

**ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019**  
**COMMITTEE STATEMENT**  
**LB536**

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**Hearing Date:** Monday February 04, 2019  
**Committee On:** Banking, Commerce and Insurance  
**Introducer:** Pansing Brooks  
**One Liner:** Adopt the Nebraska Uniform Directed Trust Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File

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**Vote Results:**

**Aye:** 8 Senators Gragert, Howard, Kolterman, La Grone, Lindstrom,  
McCollister, Quick, Williams

**Nay:**

**Absent:**

**Present Not Voting:**

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**Oral Testimony:**

**Proponents:**

Sentor Patty Pansing - Brooks  
Larry Ruth  
Benjamin Orzeske  
Tim Hruza

**Representing:**

Introducer  
NE Uniform Law Commission  
Uniform Law Commission  
NE State Bar Association

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

This bill would enact 19 new sections to be known as the Nebraska Uniform Directed Trust Act (NUDTA) and would amend sections 30-3805, 30-3808, 30-3855, and 30-3859, and outright repeal section of 30-3873 of Nebraska's Uniform Trust Code. The NUDTA is based on the Uniform Directed Trust Act (UDTA) as promulgated by the National Conference of Commissioners on Uniform State Laws in 2017.

In a directed trust, a person other than a trustee - trust director - has a power over some aspects of the trust's administration. Under the UDTA, a power over a trust held by a nontrustee is called a "power of direction." The holder of a power of direction is called a "trust director." A trustee that is subject to a power of direction is called a "directed trustee." The division of authority between a trust director and a directed trustee can raise difficult questions about how to divide fiduciary power and duty. The UDTA provides rules that allow a settlor to freely structure a directed trust while preserving key fiduciary safeguards for beneficiaries. By validating terms of a trust that grant a trust director a power of direction, the UDTA promotes settlor autonomy in accordance with the principle of freedom of disposition. At the same time, the act imposes a mandatory minimum of fiduciary duty on both a directed trustee and a trust director in accordance with the traditional principle that a trust is a fiduciary relationship. The UDTA provides default rules for matters that might be overlooked in the drafting of a directed trust, including information sharing among trustees and trust directors, the procedures for accepting appointment as a trust director, the distinction between a power of direction and a nonfiduciary power of appointment, and others.

Section 1 provides for a named act and section 2 provides for definitions: (1) "breach of trust;" (2) "directed trust;" (3) "directed trustee;" (4) "person;" (5) "power of direction;" (6) "settlor;" (7) "state;" (8) "terms of a trust;" (9) "trust director;" and (10) "trustee." Section 3 provides for the principal place of administration. Section 4 confirms that the common law and principles of equity remain applicable to a directed trust except to the extent modified by this act or other law. Section 5 excludes categories of powers that are not covered by this act for reasons of policy, coverage by other law, or both.

The heart of the UDTA appears in sections 6 to 11, which address the powers and duties of a trust director and a directed trustee. Sections 6 to 8 address the kinds of powers that the terms of a trust can grant to a trust director and the default and mandatory fiduciary duties of the director. Section 9 addresses the fiduciary duty of a directed trustee. Sections 10 and 11 further elaborate the duties of a trust director and directed trustee, prescribing specific rules for information sharing and monitoring among trust directors and trustees. Section 12 addresses cotrusteeship, enabling a settlor to apply the fiduciary standards of conduct for a directed trust under the act to a cotrusteeship. Sections 13 to 15 regard legal actions against a trust director. Section 16 identifies rules applicable to a trustee under the Uniform Trust Code that are applicable to a trust director. The remaining sections involve such things as rules of construction and applicability of NUDTA beginning on January 1, 2021. Sections of Nebraska's Uniform Trust Code are amended to coordinate its provisions with the NUDTA.

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Matt Williams, Chairperson