
DIVISION OF BANKING

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MEMORANDUM

NUMBER: 20-027

DATE: June 3, 2020

TO: SOUTH DAKOTA TRUST COMPANIES AND BANK TRUST DEPARTMENTS

FROM: BRET AFDAHL, Director

RE: NEW TRUST LEGISLATION

The following is a summary of Senate Bill 65 (SB 65). SB 65 was introduced and signed into law by Governor Kristi Noem. The amendments to existing law established in SB 65 will become effective on July 1, 2020. I would encourage you to review this bill in detail at your convenience at the following link: <https://mylrc.sdlegislature.gov/api/Documents/69296.pdf>.

If you would like additional information regarding this bill, or if you have any questions, please do not hesitate to contact the South Dakota Division of Banking at 605-773-3421.

SB 65

The following provisions of SB 65 amend SDCL Title 55, and were adopted to make the following changes:

- Section 1: This clarifies certain aspects of the role and powers of an “enforcer” in a “purpose trust” whose responsibility is to enforce the purpose of the trust (e.g., a pet trust, etc.).
- Section 2. Also in relation to “purpose trusts,” this section makes stylistic and clarifying changes to an existing statute which relates to when an enforcer can be removed by a court.
- Section 3: Also in relation to “purpose trusts,” this section cross-references SDCL 55-1-21.4 (as amended by section 2, above).
- Section 4: This section relates to three different subsets of particular kinds of trusts which should qualify for “spendthrift” protection treatment.
- Section 5: This section also relates to “asset protection trusts” (or “APTs”) and mirrors an existing statute, SDCL 55-16-13. It confirms that South Dakota courts have jurisdiction to hear any claims that transfers to such a trust were wrongful and makes other related clarifications.
- Section 6: This section deletes a burden of proof provision that was relocated to SDCL 55-1-44 (by section 5, above).
- Section 7: This section relates to “directed trusts” in which a trust advisor and/or trust protector and/or family advisor has the authority to direct or advise a trustee in certain matters. The section clarifies that a trustee may rely on a trust advisor to establish a valuation for trust assets.

- Section 8: Also in relation to “directed trusts,” this section clarifies a trust protector’s ability to act in relation to beneficiary notice issues by removing one subsection and replacing it with a cross-reference.
- Section 9: Also in relation to “directed trusts,” this section incorporates a cross-reference for trust advisors and makes certain trust advisor powers “default” powers that need not be spelled out in the trust instrument.
- Section 10: Also in relation to “directed trusts,” this section makes SDCL 55-1B-11 consistent with SDCL 55-1B-10 (as amended by section 9, above).
- Section 11: Also in relation to “directed trusts,” this section makes a technical clarification to the powers of a family advisor.
- Section 12: This section amends trust beneficiary notice requirements by clarifying particular ways in which notice may be varied or limited by the trust instrument.
- Section 13: This section relates to trustee expenses. When a former trustee is required to account or respond to beneficiary demands, this would allow the trustee to be reimbursed from the trust.
- Section 14: This section also relates to “purpose trusts” and permits an enforcer to petition a court for the removal of a trustee in certain circumstances.
- Section 15: This section amends trust accounting procedures by permitting accountings to be approved by trust advisors/trust protectors of directed trusts.
- Section 16: This section also relates to APTs and provides a stylistic correction and clarifies that the settlor/transferor of an APT may also serve as a member of a distribution committee for the trust.
- Section 17: Also in relation to APTs, this section reworks SDCL 55-16-5 to fit with the amendment to SDCL 55-15-2 (by section 16, above).