

AN ACT

ENTITLED, An Act to provide for directed trusts.

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

Section 1. Terms used in this Act mean:

- (1) "Instrument," any revocable or irrevocable trust document created inter vivos or testamentary;
- (2) "Trust protector," any disinterested third party whose appointment is provided for in the trust instrument;
- (3) "Trust advisor," the grantor of an instrument or other fiduciaries in which any power, including the power and authority to direct the acquisition, disposition, or retention of any investment, or the power to authorize any act that an excluded fiduciary may propose, is reserved to the exclusion of another fiduciary also acting under the instrument. Trust advisor also includes any party accepting the delegation of a fiduciary's power to direct the acquisition, disposition, or retention of any investment;
- (4) "Fiduciary," a trustee under any testamentary or other trust, an executor, administrator, or personal representative of a decedent's estate, or any other party, including a trust advisor or a trust protector, who is acting in a fiduciary capacity for any person, trust, or estate; and
- (5) "Excluded fiduciary," any fiduciary excluded from exercising certain powers under the instrument which powers may be exercised by the grantor or a trust advisor or a trust protector.

Section 2. An excluded fiduciary is not liable, either individually or as a fiduciary, for either of the following:

- (1) Any loss that results from compliance with a direction of the trust advisor;
- (2) Any loss that results from a failure to take any action proposed by an excluded

fiduciary that requires a prior authorization of the trust advisor if that excluded fiduciary timely sought but failed to obtain that authorization.

Any excluded fiduciary is also relieved from any obligation to perform investment reviews and make recommendations with respect to any investments to the extent the trust advisor had authority to direct the acquisition, disposition, or retention of any such investment.

Section 3. An excluded fiduciary may continue to follow the direction of the trust advisor upon the incapacity or death of the grantor if the instrument so allows.

Section 4. If one or more trust advisors are given authority by the terms of a governing instrument to direct, consent to, or disapprove a fiduciary's investment decisions, or proposed investment decisions, such trust advisors shall be considered to be fiduciaries when exercising such authority unless the governing instrument provides otherwise.

Section 5. If an instrument appoints a trust protector, the excluded fiduciary is not liable for any loss resulting from any action taken upon such trust protector's direction.

Section 6. The powers and discretions of a trust protector shall be as provided in the governing instrument and may, in the best interests of the trust, be exercised or not exercised in the sole and absolute discretion of the trust protector and shall be binding on all other persons. Such powers and discretion may include the following:

- (1) To modify or amend the trust instrument to achieve favorable tax status or because of changes in the Internal Revenue Code, state law, or the rulings and regulations thereunder;
- (2) To increase or decrease the interests of any beneficiaries to the trust; and
- (3) To modify the terms of any power of appointment granted by the trust. However, a modification or amendment may not grant a beneficial interest to any individual or class of individuals not specifically provided for under the trust instrument.

Section 7. By accepting an appointment to serve as a trust advisor or trust protector of a

trust that is subject to the laws of this State, the trust advisor or the trust protector submits to the jurisdiction of the courts of South Dakota even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding if issues relate to a decision or action of the trust advisor or trust protector.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1147

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1147

File No. _____

Chapter No. _____

Received at this Executive Office
this ____ day of _____ ,

19__ at ____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 19__

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 19__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State