

SENATE BILL No. 141

AN ACT enacting the Kansas uniform directed trust act; relating to power over a trust held by a nontrustee; establishing powers and duties of a trust director and a directed trustee; amending K.S.A. 58a-703 and K.S.A. 2021 Supp. 58a-103, 58a-105 and 58a-603 and repealing the existing sections; also repealing K.S.A. 58a-808.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Sections 1 through 18, and amendments thereto, may be cited as the Kansas uniform directed trust act.

New Sec. 2. As used in the Kansas uniform directed trust act:

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

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

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

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

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

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

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

(8) "Terms of a trust" means:

(A) Except as otherwise provided in subsection (8)(B), the manifestation of the settlor's intent regarding a trust's provisions as:

(i) Expressed in the trust instrument; or

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

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

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

(ii) court order; or

(iii) a nonjudicial settlement agreement under K.S.A. 58a-111, and amendments thereto.

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

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

New Sec. 3. (a) The Kansas uniform directed trust act applies to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(1) If the trust was created before July 1, 2022, this act applies only to a decision or action occurring on or after July 1, 2022.

(2) If the principal place of administration of the trust is changed to this state on or after July 1, 2022, this act applies only to a decision or action occurring on or after July 1, 2022.

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

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

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

(3) all or part of the administration occurs in the designated jurisdiction.

New Sec. 4. The common law and principles of equity supplement the Kansas uniform directed trust act, except to the extent modified by this act or law of this state other than this act.

New Sec. 5. (a) In this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(b) The Kansas uniform directed trust act does not apply to a:

(1) Power of appointment;

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

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

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

(A) The beneficiary; or

(B) another beneficiary represented by the beneficiary under K.S.A. 58a-301 through 58a-305, and amendments thereto, with respect to the exercise or nonexercise of the power; or

(5) power over a trust if:

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

(B) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the internal revenue code of 1986, as in effect on July 1, 2022.

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

New Sec. 6. (a) Subject to section 7, and amendments thereto, the terms of a trust may grant a power of direction to a trust director.

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

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

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

New Sec. 7. A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under section 6(b)(1), and amendments thereto, regarding:

(a) A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of medicaid law in section 1917 of the social security act, 42 U.S.C. § 1396p(d)(4)(A), as in effect on July 1, 2022; and

(b) a charitable interest in the trust, including notice regarding the interest to the attorney general.

New Sec. 8. (a) Subject to subsection (b), with respect to a power of direction or further power under section 6(b)(1), and amendments thereto:

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

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

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

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

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than the Kansas uniform directed trust act to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this act.

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

New Sec. 9. (a) Subject to subsection (b), a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under section 6(b)(1), and amendments thereto, and the trustee is not liable for the action.

(b) A directed trustee must not comply with a trust director's exercise or nonexercise of a power of direction or further power under section 6(b)(1), and amendments thereto, to the extent that by complying the trustee would engage in willful misconduct.

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

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

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

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

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

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

New Sec. 10. (a) Subject to section 11, and amendments thereto, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

(1) The powers or duties of the trustee; and

(2) the powers or duties of the director.

(b) Subject to section 11, and amendments thereto, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

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

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

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

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

New Sec. 11. (a) Unless the terms of a trust provide otherwise:

(1) A trustee does not have a duty to:
(A) Monitor a trust director; or
(B) inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(2) by taking an action described in paragraph (1), a trustee does not assume the duty excluded by paragraph (1).

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

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

(A) Monitor a trustee or another trust director; or

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

(2) by taking an action described in paragraph (1), a trust director does not assume the duty excluded by paragraph (1).

New Sec. 12. The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under sections 9 through 11, and amendments thereto.

New Sec. 13. (a) An action against a trust director for breach of trust must be commenced within the same limitation period as under K.S.A. 58a-1005, and amendments thereto, for an action for breach of trust against a trustee in a like position and under similar circumstances.

(b) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under K.S.A. 58a-1005, and amendments thereto, in an action for breach of trust against a trustee in a like position and under similar circumstances.

New Sec. 14. In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

New Sec. 15. (a) By accepting appointment as a trust director of a trust subject to the Kansas uniform directed trust act, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

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

New Sec. 16. Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

(a) Acceptance under K.S.A. 58a-701, and amendments thereto;

(b) giving of bond to secure performance under K.S.A. 58a-702, and amendments thereto;

(c) reasonable compensation under K.S.A. 58a-708, and amendments thereto;

(d) resignation under K.S.A. 58a-705, and amendments thereto;

(e) removal under K.S.A. 58a-706, and amendments thereto; and

(f) vacancy and appointment of successor under K.S.A. 58a-704, and amendments thereto.

New Sec. 17. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

New Sec. 18. The Kansas uniform directed trust act modifies, limits or supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. § 7001 et seq., but does not modify,

limit or supersede § 7001(c) of that act or authorize electronic delivery of any of the notices described in § 7003(b) of that act.

Sec. 19. K.S.A. 2021 Supp. 58a-103 is hereby amended to read as follows: 58a-103. As used in this code:

(1) "Action," with respect to an act of a trustee, includes a failure to act.

(2) "Beneficiary" means a person that:

(A) Has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

(3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in K.S.A. 58a-405(a), and amendments thereto.

(4) "Conservator" means a person appointed by the court pursuant to K.S.A. 59-3001 et seq., and amendments thereto, to administer the estate of a minor or adult individual.

(5) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(6) "Guardian" means a person appointed by the court pursuant to K.S.A. 59-3001 et seq., and amendments thereto, to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.

(7) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(8) "Jurisdiction," with respect to a geographic area, includes a state or country.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(A) Exercisable by a trustee and limited by an ascertainable standard relating to an individual's health, education, support or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal revenue code of 1986, as in effect on July 1, ~~2006~~ 2022; or

(B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(11) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(12) (A) "Qualified beneficiary" means a beneficiary who, as of the date in question, either is eligible to receive mandatory or discretionary distributions of trust income or principal, or would be so eligible if the trust terminated on that date.

(B) For the purpose of trustee determining "qualified beneficiaries" of a trust in which a beneficial interest is subject to a power of appointment of any nature, the trustee may conclusively presume such power of appointment has not been exercised unless the trustee has been furnished by the powerholder or the legal representative of the powerholder or the powerholder's estate with the original or a copy of an instrument validly exercising such power of appointment, in which event the qualified beneficiaries shall be subsequently determined by giving due consideration to such exercise unless and until the trustee has been given notification in a similar manner of an instrument which validly revokes or modifies such

exercise.

(13) "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

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

(15) "Spendthrift provision" means a term of a trust which restrains either voluntary or involuntary transfer of a beneficiary's interest.

(16) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(17) "Terms of a trust" means:

(A) Except as otherwise provided in subparagraph (B), the manifestation of the settlor's intent regarding a trust's provisions as:

~~(1)~~(i) Expressed in the trust instrument; or

~~(2)~~(ii) established by other evidence that would be admissible in a judicial proceeding; or

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

~~(1)~~(i) A trustee or person holding a power to direct under K.S.A. 58a-808, and amendments thereto, in accordance with applicable law;

~~(2)~~(ii) court order; or

~~(3)~~(iii) a nonjudicial settlement agreement under K.S.A. 58a-111, and amendments thereto.

(18) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(19) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

Sec. 20. K.S.A. 2021 Supp. 58a-105 is hereby amended to read as follows: 58a-105. (a) Except as otherwise provided in the terms of the trust, this code governs the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this code except:

(1) The requirements for creating a trust;

(2) *subject to sections 9, 11 and 12, and amendments thereto*, the duty of a trustee to act in good faith and administer the trust in accordance with K.S.A. 58a-801, and amendments thereto;

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

(4) the power of the court to modify or terminate a trust under K.S.A. 58a-410 through 58a-416, and amendments thereto;

(5) the effect of the rights of creditors to reach a trust as provided in article 5 of chapter 58a of the Kansas Statutes Annotated, and amendments thereto;

(6) the power of the court under K.S.A. 58a-702, and amendments thereto, to require, dispense with, or modify or terminate a bond;

(7) the power of the court under ~~subsection (b) of~~ K.S.A. 58a-708(b), and amendments thereto, to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under K.S.A. 58a-1008, and

amendments thereto;

(9) the rights under K.S.A. 58a-1010 through 58a-1013, and amendments thereto, of a person other than a trustee or beneficiary;

(10) periods of limitation for commencing a judicial proceeding under K.S.A. 58a-604, and amendments thereto;

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

(12) the barring of claims against trusts and trustees under K.S.A. 58a-818, and amendments thereto.

(c) Notwithstanding any provisions of the Kansas uniform trust code to the contrary, any trust created by will and admitted to probate shall be subject to the requirements of chapter 59 of the Kansas Statutes Annotated, *and amendments thereto*.

Sec. 21. K.S.A. 2021 Supp. 58a-603 is hereby amended to read as follows: 58a-603. (a) While a trust is revocable, the duties of the trustee are owed exclusively to the settlor. *While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.*

(b) During the period a power of withdrawal may be exercised, the holder of the power has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

(c) (1) If a settlor of a revocable trust is or becomes an incapacitated person, on petition of the settlor's legal representative, an adult member of the settlor's family or any interested person, including a person interested in the welfare of the settlor, for good cause shown, the court may: Order the trustee to exercise or refrain from exercising the trustee's authority in a manner inconsistent with the trustee's fiduciary responsibilities under the provisions of the trust; remove the trustee; require the trustee to account; and issue such other orders as the court finds will be in the best interests of the settlor.

(2) (A) The court may require any person petitioning for any such order to file a bond in such amount and with such sureties as required by the court to indemnify either the trustee or the trust estate for the expenses, including attorney fees, incurred with respect to such proceeding.

(B) None of the actions described in this section shall be taken by the court until after hearing upon reasonable notice to the trustee, the settlor, and any legal representative of the settlor, such as a conservator or attorney-in-fact under a durable power of attorney authorizing the attorney-in-fact to act on the behalf of the settlor in such matters.

(C) If there is no legal representative of the settlor, the court shall appoint a guardian ad litem to represent the settlor in such proceeding.

(D) In the event of an emergency as determined by the court, the court, without notice, may enter such temporary order as seems proper to the court, but no such temporary order shall be effective for more than 30 days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.

Sec. 22. K.S.A. 58a-703 is hereby amended to read as follows: 58a-703. (a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

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

(c) *Subject to section 12, and amendments thereto*, a cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of

absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

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

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

(g) *Subject to section 12, and amendments thereto*, each trustee shall exercise reasonable care to:

- (1) Prevent a cotrustee from committing a breach of trust; and
- (2) compel a cotrustee to redress a breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent, in writing, at or before the time of the action is not liable for the action.

Sec. 23. K.S.A. 58a-703 and 58a-808 and K.S.A. 2021 Supp. 58a-103, 58a-105 and 58a-603 are hereby repealed.

Sec. 24. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the
SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.