

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4933**

BY DELEGATE SHOTT

[Introduced February 11, 2020; Referred to the Committee  
on the Judiciary]

1 A BILL to amend and reenact §44D-1-103, §44D-1-105, §44D-1-108, §44D-6-602, §44D-7-703  
 2 and §44D-8-808 of the Code of West Virginia, 1931, as amended; and to amend said code  
 3 by adding thereto 17 new sections, designated §44D-8A-801, §44D-8A-802, §44D-8A-  
 4 803, §44D-8A-804, §44D-8A-805, §44D-8A-806, §44D-8A-807, §44D-8A-808, §44D-8A-  
 5 809, §44D-8A-810, §44D-8A-811, §44D-8A-812, §44D-8A-813, §44D-8A-814, §44D-8A-  
 6 815, §44D-8A-816, and §44D-8A-817, all relating to the administration of trusts;  
 7 definitions; default and mandatory rules; principal place of administration; grantor's powers  
 8 and powers of withdrawal; cotrustees; and powers to direct; and enacting the West Virginia  
 9 Uniform Directed Trust Act which specifies how trust directors can act concerning trusts  
 10 in this state.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

### **§44D-1-103. Definitions.**

1 In this chapter:

2 (a) "Action", with respect to an act of a trustee, includes a failure to act.

3 (b) "Ascertainable standard" means a standard relating to an individual's health,  
 4 education, support or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of  
 5 the Internal Revenue Code.

6 (c) "Beneficiary" means a person that:

7 (1) Has a present or future beneficial interest in a trust, vested or contingent;

8 (2) In a capacity other than that of trustee, holds a power of appointment over trust  
 9 property; or

10 (3) A charitable organization that is expressly designated in the terms of the trust  
 11 instrument to receive distributions.

12 (d) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose  
 13 described in §44D-4-405(a) of this code.

14 (e) "Conservator" means a person appointed by the court to administer the estate and  
15 financial affairs of a protected person.

16 (f) "Court" means a court of this state having proper jurisdiction under §44D-2-203 of this  
17 code, and venue under §44D-2-204 of this code.

18 (g) "Current beneficiary" means a beneficiary that, on the date the beneficiary's  
19 qualification is determined, is a distributee or permissible distributee of trust income or principal.

20 (h) "Environmental law" means a federal, state or local law, rule, regulation or ordinance  
21 relating to protection of the environment.

22 (i) "Grantor" means a person, including a testator, who creates, or contributes property to  
23 a trust. If more than one person creates or contributes property to a trust, each person is a grantor  
24 of the portion of the trust property attributable to that person's contribution except to the extent  
25 another person has the power to revoke or withdraw that portion.

26 (j) "Guardian" means a person appointed by the court who is responsible for the personal  
27 affairs of a protected person or a parent to make decisions regarding the support, care, education,  
28 health and welfare of a minor. The term does not include a guardian ad litem.

29 (k) "Interested person" means heirs, devisees, children, spouses, creditors, beneficiaries  
30 and any others having a property right in or claim against a trust or the property in a trust. It also  
31 includes persons having priority for appointment as personal representative and other fiduciaries  
32 representing interested persons. The meaning as it relates to particular persons may vary from  
33 time to time and must be determined according to the particular purposes of, and matter involved  
34 in, any proceeding.

35 (l) "Interests of the beneficiaries" means the beneficial interests provided in the terms of  
36 the trust.

37 (m) "Internal Revenue Code" or "Internal Revenue Code of 1986" has the same meaning  
38 as when used in a comparable context in the laws of the United States then in effect relating to  
39 income, estate, generation-skipping transfer and other taxes including all amendments made to

40 the laws of the United States and amendments which have been adopted and incorporated into  
41 West Virginia law by the West Virginia Legislature in §11-21-9 of this code.

42 (n) "Jurisdiction" with respect to a geographic area, includes a state or country.

43 (o) "Person" means an individual, corporation, business trust, estate, trust, partnership,  
44 limited liability company, association, joint venture, unincorporated nonprofit association,  
45 charitable organization, government, governmental subdivision, agency or instrumentality, public  
46 corporation or any other legal or commercial entity.

47 (p) "Power of withdrawal" means a presently exercisable general power of appointment  
48 other than a power

49 (1) Exercisable by a trustee and limited by an ascertainable standard; or

50 (2) Exercisable by another person only upon consent of the trustee or a person holding an  
51 adverse interest.

52 (q) "Property" means anything that may be the subject of ownership, whether real or  
53 personal, legal or equitable or any interest therein.

54 (r) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's  
55 qualification is determined:

56 (1) Is a distributee or permissible distributee of trust income or principal;

57 (2) Would be a distributee or permissible distributee of trust income or principal if the  
58 interests of the distributees described in paragraph (1) of this subdivision terminated on that date  
59 without causing the trust to terminate; or

60 (3) Would be a distributee or permissible distributee of trust income or principal if the trust  
61 terminated on that date.

62 (s) "Revocable", as applied to a trust, means revocable by the grantor without the consent  
63 of the trustee or a person holding an adverse interest.

64 (t) "Spendthrift provision" means a term of a trust which restrains both voluntary and  
65 involuntary transfer of a beneficiary's interest.

66 (u) "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
 67 United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the  
 68 United States. The term includes an Indian tribe or band recognized by federal law or formally  
 69 acknowledged by a state.

70 (v) "Terms of a trust" means: (1) Except as otherwise provided in subparagraph (2), the  
 71 manifestation of the grantor's intent regarding a trust's provisions as

72 (A) Expressed in the trust instrument; or

73 (B) as may be Established by other evidence that would be admissible in a judicial  
 74 proceeding; or

75 (2) The trust's provisions as established, determined, or amended by:

76 (i) A trustee or trust director in accordance with applicable law;

77 (ii) A court order; or

78 (iii) A nonjudicial settlement agreement under §44D-1-111 of this code.

79 (w) "Trust instrument" means a writing, including a will, executed by the grantor that  
 80 contains terms of the trust, including any amendments thereto.

81 (x) "Trustee" includes an original, additional, successor trustee and a cotrustee.

82 (y) "Writing" or "written instrument" does not include an electronic record or electronic  
 83 signature as provided in chapter 39A of this code.

**§44D-1-105. Default and mandatory rules.**

1 (a) Except as otherwise provided in the terms of the trust instrument, this chapter governs  
 2 the duties and powers of a trustee, relations among trustees, and the rights and interests of a  
 3 beneficiary.

4 (b) The terms of a trust prevail over any provision of this chapter except:

5 (1) The requirements for creating a trust;

6 (2) The duty of a trustee to act in good faith and in accordance with the terms and purposes  
 7 of the trust, but subject to the provisions of §44D-8A-809, §44D-8A-811 and §44D-8A-812 of this

8 code;

9 (3) The requirement that a trust and its terms have a purpose that is lawful, not contrary  
10 to public policy, and possible to achieve;

11 (4) The power of the court to modify or terminate a trust under §44D-4-410 through 416,  
12 of this code;

13 (5) The effect of a spendthrift provision and the rights of certain creditors and assignees  
14 to reach a trust as provided in §44D 5-1 *et seq.* of this code;

15 (6) The power of the court under §44D-7-702 of this code to require, dispense with, or  
16 modify or terminate a bond;

17 (7) The power of the court under §44D-7-708(b) of this code, to adjust a trustee's  
18 compensation specified in the terms of the trust instrument which is unreasonably low or high;

19 (8) The effect of an exculpatory term under §44D-10-1008, article of this code;

20 (9) The rights under §44D-10-1010 through 1013 of this code, of a person other than a  
21 trustee or beneficiary;

22 (10) Periods of limitation for commencing a judicial proceeding;

23 (11) The power of the court to take action and exercise jurisdiction as may be necessary  
24 in the interests of justice; and

25 (12) The subject-matter jurisdiction of the court and venue for commencing a proceeding  
26 as provided in §44D-2-203 and 204 of this code.

**§44D-1-108. Principal place of administration.**

1 (a) Without precluding other means for establishing a sufficient connection with the  
2 designated jurisdiction, terms of a trust designating the principal place of administration are valid  
3 and controlling if:

4 (1) A trustee's principal place of business is located in or a trustee is a resident of the  
5 designated jurisdiction; or

6           (2) A trust director's principal place of business is located in or a trust director is a resident  
7 of the designated jurisdiction; or

8           ~~(2)~~ (3) All or part of the administration occurs in the designated jurisdiction.

9           (b) Without precluding the right of the court to order, approve, or disapprove a transfer,  
10 the trustee, may transfer the trust's principal place of administration to another state or to a  
11 jurisdiction outside of the United States that is appropriate to the trust's purposes, its  
12 administration and the interests of the beneficiaries.

13           (c) When the proposed transfer of a trust's principal place of administration is to another  
14 state or to a jurisdiction outside of the United States, the trustee shall notify the current  
15 beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60  
16 days before initiating the transfer. A corporate trustee that maintains a place of business in West  
17 Virginia where one or more trust officers are available on a regular basis for personal contact with  
18 trust customers and beneficiaries has not transferred its principal place of administration merely  
19 because all or a significant portion of the administration of the trust is performed outside West  
20 Virginia. The notice of proposed transfer must include:

21           (1) The name of the jurisdiction to which the principal place of administration is to be  
22 transferred;

23           (2) The address and telephone number at the new location at which the trustee can be  
24 contacted;

25           (3) An explanation of the reasons for the proposed transfer;

26           (4) The date on which the proposed transfer is anticipated to occur; and

27           (5) The date, not less than 60 days after the giving of the notice, by which the current  
28 beneficiary must notify the trustee of an objection to the proposed transfer.

29           (d) The authority of a trustee under this section to transfer a trust's principal place of  
30 administration to another state or to a jurisdiction outside the United States terminates if a current  
31 beneficiary notifies the trustee of an objection to the proposed transfer on or before the date

32 specified in the notice.

33 (e) In connection with a transfer of the trust’s principal place of administration, the trustee  
34 may transfer some or all of the trust property to a successor trustee designated in the terms of  
35 the trust instrument or appointed pursuant to §44D-7-704 of this code.

**ARTICLE 6. REVOCABLE TRUSTS.**

**§44D-6-603. Grantor’s powers; powers of withdrawal.**

1 (a) While a trust is revocable and the grantor has capacity to revoke the trust, rights of the  
2 beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to,  
3 the grantor.

4 (b) During the period the power may be exercised, the holder of a power of withdrawal has  
5 the rights of a grantor of a revocable trust under this section to the extent of the property subject  
6 to the power.

7 (c) When a trust is revocable, the trustee may follow a direction of the grantor that is  
8 contrary to the terms of the trust instrument.

**ARTICLE 7. OFFICE OF THE TRUSTEE.**

**§44D-7-703. Cotrustees.**

1 (a) Unless otherwise provided in the terms of the trust instrument, cotrustees who are  
2 unable to reach a unanimous decision may act by majority decision. Unless otherwise provided  
3 by the trust instrument, when a dispute arises among trustees as to the exercise or nonexercise  
4 of any of their powers and there is no agreement by a majority of them, the court in its discretion  
5 upon petition filed by any of the trustees, the grantor, if living, a qualified beneficiary, or any  
6 interested person, may direct the exercise or nonexercise of the power as it considers necessary  
7 for the best interest of the trust.

8 (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust,  
9 unless otherwise provided in the terms of the trust instrument.



10 (c) Subject to the provisions of §§44D-8A-801 *et. seq.* of this code, a cotrustee must  
 11 participate in the performance of a trustee's function unless the cotrustee is unavailable to perform  
 12 the function because of absence, illness, disqualification under other law, or other temporary  
 13 incapacity or the cotrustee has properly delegated the performance of the function to another  
 14 trustee.

15 (d) If a cotrustee is unavailable to perform duties because of absence, illness,  
 16 disqualification under other law, or other temporary incapacity, and prompt action is necessary to  
 17 achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee  
 18 or a majority of the remaining cotrustees may act for the trust.

19 (e) A trustee may delegate to a cotrustee the performance of a function other than a  
 20 function that the terms of the trust expressly require to be performed by the trustees jointly. Unless  
 21 a delegation was irrevocable, a trustee may revoke a delegation of a function previously made.

22 (f) Except as otherwise provided in subsection (g) of this section, a trustee who does not  
 23 join in an action of another trustee is not liable for the action.

24 (g) Subject to the provisions of 44D-8A-801 *et. seq.* of this code, each trustee shall  
 25 exercise reasonable care to:

26 (1) Prevent a cotrustee from committing a serious breach of trust; and

27 (2) Compel a cotrustee to redress a serious breach of trust.

28 (h) A dissenting trustee who joins in an action at the direction of the majority of the trustees  
 29 and who notifies any cotrustee of the dissent at or before the time of the action is not liable for the  
 30 action unless the action is a serious breach of trust.

## **ARTICLE 8. DUTIES AND POWERS OF TRUSTEE.**

### **§44D-8-808. Powers to direct.**

1 ~~(a) While a trust is revocable, the trustee may follow a direction of the grantor that is~~  
 2 ~~contrary to the terms of the trust instrument~~

3 ~~(b) If~~ The terms of a trust instrument which confer upon a person other than the grantor of

4 a revocable trust power to direct certain actions of the trustee are governed by the provision of  
 5 the West Virginia Uniform Directed Trust Act contained in §§44D-8A-801 et seq. the trustee shall  
 6 ~~act in accordance with an exercise of the power unless the attempted exercise is manifestly~~  
 7 ~~contrary to the terms of the trust instrument or the trustee knows the attempted exercise would~~  
 8 ~~constitute a serious breach of a fiduciary duty that the person holding the power owes to the~~  
 9 ~~beneficiaries of the trust.~~

10 (c) ~~The terms of a trust instrument may confer upon a trustee or other person a power to~~  
 11 ~~direct the modification or termination of the trust.~~

12 (d) ~~A person, other than a beneficiary, who holds a power to direct is presumptively a~~  
 13 ~~fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and~~  
 14 ~~the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results~~  
 15 ~~from the holder's breach of a fiduciary duty~~

**ARTICLE 8A. WEST VIRGINIA UNIFORMED TRUST ACT.**

**§44D-8A-801. Short title.**

1 This article may be cited as the "West Virginia Uniform Directed Trust Act."

**§44D-8A-802. Definitions.**

1 In addition to the definitions contained in §4D-1-103 which apply to this article, in this  
 2 article:

3 (1) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on  
 4 that director or trustee by the terms of the trust, this article, or law of this state other than this  
 5 article pertaining to trusts.

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

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

8 (4) "Power of direction" means a power over a trust granted to a person by the terms of  
 9 the trust to the extent the power is exercisable while the person is not serving as a trustee. The  
 10 term includes a power over the investment, management, or distribution of trust property or other

11 matters of trust administration. The term excludes the powers described in §44D-8A-501(b) of this  
12 code.

13 (5) "Trust director" means a person that is granted a power of direction by the terms of a  
14 trust to the extent the power is exercisable while the person is not serving as a trustee. The person  
15 is a trust director whether or not the terms of the trust refer to the person as a trust director and  
16 whether or not the person is a beneficiary or grantor of the trust.

17 (6) "Knowingly" means known by the trustee based on the contents of the direction and  
18 any information provided by the trust director concerning the same.

19 (7) "Willful misconduct" means intentional malicious conduct or conduct intentionally  
20 designed to defraud or seek an unconscionable advantage and which is not mere negligence,  
21 gross negligence, or recklessness.

**§44D-8A-803. Application; Principal place of administration.**

1 This article applies to a trust, whenever created, that has its principal place of  
2 administration in this state, subject to the following rules:

3 (a) If the trust was created before the effective date of this article, this article applies only  
4 to a decision or action occurring on or after the effective date of this article.

5 (b) If the principal place of administration of the trust is changed to this state on or after  
6 the effective date of this article, this article applies only to a decision or action occurring on or  
7 after the date of the change.

**§44D-8A-804. Common law and principles of equity.**

1 The common law and principles of equity supplement this article, except to the extent  
2 modified by this article or law of this state other than this article.

**§44D-8A-805. Exclusions.**

1 (a) In this section, "power of appointment" means a power that enables a person acting in  
2 a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of  
3 appointment over trust property.

4           (b) This article does not apply to a:  
 5           (1) Power of appointment;  
 6           (2) Power to appoint or remove a trustee or trust director;  
 7           (3) Power of a grantor over a trust to the extent the grantor has a power to revoke the  
 8 trust;

9           (4) Power of a beneficiary over a trust to the extent the exercise or nonexercise of the  
 10 power affects the beneficial interest of:

11           (A) The beneficiary; or  
 12           (B) Another beneficiary represented by the beneficiary under §44D-3-301, §44D-3-302,  
 13 §44D-3-303, §44D-3-304 and §44D-3-305 of this code with respect to the exercise or nonexercise  
 14 of the power; or

15           (5) Power over a trust if:  
 16           (A) The terms of the trust provide that the power is held in a nonfiduciary capacity; and  
 17           (B) The power must be held in a nonfiduciary capacity to achieve the grantor’s tax  
 18 objectives under the United States Internal Revenue Code of 1986 and regulations issued  
 19 thereunder.

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

**§44D-8A-806. Powers of trust director.**

1           (a) Subject to §44D-8A-807 of this code, the terms of a trust may grant a power of direction  
 2 to a trust director.

3           (b) Unless the terms of a trust provide otherwise:

4           (1) A trust director may exercise any further power appropriate to the exercise or  
 5 nonexercise of a power of direction granted to the director under subsection (a); and

6 (2) Trust directors with joint powers must act by majority decision.

**§44D-8A-807. Limitations on trust director.**

1 A trust director is subject to the same rules as a trustee in a like position and under similar  
2 circumstances in the exercise or nonexercise of a power of direction or further power under §44D-  
3 8A-601(b)(1) of this code regarding:

4 (1) A payback provision in the terms of a trust necessary to comply with the reimbursement  
5 requirements of Medicaid law in Section 1917 of the Social Security Act, 42 U.S.C. Section  
6 1396p(d)(4)(A) and regulations issued thereunder; and

7 (2) A charitable interest in the trust, including notice regarding the interest to the Attorney  
8 General of the State of West Virginia.

**§44D-8A-808. Duty and liability of trust director.**

1 (a) Subject to subsection (b), with respect to a power of direction or further power under  
2 §44D-8A-806(b)(1) of this code:

3 (1) A trust director has the same fiduciary duty and liability in the exercise or nonexercise  
4 of the power:

5 (A) If the power is held individually, as a sole trustee in a like position and under similar  
6 circumstances; or

7 (B) If the power is held jointly with a trustee or another trust director, as a cotrustee in a  
8 like position and under similar circumstances; and

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

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

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

**§44D-8A-809. Duty and liability of directed trustee.**

1 (a) Subject to subsection (b), a directed trustee shall take reasonable action to comply  
2 with a trust director's exercise or nonexercise of a power of direction or further power under §44D-  
3 8A-806(b)(1) of this code, and the trustee is not liable for the action.

4 (b) A directed trustee must not comply with a trust director's exercise or nonexercise of a  
5 power of direction or further power under §44D-8A-806(b)(1) of this code to the extent that the  
6 directed trustee is thereby directed knowingly to violate the laws or regulations of any jurisdiction  
7 applicable to the trust. The directed trustee may reasonably rely upon the advice of legal counsel  
8 to determine what actions would be consistent with or contrary to applicable law. Reasonable  
9 expenses incurred by the directed trustee in good faith for legal advice concerning an instruction  
10 from a trust director or a petition to the court for instructions shall be proper expenses of the trust.

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

13 (1) The breach involved the trustee's or other director's willful misconduct;

14 (2) The release was induced by improper conduct of the trustee or other director in  
15 procuring the release; or

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

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

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

**§44D-8A-810. Duty to provide information to trust director or trustee.**

1 (a) Subject to §44D-8A-811 of this code, a trustee shall provide information to a trust  
2 director to the extent the information is reasonably related both to:

3 (1) The powers or duties of the trustee; and

4 (2) The powers or duties of the director.

5 (b) Subject to §44A-8A-811 of this code, a trust director shall provide information to a  
6 trustee or another trust director to the extent the information is reasonably related both to:

7 (1) The powers or duties of the director; and

8 (2) The powers or duties of the trustee or other director.

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

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

**§44D-8A-811. No duty to monitor, inform, or advise.**

1 (a) Unless the terms of a trust provide otherwise:

2 (1) A trustee does not have a duty to:

3 (A) Monitor a trust director; or

4 (B) Inform or give advice to a grantor, beneficiary, trustee, or trust director concerning an  
5 instance in which the trustee might have acted differently than the director; and

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

8 (b) Unless the terms of a trust provide otherwise:

9 (1) A trust director does not have a duty to:

10 (A) Monitor a trustee or another trust director; or

11 (B) Inform or give advice to a grantor, beneficiary, trustee, or another trust director  
12 concerning an instance in which the director might have acted differently than a trustee or another  
13 trust director; and

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

**§44D-8A-812. Application to cotrustee.**

1 The terms of a trust may relieve a cotrustee from duty and liability with respect to another  
2 cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a  
3 directed trust a directed trustee is relieved from duty and liability with respect to a trust director's  
4 power of direction under §44D-8A-809, §44D-8A-810, and §44D-8A-811 of this code.

**§44D-8A-813. Limitation of action against trust director.**

1 (a) An action against a trust director for breach of trust must be commenced within the  
2 same limitation period as provided in §44D-10-1005 of this code for an action for breach of trust  
3 against a trustee in a like position and under similar circumstances.

4 (b) A report or accounting has the same effect on the limitation period for an action against  
5 a trust director for breach of trust that the report or accounting would have under §44D-10-1005  
6 of this code in an action for breach of trust against a trustee in a like position and under similar  
7 circumstances.

**§44D-8A-814. Defenses in action against trust director.**

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

**§44D-8A-815. Jurisdiction over trust director.**

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



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

**§44D-8A-816. Office of trust director.**

1           **Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a**  
2 **trust director regarding the following matters:**

- 3           **(1) Acceptance under §44D-7-701 of this code;**
- 4           **(2) Giving of bond to secure performance under §44D-7-702 of this code;**
- 5           **(3) Reasonable compensation under §44D-7-708 of this code;**
- 6           **(4) Resignation under §44D-7-705 of this code;**
- 7           **(5) Removal under §44D-7-706 of this code; and**
- 8           **(6) Vacancy and appointment of successor under §44D-7-704 of this code.**

**§44D-8A-817. Effective date.**

1           **This article takes effect on July 1, 2020.**

NOTE: The purpose of this bill is to enact the Uniform Directed Trust Act promulgated and recommended by the Uniform Law Commission. Conforming amendments are made to the West Virginia Uniform Trust Code in order to integrate the Directed Trust Act into existing West Virginia law.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.