

# **SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE**

**BILL NO.** Senate Bill 1035

**PRINTER NO.** 1358

**AMOUNT**

No Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

January 26, 2022

**PRIME SPONSOR**

Senator Browne

**DESCRIPTION**

Senate Bill 1035 amends Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes by adding numerous definitions applicable to trusts generally and to replace references to “trust instrument” with “terms of a trust” and to add a new Subchapter H.1 to Chapter 77 known as the Directed Trust Act (act).

An advisory committee of the Joint State Government Commission released a report entitled “A Proposed Directed Trust Act with other Amendments for Estates and Trusts.” That report included legislation recommended by the Advisory Committee on Decedents’ Estates Laws. This legislation addresses the Advisory Committee’s concerns and implements several of the recommendations.

The National Conference of Commissioners on Uniform State Laws approved the Uniform Directed Trust Act (UDTA). This legislation is tailored to mirror the UDTA as well as the Uniform Trust Code (UTC). The legislation requires a directed trustee to comply with a powerholder’s exercise, or nonexercise, of a power of direction, and the directed trustee is not liable for doing so.

This legislation references the current “trust instrument” in Chapter 77 of Title 20 as “terms of a trust.” Section 7703 defines “terms of a trust” as either of the following:

- 1) The manifestation of the settlor’s intent expressed in the trust instrument; or
- 2) The terms provided for in the trust document, as established by a trustee or other person, by a court order, by a nonjudicial settlement agreement or rules of construction.

The legislation creates a new Subchapter H.1 (Directed Trusts) known and cited as the Directed Trust Act. The act provides for the following:

- Defines several terms used in the act;
- Clarifies that Subchapter H.1 does not apply to:
  - 1) A power of appointment;

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- 2) A power held by the settlor or a beneficiary to appoint or remove a trustee unless the terms of the trust provide that the power is exercisable;
- 3) A settlor's power to revoke a trust;
- 4) A power of a beneficiary that benefits the beneficiary or a person represented by the beneficiary; or
- 5) A power over a trust that must be held in a nonfiduciary capacity to achieve the settlor's tax objectives.

The provisions of the act apply to trusts whenever created but do not affect decisions or actions that occurred before the effective date of the act. Unless the terms of a trust provide otherwise, a trust director for investments has the following powers:

- 1) To direct the trustee, or veto the trustee's recommendations, as to the investment of the trust's assets and the voting of proxies and the exercise of other voting powers associated with the trust's assets;
- 2) To select, change and determine reasonable compensation of one or more investment advisors or managers and to authorize or engage them to perform any of the investment duties of a trustee or trust director;
- 3) To determine the frequency and methodology for valuing trust assets;
- 4) To exercise or veto the trustee's exercise of any other investment power the trustee has or might have; and
- 5) To perform other acts relating to the investment of the trust's assets as the terms of the trust specify.

The terms of a trust may expressly grant to a trust director powers, alone or together with powers to direct a trustee's action, to modify their terms of a trust. In that event, the trust director is a trust protector.

Senate Bill 1035 provides for limitations on powers, duties and liability of trust directors and directed trustees. Unless the terms of a trust direct otherwise, a directed trustee does not have a duty to monitor a trust director or to inform or advise a settlor, beneficiary, co-trustee or another trust director concerning an instance in which the trustee might have acted differently than a trust director. To the extent, however, a trustee does take any such action, the trustee assumes no liability by doing so. A directed trustee that has reasonable doubt about its duty may petition the court for a declaratory judgment.

The terms of a trust may assign different duties and standards of care to different trustees and, in doing so, may relieve a trustee from liability with respect to a duty assigned to another trustee 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.

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An action against a trust director must be commenced within the same limitation period as an action for breach of trust against a trustee, and a trust director may assert the same defenses that a trustee may assert in an action for breach of trust.

Senate Bill 1035 applies the same rules to a trust director as apply to a trustee with respect to accepting or declining appointment, bonding, compensation, removal and vacancy and appointment. If a trust director does not accept an appointment in writing within 60 days, or there is a vacancy in the office of trust director, the powers and duties of a trustee are determined as if a trust did not provide for a trust director.

A new Section 7785.1 (relating to nonjudicial account settlement) adds a streamlined, non-judicial method for settling trust accounts. A trustee may elect to proceed under this new section to obtain a nonjudicial settlement of account when:

- 1) The trust terminates in whole or in part;
- 2) The trustee ceases or intends to cease to serve for any reason; or
- 3) The trustee seeks discharge for an interim accounting period when the trust is continuing.

The trustee must give reasonable notice of the trustee's request for a nonjudicial settlement of account to:

- 1) Qualified beneficiaries;
- 2) Other beneficiaries who sent the trustee a written request for notice;
- 3) Any person who has the notification rights of a beneficiary; and
- 4) Any co-trustee, trust director or similar fiduciary or successor trustee.

The notice shall provide:

- 1) The reason for providing notice;
- 2) If applicable, the proposed distribution of the net assets including the distributees and proportions to be distributed;
- 3) If applicable, an estimate of anticipated disbursements to be made, including legal fees and trustee fees, if any;
- 4) Trust account statements showing all transactions, the fair market value of all assets and realized and unrealized gains and losses on assets held in the account for 30 months prior to the date a trust terminates, the cessation of the trustee's service or statement of intent to cease to serve, or the end of the interim accounting period, or for the entire term of the trust if the term of the trust is shorter than the 30-month period;
- 5) A statement that the trustee is seeking settlement of the account of the trust including the period of time for which the trustee seeks discharge and clearly stating that certain claims against the trustee will be forever barred if no objections are received;
- 6) The name and mailing address of the trustee; and

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- 7) The name and telephone number of a person who may be contacted for additional information.

If applicable, distributions and expenses from a terminating trust may be held by or on behalf of the trustee until the settlement of account is approved. A person provided notice may object to the settlement of account within 60 days. If an objection is received, the objection may be submitted to the court or may be resolved by nonjudicial settlement agreement. If no timely objections are raised, the settlement of account shall be deemed approved, and any assets held in trust shall be distributed in a reasonable time or shall continue to be administered in trust.

When a settlement of account is approved for a terminated trust or with respect to a trustee who ceased to serve or who has stated an intention to cease to serve, each person who received notice is barred from bringing a claim against the trustee or challenging the distribution to the same extent as if the court had entered a final, unappealable order.

When a settlement of account is approved for a trustee seeking final settlement of an interim trust account, each person who received notice is barred from bringing a claim against the trustee for the period of the interim account to the same extent as if the court had entered a final, unappealable order.

This act shall take effect in 90 days.

## **FISCAL IMPACT:**

According to the Administrative Office of Pennsylvania Courts (AOPC), enactment of this legislation will have no fiscal impact on Commonwealth funds.