HOUSE BILL REPORT
SB 5344

As Passed House - Amended:
April 15, 2013

Title: An act relating to revising state statutes concerning trusts.

Brief Description: Revising state statutes concerning trusts.

Sponsors: Senators Mullet, Hobbs, Kline, Fain and Benton.

Brief History:
Committee Activity:
Judiciary: 3/14/13, 3/27/13 [DPA].
Floor Activity:
Passed House - Amended: 4/15/13, 97-0.

Brief Summary of Bill
(As Amended by House)

- Makes numerous changes to the provisions of law governing trusts and estates.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Edie Adams (786-7180).

Background:

Trusts provide a means of transferring real or personal property. A trust is created by a trustor, who gives his or her property to a trustee. The trustee holds legal title to the property, but only manages the property for the benefit of other individuals specified by the trustor. The beneficiaries hold equitable title to the property, meaning the beneficiaries enjoy the property, but do not have control over the trustee or how the trustee manages the legal title.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Trusts can be made revocable or irrevocable by the trustor. Revocable living trusts are commonly used as an alternative to traditional wills as a way to pass property upon death.

Washington statutes governing trust and estate law address a range of issues relating to trusts, including the requisites for creating and amending trusts, the duties and powers of trustees, trust administration, distribution of assets, liability issues, and the investment of trust funds. The Trust and Estate Dispute Resolution Act, enacted in 1999, provides procedures for resolving trust and estate disputes.

In 2011 the Legislature passed Substitute House Bill 1051, which made a number of revisions to trust and estate law and codified many aspects of the common law governing trusts and estates. The 2011 legislation resulted from a multi-year review of Washington trust and estate laws and the Uniform Trust Code that was conducted by a task force of the Real Property, Probate, and Trust Section of the Washington State Bar Association.

Summary of Amended Bill:

Various changes are made to numerous provisions of the law governing trusts and estates.

Definitions.
Definitions are provided for "qualified beneficiary" and "permissible distributee," and various provisions are amended to incorporate these terms, including in sections governing the persons to whom certain notices must be given or from whom certain consents must be obtained.

Personal Representatives and Trustees.
A nonprofit corporation is authorized to serve as a personal representative if the articles of incorporation or bylaws of the nonprofit corporation permit the action. Limited liability partnerships and professional limited liability companies whose partners or members, respectively, are exclusively attorneys, may act as personal representatives or trustees. State or regional colleges or universities and community or technical colleges are authorized to serve as trustees.

Acceptance of Trusteeship.
Standards for a trustee to accept or decline a trusteeship are established. A person designated as trustee accepts the trusteeship by substantially complying with the method of acceptance under the terms of the trust. If the terms of the trust do not provide a method of acceptance, or the method provided is not exclusive, the trusteeship is accepted by exercising powers or performing duties as trustee, or by otherwise indicating acceptance.

A person designated as trustee may decline the trusteeship by delivering a written declination to the trustor, or a successor trustee if the trustor is deceased or incapacitated. A person designated as trustee may take certain action with respect to the trust property, without accepting the trusteeship, under certain conditions.

Trustee's Duty to Give Notice.
The trustor may waive the requirement that the trustee give notice of the existence of an irrevocable trust to all qualified beneficiaries if the waiver is made in the trust document or in

a separate writing delivered to the trustee. The specific list of report information that is presumed to keep a qualified beneficiary informed about the administration of a trust is eliminated.

Unless waived or modified, a trustee may not be required to provide information to any beneficiary of a trust other than the trustor's spouse or domestic partner if: the spouse or domestic partner has capacity; the spouse or domestic partner is the only permissible distribute of the trust; and all other qualified beneficiaries are the descendants of the trustor and the trustor's spouse or domestic partner.

While the trustor of a revocable trust is living, only the trustor is entitled to receive information about the administration of a trust.

Trust Situs.
Standards for determining trust situs when the trust does not designate any jurisdiction as the situs, or designate any jurisdiction's governing law as applying to the trust, are clarified. In this circumstance, Washington is the situs of the trust if situs has not previously been established in any court proceeding and additional conditions specified in statute are met.

Consolidation of Trusts.
Standards for consolidating trusts upon consent of all qualified beneficiaries are revised. The trustee must provide 60-day advance written notice of the proposed consolidation to all qualified beneficiaries. The notice must provide that the recipient has 30 days to object to the proposed consolidation. If the trustee does not receive any objection within the 30-day period, the trustee may consolidate the trusts, and the consolidation is deemed the equivalent of a court order declaring the trusts were combined as provided in the notice.

Statute of Limitations.
The method of delivery of the report to a beneficiary that starts the running of the statute of limitations for a breach of trust claim is specified. The report may be delivered to the beneficiary by personal service or by mailing, or by electronic transmission if the beneficiary has previously consented in a record to receiving notice by electronic transmission. The report adequately discloses the existence of a potential claim if it provides sufficient information so that the beneficiary knows or should have known of the potential claim.

The information required to be provided in a notice to a person in order to start the running of the statute of limitations for commencement of a proceeding to contest the validity of a revocable trust is clarified. The notice must include the name and date of the trust; the identity of the trustor or trustors; the trustee's name, address, and telephone number; and a notice of the time allowed for commencing a proceeding.

Virtual Representation.
Modifications are made to provisions governing the virtual representation of another party. A guardian of the person may represent and bind an incapacitated person if a guardian of the incapacitated person's estate has not been appointed. A parent may represent and bind a minor or unborn child or children if no guardian has been appointed. The Attorney General may virtually represent and bind a charitable organization under certain circumstances.

A minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not ascertainable, may be represented and bound by another person having a substantially identical interest as long as there is no conflict of interest between the representative and the person represented.

A trustor may not represent and bind a beneficiary with respect to termination or modification of an irrevocable trust. Representation of an incapacitated trustor with regard to his or her powers over a trust is subject to laws governing trustor powers, guardianship, power of attorney, and trust and estate dispute resolution.

Notice to a person who may represent and bind another person under the virtual representation statute has the same effect as if notice were given directly to the other person. The consent of a person who may represent and bind another person is binding on the person represented unless the person represented objects before the consent becomes effective.

<u>Reform of a Will or Trust</u>.
The section providing that the terms of a will or trust may be reformed using binding nonjudicial procedures upon clear, cogent, and convincing evidence are eliminated, and instead it is provided that the terms of a will or trust may be reformed according to the standards for binding nonjudicial procedures.

<u>Special Representatives</u>.
Provisions governing the appointment of a special representative to represent the interests of a minor, incapacitated person, or person who is yet unborn or unascertained, are revised to allow any party, or the parent of a minor or unborn child, to petition for appointment, rather than just the personal representative or trustee.

<u>Miscellaneous</u>.
Trusts that are created by a judgment or decree of a federal court or state superior court are made subject the Trustee's Accounting Act. A provision superseded by a statute enacted in 2011 is repealed. Various provisions of the trust laws are reorganized, statutory references are updated, and conforming amendments are made.

<u>Applicability</u>.
The act applies to all trusts created before, on, or after January 1, 2013, and all judicial proceedings concerning trusts commenced on or after that date. Any action taken before January 1, 2013, is not affected by the act.

If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced under any other statute before January 1, 2013, that statute continues to apply to the right even if it has been repealed or superseded.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill was identified in a work session surrounding financial cluster initiatives as a key measure that will promote financial service businesses in the state. Trust legislation enacted in 2011 resulted in a number of trusts being taken out of state. This bill levels the playing field with other states to encourage people to keep their trusts in Washington.

The bill deals with a number of areas of trust law that came out of review of the practical application of the 2011 legislation. The most significant change in the bill concerns notice requirements. The 2011 legislation created mandatory notice to beneficiaries that a trust exists and who serves as the trustee. This provision created significant angst, and did result in some clients no longer forming trusts in Washington. The bill provides that the notice requirement can be waived or modified by the trustor, just as the majority of other states have done. Washington law is otherwise very attractive for trust creation, so this change should remove the incentive for people to move their trusts out of Washington.

The other significant change relates to the kind of notice that must be given. The detailed list of information is removed from the notice section. The bill does not waive the obligation to keep all beneficiaries reasonably informed. Rather, it provides more flexibility to the trustee in determining how to keep beneficiaries informed. The bill makes a lot of other housekeeping changes to streamline the process and make trust administration and resolution of disputes more efficient and less costly.

(Opposed) None.

Persons Testifying: Senator Mullet, prime sponsor; and Douglas Lawrence and Karen Boxx, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.