



2023 South Dakota Legislature
Senate Bill 95
ENROLLED

AN ACT

ENTITLED An Act to amend provisions regarding trusts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 21-22-18 be AMENDED:

21-22-18. The notice provided by § 21-22-17 shall be served upon fiduciaries, beneficiaries, and attorneys of record, except as otherwise provided in chapter 55-18. Notice shall be served personally, by mail, postage prepaid, addressed to each person at the last known post office address as shown by the records and files in the proceeding, or electronically in accordance with § 15-6-5(b) and applicable local rules, at least fourteen days prior to the hearing, unless and to the extent that the court for good cause shown directs a shorter period or approves a different form of notice for some or all persons.

Section 2. That chapter 55-1 be amended with a NEW SECTION:

Unless specifically restricted by the governing instrument, an enforcer may appoint an individual or a corporate fiduciary as a co-enforcer. The appointed co-enforcer may serve only as long as the appointing enforcer serves, or as long as the last to serve if more than one enforcer appointed the co-enforcer. The appointed co-enforcer may not become a successor enforcer upon the death, resignation, or incapacity of the appointing enforcer, unless appointed under the terms of the governing instrument or unless no other successor enforcer, or method for appointing a successor enforcer, is provided in the governing instrument.

The powers and the responsibilities of the appointed co-enforcer may be limited by the appointing enforcer in a writing signed by the appointing enforcer at the time of the appointment. If the powers or responsibilities are so limited, the powers or responsibilities of the co-enforcer shall be limited as set forth in writing. Unless the powers or responsibilities are so limited, the appointed co-enforcer may exercise all the powers of the appointing enforcer. The combined powers of the appointed co-enforcer and the

appointing enforcer may not exceed the powers of the appointing enforcer alone. The enforcer appointing a co-enforcer may, in writing, revoke the appointment at any time, with or without cause.

Unless specifically restricted by the governing instrument, if the governing instrument gives a fiduciary other than the enforcer the power to remove and replace the enforcer, such power includes the power to appoint a co-enforcer to serve with the current enforcer.

If an appointment under this section confers upon the appointed co-enforcer, to the exclusion of another co-enforcer, the power to take certain actions, including the power to direct or prevent certain actions of the enforcers, the limitations on liability and the relief from duties and obligations afforded an excluded fiduciary under § 55-1B-2 apply to a co-enforcer who does not hold such power.

If the governing instrument is silent concerning the enforcer's power to appoint a co-enforcer, the enforcer shall notify in writing, the trustor, if living, the current trustee or trustees, and any trust protector, trust advisors, and co-enforcers at least thirty days prior to the effective date of the enforcer's exercise of the power granted under this section. The notice, which shall include a copy of the proposed action, shall advise the trustor, the current trustee or trustees, trust protector, trust advisors, or co-enforcers that if they object to the enforcer's appointment, they need to file a written objection with the enforcer prior to the effective date set out in the notice of the proposed action. If an objection is received by the enforcer, prior to the effective date of the appointment, the enforcer may not appoint a co-enforcer. However, this section does not limit the power of the enforcer under law to petition the court for approval of the appointment. If no objection has been timely made, the proposed appointment becomes effective on the later of the date set out in the notice or thirty days after notice has been given. The notice shall be sent by any means allowed under the terms of the trust instrument or authorized in section 9 of this Act to the trustor, the current trustee or trustees, trust protector, trust advisors, or co-enforcers.

The provisions of this section are effective for trusts created before, on, or after July 1, 2023, except as otherwise directed by the trustor, current trustee or trustees, trust protector, trust advisors, or other fiduciary designated by the terms of the trust.

Section 3. That § 55-1-32 be AMENDED:

55-1-32. Pierce the veil and dominion and control claims by a party are, in essence, a variation of the alter ego common law doctrine. This section covers all of these types of claims.

In the event that a party brings an action against a trustee, beneficiary, trust advisor, or trust protector under an alter ego claim, none of the following factors, alone or in combination, may be considered as resulting in the alter ego theory being applied to a trustee or the person who is claimed to be the alter ego:

- (1) The settlor or a beneficiary serving as a trustee or a co-trustee as described in § 55-1-28;
- (2) The settlor or a beneficiary holds an unrestricted power to remove or replace a trustee;
- (3) The settlor or a beneficiary is a trust administrator, a general partner of a partnership, a manager of a limited liability company, an officer of a corporation, or any other managerial function of any other type of entity, and part or all of the trust property consists of an interest in the entity;
- (4) A person related by blood or adoption to the settlor or a beneficiary is appointed as trustee;
- (5) The settlor's or a beneficiary's agent, accountant, attorney, financial advisor, or friend is appointed as trustee;
- (6) A business associate is appointed as a trustee;
- (7) A beneficiary holds any power of appointment over any or all of the trust property;
- (8) The settlor holds a power to substitute property of equivalent value;
- (9) The trustee may loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security;
- (10) The distribution language provides any discretion;
- (11) The trust has only one beneficiary eligible for current distributions;
- (12) A beneficiary serving as an investment trust advisor, as the role is defined in § 55-1B-1;
- (13) Isolated occurrences where the settlor has signed checks, made disbursements, or executed other documents related to the trust as a trustee, when in fact the settlor was not a trustee;
- (14) Making any requests for distributions on behalf of beneficiaries;
- (15) Making any requests to the trustee to hold, purchase, or sell any trust property;
or
- (16) A beneficiary serving as a trust protector or a trust advisor.

Section 4. That § 55-1-33 be REPEALED.

Section 5. That chapter 55-1A be amended with a NEW SECTION:

If otherwise validly executed, the following documents may be executed in accordance with chapter 53-12:

- (1) The governing instrument of an express trust, or other document, other than a will or codicil as defined in title 29A;
- (2) The resignation, removal, appointment, or acceptance of appointment of any trustee, any advisor or protector, or of any designated representation addressed in title 55;
- (3) A consent, release, ratification, or indemnification addressed in title 55; and
- (4) Any other document addressed by title 55 to the extent it is not excluded from the scope of chapter 53-12.

Notwithstanding any provision of chapter 53-12 to the contrary, the documents under this section are deemed to be a transaction within the meaning of subdivision 53-12-1(17) and are within the scope of chapter 53-12.

Section 6. That § 55-1A-41 be AMENDED:

55-1A-41. Unless specifically restricted by the governing instrument, a trustee may appoint an individual or a corporate fiduciary as a co-trustee. The appointed co-trustee may serve only as long as the appointing trustee serves, or as long as the last to serve if more than one trustee appointed the co-trustee. The appointed co-trustee may not become a successor trustee upon the death, resignation, or incapacity of the appointing trustee, unless appointed under the terms of the governing instrument or unless no other successor trustee, or method for appointing a successor trustee, is provided in the governing instrument.

The powers and the responsibilities of the appointed co-trustee may be limited by the appointing trustee in a writing signed by the appointing trustee at the time of the appointment. If the powers or responsibilities are so limited, the powers or responsibilities of the co-trustee shall be limited as set forth in writing. Unless the powers or responsibilities are so limited, the appointed co-trustee may exercise all the powers of the appointing trustee. The combined powers of the appointed co-trustee and the appointing trustee may not exceed the powers of the appointing trustee alone. The trustee appointing a co-trustee may, in writing, revoke the appointment at any time, with or without cause.

Unless specifically restricted by the governing instrument, if the governing instrument gives a fiduciary other than the trustee the power to remove and replace the trustee, such power includes the power to appoint a co-trustee to serve with the current trustee.

If an appointment under this section confers upon the appointed co-trustee, to the exclusion of another co-trustee, the power to take certain actions, including the power to direct or prevent certain actions of the trustees, the limitations on liability and the relief from duties and obligations afforded an excluded fiduciary under § 55-1B-2 apply to a co-trustee who does not hold such power.

If the governing instrument is silent concerning the trustee's power to appoint a co-trustee, the trustee shall notify in writing, the trustor, if living, and all current income and principal beneficiaries at least thirty days prior to the effective date of the trustee's exercise of the power granted under this section. The notice, which shall include a copy of the proposed action, shall advise the trustor and current beneficiaries that if they object to the trustee's appointment they need to file a written objection with the trustee prior to the effective date set out in the notice of the proposed action. If an objection is received by the trustee, prior to the effective date of the appointment, the trustee may not appoint a co-trustee. However, this section does not limit the power of the trustee under law to petition the court for approval of the appointment. If no objection has been timely made, the proposed appointment becomes effective on the later of the date set out in the notice or thirty days after notice has been given. The notice must be sent by any means allowed under the terms of the trust instrument, by mail with postage prepaid to the last known address of the trustor or current beneficiary, or by means otherwise allowed by law.

A governing instrument may provide for the appointment of two or more trustees and confer or allocate on one or more of the trustees, to the exclusion of other trustees, the power to direct, veto, or overrule specified actions or decisions of other trustees, or with sole responsibility for certain trustee duties. Any excluded trustee shall act in accordance with the exercise of the power, is not liable for complying with the exercise of the power, and has no obligation to review, inquire, investigate, or undertake any recommendations or evaluations with respect to the exercise of the power. A trustee having the power has the sole duty to account to the beneficiaries with respect to the exercise of the power and, if found liable for a breach of the trustee's duties with respect to the exercise of the power, is liable as if that trustee were the sole trustee.

The provisions of this section are effective for trusts created before, on, or after July 1, 2017, except as otherwise directed by the trustor, trust protector, trust advisor, or other fiduciary designated by the terms of the trust.

Section 7. That § 55-2-13 be AMENDED:

55-2-13.

- (1) Except as otherwise provided by the terms of a trust instrument governing a revocable trust and subject to § 55-2-14, a trustee has no duty to notify the qualified beneficiaries of the trust's existence.
- (2) Except as otherwise provided by the terms of a trust instrument governing an irrevocable trust or otherwise directed in writing by the trustor, trust advisor, or trust protector, the trustee shall:
 - (a) Notify the qualified beneficiaries of the trust's existence and of the right of the qualified beneficiary to request a copy of the trust instrument pertaining to the qualified beneficiary's interest in the trust within sixty days after the trustee has accepted trusteeship of the trust, or within sixty days after the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable;
 - (b) Promptly furnish to the qualified beneficiary a copy of the trust instrument upon request by the qualified beneficiary; and
 - (c) Promptly respond to a qualified beneficiary's request for information related to the administration of the trust, unless the request is unreasonable under the circumstances.
- (3) The trustor, trust advisor, or trust protector, may, by the terms of the governing instrument, or by providing written directions to the trustee, expand, restrict, eliminate, or otherwise modify the rights of beneficiaries to information relating to a trust. Unless otherwise stated in the governing instrument, the direction of the trustor controls in the event of a conflict among written directions provided to the trustee pursuant to this section. The trustee incurs no liability for a loss or otherwise for relying upon the written directions, including an instance when the governing instrument of an irrevocable trust does not expressly authorize an expansion, restriction, or other modification of the rights of beneficiaries to information relating to a trust.

The terms of a trust instrument governing an irrevocable trust or written directions provided pursuant to this section may expand, restrict, eliminate, or otherwise vary the

right of a beneficiary to be informed of the beneficiary's interest in a trust indefinitely or for a period of time, for example:

- (a) A period of time related to the age of a beneficiary;
 - (b) A period of time related to the lifetime of either a trustor or spouse of a trustor, or both;
 - (c) A period of time related to a term of years or specific date; and
 - (d) A period of time related to a specific event that is certain to occur.
- (4) The terms of the governing instrument or written directions provided pursuant to this section may authorize either the trustor, trust advisor, or trust protector to appoint a representative as provided in subdivisions 55-18-9 (11) and (12) for the purpose of being informed, on behalf of the beneficiary, of the beneficiary's interest in a trust for the period of time that the right of a beneficiary to be informed about a beneficiary's interest is restricted or eliminated pursuant to this section.
 - (5) The written directions of the trustor, whether made in the governing instrument or by separate written directions made pursuant to the governing instrument or this section, control and remain in effect upon the death of the trustor until or unless modified or revoked by a trust advisor or trust protector as permitted by the governing instrument or the trustor's written directions in effect at the time of the trustor's death. Subject to subsection (3), the written directions of a trust advisor or trust protector remain in effect until or unless a trust advisor or trust protector revokes the written directions by providing a writing to that effect to the trustee.
 - (6) Any beneficiary may waive the right to the notice or information otherwise required to be furnished under this section and, with respect to future reports and other information, may withdraw a waiver previously given.
 - (7) Before providing information to any qualified beneficiary, a fiduciary may require that any such qualified beneficiary or beneficiaries be bound by the same duty of confidentiality that binds the fiduciary. If trust information is sought through service of a subpoena on a fiduciary, the fiduciary may petition the court for an order that makes disclosure of trust information contingent upon the receiving party being bound by reasonable conditions to ensure the protection of confidentiality of trust information by the receiving party.
 - (8) The change in the identity of a trustee, occurring as the result of a mere name change or a merger, consolidation, combination, or reorganization of a trustee, does not require notice.

- (9) For the purposes of this section, the term, qualified beneficiary, means a beneficiary that is an entity then in existence or an individual who is twenty-one years of age or older and who, on the date the beneficiary's qualification is determined:
- (a) Is a distributee or permissible distributee of trust income or principal;
 - (b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees terminated on that date; or
 - (c) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

However, if the distributee is then unknown because a person holds a power to change the distributee, the trustee shall give notice only to the holder of the power.

- (10) For purposes of this section, the term, trust advisor, and the term, trust protector, are defined as provided in § 55-1B-1.
- (11) The provisions of this section are effective for trusts created, amended, or restated after June 30, 2002, except as otherwise directed by the trustor, trust protector, trust advisor, or other fiduciary designated by the terms of the trust. For trusts created before July 1, 2002, a trustee has no duty at common law or otherwise to notify a qualified beneficiary of the trust's existence unless otherwise directed by the trustor. The provisions of this paragraph do not apply if otherwise directed by the trustor, trust protector, trust advisor, or other fiduciary designated by the terms of the trust.

Section 8. That chapter 55-2 be amended with a NEW SECTION:

A trust advisor, trust protector, or other fiduciary designated by the terms of the trust shall keep each excluded fiduciary designated by the terms of the trust reasonably informed about:

- (1) The administration of the trust with respect to any specific duty or function being performed by the trust advisor, trust protector, or other fiduciary to the extent that the duty or function would normally be performed by the excluded fiduciary or to the extent that providing such information to the excluded fiduciary is reasonably necessary for the excluded fiduciary to perform its duties; and
- (2) Any other material information that the excluded fiduciary would be required to disclose to the qualified beneficiaries, regardless of whether the terms of the trust relieve the excluded fiduciary from providing such information to the qualified beneficiaries pursuant to § 55-2-13.

The limitation of the liability of the excluded fiduciary is not affected by the performance of the actions required above or the failure of a trust advisor, trust protector, or other fiduciary designated pursuant to the terms of the governing instrument, to perform any such actions.

Section 9. That chapter 55-2 be amended with a NEW SECTION:

Except as otherwise provided by chapter 21-22, § 55-4-58, or by the terms of a governing instrument, and in addition to the methods of notice allowed or mandated by title 15, notice to beneficiaries and other persons interested in a trust pursuant to § 55-2-13 or otherwise may be carried out by means of any of the following methods:

- (1) By delivery to the person, to the person's last known address, or to an address supplied by the person;
- (2) By U.S. mail, postage prepaid, addressed to the person at the person's last known address, or to an address supplied by the person;
- (3) By facsimile to a facsimile number of such person;
- (4) By electronic communication, as defined by subdivision 55-19-1(12); or
- (5) By posting on or sending to an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice of the posting provided to the person in conformity with subdivisions (1), (2), (3), or (4) of this section.

Section 10. That § 55-3-28 be AMENDED:

55-3-28. On petition by a trustee or beneficiary, the court may reform the terms of the trust, based upon a showing by the preponderance of the evidence and without any preliminary showing of an ambiguity, to conform to the trustor's intention if the failure to conform was due to a mistake of fact or law or a scrivener's error and the trustor's intent can be established. The terms of the trust may be construed or modified, in a manner that does not violate the trustor's probable intention, to achieve the trustor's tax objectives.

Section 11. That § 55-3-45 be AMENDED:

55-3-45. If a trust is not subject to court supervision under chapter 21-22, and if no objection has been made by a distribution beneficiary, as defined in this title, of a trust within one hundred eighty days after a copy of the trustee's accounting has been provided in accordance with section 9 of this Act, the distribution beneficiary is deemed to have

approved such accounting of the trustee, and the trustee, absent fraud, intentional misrepresentation, or material omission, shall be released and discharged from any and all liability to all beneficiaries of the trust as to all matters set forth in such accounting. Alternatively, the trustee's accounting may be approved on behalf of all beneficiaries by a trust advisor or trust protector, or in accordance with § 55-18-9 if:

- (1) Notice or information to the beneficiaries has been waived or modified in accordance with § 55-2-13; or
- (2) Authorized under the terms of the governing instrument.

The provisions of chapter 55-18 apply to this section.

For purposes of this section, the term, accounting, means any interim or final report or other statement provided by a trustee reflecting all transactions, receipts, and disbursements during the reporting period and a list of assets as of the end of the period covered by the report or statement, and including written notice to the distribution beneficiary of the provisions of this section.

Section 12. That § 55-15-1 be AMENDED:

55-15-1. Terms used in this chapter mean:

- (1) "Disinterested person," any person who is not a related or subordinate party, as defined in 26 U.S.C. § 672(c) , as amended and in effect on January 1, 2023, with respect to the person then acting as trustee of the trust and excludes the trustor of the trust and any interested trustee;
- (2) "Income trust," any trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, whether at fixed intervals or from time to time, either in fixed proportions or in amounts or proportions determined by the trustee. However, no trust that otherwise is an income trust may qualify pursuant to this subdivision, if it is subject to taxation under 26 U.S.C. § 2001 or 26 U.S.C. § 2501, as amended and in effect on January 1, 2023, until the expiration of the period for filing the return therefor (including extensions);
- (3) "Interested distributee," any person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party, as defined in 26 U.S.C. § 672(c), as amended and in effect on January 1, 2023, with respect to such distributee;
- (4) "Interested trustee:"

- (a) Any individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed;
 - (b) Any trustee who may be removed and replaced by an interested distributee;
 - (c) Any individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust; or
 - (d) Any of the above;
- (5) "Total return unitrust," any income trust which has been converted under and meets the provisions of this chapter;
 - (6) "Trustee," all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion or on the direction of one or more persons acting in a fiduciary capacity;
 - (7) "Trustor," any individual who created an inter vivos or a testamentary trust;
 - (7A) "Unitrust," a trust, the terms of which require or permit distribution of a unitrust amount, without regard to whether the trust has been converted to a unitrust in accordance with this chapter or whether the trust is established by express terms of the governing instrument;
 - (8) "Unitrust amount," an amount equal to a percentage of a unitrust's assets that may or are required to be distributed to one or more beneficiaries annually in accordance with the terms of the unitrust. The unitrust amount may be determined by reference to the net fair market value of the unitrust's assets as of a particular date each year or as an average determined on a multiple year basis;
 - (9) "Current valuation year," the accounting period of the trust for which the unitrust amount is being determined;
 - (10) "Prior valuation year," each of the two accounting periods of the trust immediately preceding the current valuation year;
 - (11) "I.R.C.," the Internal Revenue Code (26 U.S.C. section 1, et seq.); and
 - (12) "Net income," the amount of income of the trust for the taxable year described in 26 U.S.C. § 643(b), as amended and in effect on January 1, 2023, as income when not preceded by the words, taxable, distributable net, undistributed net, or gross, otherwise known as the trust accounting income of a trust.

Section 13. That § 55-15-8 be AMENDED:

55-15-8. Following the conversion of an income trust to a total return unitrust, the trustee:

- (1) Shall treat the unitrust amount as the net income of the trust for purposes of determining the amount available, from time to time, for distributions from the trust; and
- (2) May allocate to trust income for each taxable year of the trust (or portions thereof):
 - (a) Net short-term capital gain described in 26 U.S.C. § 1222(5), as amended and in effect on January 1, 2023, for such year (or portion thereof) but only to the extent that the amounts so allocated together with all other amounts allocate to trust income for such year (or portion thereof) does not exceed the unitrust amount for such year (or portion thereof); and
 - (b) Net long-term capital gain described in 26 U.S.C. § 1222(7), as amended and in effect on January 1, 2023, for such year (or portion thereof) but only to the extent that the amount so allocated together with all other amounts, including amounts described in subsection (a) above, allocated to trust income for such year (or portion thereof) does not exceed the unitrust amount for such year (or portion thereof).

Section 14. That § 55-15-9 be AMENDED:

55-15-9. In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

- (1) The effective date of the conversion;
- (2) The timing of distributions during the year, if any, including provisions for prorating distributions for a short year when the effective date of a conversion takes place during the year;
- (3) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;
- (4) If the trust is reconverted to an income trust, the effective date of such reconversion; and
- (5) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this chapter.

Section 15. That § 55-15-10 be AMENDED:

55-15-10. Conversion to a total return unitrust under the provisions of this chapter does not affect any other provisions of the governing instrument, if any, regarding distributions of principal or the standards for distributions of income.

Section 16. That § 55-18-1 be AMENDED:

55-18-1. Terms used in this chapter mean:

- (1) "Bind" or "bound," to consent, receive notice or service of process, approve, agree, object, resist, waive, or demand for or as a person with the same binding and conclusive effect as if the person represented had;
- (2) "Conflict of interest," a situation in which a representative's interest in the trust causes a significant likelihood that a reasonable person would disregard a representative's duty to a represented beneficiary. A conflict of interest, however, excludes:
 - (a) Any adversity, conflict or opposed interests substantially unrelated to the representative's interest in the trust;
 - (b) Any past situation which is not likely to re-occur; and
 - (c) Any conflict of interest which falls short of a material conflict of interest;
- (3) "Co-representative," more than one simultaneously acting representative of the same class pursuant to § 55-18-9, as when co-guardians are acting;
- (4) "Conservator," a person appointed pursuant to chapter 29A-5 or equivalent provisions of another jurisdiction's laws including a temporary conservator, a guardian ad litem, and a limited conservator;
- (5) "Fiduciary," a person defined by subdivision 21-22-1(3), except as used in § 55-18-17;
- (6) "Guardian," a person appointed pursuant to chapter 29A-5 or equivalent provisions of another jurisdiction's laws including a temporary guardian and a limited guardian;
- (7) "Incapacitated" or "incapacity," lacking the capacity to meaningfully understand the matter in question because of a mental or physical impairment;
- (8) "Interest," a beneficial interest as defined by subdivision 55-1-24(1) but including the holder of a power of appointment, and any power to remove or replace a fiduciary or a representative;
- (9) "Interested beneficiary," a person who, on the date the person's qualification is determined:
 - (a) Is a current distributee or permissible distributee of trust income or principal;
 - (b) Would be a distributee or permissible distributee of trust income or principal if the interests of the current distributees terminated on that date;

- (c) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date;
 - (d) Holds a power of appointment; or
 - (e) Would hold a power of appointment if the interests of the current distributees terminated on that date or the interests of the persons currently holding a power of appointment under this subdivision terminated on that date;
- (10) "Knows" or "knowingly," actual knowledge of the fact in question;
- (11) "Minor," any person who has not attained the age of eighteen. The term includes a minor with an incapacity;
- (12) "Nonjudicial settlement," an agreement, release, or other action whether or not approved by a court, which may include, without limitation:
- (a) The interpretation or construction of the terms of a trust;
 - (b) The approval of any fiduciary's report or accounting;
 - (c) Direction to any fiduciary to refrain from performing a particular act or the grant to a fiduciary of any necessary or desirable power;
 - (d) The resignation or appointment of any fiduciary;
 - (e) The determination of a fiduciary or a representative's compensation;
 - (f) The transfer of a trust's principal place of administration or situs;
 - (g) The liability of any fiduciary's action or omission relating to a trust;
 - (h) Partial or final settlement agreements regarding a trust or its administration; or
 - (i) The modification, amendment, reformation, or termination of a trust;
- (13) "Notice" or "notifies," notice provided in accordance with section 9 of this Act;
- (14) "Notifier," a person who is undertaking notice or proposing consent with regard to a matter concerning a trust;
- (15) "Power of appointment," a power defined by § 55-1-12;
- (16) "Proceeding," any judicial or nonjudicial trust proceeding, accounting, termination, modification, reformation, decanting, settlement, nonjudicial settlement, and any proceeding conducted pursuant to chapter 21-22 or title 29A which concerns a trust;
- (17) "Protected person," a person other than a minor for whom a guardian or conservator is appointed;
- (18) "Reasonably available," with respect to a person, that the person can be identified and located with the exercise of reasonable diligence;

- (19) "Representative," a person who may bind another person pursuant to § 55-18-9;
- (20) "Trust," an express inter vivos or testamentary trust; and
- (21) "Uninterested beneficiary," a beneficiary other than an interested beneficiary.

An Act to amend provisions regarding trusts.

I certify that the attached Act originated in the:

Received at this Executive Office this ____ day of _____,

Senate as Bill No. 95

2023 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby approved this _____ day of _____, A.D., 2023

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2023
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 95
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State