) the effect of an exculpatory term under
25 Section 46A-10-1008 NMSA 1978;

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1 (11) the rights under Sections 46A-10-1010
2 through 46A-10-1013 NMSA 1978 of a person other than a trustee
3 or beneficiary;

4 (12) periods of limitation for commencing a
5 judicial proceeding; provided, however, any such period may be
6 increased;

7 (13) the power of the court to take such
8 action and exercise such jurisdiction as may be necessary in
9 the interests of justice; and

10 (14) the subject-matter jurisdiction of the
11 court and venue for commencing a proceeding as provided in
12 Sections 46A-2-203 and 46A-2-204 NMSA 1978."

13 SECTION 22. Section 46A-6-603 NMSA 1978 (being Laws 2003,
14 Chapter 122, Section 6-603, as amended) is amended to read:

15 "46A-6-603. SETTLOR'S POWERS--POWERS OF WITHDRAWAL.--

16 A. While a trust is revocable, the trustee may
17 follow a direction of the settlor that is contrary to the terms
18 of the trust.

19 [~~A.~~] B. While a trust is revocable and the settlor
20 has capacity to revoke the trust, rights of the beneficiaries
21 are subject to the control of, and the duties of the trustee
22 are owed exclusively to, the settlor.

23 [~~B.~~] C. During the period the power may be
24 exercised, the holder of a power of withdrawal has the rights
25 of a settlor of a revocable trust under this section to the

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1 extent of the property subject to the power."

2 SECTION 23. Section 46A-7-703 NMSA 1978 (being Laws 2003,
3 Chapter 122, Section 7-703) is amended to read:

4 "46A-7-703. CO-TRUSTEES.--

5 A. Co-trustees who are unable to reach a unanimous
6 decision may act by majority decision.

7 B. If a vacancy occurs in a co-trusteeship, the
8 remaining co-trustees may act for the trust.

9 C. Subject to Section 12 of the Uniform Directed
10 Trust Act, a co-trustee [~~must~~] shall participate in the
11 performance of a trustee's function unless the co-trustee is
12 unavailable to perform the function because of absence,
13 illness, disqualification under other law or other temporary
14 incapacity, or the co-trustee has properly delegated the
15 performance of the function to another trustee.

16 D. If a co-trustee is unavailable to perform duties
17 because of absence, illness, disqualification under other law
18 or other temporary incapacity, and prompt action is necessary
19 to achieve the purposes of the trust or to avoid injury to the
20 trust property, the remaining co-trustee or a majority of the
21 remaining co-trustees may act for the trust.

22 E. A trustee [~~may~~] shall not delegate to a co-
23 trustee the performance of a function the settlor reasonably
24 expected the trustees to perform jointly. Unless a delegation
25 was irrevocable, a trustee may revoke a delegation previously

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1 made.

2 F. Except as otherwise provided in Subsection G of
3 this section, a trustee who does not join in an action of
4 another trustee is not liable for the action.

5 G. Subject to Section 12 of the Uniform Directed
6 Trust Act, each trustee shall exercise reasonable care to:

7 (1) prevent a co-trustee from committing a
8 serious breach of trust; and

9 (2) compel a co-trustee to redress a serious
10 breach of trust.

11 H. A dissenting trustee who joins in an action at
12 the direction of the majority of the trustees and who notified
13 any co-trustee of the dissent at or before the time of the
14 action is not liable for the action unless the action is a
15 serious breach of trust."

16 SECTION 24. REPEAL.--Section 46A-8-808 NMSA 1978 (being
17 Laws 2003, Chapter 122, Section 8-808) is repealed.

18 SECTION 25. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is January 1, 2019.