

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 59th Legislature (2024)

4 HOUSE BILL 2978

By: Kane of the House

5 and

6 **Daniels** of the Senate

7
8 AS INTRODUCED

9 An Act relating to trusts; enacting the Oklahoma
10 Uniform Directed Trust Act of 2024; defining terms;
11 providing for applicability; providing for principal
12 place of administration; providing for when common
13 law and principals of equity control; providing for
14 exclusions; providing the powers of a trust director;
15 providing limitations on trust director; providing
16 duties and liabilities of a trust director; providing
17 duties and liabilities of directed trustees;
18 providing a duty to provide certain information to a
19 trust director or trustee; providing that there is no
20 duty to monitor, inform, or advise; providing
21 application to co-trustee; providing limitation of
22 action against a trust director; providing defenses
23 for a suit against a trust director; providing
24 jurisdiction over a trust director; providing that
unless the term of a trust provides otherwise, the
rules applicable to a trustee shall apply to a trust
director in certain matters; providing uniformity of
application and construction; providing relation to
electronic signature laws; providing for
codification; and providing an effective date.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1110 of Title 60, unless there
24 is created a duplication in numbering, reads as follows:

1 This act shall be known and cited as the "Oklahoma Uniform
2 Directed Trust Act of 2024".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1111 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 As used in this act:

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

11 2. "Directed trust" means a trust for which the terms of the
12 trust grant a power of direction;

13 3. "Directed trustee" means a trustee that is subject to a
14 trust director's power of direction;

15 4. "Person" means an individual, estate, business or nonprofit
16 entity, public corporation, government or governmental subdivision,
17 agency, or instrumentality, or other legal entity;

18 5. "Power of direction" means a power over a trust granted to a
19 person by the terms of the trust to the extent the power is
20 exercisable while the person is not serving as a trustee. The term
21 includes a power over the investment, management, or distribution of
22 trust property or other matters of trust administration. The term
23 excludes the powers described in subsection B of Section 5 of this
24 act;

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

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

11 8. "Terms of a trust" means:

12 a. except as otherwise provided in subparagraph b of this
13 paragraph, the manifestation of the settlor's intent
14 regarding a trust's provisions as:

15 (1) expressed in the trust instrument, or

16 (2) established by other evidence that would be
17 admissible in a judicial proceeding, or

18 b. the trust's provisions as established, determined, or
19 amended by:

20 (1) a trustee or trust director in accordance with
21 applicable law, or

22 (2) a court order;

23 9. "Trust director" means a person that is granted a power of
24 direction by the terms of a trust to the extent the power is

1 exercisable while the person is not serving as a trustee. The
2 person is a trust director whether or not the terms of the trust
3 refer to the person as a trust director and whether or not the
4 person is a beneficiary or settlor of the trust;

5 10. "Trustee" includes an original, additional, and successor
6 trustee, and a co-trustee.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1112 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 A. This act applies to a trust, whenever created, that has its
11 principal place of administration in this state, subject to the
12 following rules:

13 1. If the trust was created before the effective date of this
14 act, this act applies only to a decision or action occurring on or
15 after the effective date of this act;

16 2. If the principal place of administration of the trust is
17 changed to this state on or after the effective date of this act,
18 this act applies only to a decision or action occurring on or after
19 the date of the change.

20 B. Without precluding other means to establish a sufficient
21 connection with the designated jurisdiction in a directed trust, the
22 terms of the trust which designate the principal place of
23 administration of the trust are valid and controlling if:

24

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

3 2. A trust director's principal place of business is located in
4 or a trust director is a resident of the designated jurisdiction; or

5 3. All or part of the administration occurs in the designated
6 jurisdiction.

7 SECTION 4. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1113 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 The common law and principles of equity supplement this act,
11 except to the extent modified by this act or law of this state other
12 than this act.

13 SECTION 5. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1114 of Title 60, unless there
15 is created a duplication in numbering, reads as follows:

16 A. In this section, "power of appointment" means a power that
17 enables a person acting in a nonfiduciary capacity to designate a
18 recipient of an ownership interest in or another power of
19 appointment over trust property.

20 B. This act does not apply to a:

21 1. Power of appointment;

22 2. Power to appoint or remove a trustee or trust director;

23 3. Power of a settlor over a trust to the extent the settlor
24 has a power to revoke the trust;

1 4. Power of a beneficiary over a trust to the extent the
2 exercise or nonexercise of the power affects the beneficial interest
3 of:

- 4 a. the beneficiary, or
- 5 b. another beneficiary represented by the beneficiary
6 with respect to the exercise or nonexercise of the
7 power; or

8 5. Power over a trust, if:

- 9 a. the terms of the trust provide that the power is held
10 in a nonfiduciary capacity, and
- 11 b. the power must be held in a nonfiduciary capacity to
12 achieve the settlor's tax objectives under the United
13 States Internal Revenue Code of 1986, as amended, and
14 regulations issued thereunder, as amended.

15 C. Unless the terms of a trust provide otherwise, a power
16 granted to a person to designate a recipient of an ownership
17 interest in or power of appointment over trust property which is
18 exercisable while the person is not serving as a trustee is a power
19 of appointment and not a power of direction.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1115 of Title 60, unless there
22 is created a duplication in numbering, reads as follows:

23 A. Subject to Section 7 of this act, the terms of a trust may
24 grant a power of direction to a trust director.

1 B. Unless the terms of a trust provide otherwise:

2 1. A trust director may exercise any further power appropriate
3 to the exercise or nonexercise of a power of direction granted to
4 the director under subsection A of this section; and

5 2. Trust directors with joint powers must act by majority
6 decision.

7 SECTION 7. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1116 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 A trust director is subject to the same rules as a trustee in a
11 like position and under similar circumstances in the exercise or
12 nonexercise of a power of direction or further power under paragraph
13 1 of subsection B of Section 6 of this act regarding:

14 1. A payback provision in the terms of a trust necessary to
15 comply with the reimbursement requirements of Medicaid law in
16 Section 1917 of the Social Security Act, 42 U.S.C., Section
17 1396p(d)(4)(A), as amended, and regulations issued thereunder, as
18 amended; and

19 2. A charitable interest in the trust, including notice
20 regarding the interest to the Attorney General.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1117 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. Subject to subsection B of this section, with respect to a
2 power of direction or further power under paragraph 1 of subsection
3 B of Section 6 of this act:

4 1. A trust director has the same fiduciary duty and liability
5 in the exercise or nonexercise of the power:

- 6 a. if the power is held individually, as a sole trustee
7 in a like position and under similar circumstances, or
- 8 b. if the power is held jointly with a trustee or another
9 trust director, as a co-trustee in a like position and
10 under similar circumstances; and

11 2. The terms of the trust may vary the director's duty or
12 liability to the same extent the terms of the trust could vary the
13 duty or liability of a trustee in a like position and under similar
14 circumstances.

15 B. Unless the terms of a trust provide otherwise, if a trust
16 director is licensed, certified, or otherwise authorized or
17 permitted by law other than this act to provide health care in the
18 ordinary course of the director's business or practice of a
19 profession, to the extent the director acts in that capacity, the
20 director has no duty or liability under this act.

21 C. The terms of a trust may impose a duty or liability on a
22 trust director in addition to the duties and liabilities under this
23 section.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1118 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Subject to subsection B of this section, a directed trustee
5 shall take reasonable action to comply with a trust director's
6 exercise or nonexercise of a power of direction or further power
7 under paragraph 1 of subsection B of Section 6 of this act, and the
8 trustee is not liable for the action.

9 B. A directed trustee must not comply with a trust director's
10 exercise or nonexercise of a power of direction or further power
11 under paragraph 1 of subsection B of Section 6 of this act to the
12 extent that by complying the trustee would engage in willful
13 misconduct.

14 C. An exercise of a power of direction under which a trust
15 director may release a trustee or another trust director from
16 liability for breach of trust is not effective, if:

17 1. The breach involved the trustee's or other director's
18 willful misconduct;

19 2. The release was induced by improper conduct of the trustee
20 or other director in procuring the release; or

21 3. At the time of the release, the director did not know the
22 material facts relating to the breach.

23 D. A directed trustee that has reasonable doubt about its duty
24 under this section may petition the district court for instructions.

1 E. The terms of a trust may impose a duty or liability on a
2 directed trustee in addition to the duties and liabilities under
3 this section.

4 SECTION 10. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1119 of Title 60, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Subject to Section 11 of this act, a trustee shall provide
8 information to a trust director to the extent the information is
9 reasonably related both to:

- 10 1. The powers or duties of the trustee; and
- 11 2. The powers or duties of the director.

12 B. Subject to Section 11 of this act, a trust director shall
13 provide information to a trustee or another trust director to the
14 extent the information is reasonably related both to:

- 15 1. The powers or duties of the director; and
- 16 2. The powers or duties of the trustee or other director.

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

21 D. A trust director that acts in reliance on information
22 provided by a trustee or another trust director is not liable for a
23 breach of trust to the extent the breach resulted from the reliance,
24

1 unless by so acting, the trust director engages in willful
2 misconduct.

3 SECTION 11. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1120 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Unless the terms of a trust provide otherwise:

7 1. A trustee does not have a duty to:

8 a. monitor a trust director, or

9 b. inform or give advice to a settlor, beneficiary,
10 trustee, or trust director concerning an instance in
11 which the trustee might have acted differently than
12 the director; and

13 2. By taking an action described in paragraph 1 of subsection A
14 of this section trustee does not assume the duty excluded by
15 paragraph 1 of subsection A of this section.

16 B. Unless the terms of a trust provide otherwise:

17 1. A trust director does not have a duty to:

18 a. monitor a trustee or another trust director, or

19 b. inform or give advice to a settlor, beneficiary,
20 trustee, or another trust director concerning an
21 instance in which the director might have acted
22 differently than a trustee or another trust director;
23 and

24

1 2. By taking an action described in paragraph 1 of subsection B
2 of this section, a trust director does not assume the duty excluded
3 by paragraph 1 of subsection B of this section.

4 SECTION 12. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1121 of Title 60, unless there
6 is created a duplication in numbering, reads as follows:

7 The terms of a trust may relieve a co-trustee from duty and
8 liability with respect to another co-trustee's exercise or
9 nonexercise of a power of the other co-trustee to the same extent
10 that in a directed trust a directed trustee is relieved from duty
11 and liability with respect to a trust director's power of direction
12 under Sections 9 through 11 of this act.

13 SECTION 13. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1122 of Title 60, unless there
15 is created a duplication in numbering, reads as follows:

16 A. An action against a trust director for breach of trust must
17 be commenced within the same limitation period for an action for
18 breach of trust against a trustee in a like position and under
19 similar circumstances.

20 B. 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 in an action for breach of
23 trust against a trustee in a like position and under similar
24 circumstances.

1 SECTION 14. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1123 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 In an action against a trust director for breach of trust, the
5 director may assert the same defenses a trustee in a like position
6 and under similar circumstances could assert in an action for breach
7 of trust against the trustee.

8 SECTION 15. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1124 of Title 60, unless there
10 is created a duplication in numbering, reads as follows:

11 A. By accepting appointment as a trust director of a trust
12 subject to this act, the director submits to personal jurisdiction
13 of the courts of this state regarding any matter related to a power
14 or duty of the director.

15 B. This section does not preclude other methods of obtaining
16 jurisdiction over a trust director.

17 SECTION 16. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1125 of Title 60, unless there
19 is created a duplication in numbering, reads as follows:

20 Unless the terms of a trust provide otherwise, the rules
21 applicable to a trustee apply to a trust director regarding the
22 following matters:

- 23 1. Acceptance;
- 24 2. Giving of bond to secure performance;

- 1 3. Reasonable compensation;
- 2 4. Resignation;
- 3 5. Removal; and
- 4 6. Vacancy and appointment of a successor.

5 SECTION 17. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1126 of Title 60, unless there
7 is created a duplication in numbering, reads as follows:

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

11 SECTION 18. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1127 of Title 60, unless there
13 is created a duplication in numbering, reads as follows:

14 This act modifies, limits, or supersedes the Electronic
15 Signatures in Global and National Commerce Act, 15 U.S.C., Section
16 7001 et seq., but does not modify, limit, or supersede Section
17 101(c) of that act, 15 U.S.C., Section 7001(c), or authorize
18 electronic delivery of any of the notices described in Section
19 103(b) of that act, 15 U.S.C., Section 7003(b).

20 SECTION 19. This act shall become effective November 1, 2024.

21
22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
23 02/22/2024 - DO PASS, As Coauthored.