

SENATE BILL REPORT

SSB 6029

As Passed Senate, January 31, 2020

Title: An act relating to the uniform directed trust act.

Brief Description: Concerning the uniform directed trust act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen and Padden; by request of Uniform Law Commission).

Brief History:

Committee Activity: Law & Justice: 1/14/20, 1/16/20 [DPS].

Floor Activity:

Passed Senate: 1/31/20, 45-0.

Brief Summary of First Substitute Bill

- Repeals and replaces the Washington Directed Trust Act with the Uniform Directed Trust Act.
- Changes certain terminology like "statutory trust advisor" to "trust director."
- Clarifies the liability of the trust director and trustee.
- Requires the trust director and trustee share information relating to their powers or duties.
- Requires the act be construed to promote uniformity of law with other states that enact it.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6029 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

Staff: Tim Ford (786-7423)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: The Washington Directed Trust Act was adopted in 2015. A directed trust is different than a normal trust. In a normal trust the trustee is ultimately responsible and liable for decisions related to all of the property in the trust with a duty to invest it prudently. Under a directed trust it is possible to have specific duties and liability directed away from the trustee to a third party called a statutory trust advisor. Specific provisions clearly describing the roles of the trustee and the statutory trust advisor must be included in the directed trust document. The act applies to a trust only if expressly invoked in the governing instrument, and the trust is sited in Washington State.

A statutory trust advisor has fiduciary duties with respect to the powers given to it and has the power to take actions normally given to a trustee. Examples of the powers and duties given to the statutory trust advisor may include: the power to direct the purchase, sale, or retention of a trust asset; the power to make or withhold distributions to beneficiaries; the power to change a beneficiary's interest in the trust; and the power to change the trust agreement to achieve tax benefits or take advantage of changes in the governing law. The statutory trust advisor is not required to monitor the trust to determine whether the power should be exercised. Unless the trust agreement provides otherwise, the statutory trust advisor acts only upon a request made by the trustee or a trust beneficiary.

Summary of First Substitute Bill: The bill repeals the Washington Directed Trust Act of 2015 and replaces it with the Uniform Directed Trust Act. In a directed trust, the terms of the trust grant a person other than a trustee a power over some aspect of the trust's administration. Under the Uniform Directed Trust Act, a power over a trust held by a nontrustee is called a power of direction. The holder of a power of direction is called a trust director as opposed to a statutory trust advisor under current law. A trustee that is subject to a power of direction is called a directed trustee. The new act applies to trusts, whenever created, that has its principal place of administration in Washington State.

The terms of a trust may grant a power of direction to a trust director. A trust director may exercise any further power appropriate to a granted power of direction. Trust directors with joint powers must act by majority decision. A trust director is subject to the same rules as a trustee in a like position and under similar circumstances. A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the granted power of direction. The explicit terms of the trust may vary the director's duty or liability.

A directed trustee must take reasonable action to comply with a power of direction. The directed trustee is not liable for the action, but is liable for willful misconduct. Generally, the directed trustee has a reduced liability compared to the trust director. The terms of a trust may vary the duty or liability of a directed trustee. A directed trustee that has reasonable doubt about its duty may petition a superior court for instructions. A beneficiary's main recourse for misconduct by a trust director is an action against the director for breach of the director's fiduciary duty to the beneficiary. The beneficiary also has recourse against a directed trustee, but only to the extent of the trustee's own willful misconduct.

A trustee must provide information to a trust director, and a trust director must provide information to a trustee to the extent the information is related both to the powers or duties of the trustee, and the powers or duties of the director.

A trustee or trust director acting in reliance on this information is not liable for a breach of trust unless there is an engagement in willful misconduct.

A trust director or trustee does not have a duty to monitor the other. There is no duty to inform or give advice to a settlor, beneficiary, trustee, or another trust director where they may have acted differently than the other trustee or trust director.

In construing this act, consideration must be given to the need of promoting uniformity in the law with respect to its subject matter among enacting states.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2021.

Staff Summary of Public Testimony on First Substitute: PRO: This a relatively newly promulgated uniform act. The Real Property Probate and Trust section of the State Bar recognized the problem several years ago and came up with a home grown solution to this issue of divided trust powers. It is the consensus of that group that the Uniform Act addresses that problem in a better and more nuanced way.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor.

Persons Signed In To Testify But Not Testifying: No one.