

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 536

Introduced by Pansing Brooks, 28.

Read first time January 22, 2019

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to trusts; to amend sections 30-3805, 30-3808,
2 30-3855, and 30-3859, Reissue Revised Statutes of Nebraska; to adopt
3 the Nebraska Uniform Directed Trust Act; to provide for
4 applicability; to change and eliminate related Uniform Trust Code
5 provisions; to harmonize provisions; to repeal the original
6 sections; and to outright repeal section 30-3873, Reissue Revised
7 Statutes of Nebraska.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. (UDTA 1) Sections 1 to 19 of this act shall be known and
2 may be cited as the Nebraska Uniform Directed Trust Act.

3 Sec. 2. (UDTA 2) In the Nebraska Uniform Directed Trust Act:

4 (1) Breach of trust includes a violation by a trust director or
5 trustee of a duty imposed on that director or trustee by the terms of the
6 trust, the Nebraska Uniform Directed Trust Act, or law of this state
7 other than the Nebraska Uniform Directed Trust Act pertaining to trusts.

8 (2) Directed trust means a trust for which the terms of the trust
9 grant a power of direction.

10 (3) Directed trustee means a trustee that is subject to a trust
11 director's power of direction.

12 (4) Person means an individual, estate, business or nonprofit
13 entity, public corporation, government or governmental subdivision,
14 agency, or instrumentality, or other legal entity.

15 (5) Power of direction means a power over a trust granted to a
16 person by the terms of the trust to the extent the power is exercisable
17 while the person is not serving as a trustee. The term includes a power
18 over the investment, management, or distribution of trust property or
19 other matters of trust administration, including, but not limited to,
20 amendment, reform, or termination of the trust. The term excludes the
21 powers described in subsection (b) of section 5 of this act.

22 (6) Settlor has the same meaning as in section 30-3803.

23 (7) State means a state of the United States, the District of
24 Columbia, Puerto Rico, the United States Virgin Islands, or any other
25 territory or possession subject to the jurisdiction of the United States.

26 (8) Terms of a trust means:

27 (A) except as otherwise provided in subdivision (8)(B) of this
28 section, the manifestation of the settlor's intent regarding a trust's
29 provisions as:

30 (i) expressed in the trust instrument; or

31 (ii) established by other evidence that would be admissible in a

1 judicial proceeding; or

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

4 (i) a trustee or trust director in accordance with applicable law;

5 (ii) court order; or

6 (iii) a nonjudicial settlement agreement under section 30-3811.

7 (9) Trust director means a person that is granted a power of
8 direction by the terms of a trust to the extent the power is exercisable
9 while the person is not serving as a trustee. The person is a trust
10 director whether or not the terms of the trust refer to the person as a
11 trust director and whether or not the person is a beneficiary or settlor
12 of the trust. A trust director does not include a trustee or a person
13 described in subsection (c) of section 30-3873.

14 (10) Trustee has the same meaning as in section 30-3803.

15 Sec. 3. (UDTA 3) The Nebraska Uniform Directed Trust Act applies to
16 a trust, whenever created, that has its principal place of administration
17 in this state, subject to the following rules:

18 (1) If the trust was created before the effective date of this act,
19 the Nebraska Uniform Directed Trust Act applies only to a decision or
20 action occurring on or after the effective date of this act.

21 (2) If the principal place of administration of the trust is changed
22 to this state on or after the effective date of this act, the Nebraska
23 Uniform Directed Trust Act applies only to a decision or action occurring
24 on or after the date of the change.

25 Sec. 4. (UDTA 4) The common law and principles of equity supplement
26 the Nebraska Uniform Directed Trust Act, except to the extent modified by
27 the Nebraska Uniform Directed Trust Act or law of this state other than
28 the Nebraska Uniform Directed Trust Act.

29 Sec. 5. (UDTA 5) (a) In this section, power of appointment means a
30 power that enables a person acting in a nonfiduciary capacity to
31 designate a recipient of an ownership interest in or another power of

1 appointment over trust property.

2 (b) The Nebraska Uniform Directed Trust Act does not apply to a:

3 (1) power of appointment;

4 (2) power to appoint or remove a trustee or trust director;

5 (3) power of a settlor over a trust to the extent the settlor has a
6 power to revoke the trust;

7 (4) power of a beneficiary over a trust to the extent the exercise
8 or nonexercise of the power affects the beneficial interest of:

9 (A) the beneficiary; or

10 (B) the beneficial interest of another beneficiary represented by
11 the beneficiary under sections 30-3822 to 30-3826 with respect to the
12 exercise or nonexercise of the power; or

13 (5) power over a trust if:

14 (A) the terms of the trust provide that the power is held in a
15 nonfiduciary capacity; and

16 (B) the power must be held in a nonfiduciary capacity to achieve the
17 settlor's tax objectives under the Internal Revenue Code of 1986 as
18 defined in section 49-801.01.

19 (c) Unless the terms of a trust provide otherwise, a power granted
20 to a person to designate a recipient of an ownership interest in or power
21 of appointment over trust property which is exercisable while the person
22 is not serving as a trustee is a power of appointment and not a power of
23 direction.

24 Sec. 6. (UDTA 6) (a) Subject to section 7 of this act, the terms of
25 a trust may grant a power of direction to a trust director.

26 (b) Unless the terms of a trust provide otherwise:

27 (1) a trust director may exercise any further power appropriate to
28 the exercise or nonexercise of a power of direction granted to the trust
29 director under subsection (a) of this section; and

30 (2) trust directors with joint powers must act by majority decision.

31 (c) A power of direction includes only those powers granted by the

1 terms of the trust and further powers pursuant to subdivision (b)(1) of
2 this section must be appropriate to the exercise or nonexercise of such
3 power of direction granted by the terms of the trust.

4 Sec. 7. (UDTA 7) A trust director is subject to the same rules as a
5 trustee in a like position and under similar circumstances in the
6 exercise or nonexercise of a power of direction or further power under
7 subdivision (b)(1) of section 6 of this act regarding:

8 (1) a payback provision in the terms of a trust necessary to comply
9 with the medicaid reimbursement requirements of section 68-919; and

10 (2) a charitable interest in the trust, including notice regarding
11 the interest to the Attorney General.

12 Sec. 8. (UDTA 8) (a) Subject to subsection (b) of this section,
13 with respect to a power of direction or further power under subdivision
14 (b)(1) of section 6 of this act:

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

17 (A) if the power is held individually, as a sole trustee in a like
18 position and under similar circumstances; or

19 (B) if the power is held jointly with a trustee or another trust
20 director, as a cotrustee in a like position and under similar
21 circumstances; and

22 (2) the terms of the trust may vary the director's duty or liability
23 to the same extent the terms of the trust could vary the duty or
24 liability of a trustee in a like position and under similar
25 circumstances.

26 (b) Unless the terms of a trust provide otherwise, if a trust
27 director is licensed, certified, or otherwise authorized or permitted by
28 law other than the Nebraska Uniform Directed Trust Act to provide health
29 care in the ordinary course of the director's business or practice of a
30 profession, to the extent the director acts in that capacity, the
31 director has no duty or liability under the Nebraska Uniform Directed

1 Trust Act.

2 (c) The terms of a trust may impose a duty or liability on a trust
3 director in addition to the duties and liabilities under this section.

4 Sec. 9. (UDTA 9) (a) Subject to subsections (b) and (c) of this
5 section, a directed trustee shall take reasonable action to comply with a
6 trust director's exercise or nonexercise of a power of direction or
7 further power under subdivision (b)(1) of section 6 of this act, and the
8 trustee is not liable for the action.

9 (b) A directed trustee must not comply with a trust director's
10 exercise or nonexercise of a power of direction or further power under
11 subdivision (b)(1) of section 6 of this act to the extent that by
12 complying the trustee would engage in willful misconduct.

13 (c) A directed trustee must determine that the trust director's
14 exercise of power of direction under subsection (a) of section 6 of this
15 act or appropriation of further power under subsection (b) of section 6
16 of this act is granted by the terms of the trust pursuant to subsection
17 (c) of section 6 of this act.

18 (d) An exercise of a power of direction under which a trust director
19 may release a trustee or another trust director from liability for breach
20 of trust is not effective if:

21 (1) the breach involved the trustee's or other director's willful
22 misconduct;

23 (2) the release was induced by improper conduct of the trustee or
24 other director in procuring the release; or

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

27 (e) A directed trustee that has reasonable doubt about its duty
28 under this section may petition the court for instructions.

29 (f) The terms of a trust may impose a duty or liability on a
30 directed trustee in addition to the duties and liabilities under this
31 section.

1 Sec. 10. (UDTA 10) (a) Subject to section 11 of this act, a trustee
2 shall provide information to a trust director to the extent the
3 information is reasonably related 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 this act, a trust director shall
7 provide information to a trustee or another trust director to the extent
8 the information is reasonably related both to:

9 (1) the powers or duties of the director; and

10 (2) the powers or duties of the trustee or other director.

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

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

19 Sec. 11. (UDTA 11) (a) Unless the terms of a trust provide
20 otherwise:

21 (1) a trustee does not have a duty to:

22 (A) monitor a trust director; or

23 (B) inform or give advice to a settlor, beneficiary, trustee, or
24 trust director concerning an instance in which the trustee might have
25 acted differently than the director; and

26 (2) by taking an action described in subdivision (a)(1) of this
27 section, a trustee does not assume the duty excluded by such subdivision.

28 (b) Unless the terms of a trust provide otherwise:

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

30 (A) monitor a trustee or another trust director; or

31 (B) inform or give advice to a settlor, beneficiary, trustee, or

1 another trust director concerning an instance in which the director might
2 have acted differently than a trustee or another trust director; and

3 (2) by taking an action described in subdivision (a)(1) of this
4 section, a trustee does not assume the duty excluded by such subdivision.

5 Sec. 12. (UDTA 12) The terms of a trust may relieve a cotrustee
6 from duty and liability with respect to another cotrustee's exercise or
7 nonexercise of a power of the other cotrustee to the same extent that in
8 a directed trust a directed trustee is relieved from duty and liability
9 with respect to a trust director's power of direction under sections 9 to
10 11 of this act.

11 Sec. 13. (UDTA 13) (a) An action against a trust director for
12 breach of trust must be commenced within the same limitation period as
13 under section 30-3894 for an action for breach of trust against a trustee
14 in a like position and under similar circumstances.

15 (b) A report or accounting has the same effect on the limitation
16 period for an action against a trust director for breach of trust that
17 the report or accounting would have under section 30-3894 in an action
18 for breach of trust against a trustee in a like position and under
19 similar circumstances.

20 Sec. 14. (UDTA 14) In an action against a trust director for breach
21 of trust, the director may assert the same defenses a trustee in a like
22 position and under similar circumstances could assert in an action for
23 breach of trust against the trustee.

24 Sec. 15. (UDTA 15) (a) By accepting appointment as a trust director
25 of a trust subject to the Nebraska Uniform Directed Trust Act, the
26 director submits to personal jurisdiction of the courts of this state
27 regarding any matter related to a power or duty of the director.

28 (b) This section does not preclude other methods of obtaining
29 jurisdiction over a trust director.

30 Sec. 16. (UDTA 16) Unless the terms of a trust provide otherwise,
31 the rules applicable to a trustee apply to a trust director regarding the

1 following matters:

- 2 (1) acceptance under section 30-3857;
- 3 (2) giving of bond to secure performance under section 30-3858;
- 4 (3) reasonable compensation under section 30-3864;
- 5 (4) resignation under section 30-3861;
- 6 (5) removal under section 30-3862; and
- 7 (6) vacancy and appointment of successor under section 30-3860.

8 Sec. 17. (UDTA 17) In applying and construing the Nebraska Uniform
9 Directed Trust Act, consideration must be given to the need to promote
10 uniformity of the law with respect to its subject matter among states
11 that enact it.

12 Sec. 18. (UDTA 18) The provisions of the Nebraska Uniform Directed
13 Trust Act governing the legal effect, validity, or enforceability of
14 electronic records or electronic signatures, and of contracts formed or
15 performed with the use of such records or signatures, conform to the
16 requirements of section 102 of the Electronic Signatures in Global and
17 National Commerce Act, 15 U.S.C. 7002, as such section existed on January
18 1 immediately preceding January 1, 2005, and supersede, modify, and limit
19 the requirements of the Electronic Signatures in Global and National
20 Commerce Act.

21 Sec. 19. (a) Except as otherwise provided in the Nebraska Uniform
22 Directed Trust Act, on January 1, 2021:

23 (1) the Nebraska Uniform Directed Trust Act applies to all trusts
24 created before, on, or after January 1, 2021;

25 (2) the Nebraska Uniform Directed Trust Act applies to all judicial
26 proceedings concerning trust directors, trustees, and cotrustees
27 commenced on or after January 1, 2021;

28 (3) the Nebraska Uniform Directed Trust Act applies to judicial
29 proceedings concerning trusts commenced before January 1, 2021, unless
30 the court finds that application of a particular provision of the
31 Nebraska Uniform Directed Trust Act would substantially interfere with

1 the effective conduct of the judicial proceedings or prejudice the rights
2 of the parties, in which case the particular provision of the Nebraska
3 Uniform Directed Trust Act does not apply and the superseded law applies;
4 and

5 (4) an act done before January 1, 2021, is not affected by the
6 Nebraska Uniform Directed Trust Act.

7 (b) If a right is acquired, extinguished, or barred upon the
8 expiration of a prescribed period that has commenced to run under any
9 other statute before January 1, 2021, that statute continues to apply to
10 the right even if it has been repealed or superseded.

11 Sec. 20. Section 30-3805, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 30-3805 (UTC 105) (a) Except as otherwise provided in the terms of
14 the trust, the Nebraska Uniform Trust Code governs the duties and powers
15 of a trustee, relations among trustees, and the rights and interests of a
16 beneficiary.

17 (b) The terms of a trust prevail over any provision of the code
18 except:

19 (1) the requirements for creating a trust;

20 (2) subject to sections 9, 11, and 12 of this act, the duty of a
21 trustee to act in good faith and in accordance with the terms and
22 purposes of the trust and the interests of the beneficiaries;

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

26 (4) the power of the court to modify or terminate a trust under
27 sections 30-3836 to 30-3842;

28 (5) the effect of a spendthrift provision and the rights of certain
29 creditors and assignees to reach a trust as provided in sections 30-3846
30 to 30-3852;

31 (6) the power of the court under section 30-3858 to require,

1 dispense with, or modify or terminate a bond;

2 (7) the power of the court under subsection (b) of section 30-3864
3 to adjust a trustee's compensation specified in the terms of the trust;

4 (8) the duty under subsection (a) of section 30-3878 to keep the
5 qualified beneficiaries of the trust reasonably informed about the
6 administration of the trust and of the material facts necessary for them
7 to protect their interests, and to respond to the request of a qualified
8 beneficiary of an irrevocable trust for trustee's reports and other
9 information reasonably related to the administration of a trust;

10 (9) the effect of an exculpatory term under section 30-3897;

11 (10) the rights under sections 30-3899 to 30-38,107 of a person
12 other than a trustee or beneficiary;

13 (11) periods of limitation for commencing a judicial proceeding;

14 (12) the power of the court to take such action and exercise such
15 jurisdiction as may be necessary in the interests of justice;

16 (13) the subject matter jurisdiction of the court and venue for
17 commencing a proceeding as provided in sections 30-3814 and 30-3815;

18 (14) the power of a court under subdivision (a)(1) of section
19 30-3807; and

20 (15) the power of a court to review the action or the proposed
21 action of the trustee for an abuse of discretion.

22 Sec. 21. Section 30-3808, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 30-3808 (UTC 108) (a) Without precluding other means for
25 establishing a sufficient connection with the designated jurisdiction,
26 terms of a trust designating the principal place of administration are
27 valid and controlling if:

28 (1) a trustee's principal place of business is located in or a
29 trustee is a resident of the designated jurisdiction;~~or~~

30 (2) all or part of the administration occurs in the designated
31 jurisdiction; or -

1 (3) a trust director's principal place of business is located in or
2 a trust director is a resident of the designated jurisdiction.

3 (b) A trustee is under a continuing duty to administer the trust at
4 a place appropriate to its purposes, its administration, and the
5 interests of the beneficiaries.

6 (c) Without precluding the right of the court to order, approve, or
7 disapprove a transfer, the trustee, in furtherance of the duty prescribed
8 by subsection (b) of this section, may transfer the trust's principal
9 place of administration to another state or to a jurisdiction outside of
10 the United States.

11 (d) The trustee shall notify the qualified beneficiaries of a
12 proposed transfer of a trust's principal place of administration not less
13 than sixty days before initiating the transfer. The notice of proposed
14 transfer must include:

15 (1) the name of the jurisdiction to which the principal place of
16 administration is to be transferred;

17 (2) the address and telephone number at the new location at which
18 the trustee can be contacted;

19 (3) an explanation of the reasons for the proposed transfer;

20 (4) the date on which the proposed transfer is anticipated to occur;
21 and

22 (5) the date, not less than sixty days after the giving of the
23 notice, by which the qualified beneficiary must notify the trustee of an
24 objection to the proposed transfer.

25 (e) The authority of a trustee under this section to transfer a
26 trust's principal place of administration terminates if a qualified
27 beneficiary notifies the trustee of an objection to the proposed transfer
28 on or before the date specified in the notice.

29 (f) In connection with a transfer of the trust's principal place of
30 administration, the trustee may transfer some or all of the trust
31 property to a successor trustee designated in the terms of the trust or

1 appointed pursuant to section 30-3860.

2 Sec. 22. Section 30-3855, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 30-3855 (UTC 603) (a) To the extent a trust is revocable by a
5 settlor, a trustee may follow a direction of the settlor that is contrary
6 to the terms of the trust. To the extent a trust is revocable by a
7 settlor in conjunction with a person other than a trustee or person
8 holding an adverse interest, the trustee may follow a direction from the
9 settlor and the other person holding the power to revoke even if the
10 direction is contrary to the terms of the trust.

11 (b) While a trust is revocable, rights of the beneficiaries are
12 subject to the control of, and the duties of the trustee are owed
13 exclusively to, the settlor.

14 (c) ~~(b)~~ While the trust is irrevocable and during the period the
15 power may be exercised, the holder of a power of withdrawal has the
16 rights of a settlor of a revocable trust under this section and the
17 duties of the trustee are owed exclusively to the holder of the power to
18 the extent of the property subject to the power.

19 (d) ~~(c)~~ While the trust is irrevocable and during the period the
20 interest of any beneficiary not having a present interest may be
21 terminated by the exercise of a power of appointment or other power, the
22 duties of the trustee are owed exclusively to the holder of the power to
23 the extent of the property subject to the power.

24 Sec. 23. Section 30-3859, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 30-3859 (UTC 703) (a) Cotrustees who are unable to reach a unanimous
27 decision may act by majority decision.

28 (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees
29 may act for the trust.

30 (c) Subject to section 12 of this act, a A cotrustee must
31 participate in the performance of a trustee's function unless the

1 cotrustee is unavailable to perform the function because of absence,
2 illness, disqualification under other law, or other temporary incapacity
3 or the cotrustee has properly delegated the performance of the function
4 to another trustee.

5 (d) If a cotrustee is unavailable to perform duties because of
6 absence, illness, disqualification under other law, or other temporary
7 incapacity, and prompt action is necessary to achieve the purposes of the
8 trust or to avoid injury to the trust property, the remaining cotrustee
9 or a majority of the remaining cotrustees may act for the trust.

10 (e) A trustee may not delegate to a cotrustee the performance of a
11 function the settlor reasonably expected the trustees to perform jointly.
12 Unless a delegation was irrevocable, a trustee may revoke a delegation
13 previously made.

14 (f) Except as otherwise provided in subsection (g) of this section,
15 a trustee who does not join in an action of another trustee is not liable
16 for the action.

17 (g) Subject to section 12 of this act, each ~~Each~~ trustee shall
18 exercise reasonable care to:

19 (1) prevent a cotrustee from committing a serious breach of trust;
20 and

21 (2) compel a cotrustee to redress a serious breach of trust.

22 (h) A dissenting trustee who joins in an action at the direction of
23 the majority of the trustees and who notified any cotrustee of the
24 dissent at or before the time of the action is not liable for the action
25 unless the action is a serious breach of trust.

26 Sec. 24. Original sections 30-3805, 30-3808, 30-3855, and 30-3859,
27 Reissue Revised Statutes of Nebraska, are repealed.

28 Sec. 25. The following section is outright repealed: Section
29 30-3873, Reissue Revised Statutes of Nebraska.