



SOUTH DAKOTA TRUST LAW UPDATE - 2023 Edition

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South Dakota's 2023, 98th legislative session posted the passage of one trust law-related bill, SB 95, which was signed by the governor and became effective July 1, 2023.

<https://sdlegislature.gov/Session/Bill/24027/245592>

SB 95 represents the annual work product of the Governor's Trust Task Force. The South Dakota Division of Banking did not introduce legislation during the 98th legislative session, leaving SB 95 as the lone trust law related bill. Testifiers in support of SB 95 explained the bill simply tweaks state trust law and contains minor, noncontroversial updates. Let's review the changes.

There are two headliner enhancements to South Dakota trust law in SB 95. The first relates to electronic signatures and the second relates to updating several notice statutes in South Dakota's trust code.

Continuing the trend of accommodating the execution of legal documents during a pandemic, and in recognition of advancements in technology, SB 95 authorizes the execution of trust documents by electronic means. Furthermore, the electronic execution revisions also applies to trust modifications and revocations, along with other documents relating to the administration of a trust, such as appointments, consents, releases, acceptances, etc. The updates regarding electronic signatures are codified in SDCL § 55-1A-35.1, which refers to the electronic execution requirements of SDCL Chap. 53-12.

The second group of headline enhancements in SB 95 are revisions to several statutes to clarify and coordinate notice provisions under South Dakota trust law. SDCL § 55-2-13 is commonly referred to as the notice statute of the South Dakota trust code. It is an important statute and affects just about every trust that is governed by South Dakota law. Since its adoption in 2002, it has undergone multiple revisions and amendments. The Task Force observed that the vast number of amendments to the notice statute has resulted in a law that challenged conventional statutory structure and was a bit disjointed in light of revisions to other parts of the South Dakota trust code. In response, the Task Force undertook a two plus year analysis of the notice provisions in the trust

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code with the goal of maintaining the legal affect of the notice statutes, but rearranging these provisions to make the statute better organized and more user friendly. SB 95 is the product of those two plus years of work by the Task Force. SB 95 has revised the notice provisions as follows:

- SDCL § 55-2-13 has been overhauled. A portion of the old statute was dropped into a standalone statute, SDCL § 55-2-13.1.
- To facilitate further clarification and coordination on the notice statutes, SDCL § 55-2-24 was created.
- Cross references to electronic notice statutes were cleaned up and addressed in revisions to SDCL §§ 21-22-18, 55-18-1, and 55-3-45.

Other enhancements contained in SB 95 include:

- An update to the noncharitable purpose trust laws adds a provision to allow a trust enforcer to appoint a co-enforcer to serve and assist the current trust enforcer. See SDCL § 55-1-21.11.
- SDCL § 55-1A-41 confirms that trust agreements may permit bifurcation of responsibilities between co-trustees.
- South Dakota’s domestic asset protection trust statutes were tightened up to combine SDCL § 55-1-33 with SDCL § 55-1-32 and add factors that are not considered grantor alter ego or grantor dominion and control over trust assets. SDCL § 55-1-32 was upgraded. SDCL § 55-1-33 was deleted.
- SDCL § 55-3-28 was amended to make it clear a scrivener’s error qualifies as a basis for trust reformation.
- SB 95 cleaned up several statutes, deleting unnecessary language and updated several cross references. Revisions were made to: Beneficiary and Alternative approval of trustee’s accounting, SDCL § 55-3-45; Definitions, SDCL § 55-15-1; Unitrust amount as net income of trust, SDCL § 55-15-8; Administration of total return unitrust, SDCL § 55-15-9; Distributions of principal and standards for income distributions not affected by conversion, SDCL § 55-15-10; Definitions, SDCL § 55-18-1.

It is also worth pointing out that the South Dakota Division of Banking has a robust and user friendly trust company website available as a reference for trust officers, trust company executives and advisors. <https://dlr.sd.gov/banking/trusts/default.aspx>. Recent developments from the regulatory side and important announcements of the Division of Banking are available for review at this website. Of particular note for the past year are the Division’s announcements and reference material regarding BSA, AML, FinCen, and CTA topics.



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