

---

**SUBSTITUTE SENATE BILL 6029**

---

**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Pedersen and Padden; by request of Uniform Law Commission)

1 AN ACT Relating to the uniform directed trust act; adding a new  
2 chapter to Title 11 RCW; repealing RCW 11.98A.010, 11.98A.020,  
3 11.98A.030, 11.98A.040, 11.98A.050, 11.98A.060, 11.98A.070,  
4 11.98A.080, 11.98A.090, 11.98A.100, 11.98A.110, 11.98A.120, and  
5 11.98A.900; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be known and  
8 cited as the uniform directed trust act.

9 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
10 section apply throughout this chapter unless the context clearly  
11 requires otherwise.

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

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

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

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

4 (5) "Power of direction" means a power over a trust granted to a  
5 person by the terms of the trust to the extent the power is  
6 exercisable while the person is not serving as a trustee. The term  
7 includes a power over the investment, management, or distribution of  
8 trust property or other matters of trust administration. The term  
9 excludes the powers described in section 5(2) of this act.

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

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

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

21 (a) Except as otherwise provided in (b) of this subsection, the  
22 manifestation of the settlor's intent regarding a trust's provisions  
23 as:

24 (i) Expressed in the trust instrument; or

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

27 (b) The trust's provisions as established, determined, or amended  
28 by:

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

31 (ii) Court order; or

32 (iii) A nonjudicial settlement agreement under chapter 11.96A  
33 RCW.

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

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

3 NEW SECTION. **Sec. 3.** APPLICATION—PRINCIPAL PLACE OF  
4 ADMINISTRATION. (1) This chapter applies to a trust, whenever  
5 created, that has its principal place of administration in this  
6 state, subject to the following rules:

7 (a) If the trust was created before the effective date of this  
8 section, this chapter applies only to a decision or action occurring  
9 on or after the effective date of this section.

10 (b) If the principal place of administration of the trust is  
11 changed to this state on or after the effective date of this section,  
12 this chapter applies only to a decision or action occurring on or  
13 after the date of the change.

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

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

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

22 (c) All or part of the administration occurs in the designated  
23 jurisdiction.

24 NEW SECTION. **Sec. 4.** COMMON LAW AND PRINCIPLES OF EQUITY. The  
25 common law and principles of equity supplement this chapter, except  
26 to the extent modified by this chapter or law of this state other  
27 than this chapter.

28 NEW SECTION. **Sec. 5.** EXCLUSIONS. (1) In this section, "power of  
29 appointment" means a power that enables a person acting in a  
30 nonfiduciary capacity to designate a recipient of an ownership  
31 interest in or another power of appointment over trust property.

32 (2) This chapter does not apply to a:

33 (a) Power of appointment;

34 (b) Power to appoint or remove a trustee or trust director;

35 (c) Power of a settlor over a trust to the extent the settlor has  
36 a power to revoke the trust;

1 (d) 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 (i) The beneficiary; or

5 (ii) Another beneficiary represented by the beneficiary with  
6 respect to the exercise or nonexercise of the power; or

7 (e) Power over a trust if:

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

10 (ii) The power must be held in a nonfiduciary capacity to achieve  
11 the settlor's tax objectives under the federal internal revenue code  
12 of 1986, as amended, as of the effective date of this section.

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

18 NEW SECTION. **Sec. 6.** POWERS OF TRUST DIRECTOR. (1) Subject to  
19 section 7 of this act, the terms of a trust may grant a power of  
20 direction to a trust director.

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

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

25 (b) Trust directors with joint powers must act by majority  
26 decision.

27 NEW SECTION. **Sec. 7.** LIMITATIONS ON TRUST DIRECTOR. A trust  
28 director is subject to the same rules as a trustee in a like position  
29 and under similar circumstances in the exercise or nonexercise of a  
30 power of direction or further power under section 6(2)(a) of this act  
31 regarding:

32 (1) A payback provision in the terms of a trust necessary to  
33 comply with the reimbursement requirements of medicaid law in section  
34 1917 of the social security act, 42 U.S.C. Sec. 1396p(d)(4)(A), as  
35 amended, as of the effective date of this section; and

36 (2) A charitable interest in the trust.

1        NEW SECTION.    **Sec. 8.**    DUTY AND LIABILITY OF TRUST DIRECTOR. (1)

2    Subject to subsection (2) of this section, with respect to a power of  
3    direction or further power under section 6(2)(a) of this act:

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

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

8        (ii) If the power is held jointly with a trustee or another trust  
9    director, as a cotrustee in a like position and under similar  
10   circumstances; and

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

21       (3) 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.

24       NEW SECTION.    **Sec. 9.**    DUTY AND LIABILITY OF DIRECTED TRUSTEE.

25   (1) Subject to subsection (2) of this section, a directed trustee  
26   shall take reasonable action to comply with a trust director's  
27   exercise or nonexercise of a power of direction or further power  
28   under section 6(2)(a) of this act, and the trustee is not liable for  
29   the action.

30       (2) A directed trustee must not comply with a trust director's  
31   exercise or nonexercise of a power of direction or further power  
32   under section 6(2)(a) of this act to the extent that by complying the  
33   trustee would engage in willful misconduct.

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

37       (a) The breach involved the trustee's or other director's willful  
38   misconduct;

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

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

5 (4) A directed trustee that has reasonable doubt about its duty  
6 under this section may petition the superior court for instructions  
7 in the county where venue lies for the trust under RCW 11.96A.050.

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

11 NEW SECTION. **Sec. 10.** DUTY TO PROVIDE INFORMATION TO TRUST  
12 DIRECTOR OR TRUSTEE. (1) Subject to section 11 of this act, a trustee  
13 shall provide information to a trust director to the extent the  
14 information is reasonably related both to:

15 (a) The powers or duties of the trustee; and

16 (b) The powers or duties of the director.

17 (2) Subject to section 11 of this act, a trust director shall  
18 provide information to a trustee or another trust director to the  
19 extent the information is reasonably related both to:

20 (a) The powers or duties of the director; and

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

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

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

30 NEW SECTION. **Sec. 11.** NO DUTY TO MONITOR, INFORM, OR ADVISE.

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

32 (a) A trustee does not have a duty to:

33 (i) Monitor a trust director; or

34 (ii) Inform or give advice to a settlor, beneficiary, trustee, or  
35 trust director concerning an instance in which the trustee might have  
36 acted differently than the director; and

37 (b) By taking an action described in (a) of this subsection, a  
38 trustee does not assume the duty excluded by (a) of this subsection.

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

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

3 (i) Monitor a trustee or another trust director; or

4 (ii) Inform or give advice to a settlor, beneficiary, trustee, or  
5 another trust director concerning an instance in which the director  
6 might have acted differently than a trustee or another trust  
7 director; and

8 (b) By taking an action described in (a) of this subsection, a  
9 trust director does not assume the duty excluded by (a) of this  
10 subsection.

11 NEW SECTION. **Sec. 12.** APPLICATION TO COTRUSTEE. The terms of a  
12 trust may relieve a cotrustee from duty and liability with respect to  
13 another cotrustee's exercise or nonexercise of a power of the other  
14 cotrustee to the same extent that in a directed trust a directed  
15 trustee is relieved from duty and liability with respect to a trust  
16 director's power of direction under sections 9 through 11 of this  
17 act.

18 NEW SECTION. **Sec. 13.** LIMITATION OF ACTION AGAINST TRUST  
19 DIRECTOR. (1) An action against a trust director for breach of trust  
20 must be commenced within the same limitation period under RCW  
21 11.96A.070 as for an action for breach of trust against a trustee in  
22 a like position and under similar circumstances.

23 (2) A report or accounting has the same effect on the limitation  
24 period for an action against a trust director for breach of trust  
25 that the report or accounting would have under RCW 11.96A.070 in an  
26 action for breach of trust against a trustee in a like position and  
27 under similar circumstances.

28 NEW SECTION. **Sec. 14.** DEFENSES IN ACTION AGAINST TRUST  
29 DIRECTOR. In an action against a trust director for breach of trust,  
30 the director may assert the same defenses a trustee in a like  
31 position and under similar circumstances could assert in an action  
32 for breach of trust against the trustee.

33 NEW SECTION. **Sec. 15.** JURISDICTION OVER TRUST DIRECTOR. (1) By  
34 accepting appointment as a trust director of a trust subject to this  
35 chapter, the director submits to personal jurisdiction of the courts

1 of this state regarding any matter related to a power or duty of the  
2 director.

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

5 NEW SECTION. **Sec. 16.** OFFICE OF TRUST DIRECTOR. Unless the  
6 terms of a trust provide otherwise, the rules applicable to a trustee  
7 apply to a trust director regarding the following matters:

- 8 (1) Acceptance;
- 9 (2) Giving of bond to secure performance;
- 10 (3) Reasonable compensation;
- 11 (4) Resignation;
- 12 (5) Removal; and
- 13 (6) Vacancy and appointment of successor.

14 NEW SECTION. **Sec. 17.** UNIFORMITY OF APPLICATION AND  
15 CONSTRUCTION. In applying and construing this uniform act,  
16 consideration must be given to the need to promote uniformity of the  
17 law with respect to its subject matter among states that enact it.

18 NEW SECTION. **Sec. 18.** RELATION TO ELECTRONIC SIGNATURES IN  
19 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or  
20 supersedes the electronic signatures in global and national commerce  
21 act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or  
22 supersede section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or  
23 authorize electronic delivery of any of the notices described in  
24 section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

25 NEW SECTION. **Sec. 19.** The following acts or parts of acts are  
26 each repealed:

- 27 (1) RCW 11.98A.010 (Application of chapter) and 2015 c 115 s 4;
- 28 (2) RCW 11.98A.020 (Governing instrument) and 2015 c 115 s 5;
- 29 (3) RCW 11.98A.030 (Statutory trust advisor) and 2015 c 115 s 6;
- 30 (4) RCW 11.98A.040 (Remedies for breach of duty) and 2015 c 115 s  
31 7;
- 32 (5) RCW 11.98A.050 (Measure of liability for breach of duty—  
33 Excuse from liability) and 2015 c 115 s 8;
- 34 (6) RCW 11.98A.060 (Vacancy—Directed trusts) and 2015 c 115 s 9;

- 1 (7) RCW 11.98A.070 (Statutory trust advisor's duty to inform and  
2 report—Notice to beneficiary) and 2015 c 115 s 10;
- 3 (8) RCW 11.98A.080 (Statutory trust advisor subject to court  
4 jurisdiction) and 2015 c 115 s 11;
- 5 (9) RCW 11.98A.090 (Statutory trust advisor's right to request  
6 information and bring proceedings) and 2015 c 115 s 12;
- 7 (10) RCW 11.98A.100 (Directed trustee—Directed trustee's  
8 liability for action or inaction of statutory trust advisor—No duty  
9 to review actions of statutory trust advisor) and 2015 c 115 s 13;
- 10 (11) RCW 11.98A.110 (Statutes of limitation) and 2015 c 115 s 14;
- 11 (12) RCW 11.98A.120 (Application of other provisions of probate  
12 and trust law) and 2015 c 115 s 15; and
- 13 (13) RCW 11.98A.900 (Short title—2015 c 115) and 2015 c 115 s 16.

14 NEW SECTION. **Sec. 20.** EFFECTIVE DATE. This act takes effect  
15 January 1, 2021.

16 NEW SECTION. **Sec. 21.** CODIFICATION. Sections 1 through 18 and  
17 20 of this act constitute a new chapter in Title 11 RCW.

--- END ---