

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

672W0445

HOUSE BILL NO. 1087

Introduced by: Representatives Partridge, Gibson, Haugaard, Hunt, Johns, Latterell, Mickelson, Peterson (Kent), Schoenbeck, and Stevens and Senators Rampelberg, Ewing, Hunhoff (Bernie), Omdahl, Peters, Vehle, and White

1 FOR AN ACT ENTITLED, An Act to authorize trust protectors to be a party to a legal action
2 to remove trustees or pursue legal action for and on behalf of trusts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 55-3-20.1 be amended to read as follows:

5 55-3-20.1. In addition to other remedies available by law and procedures or powers set out
6 in a trust instrument, the settlor, or the settlor's agent, a trust protector, a cotrustee, or a qualified
7 beneficiary as defined in § 55-2-13, may request the court to remove a trustee, or a trustee may
8 be removed by the court on the court's own initiative.

9 In addition to the powers otherwise granted the court, the court may remove a trustee if:

- 10 (1) The trustee has committed a serious breach of trust;
- 11 (2) Lack of cooperation among cotrustees substantially impairs the administration of the
12 trust;
- 13 (3) Because of unfitness, unwillingness, persistent failure of the trustee to administer the
14 trust effectively, the court determines that removal of the trustee best serves the



1 interests of the beneficiaries;

2 (4) There has been a substantial change of circumstances or removal is requested by all
3 of the qualified beneficiaries, the court finds that removal of the trustee best serves
4 the interests of all of the beneficiaries and is not inconsistent with a material purpose
5 of the trust, and a suitable cotrustee or successor trustee is available; or

6 (5) If the trustee merges with another institution or the location or place of
7 administration of the trust changes, and the court finds that removal of the trustee
8 best serves the interests of all of the beneficiaries, and a suitable cotrustee or
9 successor trustee is available.

10 Pending a final decision on a request to remove a trustee, the court may order such
11 appropriate relief as may be necessary to protect the trust property or the interests of the
12 beneficiaries.

13 Section 2. That § 15-6-17(A) be amended to read as follows:

14 15-6-17(a). Every action shall be prosecuted in the name of the real party in interest. A
15 personal representative, guardian, conservator, bailee, trustee of an express trust, a trust
16 protector, a party with whom or in whose name a contract has been made for the benefit of
17 another, or a party authorized by statute may sue in ~~his~~ the person's own name without joining
18 ~~with him~~ the party for whose benefit the action is brought; ~~and when.~~ If a statute of the state so
19 provides, an action for the use or benefit of another shall be brought in the name of the state. No
20 action ~~shall~~ may be dismissed on the ground that it is not prosecuted in the name of the real
21 party in interest until a reasonable time has been allowed after objection for ratification of
22 commencement of the action by, or joinder or substitution of, the real party in interest; and ~~such~~
23 the ratification, joinder, or substitution shall have the same effect as if the action had been
24 commenced in the name of the real party in interest.