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SB-801 California Uniform Directed Trust Act. (2023-2024)

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Date Published: 10/12/2023 02:00 PM

Senate Bill No. 801

CHAPTER 721

An act to amend Sections 300 and 1304 of, and to add Chapter 6 (commencing with Section 16600) to Part 4 of Division 9 of, the Probate Code, relating to trusts.

[Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 801, Allen. California Uniform Directed Trust Act.

Existing law establishes procedures for the creation, modification, and termination of a trust and regulates the administration of trusts by trustees on behalf of beneficiaries.

This bill would enact the California Uniform Directed Trust Act to provide a method for regulating trusts where a person who is not a trustee has been given a role in directing the trust. The bill would require the consent of the public administrator, public guardian, or public conservator before they are appointed to act as a trust director or directed trustee. The bill would set forth the duties and responsibilities of the trust director and the duties and responsibilities of the directed trustee, including specifying what powers may be given to a trust director and the information required to be exchanged by the trust director and the directed trustee. The bill would require a directed trustee to take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction, except that the directed trustee is not required to comply with a trust director's exercise or nonexercise of a power of direction to the extent that, by complying, the trustee would engage in willful misconduct. The bill would exempt from duties and liabilities under the act a trust director who is licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of the trust director's business or practice of a profession, to the extent the trust director acts in that capacity. The bill would make conforming changes to related provisions.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 300 of the Probate Code is amended to read:

300. A trust company may be appointed to act as a personal representative, guardian or conservator of an estate, trust director, or trustee, in the same manner as an individual. A trust company may not be appointed guardian or conservator of the person of a ward or conservatee.

SEC. 2. Section 1304 of the Probate Code is amended to read:

1304. With respect to a trust, the grant or denial of the following orders is appealable:

(a) Any final order under Chapter 3 (commencing with Section 17200) of Part 5 of Division 9, except the following:

- (1) Compelling the trustee or trust director to submit an account or report acts as trustee or trust director, respectively.
- (2) Accepting the resignation of the trustee or trust director.

(b) Any final order under Chapter 2 (commencing with Section 19020) of Part 8 of Division 9.

(c) Any final order under Chapter 1 (commencing with Section 20100) and Chapter 2 (commencing with Section 20200) of Division 10.

(d) Determining whether an action constitutes a contest under former Chapter 2 (commencing with Section 21320) of Part 3 of Division 11, as that chapter read prior to its repeal by Chapter 174 of the Statutes of 2008.

SEC. 3. Chapter 6 (commencing with Section 16600) is added to Part 4 of Division 9 of the Probate Code, to read:

CHAPTER 6. California Uniform Directed Trust Act

16600. (a) This chapter shall be known, and may be cited, as the California Uniform Directed Trust Act.

(b) The Legislature finds and declares all of the following:

- (1) This chapter governs an arrangement commonly known as a directed trust.
- (2) In a directed trust, the terms of the trust grant a person other than a trustee a power over some aspect of the trust's administration.
- (3) Under this chapter, this power is called a power of direction, the person that holds the power is called a trust director, a trustee that is subject to the power is called a directed trustee, and the trust is a directed trust.
- (4) A directed trustee is required to take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction.
- (5) Except for willful misconduct, a directed trustee is liable only for its own breach of trust in executing a direction and not for the trust director's breach of trust in exercising or not exercising the power of direction.

16602. For purposes of this chapter, the following definitions shall apply:

(a) "Breach of trust" includes 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.

(b) "Directed trust" means a trust for which the terms of the trust grant a power of direction.

(c) "Directed trustee" means a trustee that is subject to a trust director's power of direction.

(d) "Power of direction" means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. Power of direction includes a power over the investment, management, or distribution of trust property or other matters of trust administration. The term excludes the powers described in subdivision (a) of Section 16606.

(e) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(f) "Terms of a trust" means either of the following:

- (1) The manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or established by other evidence that has been admitted in a judicial proceeding.
- (2) The trust's provisions as established, determined, or amended by a trustee or trust director in accordance with applicable law, the exercise of a power of appointment in accordance with applicable law, a court order, or other binding modification, including, but not limited to, under Section 15404.

(g) "Trust director" means a person that is granted a power of direction by the terms of a trust, to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

16604. (a) This chapter applies to a trust, whenever created, that has its principal place of administration in this state, subject to all of the following rules:

- (1) If the trust was created before January 1, 2024, this chapter applies only to a decision or action occurring on or after that date.
- (2) If the principal place of administration of the trust is changed to this state on or after January 1, 2024, this chapter applies only to a decision or action occurring on or after the date of the change.

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

- (1) A trustee's principal place of business is located in, or a trustee is a resident of, the designated jurisdiction.
- (2) A trust director's principal place of business is located in, or a trust director is a resident of, the designated jurisdiction.
- (3) All or part of the administration occurs in the designated jurisdiction.

16605. Notwithstanding any other law, the consent of the public administrator, public guardian, or public conservator is required before they may be appointed to act as a trust director or directed trustee.

16606. (a) This chapter does not apply to any of the following:

- (1) A power of appointment.
- (2) The power to appoint or remove a trustee or trust director.
- (3) The power of a settlor over a trust, to the extent the settlor has a power to revoke the trust.
- (4) The power of a beneficiary over a trust, to the extent the exercise or nonexercise of the power affects the beneficial interest of the beneficiary.
- (5) The power over a trust if both of the following apply:
 - (A) The terms of the trust provide that the power is held in a nonfiduciary capacity.
 - (B) The power is required to be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the United States Internal Revenue Code of 1986 and regulations issued thereunder.

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

16608. (a) Subject to Section 16610, the terms of a trust may grant a power of direction to a trust director.

(b) Unless the terms of a trust provide otherwise, a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the trust director pursuant to subdivision (a).

(c) Unless the terms of a trust provide otherwise, trust directors with joint powers shall act by majority decision.

16610. A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under subdivision (b) of Section 16608 regarding either of the following:

- (a) A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of Medicaid law in Section 1917 of the Social Security Act (42 U.S.C. Section 1396p(d)(4)(A)) and regulations issued thereunder.
- (b) A charitable interest in the trust, including notice regarding the interest to the Attorney General.

16612. (a) Subject to subdivision (b), with respect to a power of direction or further power under subdivision (b) of Section 16608, both of the following apply:

- (1) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power, if the power is held individually, as a sole trustee in a like position and under similar circumstances or, if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances.

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

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

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

16614. (a) Subject to subdivision (b), a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b) of Section 16608, and the trustee is not liable for the action.

(b) A directed trustee shall not comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b) of Section 16608 to the extent that, by complying, the trustee would engage in willful misconduct.

(c) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if any of the following is true:

(1) The breach involved the trustee's or other trust director's willful misconduct.

(2) The release was induced by improper conduct of the trustee or other trust director in procuring the release.

(3) At the time of the release, the trust director did not know the material facts relating to the breach.

(d) A directed trustee that has reasonable doubt about their duty under this section may petition the court for instructions.

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

16616. (a) Subject to Section 16618, a trustee shall provide information to a trust director to the extent the information is reasonably related both to the powers or duties of the trustee and the powers or duties of the trust director.

(b) Subject to Section 16618, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to the powers or duties of the trust director and the powers or duties of the trustee or other trust director.

(c) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(d) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

16618. (a) (1) Unless the terms of a trust provide otherwise, a trustee does not have a duty to do either of the following:

(A) Monitor a trust director.

(B) Inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the trust director.

(2) By taking an action described in paragraph (1), a trustee does not assume the duty excluded by paragraph (1).

(b) (1) Unless the terms of a trust provide otherwise, a trust director does not have a duty to do either of the following:

(A) Monitor a trustee or another trust director.

(B) Inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the trust director might have acted differently than a trustee or another trust director.

(2) By taking an action described in paragraph (1), a trust director does not assume the duty excluded by paragraph (1).

16620. The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that, in a directed trust, a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under Sections 16614, 16616, and 16618.

16622. (a) An action against a trust director for breach of trust shall be commenced within the same limitation period as in Section 16460 for an action for breach of trust against a trustee in a like position and under similar circumstances.

(b) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under Section 16460 in an action for breach of trust against a trustee in a like position and under similar circumstances.

16624. In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

16626. (a) By accepting appointment as a trust director of a trust subject to this chapter, the trust director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the trust director.

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

16628. Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding all of the following matters:

(a) Acceptance under Sections 15600 and 15601.

(b) Giving of a bond to secure performance under Section 15602.

(c) Reasonable compensation under Section 15681.

(d) Resignation or removal under Article 3 (commencing with Section 15640) of Chapter 1.

(e) Vacancy and appointment of a successor under Section 15660.

16630. In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

16632. This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).