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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: Z-0160.2/19 2nd draft

ATTY/TYPIST: JA:lcl

BRIEF DESCRIPTION: Concerning the uniform directed trust act.

1 AN ACT Relating to the uniform directed trust act; adding a new  
2 chapter to Title 11 RCW; and providing an effective date.

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

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

6 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
7 section apply throughout this chapter unless the context clearly  
8 requires otherwise.

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

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

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

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

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

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

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

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

18 (a) Except as otherwise provided in (b) of this subsection, the  
19 manifestation of the settlor's intent regarding a trust's provisions  
20 as:

21 (i) Expressed in the trust instrument; or

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

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

26 (i) A trustee or trust director in accordance with applicable  
27 law;

28 (ii) Court order; or

29 (iii) A nonjudicial settlement agreement under chapter 11.96A  
30 RCW.

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

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

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

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

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

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

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

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

20        (c) All or part of the administration occurs in the designated  
21 jurisdiction.

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

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

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

31        (a) Power of appointment;

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

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

35        (d) Power of a beneficiary over a trust to the extent the  
36 exercise or nonexercise of the power affects the beneficial interest  
37 of:

38        (i) The beneficiary; or

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

3 (e) Power over a trust if:

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

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

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

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

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

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

21 (b) Trust directors with joint powers must act by majority  
22 decision.

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

28 (1) A payback provision in the terms of a trust necessary to  
29 comply with the reimbursement requirements of medicaid law in section  
30 1917 of the social security act, 42 U.S.C. Sec. 1396p(d)(4)(A), as  
31 amended, as of the effective date of this section; and

32 (2) A charitable interest in the trust.

33 NEW SECTION. **Sec. 8.** DUTY AND LIABILITY OF TRUST DIRECTOR. (1)  
34 Subject to subsection (2) of this section, with respect to a power of  
35 direction or further power under section 6(2)(a) of this act:

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

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

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

6 (b) The terms of the trust may vary the director's duty or  
7 liability to the same extent the terms of the trust could vary the  
8 duty or liability of a trustee in a like position and under similar  
9 circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

- 11 (a) The powers or duties of the trustee; and  
12 (b) The powers or duties of the director.

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

- 16 (a) The powers or duties of the director; and  
17 (b) The powers or duties of the trustee or other director.

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

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

26 NEW SECTION. **Sec. 11.** NO DUTY TO MONITOR, INFORM, OR ADVISE.  
27 (1) Unless the terms of a trust provide otherwise:

- 28 (a) A trustee does not have a duty to:  
29 (i) Monitor a trust director; or

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

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

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

- 36 (a) A trust director does not have a duty to:  
37 (i) Monitor a trustee or another trust director; or

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

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

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

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

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

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

30 NEW SECTION. **Sec. 15.** JURISDICTION OVER TRUST DIRECTOR. (1) By  
31 accepting appointment as a trust director of a trust subject to this  
32 chapter, the director submits to personal jurisdiction of the courts  
33 of this state regarding any matter related to a power or duty of the  
34 director.

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

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

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

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

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

21       NEW SECTION.        **Sec. 19.**    EFFECTIVE DATE. This act takes effect  
22 January 1, 2020.

23       NEW SECTION.        **Sec. 20.**    CODIFICATION. Sections 1 through 19 of  
24 this act constitute a new chapter in Title 11 RCW.

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