

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

574A0573

HOUSE BILL NO. 1147

Introduced by: Representatives Broderick and Volesky and Senators Everist and Daugaard

1 FOR AN ACT ENTITLED, An Act to provide for directed trusts.

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

3 Section 1. Terms used in this Act mean:

4 (1) "Instrument," any revocable or irrevocable trust document created inter vivos or
5 testamentary;

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

8 (3) "Trust advisor," the grantor of an instrument or other fiduciaries in which any power,
9 including the power and authority to direct the acquisition, disposition, or retention
10 of any investment, or the power to authorize any act that an excluded fiduciary may
11 propose, is reserved to the exclusion of another fiduciary also acting under the
12 instrument. Trust advisor also includes any party accepting the delegation of a
13 fiduciary's power to direct the acquisition, disposition, or retention of any investment;

14 (4) "Fiduciary," a trustee under any testamentary or other trust, an executor,
15 administrator, or personal representative of a decedent's estate, or any other party,
16 including a trust advisor or a trust protector, who is acting in a fiduciary capacity for

1 any person, trust, or estate; and

2 (5) "Excluded fiduciary," any fiduciary excluded from exercising certain powers under the
3 instrument which powers may be exercised by the grantor or a trust advisor or a trust
4 protector.

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

7 (1) Any loss that results from compliance with a direction of the trust advisor;

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

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

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

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

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

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

1 (1) To modify or amend the trust instrument to achieve favorable tax status or because
2 of changes in the Internal Revenue Code, state law, or the rulings and regulations
3 thereunder;

4 (2) To increase or decrease the interests of any beneficiaries to the trust; and

5 (3) To modify the terms of any power of appointment granted by the trust. However, a
6 modification or amendment may not grant a beneficial interest to any individual or
7 class of individuals not specifically provided for under the trust instrument.

8 Section 7. By accepting an appointment to serve as a trust advisor or trust protector of a
9 trust that is subject to the laws of this State, the trust advisor or the trust protector submits to
10 the jurisdiction of the courts of South Dakota even if investment advisory agreements or other
11 related agreements provide otherwise, and the trust advisor or trust protector may be made a
12 party to any action or proceeding if issues relate to a decision or action of the trust advisor or
13 trust protector.