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H.350

Introduced by Representatives Marcotte of Coventry, Jerome of Brandon, and

Nicoll of Ludlow

Referred to Committee on

Date:

Subject: Trusts; Uniform Directed Trust Act

Statement of purpose of bill as introduced: This bill proposes to enact the
Uniform Directed Trust Act.

An act relating to the Uniform Directed Trust Act

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 14A V.S.A. chapter 13 is added to read:

CHAPTER 13. UNIFORM DIRECTED TRUST ACT

§ 1301. SHORT TITLE

This chapter may be cited as the Uniform Directed Trust Act.

§ 1302. DEFINITIONS

As used in this chapter:

(1) “Breach of trust” means a violation by a trust director or trustee of a
duty imposed on that director or trustee by the terms of the trust, this chapter,
or law of this State other than this chapter pertaining to trusts.

1 (2) “Directed trust” means a trust for which the terms of the trust grant a
2 power of direction.

3 (3) “Directed trustee” means a trustee that is subject to a trust director’s
4 power of direction.

5 (4) “Person” means an individual; estate; business or nonprofit entity;
6 public corporation; government or governmental subdivision, agency, or
7 instrumentality; or other legal entity.

8 (5) “Power of direction” means a power over a trust granted to a person
9 by the terms of the trust to the extent the power is exercisable while the person
10 is not serving as a trustee. The term includes a power over the investment,
11 management, or distribution of trust property or other matters of trust
12 administration. The term excludes the powers described in subsection 1305(b)
13 of this title.

14 (6) “Settlor” has the same meaning as in subdivision 103(20) of this
15 title.

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

19 (8) “Terms of a trust” means:

1 (A) except as otherwise provided in subdivision (B) of this
2 subdivision (8), the manifestation of the settlor’s intent regarding a trust’s
3 provisions as:

4 (i) expressed in the trust instrument; or

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

7 (B) the trust’s provisions as established, determined, or amended by:

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

9 (ii) a court order; or

10 (iii) a nonjudicial settlement agreement under section 111 of this
11 title.

12 (9) “Trust director” means a person that is granted a power of direction
13 by the terms of a trust to the extent the power is exercisable while the person is
14 not serving as a trustee. The person is a trust director whether or not the terms
15 of the trust refer to the person as a trust director and whether or not the person
16 is a beneficiary or settlor of the trust.

17 (10) “Trustee” has the same meaning as in subdivision 103(20) of this
18 title.

1 § 1303. APPLICATION; PRINCIPAL PLACE OF ADMINISTRATION

2 (a) Notwithstanding section 1204 of this title, this chapter applies to a trust,
3 whenever created, that has its principal place of administration in this State,
4 subject to the following rules:

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

8 (2) If the principal place of administration of the trust is changed to this
9 State on or after the effective date of this chapter, this chapter applies only to a
10 decision or action occurring on or after the date of the change.

11 (b) Without precluding other means to establish a sufficient connection
12 with the designated jurisdiction in a directed trust, terms of the trust that
13 designate the principal place of administration of the trust are valid and
14 controlling if:

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

17 (2) a trust director's principal place of business is located in or a trust
18 director is a resident of the designated jurisdiction; or

19 (3) all or part of the administration occurs in the designated jurisdiction.

1 § 1304. COMMON LAW AND PRINCIPLES OF EQUITY

2 The common law and principles of equity supplement this chapter, except
3 to the extent modified by this chapter or laws of this State other than this
4 chapter.

5 § 1305. EXCLUSIONS

6 (a) As used in this section, “power of appointment” means a power that
7 enables a person acting in a nonfiduciary capacity to designate a recipient of
8 an ownership interest in or another power of appointment over trust property.

9 (b) This chapter does not apply to a:

10 (1) power of appointment;

11 (2) power to appoint or remove a trustee or trust director;

12 (3) power of a settlor over a trust to the extent the settlor has a power to
13 revoke the trust;

14 (4) power of a beneficiary over a trust to the extent the exercise or
15 nonexercise of the power affects the beneficial interest of:

16 (A) the beneficiary; or

17 (B) another beneficiary represented by the beneficiary under chapter
18 3 of this title with respect to the exercise or nonexercise of the power; or

19 (5) power over a trust if:

20 (A) the terms of the trust provide that the power is held in a
21 nonfiduciary capacity; and

1 (B) the power must be held in a nonfiduciary capacity to achieve the
2 settlor's tax objectives under the United States Internal Revenue Code of 1986
3 and regulations issued thereunder.

4 (c) Unless the terms of a trust provide otherwise, a power granted to a
5 person to designate a recipient of an ownership interest in or power of
6 appointment over trust property which is exercisable while the person is not
7 serving as a trustee is a power of appointment and not a power of direction.

8 § 1306. POWERS OF TRUST DIRECTOR.

9 (a) Subject to section 1307 of this title, the terms of a trust may grant a
10 power of direction to a trust director.

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

12 (1) a trust director may exercise any further power appropriate to the
13 exercise or nonexercise of a power of direction granted to the director under
14 subsection (a) of this section; and

15 (2) trust directors with joint powers must act by majority decision.

16 § 1307. LIMITATIONS ON TRUST DIRECTOR

17 A trust director is subject to the same rules as a trustee in a like position and
18 under similar circumstances in the exercise or nonexercise of a power of
19 direction or further power under subdivision 1306(b)(1) of this title regarding:

20 (1) a payback provision in the terms of a trust necessary to comply with
21 the reimbursement requirements of Medicaid law in Section 1917 of the Social

1 Security Act, 42 U.S.C. Section 1396p(d)(4)(A), and regulations issued
2 thereunder; and

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

5 § 1308. DUTY AND LIABILITY OF TRUST DIRECTOR

6 (a) Subject to subsection (b) of this section, with respect to a power of
7 direction or further power under subdivision 1306(b)(1) of this title:

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

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

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

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

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

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

3 § 1309. DUTY AND LIABILITY OF DIRECTED TRUSTEE

4 (a) Subject to subsection (b) of this section, a directed trustee shall take
5 reasonable action to comply with a trust director's exercise or nonexercise of a
6 power of direction or further power under subdivision 1306(b)(1) of this title,
7 and the trustee is not liable for the action.

8 (b) A directed trustee shall not comply with a trust director's exercise or
9 nonexercise of a power of direction or further power under subdivision
10 1306(b)(1) of this title to the extent that by complying the trustee would
11 engage in intentional misconduct.

12 (c) An exercise of a power of direction under which a trust director may
13 release a trustee or another trust director from liability for breach of trust is not
14 effective if:

15 (1) the breach involved the trustee's or other director's intentional
16 misconduct;

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

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

1 (d) A directed trustee that has reasonable doubt about its duty under this
2 section may petition the Probate Division of the Superior Court for
3 instructions.

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

6 § 1310. DUTY TO PROVIDE INFORMATION TO TRUST DIRECTOR OR
7 TRUSTEE

8 (a) Subject to section 1311 of this title, a trustee shall provide information
9 to a trust director to the extent the information is 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 1311 of this title, a trust director shall provide
13 information to a trustee or another trust director to the extent the information is
14 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 trust
18 director is not liable for a breach of trust to the extent the breach resulted from
19 the reliance, unless by so acting the trustee engages in intentional misconduct.

20 (d) A trust director that acts in reliance on information provided by a
21 trustee or another trust director is not liable for a breach of trust to the extent

1 the breach resulted from the reliance, unless by so acting the trust director
2 engages in intentional misconduct.

3 § 1311. NO DUTY TO MONITOR, INFORM, OR ADVISE

4 (a) Unless the terms of a trust provide otherwise:

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

6 (A) monitor a trust director; or

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

10 (2) by taking an action described in subdivision (1) of this subsection, a
11 trustee does not assume the duty excluded by subdivision (1) of this
12 subsection.

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

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

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

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

19 (2) by taking an action described in subdivision (1) of this subsection, a
20 trust director does not assume the duty excluded by subdivision (1) of this
21 subsection.

1 § 1312. APPLICATION TO COTRUSTEE

2 The terms of a trust may relieve a cotrustee from duty and liability with
3 respect to another cotrustee’s exercise or nonexercise of a power of the other
4 cotrustee to the same extent that in a directed trust a directed trustee is relieved
5 from duty and liability with respect to a trust director’s power of direction
6 under sections 1309–1311 of this title.

7 § 1313. LIMITATION OF ACTION AGAINST TRUST DIRECTOR

8 (a) An action against a trust director for breach of trust must be
9 commenced within the same limitation period applicable to an action for
10 breach of trust against a trustee in a like position and under similar
11 circumstances.

12 (b) A report or accounting has the same effect on the limitation period for
13 an action against a trust director for breach of trust that the report or
14 accounting would have in an action for breach of trust against a trustee in a
15 like position and under similar circumstances.

16 § 1314. DEFENSES IN ACTION AGAINST TRUST DIRECTOR

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

1 § 1315. JURISDICTION OVER TRUST DIRECTOR

2 (a) By accepting appointment as a trust director of a trust subject to this
3 chapter, the director submits to personal jurisdiction of the courts of this State
4 regarding any matter related to a power or duty of the director.

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

7 § 1316. OFFICE OF TRUST DIRECTOR

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

- 10 (1) acceptance under section 701 of this title;
11 (2) giving of bond to secure performance section 702 of this title;
12 (3) reasonable compensation section 708 of this title;
13 (4) resignation section 705 of this title;
14 (5) removal section 706 of this title; and
15 (6) vacancy and appointment of successor section 704 of this title.

16 § 1317. UNIFORMITY OF APPLICATION AND CONSTRUCTION

17 In applying and construing this uniform act, consideration shall be given to
18 the need to promote uniformity of the law with respect to its subject matter
19 among states that enact it.

20 § 1318. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND

21 NATIONAL COMMERCE ACT

1 This chapter modifies, limits, or supersedes the Electronic Signatures in
2 Global and National Commerce Act, 15 U.S.C. Section 7001, but does not
3 modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section
4 7001(c), or authorize electronic delivery of any of the notices described in
5 Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

6 Sec. 2. EFFECTIVE DATE

7 This act shall take effect on passage.