

TRUST PROVISIONS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kelly B. Miles

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to the power of appointment and enacts the Uniform Directed Trust Act.

Highlighted Provisions:

This bill:

- ▶ addresses compliance to the provisions of the Uniform Directed Trust Act;
- ▶ enacts the Uniform Directed Trust Act, including definitions, general provisions, and governing law;
- ▶ describes the principal place of administration;
- ▶ describes a trust director's powers and limitations;
- ▶ describes the duty and liability of a trust director and directed trustee;
- ▶ describes the duty of a trust director and trustee;
- ▶ describes the application of a directed trust to a cotrustee;
- ▶ describes the limitations and defenses of an action against a trust director;
- ▶ describes jurisdiction over a trust director;
- ▶ describes the office of a trust director;
- ▶ modifies the power of appointment; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **75-7-103**, as enacted by Laws of Utah 2004, Chapter 89

33 **75-7-105**, as last amended by Laws of Utah 2017, Chapter 204

34 **75-7-606**, as enacted by Laws of Utah 2004, Chapter 89

35 **75-7-703**, as enacted by Laws of Utah 2004, Chapter 89

36 **75-10-305**, as enacted by Laws of Utah 2017, Chapter 125

37 ENACTS:

38 **75-12-101**, Utah Code Annotated 1953

39 **75-12-102**, Utah Code Annotated 1953

40 **75-12-103**, Utah Code Annotated 1953

41 **75-12-104**, Utah Code Annotated 1953

42 **75-12-105**, Utah Code Annotated 1953

43 **75-12-106**, Utah Code Annotated 1953

44 **75-12-107**, Utah Code Annotated 1953

45 **75-12-108**, Utah Code Annotated 1953

46 **75-12-109**, Utah Code Annotated 1953

47 **75-12-110**, Utah Code Annotated 1953

48 **75-12-111**, Utah Code Annotated 1953

49 **75-12-112**, Utah Code Annotated 1953

50 **75-12-113**, Utah Code Annotated 1953

51 **75-12-114**, Utah Code Annotated 1953

52 **75-12-115**, Utah Code Annotated 1953

53 **75-12-116**, Utah Code Annotated 1953

54 **75-12-117**, Utah Code Annotated 1953

55 **75-12-118**, Utah Code Annotated 1953



57 *Be it enacted by the Legislature of the state of Utah:*

58 Section 1. Section **75-7-103** is amended to read:

59 **75-7-103. Definitions.**

60 (1) In this chapter:

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

62 (b) "Beneficiary" means a person that:

63 (i) has a present or future beneficial interest in a trust, vested or contingent; or

64 (ii) in a capacity other than that of trustee, holds a power of appointment over trust
65 property.66 (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable
67 purpose described in Subsection [75-7-405\(1\)](#).68 (d) "Environmental law" means a federal, state, or local law, rule, regulation, or
69 ordinance relating to protection of the environment.70 (e) "Interests of the beneficiaries" means the beneficial interests provided in the terms
71 of the trust.

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

73 (g) "Power of withdrawal" means a presently exercisable general power of appointment
74 other than a power exercisable only upon consent of the trustee or a person holding an adverse
75 interest.76 (h) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
77 qualification is determined:

78 (i) is a current distributee or permissible distributee of trust income or principal; or

79 (ii) would be a distributee or permissible distributee of trust income or principal if the
80 trust terminated on that date.

81 (i) "Resident estate" or "resident trust" means:

82 (i) an estate of a decedent who at death was domiciled in this state;

83 (ii) a trust, or a portion of a trust, consisting of property transferred by will of a
84 decedent who at his death was domiciled in this state; or

85 (iii) a trust administered in this state.

86 (j) "Revocable," as applied to a trust, means revocable by the settlor without the
87 consent of the trustee or a person holding an adverse interest.88 (k) "Settlor" means a person, including a testator, who creates, or contributes property
89 to, a trust. If more than one person creates or contributes property to a trust, each person is a

90 settlor of the portion of the trust property attributable to that person's contribution except to the
91 extent another person has the power to revoke or withdraw that portion.

92 (l) "Spendthrift provision" means a term of a trust which restrains both voluntary and
93 involuntary transfer or encumbrance of a beneficiary's interest.

94 (m) "Terms of a trust" means:

95 (i) subject to Subsection (1)(m)(ii), the manifestation of the settlor's intent regarding a
96 trust's provisions as:

97 (A) expressed in the trust instrument; or [~~as may be~~]

98 (B) established by other evidence that would be admissible in a judicial proceeding[~~;~~];

99 or

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

101 (A) a trustee or other person in accordance with applicable law;

102 (B) a court order; or

103 (C) a nonjudicial settlement agreement under Section 75-7-110.

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

106 (2) Terms not specifically defined in this section have the meanings provided in
107 Section 75-1-201.

108 Section 2. Section 75-7-105 is amended to read:

109 **75-7-105. Default and mandatory rules.**

110 (1) Except as otherwise provided in the terms of the trust, this chapter governs the
111 duties and powers of a trustee, relations among trustees, and the rights and interests of a
112 beneficiary.

113 (2) Except as specifically provided in this chapter, the terms of a trust prevail over any
114 provision of this chapter except:

115 (a) the requirements for creating a trust;

116 (b) subject to Sections 75-12-109, 75-12-111, and 75-12-112, the duty of a trustee to
117 act in good faith and in accordance with the purposes of the trust;

118 (c) the requirement that a trust and [~~its terms~~] the terms of the trust be for the benefit of
119 [~~its~~] the trust's beneficiaries;

120 (d) the power of the court to modify or terminate a trust under Sections 75-7-410

121 through 75-7-416;

122 (e) the effect of a spendthrift provision, Section 25-6-502, and the rights of certain
123 creditors and assignees to reach a trust as provided in Part 5, Creditor's Claims - Spendthrift
124 and Discretionary Trusts;

125 (f) the power of the court under Section 75-7-702 to require, dispense with, or modify
126 or terminate a bond;

127 (g) the effect of an exculpatory term under Section 75-7-1008;

128 (h) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a
129 trustee or beneficiary;

130 (i) periods of limitation for commencing a judicial proceeding; and

131 (j) the subject-matter jurisdiction of the court and venue for commencing a proceeding
132 as provided in Sections 75-7-203 and 75-7-205.

133 Section 3. Section 75-7-606 is amended to read:

134 **75-7-606. Settlor's powers -- Powers of withdrawal.**

135 (1) (a) To the extent a trust is revocable by a settlor, a trustee may follow a direction of
136 the settlor that is contrary to the terms of the trust.

137 (b) To the extent a trust is revocable by a settlor in conjunction with a person other
138 than a trustee or a person holding an adverse interest, the trustee may follow a direction from
139 the settlor and the other person holding the power to revoke even if the direction is contrary to
140 the terms of the trust.

141 [~~(1)~~] (2) [~~While~~] To the extent a trust is revocable and the settlor has capacity to revoke
142 the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are
143 owed exclusively to, the settlor.

144 [~~(2)~~] (3) If a revocable trust has more than one settlor, the duties of the trustee are owed
145 to all of the settlors having capacity to revoke the trust.

146 [~~(3)~~] (4) During the period the power may be exercised, the holder of a power of
147 withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the
148 property subject to the power.

149 Section 4. Section 75-7-703 is amended to read:

150 **75-7-703. Cotrustees.**

151 (1) Cotrustees who are unable to reach a unanimous decision may act by majority

152 decision.

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

155 (3) ~~[A]~~ Subject to Section 75-12-112, a cotrustee must participate in the performance
156 of a trustee's function unless the cotrustee is unavailable to perform the function because of
157 absence, illness, disqualification under other law, or other temporary incapacity, or the
158 cotrustee has properly delegated the performance of the function to another trustee.

159 (4) If a cotrustee is unavailable to perform duties because of absence, illness,
160 disqualification under other law, or other temporary incapacity, or if a cotrustee fails or refuses
161 to act after reasonable notice, and prompt action is necessary to achieve the purposes of the
162 trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the
163 remaining cotrustees may act for the trust.

164 (5) A trustee may not delegate to a cotrustee the performance of a function the settlor
165 intended the trustees to perform jointly as determined from the terms of the trust. If one of the
166 cotrustees is a regulated financial service institution qualified to do trust business in this state
167 and the remaining cotrustees are individuals, a delegation by the individual cotrustees to the
168 regulated financial service institution of the performance of trust investment functions shall be
169 presumed to be in accordance with the settlor's intent unless the terms of the trust specifically
170 provide otherwise. Unless a delegation was irrevocable, a trustee may revoke a delegation
171 previously made.

172 (6) Except as otherwise provided in Subsection (7), a trustee who does not join in an
173 action of another trustee is not liable for the action.

174 (7) ~~[Each]~~ Subject to Section 75-12-112, ~~each~~ trustee shall exercise reasonable care to:

175 (a) prevent a cotrustee from committing a serious breach of trust; and

176 (b) compel a cotrustee to redress a serious breach of trust.

177 (8) A dissenting trustee who joins in an action at the direction of the majority of the
178 trustees and who notified any cotrustee of the dissent at or before the time of the action is not
179 liable for the action unless the action is a serious breach of trust.

180 Section 5. Section **75-10-305** is amended to read:

181 **75-10-305. Permissible appointment.**

182 (1) A powerholder of a general power of appointment that permits appointment to the

183 powerholder or the powerholder's estate may make any appointment, including an appointment
 184 in trust or creating a new power of appointment, that the powerholder could make in disposing
 185 of the powerholder's own property.

186 (2) A powerholder of a general power of appointment that permits appointment only to
 187 the creditors of the powerholder or of the powerholder's estate may appoint only to those
 188 creditors.

189 (3) Unless the terms of the instrument creating a power of appointment manifest a
 190 contrary intent, the powerholder of a nongeneral power may:

191 (a) make an appointment in any form, including an appointment in trust, in favor of a
 192 permissible appointee;

193 (b) create a general power in a permissible appointee; [or]

194 (c) create a nongeneral power in any person to appoint one or more of the permissible
 195 appointees of the original nongeneral power[-]; or

196 (d) create a nongeneral power in a permissible appointee to appoint one or more
 197 persons if the permissible appointees of the new nongeneral power include the permissible
 198 appointees of the original nongeneral power.

199 Section 6. Section **75-12-101** is enacted to read:

200 **CHAPTER 12. UNIFORM DIRECTED TRUST ACT**

201 **75-12-101. Title.**

202 This chapter is known as the "Uniform Directed Trust Act."

203 Section 7. Section **75-12-102** is enacted to read:

204 **75-12-102. Definitions.**

205 As used in this chapter:

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

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

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

213 (4) "Person" means an individual, estate, business or nonprofit entity, public

214 corporation, government or governmental subdivision, agency, instrumentality, or other legal
215 entity.

216 (5) (a) "Power of direction" means a power over a trust granted to a person by the
217 terms of the trust to the extent the power is exercisable while the person is not serving as a
218 trustee.

219 (b) "Power of direction" includes a power over the investment, management, or
220 distribution of trust property or other matters of trust administration.

221 (c) "Power of direction" does not include the powers described in Subsection
222 75-12-105(2).

223 (6) "Settlor" means the same as that term is defined in Section 75-7-103.

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

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

228 (a) subject to Subsection (8)(b), the manifestation of the settlor's intent regarding a
229 trust's provisions as:

230 (i) expressed in the trust instrument; or

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

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

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

234 (ii) a court order; or

235 (iii) a nonjudicial settlement agreement under Section 75-7-110.

236 (9) "Trust director" means a person that is granted a power of direction by the terms of
237 a trust to the extent the power is exercisable while the person is not serving as a trustee,
238 regardless of whether:

239 (a) the terms of the trust refer to the person as a trust director; or

240 (b) the person is a beneficiary or settlor of the trust.

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

242 Section 8. Section 75-12-103 is enacted to read:

243 **75-12-103. Application -- Principal place of administration.**

244 (1) This chapter applies to a trust, whenever created, that has the trust's principal place

245 of administration in this state, subject to the following rules:

246 (a) if the trust was created before May 14, 2019, this chapter applies only to a decision
247 or action occurring on or after May 14, 2019; and

248 (b) if the principal place of administration of the trust is changed to this state on or
249 after May 14, 2019, this chapter applies only to a decision or action occurring on or after the
250 date of the change.

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

254 (a) a trustee's principal place of business is located in, or a trustee is a resident of, the
255 designated jurisdiction;

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

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

259 Section 9. Section **75-12-104** is enacted to read:

260 **75-12-104. Common law and principles of equity.**

261 The common law and principles of equity supplement this chapter, except to the extent
262 modified by this chapter or the law of this state other than this chapter.

263 Section 10. Section **75-12-105** is enacted to read:

264 **75-12-105. Exclusions.**

265 (1) As used in this section, "power of appointment" means a power that enables a
266 person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in, or
267 another power of appointment over, trust property.

268 (2) This chapter does not apply to:

269 (a) a power of appointment;

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

271 (c) a power of a settlor over a trust to the extent the settlor has a power to revoke the
272 trust;

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

275 (i) the beneficiary; or

276 (ii) another beneficiary represented by the beneficiary under Sections 75-7-301 through
277 75-7-305 with respect to the exercise or nonexercise of the power; or

278 (e) power over a trust if:

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

280 (ii) the power must be held in a nonfiduciary capacity to achieve the settlor's tax
281 objectives under the Internal Revenue Code of 1986, as amended, and any related Internal
282 Revenue Service regulations.

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

287 Section 11. Section **75-12-106** is enacted to read:

288 **75-12-106. Powers of trust director.**

289 (1) Subject to Section 75-12-107, the terms of a trust may grant a power of direction to
290 a trust director.

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

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

294 (b) trust directors with joint powers shall act by majority decision.

295 Section 12. Section **75-12-107** is enacted to read:

296 **75-12-107. Limitations on trust director.**

297 A trust director is subject to the same rules as a trustee in a like position and under
298 similar circumstances in the exercise or nonexercise of a power of direction or further power
299 under Subsection 75-12-106(2)(a) regarding:

300 (1) a payback provision in the terms of a trust necessary to comply with the Medicaid
301 reimbursement requirements in Section 1917 of the Social Security Act, 42 U.S.C. Sec.
302 1396p(d)(4)(A), as amended, and any related regulations; and

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

305 Section 13. Section **75-12-108** is enacted to read:

306 **75-12-108. Duty and liability of trust director.**

307 (1) Subject to Subsection (2), with respect to a power of direction or further power
308 under Subsection 75-12-106(2)(a):

309 (a) a trust director has the same fiduciary duty and liability in the exercise or
310 nonexercise of the power:

311 (i) if the power is held individually, as a sole trustee in a like position and under similar
312 circumstances; or

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

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

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

322 (3) The terms of the a trust may impose a duty or liability on a trust director in addition
323 to the duties and liability described in this section.

324 Section 14. Section **75-12-109** is enacted to read:

325 **75-12-109. Duty and liability of directed trustee.**

326 (1) Subject to Subsection (2), a directed trustee shall take reasonable action to comply
327 with a trust director's exercise or nonexercise of a power of direction or further power under
328 Subsection 75-12-106(2)(a), and the trustee is not liable for the action.

329 (2) A directed trustee may not comply with a trust director's exercise or nonexercise of
330 a power of direction or further power under Subsection 75-12-106(2)(a) to the extent that by
331 complying the trustee would engage in willful misconduct.

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

334 (a) the breach involved the trustee's or other director's willful misconduct;

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

337 (c) at the time of the release, the director did not know the material facts relating to the

338 breach.

339 (4) A directed trustee that has reasonable doubt about the directed trustee's duty under
340 this section may petition the court for instructions.

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

343 Section 15. Section **75-12-110** is enacted to read:

344 **75-12-110. Duty to provide information to trust director or trustee.**

345 (1) Subject to Section [75-12-111](#), a trustee shall provide information to a trust director
346 to the extent the information is reasonably related both to:

347 (a) the powers or duties of the trustee; and

348 (b) the powers or duties of the director.

349 (2) Subject to Section [75-12-111](#), a trust director shall provide information to a trustee
350 or another trust director to the extent the information is reasonably related both to:

351 (a) the powers or duties of the director; and

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

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

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

359 Section 16. Section **75-12-111** is enacted to read:

360 **75-12-111. No duty to monitor, inform, or advise.**

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

362 (a) a trustee does not have a duty to:

363 (i) monitor a trust director; or

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

366 (b) by taking an action described in Subsection (1)(a), a trustee does not assume the
367 duty excluded under Subsection (1)(a).

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

369 (a) a trust director does not have a duty to:
370 (i) monitor a trustee or another trust director; or
371 (ii) inform or give advice to a settlor, beneficiary, trustee, or another trust director
372 concerning an instance in which the director might have acted differently than a trustee or
373 another trust director; and

374 (b) by taking an action described in Subsection (1)(a), a trust director does not assume
375 the duty excluded under Subsection (1)(a).

376 Section 17. Section **75-12-112** is enacted to read:

377 **75-12-112. Application to cotrustee.**

378 The terms of a trust may relieve a cotrustee from duty and liability with respect to
379 another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent
380 that, in a directed trust, a directed trustee is relieved from duty and liability with respect to a
381 trust director's power of direction under Sections [75-12-109](#) through [75-12-111](#).

382 Section 18. Section **75-12-113** is enacted to read:

383 **75-12-113. Limitation of action against trust director.**

384 (1) An action against a trust director for a breach of trust must be commenced within
385 the same limitation period as described in Section [75-7-1005](#) for an action for a breach of trust
386 against a trustee in a like position and under similar circumstances.

387 (2) A report or accounting has the same effect on the limitation period for an action
388 against a trust director for breach of trust that the report or accounting would have as described
389 in Section [75-7-1005](#) in an action for a breach of trust against a trustee in a like position and
390 under similar circumstances.

391 Section 19. Section **75-12-114** is enacted to read:

392 **75-12-114. Defenses in action against trust director.**

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

396 Section 20. Section **75-12-115** is enacted to read:

397 **75-12-115. Jurisdiction over trust director.**

398 (1) By accepting appointment as a trust director of a trust subject to this chapter, the
399 director submits to personal jurisdiction of the courts of this state regarding any matter related

400 to a power or duty of the director.

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

403 Section 21. Section **75-12-116** is enacted to read:

404 **75-12-116. Office of trust director.**

405 Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a
406 trust director regarding the following matters:

407 (1) acceptance under Section [75-7-701](#);

408 (2) giving of bond to secure performance under Section [75-7-702](#);

409 (3) reasonable compensation under Section [75-7-708](#);

410 (4) resignation under Section [75-7-705](#);

411 (5) removal under Section [75-7-706](#); and

412 (6) vacancy and appointment of successor under Section [75-7-704](#).

413 Section 22. Section **75-12-117** is enacted to read:

414 **75-12-117. Uniformity of application and construction.**

415 In applying and construing this chapter, consideration must be given to the need to
416 promote uniformity of the law with respect to its subject matter among states that enact it.

417 Section 23. Section **75-12-118** is enacted to read:

418 **75-12-118. Electronic records and signatures.**

419 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and

420 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede

421 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the

422 notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).