

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 536**

FINAL READING

Introduced by Pansing Brooks, 28.

Read first time January 22, 2019

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to trusts; to amend sections 30-3805, 30-3808,
- 2 30-3855, and 30-3859, Reissue Revised Statutes of Nebraska; to adopt
- 3 the Nebraska Uniform Directed Trust Act; to provide for
- 4 applicability; to change and eliminate related Uniform Trust Code
- 5 provisions; to harmonize provisions; to repeal the original
- 6 sections; and to outright repeal section 30-3873, Reissue Revised
- 7 Statutes of Nebraska.
- 8 Be it enacted by the people of the State of Nebraska,

1           Section 1. (UDTA 1) Sections 1 to 19 of this act shall be known and  
2 may be cited as the Nebraska Uniform Directed Trust Act.

3           Sec. 2. (UDTA 2) In the Nebraska Uniform Directed Trust Act:

4           (1) Breach of trust includes a violation by a trust director or  
5 trustee of a duty imposed on that director or trustee by the terms of the  
6 trust, the Nebraska Uniform Directed Trust Act, or law of this state  
7 other than the Nebraska Uniform Directed Trust Act pertaining to trusts.

8           (2) Directed trust means a trust for which the terms of the trust  
9 grant a power of direction.

10          (3) Directed trustee means a trustee that is subject to a trust  
11 director's power of direction.

12          (4) Person means an individual, estate, business or nonprofit  
13 entity, public corporation, government or governmental subdivision,  
14 agency, or instrumentality, or other legal entity.

15          (5) Power of direction means a power over a trust granted to a  
16 person by the terms of the trust to the extent the power is exercisable  
17 while the person is not serving as a trustee. The term includes a power  
18 over the investment, management, or distribution of trust property or  
19 other matters of trust administration, including, but not limited to,  
20 amendment, reform, or termination of the trust. The term excludes the  
21 powers described in subsection (b) of section 5 of this act.

22          (6) Settlor has the same meaning as in section 30-3803.

23          (7) State means a state of the United States, the District of  
24 Columbia, Puerto Rico, the United States Virgin Islands, or any other  
25 territory or possession subject to the jurisdiction of the United States.

26          (8) Terms of a trust means:

27           (A) except as otherwise provided in subdivision (8)(B) of this  
28 section, the manifestation of the settlor's intent regarding a trust's  
29 provisions as:

30           (i) expressed in the trust instrument; or

31           (ii) established by other evidence that would be admissible in a

1 judicial proceeding; or

2 (B) the trust's provisions as established, determined, or amended  
3 by:

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

5 (ii) court order; or

6 (iii) a nonjudicial settlement agreement under section 30-3811.

7 (9) Trust director means a person that is granted a power of  
8 direction by the terms of a trust to the extent the power is exercisable  
9 while the person is not serving as a trustee. The person is a trust  
10 director whether or not the terms of the trust refer to the person as a  
11 trust director and whether or not the person is a beneficiary or settlor  
12 of the trust.

13 (10) Trustee has the same meaning as in section 30-3803.

14 Sec. 3. (UDTA 3) The Nebraska Uniform Directed Trust Act applies to  
15 a trust, whenever created, that has its principal place of administration  
16 in this state, subject to the following rules:

17 (1) If the trust was created before the effective date of this act,  
18 the Nebraska Uniform Directed Trust Act applies only to a decision or  
19 action occurring on or after the effective date of this act.

20 (2) If the principal place of administration of the trust is changed  
21 to this state on or after the effective date of this act, the Nebraska  
22 Uniform Directed Trust Act applies only to a decision or action occurring  
23 on or after the date of the change.

24 Sec. 4. (UDTA 4) The common law and principles of equity supplement  
25 the Nebraska Uniform Directed Trust Act, except to the extent modified by  
26 the Nebraska Uniform Directed Trust Act or law of this state other than  
27 the Nebraska Uniform Directed Trust Act.

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

1       (b) The Nebraska Uniform Directed Trust Act does not apply to a:  
2       (1) power of appointment;  
3       (2) power to appoint or remove a trustee or trust director;  
4       (3) power of a settlor over a trust to the extent the settlor has a  
5 power to revoke the trust;  
6       (4) power of a beneficiary over a trust to the extent the exercise  
7 or nonexercise of the power affects the beneficial interest of:  
8       (A) the beneficiary; or  
9       (B) the beneficial interest of another beneficiary represented by  
10 the beneficiary under sections 30-3822 to 30-3826 with respect to the  
11 exercise or nonexercise of the power; or  
12       (5) power over a trust if:  
13       (A) the terms of the trust provide that the power is held in a  
14 nonfiduciary capacity; and  
15       (B) the power must be held in a nonfiduciary capacity to achieve the  
16 settlor's tax objectives under the Internal Revenue Code of 1986 as  
17 defined in section 49-801.01.  
18       (c) Unless the terms of a trust provide otherwise, a power granted  
19 to a person to designate a recipient of an ownership interest in or power  
20 of appointment over trust property which is exercisable while the person  
21 is not serving as a trustee is a power of appointment and not a power of  
22 direction.  
23       Sec. 6. (UDTA 6) (a) Subject to section 7 of this act, the terms of  
24 a trust may grant a power of direction to a trust director.  
25       (b) Unless the terms of a trust provide otherwise:  
26       (1) a trust director may exercise any further power appropriate to  
27 the exercise or nonexercise of a power of direction granted to the trust  
28 director under subsection (a) of this section; and  
29       (2) trust directors with joint powers must act by majority decision.  
30       (c) A power of direction includes only those powers granted by the  
31 terms of the trust and further powers pursuant to subdivision (b)(1) of

1 this section must be appropriate to the exercise or nonexercise of such  
2 power of direction granted by the terms of the trust.

3       Sec. 7. (UDTA 7) A trust director is subject to the same rules as a  
4 trustee in a like position and under similar circumstances in the  
5 exercise or nonexercise of a power of direction or further power under  
6 subdivision (b)(1) of section 6 of this act regarding:

7       (1) a payback provision in the terms of a trust necessary to comply  
8 with the medicaid reimbursement requirements of section 68-919; and

9       (2) a charitable interest in the trust, including notice regarding  
10 the interest to the Attorney General.

11       Sec. 8. (UDTA 8) (a) Subject to subsection (b) of this section,  
12 with respect to a power of direction or further power under subdivision  
13 (b)(1) of section 6 of this act:

14       (1) a trust director has the same fiduciary duty and liability in  
15 the exercise or nonexercise of the power:

16       (A) if the power is held individually, as a sole trustee in a like  
17 position and under similar circumstances; or

18       (B) if the power is held jointly with a trustee or another trust  
19 director, as a cotrustee in a like position and under similar  
20 circumstances; and

21       (2) the terms of the trust may vary the director's duty or liability  
22 to the same extent the terms of the trust could vary the duty or  
23 liability of a trustee in a like position and under similar  
24 circumstances.

25       (b) Unless the terms of a trust provide otherwise, if a trust  
26 director is licensed, certified, or otherwise authorized or permitted by  
27 law other than the Nebraska Uniform Directed Trust Act to provide health  
28 care in the ordinary course of the director's business or practice of a  
29 profession, to the extent the director acts in that capacity, the  
30 director has no duty or liability under the Nebraska Uniform Directed  
31 Trust Act.

1       (c) The terms of a trust may impose a duty or liability on a trust  
2 director in addition to the duties and liabilities under this section.

3       Sec. 9. (UDTA 9) (a) Subject to subsections (b) and (c) of this  
4 section, a directed trustee shall take reasonable action to comply with a  
5 trust director's exercise or nonexercise of a power of direction or  
6 further power under subdivision (b)(1) of section 6 of this act, and the  
7 trustee is not liable for the action.

8       (b) A directed trustee must not comply with a trust director's  
9 exercise or nonexercise of a power of direction or further power under  
10 subdivision (b)(1) of section 6 of this act to the extent that by  
11 complying the trustee would engage in willful misconduct.

12       (c) A directed trustee must determine that the trust director's  
13 exercise of power of direction under subsection (a) of section 6 of this  
14 act or appropriation of further power under subsection (b) of section 6  
15 of this act is granted by the terms of the trust pursuant to subsection  
16 (c) of section 6 of this act.

17       (d) An exercise of a power of direction under which a trust director  
18 may release a trustee or another trust director from liability for breach  
19 of trust is not effective if:

20       (1) the breach involved the trustee's or other director's willful  
21 misconduct;

22       (2) the release was induced by improper conduct of the trustee or  
23 other director in procuring the release; or

24       (3) at the time of the release, the director did not know the  
25 material facts relating to the breach.

26       (e) A directed trustee that has reasonable doubt about its duty  
27 under this section may petition the court for instructions.

28       (f) The terms of a trust may impose a duty or liability on a  
29 directed trustee in addition to the duties and liabilities under this  
30 section.

31       Sec. 10. (UDTA 10) (a) Subject to section 11 of this act, a trustee

1 shall provide information to a trust director to the extent the  
2 information is reasonably related both to:

3 (1) the powers or duties of the trustee; and

4 (2) the powers or duties of the director.

5 (b) Subject to section 11 of this act, a trust director shall  
6 provide information to a trustee or another trust director to the extent  
7 the information is reasonably related both to:

8 (1) the powers or duties of the director; and

9 (2) the powers or duties of the trustee or other director.

10 (c) A trustee that acts in reliance on information provided by a  
11 trust director is not liable for a breach of trust to the extent the  
12 breach resulted from the reliance, unless by so acting the trustee  
13 engages in willful misconduct.

14 (d) A trust director that acts in reliance on information provided  
15 by a trustee or another trust director is not liable for a breach of  
16 trust to the extent the breach resulted from the reliance, unless by so  
17 acting the trust director engages in willful misconduct.

18 Sec. 11. (UDTA 11) (a) Unless the terms of a trust provide  
19 otherwise:

20 (1) a trustee does not have a duty to:

21 (A) monitor a trust director; or

22 (B) inform or give advice to a settlor, beneficiary, trustee, or  
23 trust director concerning an instance in which the trustee might have  
24 acted differently than the director; and

25 (2) by taking an action described in subdivision (a)(1) of this  
26 section, a trustee does not assume the duty excluded by such subdivision.

27 (b) Unless the terms of a trust provide otherwise:

28 (1) a trust director does not have a duty to:

29 (A) monitor a trustee or another trust director; or

30 (B) inform or give advice to a settlor, beneficiary, trustee, or  
31 another trust director concerning an instance in which the director might

1 have acted differently than a trustee or another trust director; and  
2 (2) by taking an action described in subdivision (b)(1) of this  
3 section, a trust director does not assume the duty excluded by such  
4 subdivision.

5 Sec. 12. (UDTA 12) The terms of a trust may relieve a cotrustee  
6 from duty and liability with respect to another cotrustee's exercise or  
7 nonexercise of a power of the other cotrustee to the same extent that in  
8 a directed trust a directed trustee is relieved from duty and liability  
9 with respect to a trust director's power of direction under sections 9 to  
10 11 of this act.

11 Sec. 13. (UDTA 13) (a) An action against a trust director for  
12 breach of trust must be commenced within the same limitation period as  
13 under section 30-3894 for an action for breach of trust against a trustee  
14 in a like position and under similar circumstances.

15 (b) A report or accounting has the same effect on the limitation  
16 period for an action against a trust director for breach of trust that  
17 the report or accounting would have under section 30-3894 in an action  
18 for breach of trust against a trustee in a like position and under  
19 similar circumstances.

20 Sec. 14. (UDTA 14) In an action against a trust director for breach  
21 of trust, the director may assert the same defenses a trustee in a like  
22 position and under similar circumstances could assert in an action for  
23 breach of trust against the trustee.

24 Sec. 15. (UDTA 15) (a) By accepting appointment as a trust director  
25 of a trust subject to the Nebraska Uniform Directed Trust Act, the  
26 director submits to personal jurisdiction of the courts of this state  
27 regarding any matter related to a power or duty of the director.

28 (b) This section does not preclude other methods of obtaining  
29 jurisdiction over a trust director.

30 Sec. 16. (UDTA 16) Unless the terms of a trust provide otherwise,  
31 the rules applicable to a trustee apply to a trust director regarding the



1 following matters:

2 (1) acceptance under section 30-3857;

3 (2) giving of bond to secure performance under section 30-3858;

4 (3) reasonable compensation under section 30-3864;

5 (4) resignation under section 30-3861;

6 (5) removal under section 30-3862; and

7 (6) vacancy and appointment of successor under section 30-3860.

8 Sec. 17. (UDTA 17) In applying and construing the Nebraska Uniform  
9 Directed Trust Act, consideration must be given to the need to promote  
10 uniformity of the law with respect to its subject matter among states  
11 that enact it.

12 Sec. 18. (UDTA 18) The provisions of the Nebraska Uniform Directed  
13 Trust Act governing the legal effect, validity, or enforceability of  
14 electronic records or electronic signatures, and of contracts formed or  
15 performed with the use of such records or signatures, conform to the  
16 requirements of section 102 of the Electronic Signatures in Global and  
17 National Commerce Act, 15 U.S.C. 7002, as such section existed on January  
18 1 immediately preceding January 1, 2005, and supersede, modify, and limit  
19 the requirements of the Electronic Signatures in Global and National  
20 Commerce Act.

21 Sec. 19. (a) Except as otherwise provided in the Nebraska Uniform  
22 Directed Trust Act, on January 1, 2021:

23 (1) the Nebraska Uniform Directed Trust Act applies to all trusts  
24 created before, on, or after January 1, 2021;

25 (2) the Nebraska Uniform Directed Trust Act applies to all judicial  
26 proceedings concerning trust directors, trustees, and cotrustees  
27 commenced on or after January 1, 2021;

28 (3) the Nebraska Uniform Directed Trust Act applies to judicial  
29 proceedings concerning trusts commenced before January 1, 2021, unless  
30 the court finds that application of a particular provision of the  
31 Nebraska Uniform Directed Trust Act would substantially interfere with

1 the effective conduct of the judicial proceedings or prejudice the rights  
2 of the parties, in which case the particular provision of the Nebraska  
3 Uniform Directed Trust Act does not apply and the superseded law applies;  
4 and

5 (4) an act done before January 1, 2021, is not affected by the  
6 Nebraska Uniform Directed Trust Act.

7 (b) If a right is acquired, extinguished, or barred upon the  
8 expiration of a prescribed period that has commenced to run under any  
9 other statute before January 1, 2021, that statute continues to apply to  
10 the right even if it has been repealed or superseded.

11 Sec. 20. Section 30-3805, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 30-3805 (UTC 105) (a) Except as otherwise provided in the terms of  
14 the trust, the Nebraska Uniform Trust Code governs the duties and powers  
15 of a trustee, relations among trustees, and the rights and interests of a  
16 beneficiary.

17 (b) The terms of a trust prevail over any provision of the code  
18 except:

19 (1) the requirements for creating a trust;

20 (2) subject to sections 9, 11, and 12 of this act, the duty of a  
21 trustee to act in good faith and in accordance with the terms and  
22 purposes of the trust and the interests of the beneficiaries;

23 (3) the requirement that a trust and its terms be for the benefit of  
24 its beneficiaries, and that the trust have a purpose that is lawful, not  
25 contrary to public policy, and possible to achieve;

26 (4) the power of the court to modify or terminate a trust under  
27 sections 30-3836 to 30-3842;

28 (5) the effect of a spendthrift provision and the rights of certain  
29 creditors and assignees to reach a trust as provided in sections 30-3846  
30 to 30-3852;

31 (6) the power of the court under section 30-3858 to require,

1 dispense with, or modify or terminate a bond;

2 (7) the power of the court under subsection (b) of section 30-3864  
3 to adjust a trustee's compensation specified in the terms of the trust;

4 (8) the duty under subsection (a) of section 30-3878 to keep the  
5 qualified beneficiaries of the trust reasonably informed about the  
6 administration of the trust and of the material facts necessary for them  
7 to protect their interests, and to respond to the request of a qualified  
8 beneficiary of an irrevocable trust for trustee's reports and other  
9 information reasonably related to the administration of a trust;

10 (9) the effect of an exculpatory term under section 30-3897;

11 (10) the rights under sections 30-3899 to 30-38,107 of a person  
12 other than a trustee or beneficiary;

13 (11) periods of limitation for commencing a judicial proceeding;

14 (12) the power of the court to take such action and exercise such  
15 jurisdiction as may be necessary in the interests of justice;

16 (13) the subject matter jurisdiction of the court and venue for  
17 commencing a proceeding as provided in sections 30-3814 and 30-3815;

18 (14) the power of a court under subdivision (a)(1) of section  
19 30-3807; and

20 (15) the power of a court to review the action or the proposed  
21 action of the trustee for an abuse of discretion.

22 Sec. 21. Section 30-3808, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 30-3808 (UTC 108) (a) Without precluding other means for  
25 establishing a sufficient connection with the designated jurisdiction,  
26 terms of a trust designating the principal place of administration are  
27 valid and controlling if:

28 (1) a trustee's principal place of business is located in or a  
29 trustee is a resident of the designated jurisdiction;~~or~~

30 (2) all or part of the administration occurs in the designated  
31 jurisdiction; or -

1           (3) a trust director's principal place of business is located in or  
2           a trust director is a resident of the designated jurisdiction.

3           (b) A trustee is under a continuing duty to administer the trust at  
4 a place appropriate to its purposes, its administration, and the  
5 interests of the beneficiaries.

6           (c) Without precluding the right of the court to order, approve, or  
7 disapprove a transfer, the trustee, in furtherance of the duty prescribed  
8 by subsection (b) of this section, may transfer the trust's principal  
9 place of administration to another state or to a jurisdiction outside of  
10 the United States.

11           (d) The trustee shall notify the qualified beneficiaries of a  
12 proposed transfer of a trust's principal place of administration not less  
13 than sixty days before initiating the transfer. The notice of proposed  
14 transfer must include:

15           (1) the name of the jurisdiction to which the principal place of  
16 administration is to be transferred;

17           (2) the address and telephone number at the new location at which  
18 the trustee can be contacted;

19           (3) an explanation of the reasons for the proposed transfer;

20           (4) the date on which the proposed transfer is anticipated to occur;  
21 and

22           (5) the date, not less than sixty days after the giving of the  
23 notice, by which the qualified beneficiary must notify the trustee of an  
24 objection to the proposed transfer.

25           (e) The authority of a trustee under this section to transfer a  
26 trust's principal place of administration terminates if a qualified  
27 beneficiary notifies the trustee of an objection to the proposed transfer  
28 on or before the date specified in the notice.

29           (f) In connection with a transfer of the trust's principal place of  
30 administration, the trustee may transfer some or all of the trust  
31 property to a successor trustee designated in the terms of the trust or

1 appointed pursuant to section 30-3860.

2 Sec. 22. Section 30-3855, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4 30-3855 (UTC 603) (a) To the extent a trust is revocable by a  
5 settlor, a trustee may follow a direction of the settlor that is contrary  
6 to the terms of the trust. To the extent a trust is revocable by a  
7 settlor in conjunction with a person other than a trustee or person  
8 holding an adverse interest, the trustee may follow a direction from the  
9 settlor and the other person holding the power to revoke even if the  
10 direction is contrary to the terms of the trust.

11 (b) While a trust is revocable, rights of the beneficiaries are  
12 subject to the control of, and the duties of the trustee are owed  
13 exclusively to, the settlor.

14 (c) ~~(b)~~ While the trust is irrevocable and during the period the  
15 power may be exercised, the holder of a power of withdrawal has the  
16 rights of a settlor of a revocable trust under this section and the  
17 duties of the trustee are owed exclusively to the holder of the power to  
18 the extent of the property subject to the power.

19 (d) ~~(c)~~ While the trust is irrevocable and during the period the  
20 interest of any beneficiary not having a present interest may be  
21 terminated by the exercise of a power of appointment or other power, the  
22 duties of the trustee are owed exclusively to the holder of the power to  
23 the extent of the property subject to the power.

24 Sec. 23. Section 30-3859, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 30-3859 (UTC 703) (a) Cotrustees who are unable to reach a unanimous  
27 decision may act by majority decision.

28 (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees  
29 may act for the trust.

30 (c) Subject to section 12 of this act, a A cotrustee must  
31 participate in the performance of a trustee's function unless the

1 cotrustee is unavailable to perform the function because of absence,  
2 illness, disqualification under other law, or other temporary incapacity  
3 or the cotrustee has properly delegated the performance of the function  
4 to another trustee.

5 (d) If a cotrustee is unavailable to perform duties because of  
6 absence, illness, disqualification under other law, or other temporary  
7 incapacity, and prompt action is necessary to achieve the purposes of the  
8 trust or to avoid injury to the trust property, the remaining cotrustee  
9 or a majority of the remaining cotrustees may act for the trust.

10 (e) A trustee may not delegate to a cotrustee the performance of a  
11 function the settlor reasonably expected the trustees to perform jointly.  
12 Unless a delegation was irrevocable, a trustee may revoke a delegation  
13 previously made.

14 (f) Except as otherwise provided in subsection (g) of this section,  
15 a trustee who does not join in an action of another trustee is not liable  
16 for the action.

17 (g) Subject to section 12 of this act, each ~~Each~~ trustee shall  
18 exercise reasonable care to:

19 (1) prevent a cotrustee from committing a serious breach of trust;  
20 and

21 (2) compel a cotrustee to redress a serious breach of trust.

22 (h) A dissenting trustee who joins in an action at the direction of  
23 the majority of the trustees and who notified any cotrustee of the  
24 dissent at or before the time of the action is not liable for the action  
25 unless the action is a serious breach of trust.

26 Sec. 24. Original sections 30-3805, 30-3808, 30-3855, and 30-3859,  
27 Reissue Revised Statutes of Nebraska, are repealed.

28 Sec. 25. The following section is outright repealed: Section  
29 30-3873, Reissue Revised Statutes of Nebraska.