

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill repeals the previous trust law in Minnesota Statutes, chapter 501B, and replaces it with an updated trust law, chapter 501C. Much of chapter 501B was drafted in 1989; some new laws have been added since then. The new chapter is organized in a manner similar to other modern laws with generally applicable provisions at the beginning, including definitions, and follows the organizational structure of the Uniform Trust Code.

**Section**

**Article 1**

**General Provisions**

This article provides the title, scope, and definitions that are applicable to the chapter. The previous law did not have definitions that were applicable to the entire chapter outlined at the beginning of the chapter.

This article outlines the interaction between the terms of a trust and the law in this chapter, other statutes, and common law, as well as the application of general legal rules of construction related to property. This article also provides the requirements for jurisdiction.

There are also notice requirements that are applicable to the new trust chapter, which allow notice through first-class mail, personal delivery, delivery to last known address or business, and properly directed fax and email.

This section also allows for nonjudicial settlements or agreements related to the trust when the actions conform with the trust laws in this chapter, and those agreements can be approved by the court at the request of an interested party.

## Section

### Article 2

## Judicial Proceedings

This article provides the court procedures for actions related to trusts in Minnesota, including who can bring an action and what types of action can be brought related to a trust. Section 1 of this article provides a broad definition for all the people who can be considered “interested parties” and who can participate in a trust proceeding. Section 2 provides a long list of all the actions the court may take related to a trust.

This article also provides subject matter jurisdiction with continuing jurisdiction for cases that involve property, real or personal, located in Minnesota. It also allows parties to elect to have *in personam* jurisdiction, which has a binding effect on the parties notified and other parties as indicated in this section.

This section also addresses:

- ▶ the procedure for petition to have the court approve a trustee and the requirement that the trustee also file an accounting of the assets of the trust;
- ▶ the personal jurisdiction the court has over a trustee when the administration of the trust occurs primarily in Minnesota; and
- ▶ the venue, which is the county where the case is located and is usually where the will creating the trust occurred, where the trustee resides or has an office, or where any real property held in trust is located.

### Article 3

## Representation

This article provides notice and representation requirements related to individuals acting on the behalf of another, including: decisions for individuals who cannot be found, when parents are able to bind a minor, and when the court can appoint representation for an interested party.

## **Section**

### **Article 4**

#### **Creation, Validity, Modification , and Termination of Trust**

This article provides the methods for creating a trust and indicates when a trust can and cannot operate in Minnesota, including when trusts from other jurisdictions are valid and that a trust must be created for a lawful purpose and is void if the creation occurred under fraud, duress, or undue influence.

This article does allow the trustee and the beneficiary to be the same person but does not allow a passive trust, which is the passage of title to a beneficiary where the trustee has no duties.

This article also:

- ▶ Provides for specific limitations to certain types of trust;
- ▶ Provides for provisions to modify or terminate a trust—including through the use of the terms of the trust, via consent of the parties, and through a courts order;
- ▶ Provides for modification, including retroactive modification, to correct mistakes and to achieve the tax objectives of the trust.

### **Article 5**

#### **Spendthrift Trusts; Creditor's Claims**

This article provides that spendthrift provisions in a trust prohibit the transfer of the beneficiary's interest to another but regardless of spendthrift provisions still require mandatory distributions. This article also outlines the rules that apply to creditor's claims and access to distributions and trust assets. This article also prohibits trust property from being accessed for the personal obligations of the trustee.

**Section**

**Article 6**

**Revocable Trusts**

This article provides for the terms of a revocable trust, including who can revoke and how, and when the creation of a revocable trust can be challenged. It also provides the capacity requirements for making a revocable trust are the same as those of a will. This article also allows for a written statement distributing personal property similar to the written statement that is allowed for a will to distribute items of personal property.

**Article 7**

**Office of Trustee**

This section governs the actions of a trustee or trustees who are the fiduciary responsible for the administration of the trust, including:

- ▶ the acceptance or declination of a trustee position when a trust does not have those terms,
- ▶ when a bond should be posted for protection of the trust's assets,
- ▶ how co-trustees should act to perform duties and solve disputes, and
- ▶ the procedure for successor appointment and removal of a trustee.

This article also provides for terms on how a trustee is compensated and how reimbursements to the trustee are provided for expenses associated with the administration of the trust.

**Section**

**Article 8**

**Duties and Powers of Trustee**

This article outlines the responsibilities of the trustee as a fiduciary of the trust and how the trustee should act to avoid conflicts of interest and to manage the trust to the benefit of the beneficiary. It allows the delegation of certain duties to an agent.

This article also allows for a directed trust, which operates with investment trust advisors or other fiduciaries to manage the assets of a trust under the terms in the governing instrument, such as a trust or a will. There is currently no similar provision in Minnesota law. It provides for the standards of care and court jurisdiction over an agent or other fiduciary acting as in this capacity and how it affects the actions and liabilities of the trustee.

This article also provides for the general duties and powers of a trustee, including to: secure property, defend claims against the estate, inform and report on the trust to the settlor and beneficiaries, and other actions to properly invest, distribute and maintain the trust. This article also lists specific powers of the trustee and how to distribute the trust when termination of the trust occurs.

**Article 9**

**Prudent Investor Act Recodified**

This section provides the terms of care that a trustee should use in investing and managing the portfolio of the trust's assets. This article is Minnesota's version of the Uniform Prudent Investor Act which is currently in law in 501B.151 and which would be repealed by this bill and replaced with this article.

## **Section**

### **Article 10**

## **Liability of Trustees and Rights of Persons Dealing with Trustees**

This article indicates when a breach of trust has occurred, which is when the trustee has acted outside the interests or to the detriment of the beneficiary, and how those breaches of trust can be remedied. This includes forcing the trustee to pay for the damages, removing a trustee, and requiring payment for attorney fees and costs. It also provides that a trustee cannot profit off a trust regardless of whether or not they have breached the duty of trust.

This section also provides a three- and six-year statute of limitations depending on the type of claim and when the action that gave rise to the claim occurred.

This article prohibits a trust's terms from excusing the trustee from liability for their action but does allow a beneficiary to release the trustee from liability for their conduct under certain specific circumstances.

This article also provides for limits on the personal liability of the trustee and the liability of businesses that engage in activities with the trust so that the liability is similar to a situation without a trust. This article also protects a person interacting with a trust or trustee in good faith.

This article allows for the creation of a "certificate of trust" to be used to allow the trustee to act without having the entire content and terms of the trust be available, including for the sale and recording of real property.

This article provides the statutory forms for the affidavit of a trustee to convey real property that is in trust and how the documents are recorded to allow for a transfer of real property.

### **Article 11**

## **Uniform Principal and Income Act Recodification**

This section recodifies the Uniform Principal and Income Act, which is currently Minnesota Statutes, sections 501B.59-501B.76, and is repealed in this bill. This uniform law deals with the trustee's management of the principal assets and interest with regards to beneficiaries and remainder persons who may have an interest in remaining principal at the termination of the trust.

**Section**

**Article 12**

**Miscellaneous Provisions Recodification**

This article includes aspects of current Minnesota law in chapter 501B that were not included in the earlier articles. This includes creating a memorial fund such as a trust created under the Minnesota Uniform Custodial Trust Act, the ability of a trust to suspend the sale or transfer of real property, and the interaction of trusts with public assistance—including supplemental needs trusts and the effect medical assistance has on a trust. This article also provides for how a divorce affects a trust and when a “certificate of custodianship” can be used to allow a custodian or owner of property to transfer that property.

**Article 13**

**Application and Construction of Trust Code**

This article provides specific terms for the application and construction of the chapter including how it interacts with other state’s laws and the federal law on electronic signatures, and the effective dates of certain provisions. The laws in this chapter will apply to both existing and newly created trusts.

## Section

### Article 14

## **Powers of Appointment**

This article provides the laws that supplement the common law on powers of appointment and that provides the laws governing “trust decanting,” which allow a new trust to be made to replace an older trust. These provisions are based on New York law and create, update, and modify existing Minnesota law.

These laws govern how powers of appointment operate, which includes the common law surrounding the powers of appointment normally created through a will and these statutory provisions that govern how a general or specific power of appointment to distribute an asset through a will can occur. This article also addresses how a creditor can reach assets that are subject to a power of appointment and the revocation or release of a power of appointment.

This article also provides the laws that would govern the ability to decant a trust, which allows the trustee to form a new trust with more favorable terms to the beneficiary when the provisions of the old trust are no longer beneficial or could be improved.

### Article 15

## **Conforming Changes**

This article identifies conforming changes that need to be made to other areas of law, specifically sections that have cross references to chapter 501B, which is being repealed.

### Article 16

## **Repealer**

This article repeals most of the existing trust chapter 501B, which this bill replaces with a new chapter 501C. The sections that will remain in 501B are Charitable Trusts and Their Supervision, sections 501B.31-501B.45, and sections 501B.46-501B.55, which contain laws on property court proceedings.

**Effective date.** The effective date for the act and the repeal of certain provisions of chapter 501B is January 1, 2016.