

CERTIFICATION OF ENROLLMENT  
**SUBSTITUTE HOUSE BILL 1062**

Chapter 6, Laws of 1991

52nd Legislature  
1991 Regular Session

TRUSTS--POWER OF FIDUCIARY TO DIVIDE

EFFECTIVE DATE: 7/28/91

Passed by the House February 27, 1991  
Yeas 93 Nays 0

JOE KING  
Speaker of the  
House of Representatives

Passed by the Senate March 27, 1991  
Yeas 48 Nays 0

JOEL PRITCHARD  
President of the Senate

Approved April 8, 1991

BOOTH GARDNER  
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1062** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON  
Chief Clerk

FILED

April 8, 1991 - 3:32 p.m.

Secretary of State  
State of Washington



---

**SUBSTITUTE HOUSE BILL 1062**

---

Passed Legislature - 1991 Regular Session

**State of Washington                      52nd Legislature                      1991 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Ludwig, Padden, R. Meyers and Orr).

Read first time 1/28/91.

1            AN ACT Relating to power of fiduciaries to divide trusts; and  
2 amending RCW 11.108.025 and 11.98.080.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 11.108.025 and 1990 c 179 s 2 are each amended to read  
5 as follows:

6            Unless a governing instrument directs to the contrary:

7            (1) The fiduciary shall have the power to make elections, in whole  
8 or in part, to qualify property for the marital deduction as qualified  
9 terminable interest property under section 2056(b)(7) of the internal  
10 revenue code or, if the surviving spouse is not a citizen of the United  
11 States, under section 2056A of the internal revenue code.

12            (2) The fiduciary making an election under section 2056(b)(7) or  
13 2056A of the internal revenue code or making an allocation under  
14 section 2632 of the internal revenue code may benefit personally from

1 the election or allocation, with no duty to reimburse any other person  
2 interested in the election or allocation. The fiduciary shall have no  
3 duty to make any equitable adjustment and shall have no duty to treat  
4 interested persons impartially in respect of the election or  
5 allocation.

6 (3) ~~((The fiduciary making an election under section 2056(b)(7) or~~  
7 ~~2056A of the internal revenue code shall have the power to divide the~~  
8 ~~trust into two or more separate trusts, of equal or unequal value,~~  
9 ~~provided that the division shall not prevent a separate trust for which~~  
10 ~~the election is made from qualifying for the marital deduction under~~  
11 ~~the internal revenue code and its regulations.)) The fiduciary of a  
12 trust, if an election is made under section 2056(b)(7) or 2056A of the  
13 internal revenue code, if an allocation is made under section 2632 of  
14 the internal revenue code, or if division of a trust is of benefit to  
15 the persons interested in the trust, may divide the trust into two or  
16 more separate trusts, of equal or unequal value, provided that the  
17 terms of the separate trusts which result are substantially identical  
18 to the terms of the trust before division, and provided further, in the  
19 case of a trust otherwise qualifying for the marital deduction under  
20 the internal revenue code and its regulations, that the division shall  
21 not prevent a separate trust for which the election is made from  
22 qualifying for the marital deduction.~~

23 **Sec. 2.** RCW 11.98.080 and 1985 c 30 s 51 are each amended to read  
24 as follows:

25 (1) Two or more trusts may be consolidated if:

26 (a) The trusts so provide; or

27 (b) Whether provided in the trusts or not, in accordance with  
28 subsection (2) of this section, if all interested persons consent as

1 provided in subsection (2)(b) of this section and the requirements of  
2 subsection (1)(d) of this section are satisfied; or

3 (c) Whether provided in the trusts or not, in accordance with  
4 subsection (3) of this section if the requirements of subsection (1)(d)  
5 of this section are satisfied;

6 (d) Consolidation under subsection (2) or (3) of this section is  
7 permitted only if:

8 (i) The dispositive provisions of each trust to be consolidated are  
9 substantially similar;

10 (ii) Consolidation is not inconsistent with the intent of the  
11 trustor with regard to any trust to be consolidated; and

12 (iii) Consolidation would facilitate administration of the trusts  
13 and would not materially impair the interests of the beneficiaries;

14 (e) Trusts may be consolidated whether created inter vivos or by  
15 will, by the same or different instruments, by the same or different  
16 trustors, whether the trustees are the same, and regardless of where  
17 the trusts were created or administered.

18 (2) The trustees of two or more trusts may consolidate the trusts  
19 on such terms and conditions as appropriate without court approval as  
20 provided in RCW 11.96.170.

21 (a) The trustee shall give written notice of proposed consolidation  
22 by personal service or by certified mail to the beneficiaries of every  
23 trust affected by the consolidation as provided in RCW 11.96.100 and  
24 11.96.110 and to any trustee of such trusts who does not join in the  
25 notice. The notice shall: (i) State the name and mailing address of  
26 the trustee; (ii) include a copy of the governing instrument of each  
27 trust to be consolidated; (iii) include a statement of assets and  
28 liabilities of each trust to be consolidated, dated within ninety days  
29 of the notice; (iv) fully describe the terms and manner of  
30 consolidation; and (v) state the reasons supporting the requirements of

1 subsection (1)(d) of this section. The notice shall advise the  
2 recipient of the right to petition for a judicial determination of the  
3 proposed consolidation as provided in subsection (3) of this section.  
4 The notice shall include a form on which consent or objection to the  
5 proposed consolidation may be indicated.

6 (b) If the trustee receives written consent to the proposed  
7 consolidation from all persons entitled to notice as provided in RCW  
8 11.96.100 and 11.96.110, the trustee may consolidate the trusts as  
9 provided in the notice. Any person dealing with the trustee of the  
10 resulting consolidated trust is entitled to rely on the authority of  
11 that trustee to act and is not obliged to inquire into the validity or  
12 propriety of the consolidation under this section.

13 (3)(a) Any trustee, beneficiary, or special representative may  
14 petition the superior court of the county in which the principal place  
15 of administration of a trust is located for an order consolidating two  
16 or more trusts under chapter 11.96 RCW. If nonjudicial consolidation  
17 has been commenced pursuant to subsection (2) of this section, a  
18 petition may be filed under this section unless the trustee has  
19 received all necessary consents. The principal place of administration  
20 of the trust is the trustee's usual place of business where the records  
21 pertaining to the trust are kept, or the trustee's residence if the  
22 trustee has no such place of business.

23 (b) At the conclusion of the hearing, if the court finds that the  
24 requirements of subsection (1)(d) of this section have been satisfied,  
25 it may direct consolidation of two or more trusts on such terms and  
26 conditions as appropriate. The court in its discretion may provide for  
27 payment from one or more of the trusts of reasonable fees and expenses  
28 for any party to the proceeding.

29 (4) This section applies to all trusts whenever created.

30 (5) For powers of fiduciaries to divide trusts, see RCW 11.108.025.

Passed the House February 27, 1991.

Passed the Senate March 27, 1991.

Approved by the Governor April 8, 1991.

Filed in Office of Secretary of State April 8, 1991.