

1 HOUSE BILL NO. 436

2 INTRODUCED BY K. DUDIK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA UNIFORM TRUST CODE BY MAKING
5 IT TECHNICALLY CONSISTENT WITH THE UNIFORM TRUST CODE; AND AMENDING SECTIONS
6 72-38-132, 72-38-301, 72-38-802, ~~AND~~ 72-38-1008, AND 72-38-1013, MCA."

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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10 **Section 1.** Section 72-38-132, MCA, is amended to read:

11 **"72-38-132. Content of notice.** The notice of proposed action or notice of proposed inaction must state
12 that it is given pursuant to this part and must include all of the following:

13 (1) the name and mailing address of the trustee;

14 (2) the name and telephone number of a person who may be contacted for additional information;

15 (3) a description of the action or inaction proposed, the material facts upon which the trustee has relied
16 in making its decision regarding the proposed action or inaction, and an explanation of the reasons for the action
17 or inaction;

18 (4) a statement that failure of a qualified beneficiary to object within the allowed time bars the qualified
19 beneficiary from taking any legal action against the trustee for liability within the scope of 72-38-133 except as
20 provided in 72-38-133(3) and that a qualified beneficiary may want to seek independent legal advice regarding
21 the matter at the qualified beneficiary's expense;

22 (5) the time within which objections to the proposed action or inaction can be made, which must be at
23 least 30 days from providing the notice of proposed action or notice of proposed inaction; and

24 ~~(6) the time within which objections to the proposed action or inaction can be made, which must be at
25 least 30 days from providing the notice of proposed action or notice of proposed inaction; and~~

26 ~~(7)~~(6) the date on or after which the proposed action or inaction is effective."
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28 **Section 2.** Section 72-38-301, MCA, is amended to read:

29 **"72-38-301. Representation -- basic effect.** (1) Notice to a person who may represent and bind another
30 person under this part has the same effect as if notice were given directly to the other person.

1 (2) The consent of a person who may represent and bind another person under this part is binding on
2 the person represented unless the person represented objects to the representation by notifying the trustee or
3 representative before the consent would otherwise have become effective.

4 (3) Except as otherwise provided in 72-38-410 and 72-38-602, a person who under this part may
5 represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

6 (4) A settlor may not represent and bind a beneficiary under this part with respect to the termination or
7 modification of a trust under 72-38-410(1).

8 (5) In the event of a conflict between this part and part 2 of this chapter, the provisions of part 2 must
9 supersede the contrary provisions in this part."

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11 **Section 3.** Section 72-38-802, MCA, is amended to read:

12 **"72-38-802. Duty of loyalty.** (1) A trustee shall administer the trust solely in the interests of the
13 beneficiaries.

14 (2) Subject to the rights of persons dealing with or assisting the trustee as provided in ~~72-38-1013~~
15 72-38-1012, a sale, encumbrance, or other transaction involving the investment or management of trust property
16 entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict
17 between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction
18 unless:

19 (a) the transaction was authorized by the terms of the trust;

20 (b) the transaction was approved by the court;

21 (c) the beneficiary did not commence a judicial proceeding within the time allowed by 72-38-1005;

22 (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee
23 in compliance with 72-38-1009; or

24 (e) the transaction involves a contract entered into or claim acquired by the trustee before the person
25 became or contemplated becoming trustee.

26 (3) A sale, encumbrance, or other transaction involving the investment or management of trust property
27 is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee
28 with:

29 (a) the trustee's spouse;

30 (b) the trustee's descendants, siblings, parents, or their spouses;

1 (c) an agent or attorney of the trustee; or

2 (d) a corporation or other person or enterprise in which the trustee, or a person who owns a significant
3 interest in the trustee, has an interest that might affect the trustee's best judgment.

4 (4) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs
5 during the existence of the trust or while the trustee retains significant influence over the beneficiary and from
6 which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the
7 transaction was fair to the beneficiary. However, a beneficiary's gift to charity or to a trust for a charity's benefit
8 is not voidable by this subsection even though the charity may be, or may have been, serving as trustee of a trust
9 created for the benefit of the beneficiary.

10 (5) A transaction not concerning trust property in which the trustee engages in the trustee's individual
11 capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity
12 properly belonging to the trust.

13 (6) An investment by a trustee in securities of an investment company or investment trust to which the
14 trustee or its affiliate provides services in a capacity other than as trustee is not presumed to be affected by a
15 conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor
16 rule of Title 72, chapter 38, part 9. In addition to its compensation for acting as trustee, the trustee may be
17 compensated by the investment company or investment trust for providing those services out of fees charged
18 to the trust. If the trustee receives compensation from the investment company or investment trust for providing
19 investment advisory or investment management services, the trustee must at least annually notify the persons
20 entitled under 72-38-813 to receive a copy of the trustee's annual report of the rate and method by which that
21 compensation was determined.

22 (7) In voting shares of stock or in exercising powers of control over similar interests in other forms of
23 enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a
24 corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will
25 manage the corporation or enterprise in the best interests of the beneficiaries.

26 (8) This section does not preclude the following transactions, if fair to the beneficiaries:

27 (a) an agreement between a trustee and a beneficiary relating to the appointment or compensation of
28 the trustee;

29 (b) payment of reasonable compensation to the trustee;

30 (c) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the

1 trustee is a fiduciary or in which a beneficiary has an interest;
 2 (d) a deposit of trust money in a regulated financial-service institution operated by the trustee; or
 3 (e) an advance by the trustee of money for the protection of the trust.
 4 (9) The court may appoint a special fiduciary to make a decision with respect to any proposed
 5 transaction that might violate this section if entered into by the trustee."
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7 **Section 4.** Section 72-38-1008, MCA, is amended to read:

8 **"72-38-1008. Exculpation of trustee.** (1) A term of a trust relieving a trustee of liability for breach of trust
 9 is unenforceable to the extent that it:

- 10 (a) relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference
- 11 to the fiduciary duties of the trustee, the terms or purposes of the trust, or the interests of the beneficiaries;
- 12 (b) was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the
- 13 settlor; or
- 14 (c) relieves the trustee of accountability for profits derived from a breach of trust.

15 (2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary
 16 or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances;
 17 and that its existence and contents were adequately communicated to the settlor, ~~and that the settlor was~~
 18 ~~represented by independent legal counsel before adopting the exculpatory term."~~

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20 **SECTION 5. SECTION 72-38-1013, MCA, IS AMENDED TO READ:**

21 **"72-38-1013. Certification of trust.** (1) Instead of furnishing a copy of the trust instrument to a person
 22 other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following
 23 information:

- 24 (a) that the trust exists and the date the trust instrument was executed;
- 25 (b) the identity of the settlor;
- 26 (c) the identity and address of the currently acting trustee;
- 27 (d) the relevant powers of the trustee;
- 28 (e) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke
- 29 the trust; ~~and~~
- 30 (f) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are

1 required in order to exercise powers of the trustee; and
2 (g) if the governing law of the trust is not the law of Montana, the identity of the state whose laws govern
3 the trust.

4 (2) A certification of trust may be signed or otherwise authenticated by any trustee. Upon request, the
5 trustee shall acknowledge the certification in order that the certification may be recorded.

6 (3) A certification of trust must state that the trust has not been revoked, modified, or amended in any
7 manner that would cause the representations contained in the certification of trust to be incorrect.

8 (4) A certification of trust need not contain the dispositive terms of a trust.

9 (5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from
10 the original trust instrument and later amendments that designate the trustee and confer upon the trustee the
11 power to act in the pending transaction.

12 (6) A person who acts in reliance upon a certification of trust without knowledge that the representations
13 contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the
14 existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely
15 from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

16 (7) A person who in good faith enters into a transaction in reliance upon a certification of trust may
17 enforce the transaction against the trust property as if the representations contained in the certification were
18 correct.

19 (8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts
20 is liable for damages if the court determines that the person did not act in good faith in demanding the trust
21 instrument.

22 (9) This section does not limit the right of a person to obtain a copy of the trust instrument when required
23 to be furnished by law or in a judicial proceeding concerning the trust.

24 (10) A certification under subsection (1)(g) may not be construed as constituting consent by any person
25 receiving a certification of trust to the jurisdiction or application of laws of any state."

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