

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6029

66th Legislature
2020 Regular Session

Passed by the Senate January 31, 2020
Yeas 45 Nays 0

President of the Senate

Passed by the House March 3, 2020
Yeas 95 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6029** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6029

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

By Senate Law & Justice (originally sponsored by Senators Pedersen and Padden; by request of Uniform Law Commission)

READ FIRST TIME 01/17/20.

1 AN ACT Relating to the uniform directed trust act; adding a new
2 chapter to Title 11 RCW; repealing RCW 11.98A.010, 11.98A.020,
3 11.98A.030, 11.98A.040, 11.98A.050, 11.98A.060, 11.98A.070,
4 11.98A.080, 11.98A.090, 11.98A.100, 11.98A.110, 11.98A.120, and
5 11.98A.900; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be known and
8 cited as the uniform directed trust act.

9 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
10 section apply throughout this chapter unless the context clearly
11 requires otherwise.

12 (1) "Breach of trust" includes a violation by a trust director or
13 trustee of a duty imposed on that director or trustee by the terms of
14 the trust, this chapter, or law of this state other than this chapter
15 pertaining to trusts.

16 (2) "Directed trust" means a trust for which the terms of the
17 trust grant a power of direction.

18 (3) "Directed trustee" means a trustee that is subject to a trust
19 director's power of direction.

1 (4) "Person" means an individual, estate, business or nonprofit
2 entity, public corporation, government or governmental subdivision,
3 agency, or instrumentality, or other legal entity.

4 (5) "Power of direction" means a power over a trust granted to a
5 person by the terms of the trust to the extent the power is
6 exercisable while the person is not serving as a trustee. The term
7 includes a power over the investment, management, or distribution of
8 trust property or other matters of trust administration. The term
9 excludes the powers described in section 5(2) of this act.

10 (6) "Settlor" means a person, including a testator, that creates,
11 or contributes property to, a trust. If more than one person creates
12 or contributes property to a trust, each person is a settlor of the
13 portion of the trust property attributable to that person's
14 contribution except to the extent another person has the power to
15 revoke or withdraw that portion.

16 (7) "State" means a state of the United States, the District of
17 Columbia, Puerto Rico, the United States Virgin Islands, or any other
18 territory or possession subject to the jurisdiction of the United
19 States.

20 (8) "Terms of a trust" means:

21 (a) Except as otherwise provided in (b) of this subsection, the
22 manifestation of the settlor's intent regarding a trust's provisions
23 as:

24 (i) Expressed in the trust instrument; or

25 (ii) Established by other evidence that would be admissible in a
26 judicial proceeding; or

27 (b) The trust's provisions as established, determined, or amended
28 by:

29 (i) A trustee or trust director in accordance with applicable
30 law;

31 (ii) Court order; or

32 (iii) A nonjudicial settlement agreement under chapter 11.96A
33 RCW.

34 (9) "Trust director" means a person that is granted a power of
35 direction by the terms of a trust to the extent the power is
36 exercisable while the person is not serving as a trustee. The person
37 is a trust director whether or not the terms of the trust refer to
38 the person as a trust director and whether or not the person is a
39 beneficiary or settlor of the trust.

1 (10) "Trustee" includes an original, additional, and successor
2 trustee, and a cotrustee.

3 NEW SECTION. **Sec. 3.** APPLICATION—PRINCIPAL PLACE OF
4 ADMINISTRATION. (1) This chapter applies to a trust, whenever
5 created, that has its principal place of administration in this
6 state, subject to the following rules:

7 (a) If the trust was created before the effective date of this
8 section, this chapter applies only to a decision or action occurring
9 on or after the effective date of this section.

10 (b) If the principal place of administration of the trust is
11 changed to this state on or after the effective date of this section,
12 this chapter applies only to a decision or action occurring on or
13 after the date of the change.

14 (2) Without precluding other means to establish a sufficient
15 connection with the designated jurisdiction in a directed trust,
16 terms of the trust which designate the principal place of
17 administration of the trust are valid and controlling if:

18 (a) A trustee's principal place of business is located in or a
19 trustee is a resident of the designated jurisdiction;

20 (b) A trust director's principal place of business is located in
21 or a trust director is a resident of the designated jurisdiction; or

22 (c) All or part of the administration occurs in the designated
23 jurisdiction.

24 NEW SECTION. **Sec. 4.** COMMON LAW AND PRINCIPLES OF EQUITY. The
25 common law and principles of equity supplement this chapter, except
26 to the extent modified by this chapter or law of this state other
27 than this chapter.

28 NEW SECTION. **Sec. 5.** EXCLUSIONS. (1) In this section, "power of
29 appointment" means a power that enables a person acting in a
30 nonfiduciary capacity to designate a recipient of an ownership
31 interest in or another power of appointment over trust property.

32 (2) This chapter does not apply to a:

33 (a) Power of appointment;

34 (b) Power to appoint or remove a trustee or trust director;

35 (c) Power of a settlor over a trust to the extent the settlor has
36 a power to revoke the trust;

1 (d) Power of a beneficiary over a trust to the extent the
2 exercise or nonexercise of the power affects the beneficial interest
3 of:

4 (i) The beneficiary; or

5 (ii) Another beneficiary represented by the beneficiary with
6 respect to the exercise or nonexercise of the power; or

7 (e) Power over a trust if:

8 (i) The terms of the trust provide that the power is held in a
9 nonfiduciary capacity; and

10 (ii) The power must be held in a nonfiduciary capacity to achieve
11 the settlor's tax objectives under the federal internal revenue code
12 of 1986, as amended, as of the effective date of this section.

13 (3) Unless the terms of a trust provide otherwise, a power
14 granted to a person to designate a recipient of an ownership interest
15 in or power of appointment over trust property which is exercisable
16 while the person is not serving as a trustee is a power of
17 appointment and not a power of direction.

18 NEW SECTION. **Sec. 6.** POWERS OF TRUST DIRECTOR. (1) Subject to
19 section 7 of this act, the terms of a trust may grant a power of
20 direction to a trust director.

21 (2) Unless the terms of a trust provide otherwise:

22 (a) A trust director may exercise any further power appropriate
23 to the exercise or nonexercise of a power of direction granted to the
24 director under subsection (1) of this section; and

25 (b) Trust directors with joint powers must act by majority
26 decision.

27 NEW SECTION. **Sec. 7.** LIMITATIONS ON TRUST DIRECTOR. A trust
28 director is subject to the same rules as a trustee in a like position
29 and under similar circumstances in the exercise or nonexercise of a
30 power of direction or further power under section 6(2)(a) of this act
31 regarding:

32 (1) A payback provision in the terms of a trust necessary to
33 comply with the reimbursement requirements of medicaid law in section
34 1917 of the social security act, 42 U.S.C. Sec. 1396p(d)(4)(A), as
35 amended, as of the effective date of this section; and

36 (2) A charitable interest in the trust.

1 NEW SECTION. **Sec. 8.** DUTY AND LIABILITY OF TRUST DIRECTOR. (1)

2 Subject to subsection (2) of this section, with respect to a power of
3 direction or further power under section 6(2)(a) of this act:

4 (a) A trust director has the same fiduciary duty and liability in
5 the exercise or nonexercise of the power:

6 (i) If the power is held individually, as a sole trustee in a
7 like position and under similar circumstances; or

8 (ii) If the power is held jointly with a trustee or another trust
9 director, as a cotrustee in a like position and under similar
10 circumstances; and

11 (b) The terms of the trust may vary the director's duty or
12 liability to the same extent the terms of the trust could vary the
13 duty or liability of a trustee in a like position and under similar
14 circumstances.

15 (2) Unless the terms of a trust provide otherwise, if a trust
16 director is licensed, certified, or otherwise authorized or permitted
17 by law other than this chapter to provide health care in the ordinary
18 course of the director's business or practice of a profession, to the
19 extent the director acts in that capacity, the director has no duty
20 or liability under this chapter.

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

24 NEW SECTION. **Sec. 9.** DUTY AND LIABILITY OF DIRECTED TRUSTEE.

25 (1) Subject to subsection (2) of this section, a directed trustee
26 shall take reasonable action to comply with a trust director's
27 exercise or nonexercise of a power of direction or further power
28 under section 6(2)(a) of this act, and the trustee is not liable for
29 the action.

30 (2) A directed trustee must not comply with a trust director's
31 exercise or nonexercise of a power of direction or further power
32 under section 6(2)(a) of this act to the extent that by complying the
33 trustee would engage in willful misconduct.

34 (3) An exercise of a power of direction under which a trust
35 director may release a trustee or another trust director from
36 liability for breach of trust is not effective if:

37 (a) The breach involved the trustee's or other director's willful
38 misconduct;

1 (b) The release was induced by improper conduct of the trustee or
2 other director in procuring the release; or

3 (c) At the time of the release, the director did not know the
4 material facts relating to the breach.

5 (4) A directed trustee that has reasonable doubt about its duty
6 under this section may petition the superior court for instructions
7 in the county where venue lies for the trust under RCW 11.96A.050.

8 (5) The terms of a trust may impose a duty or liability on a
9 directed trustee in addition to the duties and liabilities under this
10 section.

11 NEW SECTION. **Sec. 10.** DUTY TO PROVIDE INFORMATION TO TRUST
12 DIRECTOR OR TRUSTEE. (1) Subject to section 11 of this act, a trustee
13 shall provide information to a trust director to the extent the
14 information is reasonably related both to:

15 (a) The powers or duties of the trustee; and

16 (b) The powers or duties of the director.

17 (2) Subject to section 11 of this act, a trust director shall
18 provide information to a trustee or another trust director to the
19 extent the information is reasonably related both to:

20 (a) The powers or duties of the director; and

21 (b) The powers or duties of the trustee or other director.

22 (3) A trustee that acts in reliance on information provided by a
23 trust director is not liable for a breach of trust to the extent the
24 breach resulted from the reliance, unless by so acting the trustee
25 engages in willful misconduct.

26 (4) A trust director that acts in reliance on information
27 provided by a trustee or another trust director is not liable for a
28 breach of trust to the extent the breach resulted from the reliance,
29 unless by so acting the trust director engages in willful misconduct.

30 NEW SECTION. **Sec. 11.** NO DUTY TO MONITOR, INFORM, OR ADVISE.

31 (1) Unless the terms of a trust provide otherwise:

32 (a) A trustee does not have a duty to:

33 (i) Monitor a trust director; or

34 (ii) Inform or give advice to a settlor, beneficiary, trustee, or
35 trust director concerning an instance in which the trustee might have
36 acted differently than the director; and

37 (b) By taking an action described in (a) of this subsection, a
38 trustee does not assume the duty excluded by (a) of this subsection.

1 (2) Unless the terms of a trust provide otherwise:

2 (a) A trust director does not have a duty to:

3 (i) Monitor a trustee or another trust director; or

4 (ii) Inform or give advice to a settlor, beneficiary, trustee, or
5 another trust director concerning an instance in which the director
6 might have acted differently than a trustee or another trust
7 director; and

8 (b) By taking an action described in (a) of this subsection, a
9 trust director does not assume the duty excluded by (a) of this
10 subsection.

11 NEW SECTION. **Sec. 12.** APPLICATION TO COTRUSTEE. The terms of a
12 trust may relieve a cotrustee from duty and liability with respect to
13 another cotrustee's exercise or nonexercise of a power of the other
14 cotrustee to the same extent that in a directed trust a directed
15 trustee is relieved from duty and liability with respect to a trust
16 director's power of direction under sections 9 through 11 of this
17 act.

18 NEW SECTION. **Sec. 13.** LIMITATION OF ACTION AGAINST TRUST
19 DIRECTOR. (1) An action against a trust director for breach of trust
20 must be commenced within the same limitation period under RCW
21 11.96A.070 as for an action for breach of trust against a trustee in
22 a like position and under similar circumstances.

23 (2) A report or accounting has the same effect on the limitation
24 period for an action against a trust director for breach of trust
25 that the report or accounting would have under RCW 11.96A.070 in an
26 action for breach of trust against a trustee in a like position and
27 under similar circumstances.

28 NEW SECTION. **Sec. 14.** DEFENSES IN ACTION AGAINST TRUST
29 DIRECTOR. In an action against a trust director for breach of trust,
30 the director may assert the same defenses a trustee in a like
31 position and under similar circumstances could assert in an action
32 for breach of trust against the trustee.

33 NEW SECTION. **Sec. 15.** JURISDICTION OVER TRUST DIRECTOR. (1) By
34 accepting appointment as a trust director of a trust subject to this
35 chapter, the director submits to personal jurisdiction of the courts

1 of this state regarding any matter related to a power or duty of the
2 director.

3 (2) This section does not preclude other methods of obtaining
4 jurisdiction over a trust director.

5 NEW SECTION. **Sec. 16.** OFFICE OF TRUST DIRECTOR. Unless the
6 terms of a trust provide otherwise, the rules applicable to a trustee
7 apply to a trust director regarding the following matters:

- 8 (1) Acceptance;
- 9 (2) Giving of bond to secure performance;
- 10 (3) Reasonable compensation;
- 11 (4) Resignation;
- 12 (5) Removal; and
- 13 (6) Vacancy and appointment of successor.

14 NEW SECTION. **Sec. 17.** UNIFORMITY OF APPLICATION AND
15 CONSTRUCTION. In applying and construing this uniform act,
16 consideration must be given to the need to promote uniformity of the
17 law with respect to its subject matter among states that enact it.

18 NEW SECTION. **Sec. 18.** RELATION TO ELECTRONIC SIGNATURES IN
19 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or
20 supersedes the electronic signatures in global and national commerce
21 act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
22 supersede section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or
23 authorize electronic delivery of any of the notices described in
24 section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

25 NEW SECTION. **Sec. 19.** The following acts or parts of acts are
26 each repealed:

- 27 (1) RCW 11.98A.010 (Application of chapter) and 2015 c 115 s 4;
- 28 (2) RCW 11.98A.020 (Governing instrument) and 2015 c 115 s 5;
- 29 (3) RCW 11.98A.030 (Statutory trust advisor) and 2015 c 115 s 6;
- 30 (4) RCW 11.98A.040 (Remedies for breach of duty) and 2015 c 115 s
31 7;
- 32 (5) RCW 11.98A.050 (Measure of liability for breach of duty—
33 Excuse from liability) and 2015 c 115 s 8;
- 34 (6) RCW 11.98A.060 (Vacancy—Directed trusts) and 2015 c 115 s 9;

- 1 (7) RCW 11.98A.070 (Statutory trust advisor's duty to inform and
2 report—Notice to beneficiary) and 2015 c 115 s 10;
- 3 (8) RCW 11.98A.080 (Statutory trust advisor subject to court
4 jurisdiction) and 2015 c 115 s 11;
- 5 (9) RCW 11.98A.090 (Statutory trust advisor's right to request
6 information and bring proceedings) and 2015 c 115 s 12;
- 7 (10) RCW 11.98A.100 (Directed trustee—Directed trustee's
8 liability for action or inaction of statutory trust advisor—No duty
9 to review actions of statutory trust advisor) and 2015 c 115 s 13;
- 10 (11) RCW 11.98A.110 (Statutes of limitation) and 2015 c 115 s 14;
- 11 (12) RCW 11.98A.120 (Application of other provisions of probate
12 and trust law) and 2015 c 115 s 15; and
- 13 (13) RCW 11.98A.900 (Short title—2015 c 115) and 2015 c 115 s 16.

14 NEW SECTION. **Sec. 20.** EFFECTIVE DATE. This act takes effect
15 January 1, 2021.

16 NEW SECTION. **Sec. 21.** CODIFICATION. Sections 1 through 18 and
17 20 of this act constitute a new chapter in Title 11 RCW.

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