

---

## DIVISION OF BANKING

1714 Lincoln Avenue, Suite 2, Pierre, SD 57501  
605-773-3421

## MEMORANDUM

---

NUMBER: 20-031

DATE: May 26, 2023

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 95 (SB 95). Legislative leadership in the Senate and House introduced and passed SB 95 on behalf of the Governor's Trust Task Force. Governor Kristi Noem signed SB 95 into law and it will become effective on July 1, 2023. I would encourage you to review SB 95 in detail at your convenience at the following link: [2023 Senate Bill 95 - SD Legislature amend provisions regarding trusts.](#)

If you would like additional information regarding SB 95, or if you have any questions, please do not hesitate to contact the South Dakota Division of Banking at 605-773-3421.

### **Senate Bill 95**

SB 95 allows for the valid execution of a South Dakota trust via electronic execution. However, it also applies to modification or revocation of a trust, as well as other related documents (appointments, consents, releases, acceptances, etc.). Electronic execution of trust documents can save time and money, as well as relieve some of the uncertainty and anxiety associated with the process. Instead of coordinating schedules and traveling to a location that's convenient for all parties, or expending the time and money associated with mailing documents back and forth, with electronic execution, the documents can be emailed, signed electronically and returned the same day at a reasonable cost.

### **Additional Changes**

- Adds provisions to allow a trust enforcer to appoint a "co-enforcer" to serve and assist the current trust enforcer. (Section 2)
- Confirms that trust agreements may permit bifurcation of responsibilities between co-trustees. (Section 6)
- Clarifies the notice provision statutes for better clarity (Sections 1, 7, 8 and 9)
- Combines two existing statutes to clarify the alter ego common law doctrine as it pertains to trusts. (Section 3)
- Clarifies that drafting errors in the trust document qualify for reformation by a court. (Section 10)
- Repeals unnecessary provisions and updates cross references (Sections 4, 11-16)