
DIVISION OF BANKING

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MEMORANDUM

NUMBER: 20-034

DATE: June 11, 2025

TO: SOUTH DAKOTA TRUST COMPANIES

FROM: BRET AFDAHL, Director

RE: NEW TRUST LEGISLATION

The following is a summary of Senate Bill 69 (SB 69). SB 69 was introduced by the Senate Commerce and Energy Committee on behalf of the Governor's Trust Task Force and signed into law by Governor Larry Rhoden. SB 69 will become effective on July 1, 2025. I would encourage you to review SB 69 in detail at your convenience at the following link: [2025 Senate Bill 69 - SD Legislature revise provisions related to trusts.](#)

If you would like additional information regarding SB 69, or if you have any questions, please do not hesitate to contact the South Dakota Division of Banking at 605-773-3421.

Senate Bill 69

This bill contains updates to South Dakota trust law in an effort to keep South Dakota trust law up to date and leading the nation. SB 69 addresses three general concepts:

- SB 69 clarifies the decanting procedures under SDCL 55-2-15, by adding language to specify that the appointment of assets to a new trust via decanting differs from modification of a trust via SDCL 55-3-24.
- SB 69 provides for the appointment of a tax trust advisor, to direct a trustee regarding tax matters related to a trust, and updates to related provisions of SDCL Chapter 55-1B and SDCL 55-2-23.
- SB 69 clarifies that the virtual representation statutes of SDCL Chapter 55-18 apply to trust modifications made pursuant to SDCL 55-3-24 and provides that a court has no authority to modify a trust if the modification would violate a material purpose of the trust.

SB 69 includes eight Sections:

- Section 1 – 55-1B-1: The role “tax trust advisor” is added to existing definitions for the directed trust chapter.
- Section 2 – 55-1B-2: The role “tax trust advisor” is added to the subsection related to limiting liability associated with tax decisions based on recommendations or instructions used by the trustee at the direction of the grantor or others identified by the grantor.

- Section 3 – 55-1B-4: Adds “tax trust advisor” to existing fiduciary advisors but also allows drafting flexibility to have more than one tax trust advisor. In such case, one must be a fiduciary but others can be designated as non-fiduciary by the governing instrument.
- Section 4 – 55-1B-9: The role “tax trust advisor” is added, providing clear authority for South Dakota trusts to name a “tax trust advisor” for purposes of tax decisions. This new position is added to the existing advisors: investment trust advisor and distribution trust advisor. These positions allow grantors to pick their investment advisor(s); distribution advisor(s); and now tax advisor(s) to carry out their wishes and direct the administrative/directed trustee accordingly.
- Section 5: A new Section is added to chapter 55-1B to create and define the roles and responsibilities of a “tax trust advisor” if such a role is designated in a governing instrument. This will be a new category of fiduciary advisor which a directed trustee can rely upon, limited to tax matters. This is a novel approach as no other state currently offers this option to planners.
- Section 6 – 55-2-15: New language is added in order to clarify that this section addresses trust decanting as opposed to trust modifications or trust reformations. Each of these has a unique notice process and only trust decanting can be done unilaterally by a trustee as a discretionary power. Modifications and reformations require beneficiary consent and/or court approval.
- Section 7 – 55-2-23: The role “tax trust advisor” is added to the list of individuals a trustee may rely upon for tax information and limits the liability of the trustee for so relying.
- Section 8 – 55-3-24: Terminology in the first and second sentences was revised changing “written agreement” to “written consent” to make this section more consistent with other sections of law related to modifications and/or terminations of trusts. The deletion of “by judicial action” in the second sentence removes a duplication and inconsistency as judicial action is also provided for in the first sentence along with a qualification in regarding the continuance of the trust. The reference to judicial action that is being deleted was added in 2021, subsequent to inclusion in the first sentence, and does not have a qualifier. Since 2021, this inconsistency has led to questions regarding whether the two references were intended to have the same qualifier applied and, if not, what purpose the more limited reference would serve.