

CHAPTER 263

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 00-1433

BY REPRESENTATIVES Kaufman, George, Grossman, Larson, and Swenson;
also SENATOR Lamborn.

AN ACT

CONCERNING THE FACILITATION OF FIDUCIARY TRANSACTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 7 of article 1 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

15-1-702. Family business interests - maintenance of entity - formation of successor entity. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "FAMILY" MEANS AN INDIVIDUAL, SUCH INDIVIDUAL'S SPOUSE, PARENTS, THE DESCENDANTS OF EITHER OF SUCH PARENTS OR OF SUCH SPOUSE, OR THE SPOUSES OF SUCH DESCENDANTS OR ANY COMBINATION OF SUCH PERSONS.

(b) "FAMILY BUSINESS" MEANS A BUSINESS ENTERPRISE WITH RESPECT TO WHICH THE AGGREGATE INTERESTS OF THE FAMILY ARE SUBSTANTIAL IN RELATION TO THE TOTAL OUTSTANDING INTERESTS IN THE BUSINESS ENTERPRISE.

(c) "INTEREST" AND "INTERESTS" INCLUDE BENEFICIAL INTERESTS AS BENEFICIARIES OF ANY ESTATE OR TRUST AND INDIRECT INTERESTS THROUGH ANY OTHER FORM OF ENTITY.

(d) "SUCCESSOR ENTITY" INCLUDES THE ENTITY HOLDING THE FAMILY BUSINESS WHERE SUCH ENTITY SURVIVES A CONSOLIDATION, MERGER, ACQUISITION, OR OTHER COMBINATION.

(2) ANY FIDUCIARY ACTING UNDER A WILL OR TRUST INSTRUMENT THAT EVIDENCES AN INTENT TO RETAIN AN INTEREST IN A FAMILY BUSINESS MAY MAINTAIN THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

INTEREST IN ANY FORM OF ENTITY OR SUCCESSOR ENTITY. SUCH A SUCCESSOR ENTITY MAY BE FORMED BY CONSOLIDATION, MERGER, ACQUISITION, OR OTHER COMBINATION AND SHALL BE CONSIDERED THE SAME ENTERPRISE FOR PURPOSES OF MAINTAINING THE INTEREST IN THE FAMILY BUSINESS WHERE THE INTERESTS OF THE BENEFICIARIES IN THE SUCCESSOR ENTITY ARE SUBSTANTIAL.

(3) EXCEPT AS OTHERWISE PROVIDED IN THE INSTRUMENT UNDER WHICH THE FIDUCIARY IS ACTING:

(a) A FIDUCIARY MAY PROCEED AS PROVIDED IN THIS SUBSECTION (3) WITH THE FORMATION OF SUCH A SUCCESSOR ENTITY WHERE THE FIDUCIARY BELIEVES IN GOOD FAITH THAT THE FORMATION IS ON A FAVORABLE BASIS CONSIDERING ONLY THE OVERALL INTERESTS OF THE BENEFICIARIES INCLUDING THE MAINTENANCE OF A SUBSTANTIAL INTEREST ON THE PART OF THE BENEFICIARIES IN THE ENTERPRISE AND THE VALUE OF SUCH INTEREST IN THE LONG TERM.

(b) A FIDUCIARY MAY VOTE AND OTHERWISE DEAL WITH RESPECT TO INTERESTS IN THE FAMILY BUSINESS AS THE FIDUCIARY BELIEVES IN THE GOOD FAITH EXERCISE OF THE FIDUCIARY'S BUSINESS JUDGMENT, UNDER THE BUSINESS JUDGMENT RULE, TO BE NECESSARY OR APPROPRIATE TO COMPLETE SUCH FORMATION ON SUCH A FAVORABLE BASIS.

(c) A FIDUCIARY MAY, IN THE GOOD FAITH EXERCISE OF SUCH JUDGMENT, ACCEPT A REDUCED PARTICIPATION IN EQUITY, VOTING, AND OTHER RIGHTS AND PREFERENCES INCLUDING A REDUCTION IN VOTING RIGHTS THAT RESULTS IN LESS THAN VOTING CONTROL OF THE SUCCESSOR ENTITY.

(d) A FIDUCIARY MAY PROCEED WITHOUT NOTICE TO THE BENEFICIARIES WHERE DISCLOSURE IS FORBIDDEN BY LAW OR WHERE THE FIDUCIARY BELIEVES IN THE GOOD FAITH EXERCISE OF SUCH JUDGMENT, THAT NONDISCLOSURE IS NECESSARY TO COMPLETE SUCH FORMATION ON SUCH A FAVORABLE BASIS.

(4) THIS SECTION SHALL APPLY TO ANY INTERESTS HELD BY AN ESTATE OR TRUST IN A FAMILY BUSINESS ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AND TO THE FORMATION OF ANY ENTITY OR SUCCESSOR ENTITY COMPLETED AFTER THE EFFECTIVE DATE OF THIS SECTION.

SECTION 2. 15-10-403 (3) (d) and (4) (b), Colorado Revised Statutes, are amended to read:

15-10-403. Pleadings - when parties bound by others - notice. (3) Persons are bound by orders binding others in the following cases:

(d) An unborn, ~~or~~ unascertained, MINOR, OR INCAPACITATED person who is not otherwise represented is bound by an order to the extent his OR HER interest is adequately represented by another party having a substantially identical interest in the proceeding.

(4) Notice is required as follows:

(b) Notice is given to unborn, ~~or~~ unascertained, MINOR, OR INCAPACITATED persons

who are not represented under subsection (3) of this section by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn, ~~or~~ unascertained, MINOR, OR INCAPACITATED persons.

SECTION 3. 4-3-307 (b) (2), Colorado Revised Statutes, is amended to read:

4-3-307. Notice of breach of fiduciary duty. (b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary OR (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary. ~~or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.~~

SECTION 4. 11-10-105 (4), Colorado Revised Statutes, is amended to read:

11-10-105. Definitions. As used in this article, unless the context otherwise requires:

(4) "Company" means a ~~Colorado~~ bank or ~~Colorado~~ trust company THAT IS AUTHORIZED BY THE DIVISION OF BANKING OR THE COMPTROLLER OF THE CURRENCY TO CONDUCT FIDUCIARY BUSINESS IN COLORADO.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 26, 2000