

# HOUSE BILL ANALYSIS

## HB 1098

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**Title:** An act relating to trust and estate dispute resolution.

**Brief Description:** Resolving trust and estate disputes.

**Sponsors:** Representatives Sheahan, Constantine and Lantz.

### Brief Summary of Bill

- Clarifies that the superior courts have jurisdiction over matters involving trusts and estates regardless of the amount in controversy.
- Allows more flexibility in the establishment of venue for proceedings involving trusts and estates.
- Allows more flexibility for a court in proceedings involving trust and estates.
- Codifies the doctrine of virtual representation.
- Allows parties in proceedings involving trusts and estates to enter mediation and arbitration proceedings.
- Changes statutes of limitations relating to special representatives and trusts created before June 10, 1959.

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### HOUSE COMMITTEE ON JUDICIARY

**Staff:** Jim Morishima (786-7191).

#### **Background:**

##### I. Jurisdiction and Venue

The superior courts have original jurisdiction over disputes involving trusts or estates.

Venue for proceedings involving a trust is the superior court of the county in which the situs of the trust is located, i.e., the superior court of the county in which the trust is principally administered. Venue for proceedings involving a testamentary trust is the superior court of the county in which letters testamentary were granted to a

personal representative or any place letters testamentary could have been granted for a will.

Venue for proceedings involving wills and estates depends on several factors. If the decedent was a resident of Washington State at the time of death, venue is the superior court of the county in which the decedent was a resident. If the decedent was not a resident of the state, venue is the superior court of the county in which decedent died. If the decedent did not die in the state, then venue is the superior court of the county in which any part of the estate may be. If there are no assets subject to probate administration, then venue is the superior court of the county in which any nonprobate asset may be.

## II. Judicial Proceedings

In exercising their jurisdiction over disputes involving trusts and estates, the superior courts have the power to issue and enforce orders, judgments, citations, notices, summons, and other writs and processes. A person desiring to commence an action must file a petition with the appropriate court and provide notice to all interested parties. At the hearing on the petition, the court may have broad discretion to determine the procedures to be followed in each individual situation. However, a 1990 decision of the Washington Court of Appeals implies that the initial hearing on the petition is a preliminary screening hearing in which the court has little discretion.

## III. Nonjudicial Dispute Resolution

If the required parties to a dispute come to an agreement, they must evidence that agreement in writing. The agreement may be filed with a court having jurisdiction over the dispute. Unless a party objects within 30 days of the filing, the agreement becomes binding.

A required party to the dispute may petition the court for a special representative who will represent a required party who is incapacitated, a minor, unborn, or unknown. The special representative must be a lawyer or an individual specially trained in the administration of trusts and estates. The special representative must have no interest in the dispute. The special representative may enter into a binding agreement on behalf of the party or parties he or she represents. Once the written agreement is executed, the special representative is discharged of all duties and obligations with respect to the trust or estate.

## IV. Statutes of Limitation

An action against a trustee for breach of fiduciary duty must be brought within three years from the earlier of the time the breach was discovered, the discharge of the trustee, or the time of the trust's termination. There is no statute of limitations for

actions against express trusts created before June 10, 1959. An action against a personal representative, including a special representative, must be brought before the personal representative is discharged.

## **Summary of Bill:**

### I. Jurisdiction and Venue

It is clarified that the superior court has original jurisdiction over all matters relating to trusts and estates regardless of the amount in controversy.

Venue for proceedings involving a trust is the superior court of the county in which the situs of the trust is located. If the situs of the trust is not located in the state, then venue is the superior court of any county. Venue for proceedings involving testamentary trusts is either the superior court of the county in which letters testamentary were granted to a personal representative or the superior court of the county in which the situs of the trust is located.

Venue for proceedings involving estates is the superior court of any county in Washington. A party may have venue moved for several enumerated reasons so long as the motion for change of venue is brought at least four months before the commencement of the action. If the motion is brought less than four months before the commencement of the action, the court may grant the motion at its discretion. If venue is moved, any actions by the previous court are still valid.

### II. Judicial Proceedings

The procedural rules of the bill govern over any inconsistent provisions of the Civil Rules of Court. Also, the procedural rules of the bill govern over any inconsistent provisions of the procedural rules of court unless otherwise provided by statute or by the court.

Unless otherwise provided by statute or by the court, judicial proceedings must be commenced by filing a petition with the court. A summons must then be served on any interested party, the form of which is provided. The clerk of the court then sets a date for the hearing on the petition. The answer to the petition must be filed within five days of the hearing, and the answer to the answer must be filed within two days of the hearing.

The hearing must be a hearing on the merits unless a party requests otherwise. Testimony of any witness may be by affidavit. A party may move the court for an order relating to a procedural matter, including discovery and summary judgment, at any time. If the initial hearing does not resolve the matter, the court may enter an

order as it deems proper. Such an order may resolve issues the court deems proper, determine the scope of discovery, and set a schedule for further proceedings.

The common law doctrine of virtual representation is codified. A party or parties may virtually represent his or her similar class members or future successors in interest. In other words, the judicial resolution of a trust or estate matter involving the virtual representative is binding on the representative's similar class members or future successors in interest. However, if the virtual representative has a conflict of interest with a party or parties regarding the matter, the judicial resolution of the matter will not be binding on that party or parties.

If notice to creditors is given in the probate of a Washington resident's estate, that notice must be published in the county of the decedent's residence.

### III. Nonjudicial Dispute Resolution

#### A. Binding Agreements

All parties, including a virtual representative, may enter into binding agreements outside of judicial proceedings. At the election of any party, the agreement may be filed with the court. Filing the agreement creates the same effect on the parties as a court order would create.

A trustee or executor may request the court to appoint a specific individual as special representative. The special representative is discharged upon execution of the agreement or upon the expiration of six months from the special representative's appointment. A special representative may present the written agreement of the parties to the court for approval. A special representative is not required if a party is represented through the doctrine of virtual representation.

#### B. Mediation

Any party may invoke the mediation process unless the court rules otherwise for good cause shown. If the court finds that mediation is not appropriate, it may order a judicial hearing, arbitration, or other judicial proceedings.

The parties subject to mediation must select a mediator. If the parties cannot agree, the court must choose a mediator. The mediator must either be an attorney or a person with special training in the administration of trusts and estates.

The mediation must last at least three hours. If the parties come to an agreement as a result of the mediation, their agreement must be evidenced in writing in the same manner as any other nonjudicial binding agreement.

If a party fails to follow the mediation procedures above, another party can seek a court order compelling a party to do so. The costs of obtaining such an order may be awarded to the moving party.

### C. Arbitration

Arbitration is only available to a party if the party has first sought mediation, the court has ruled that mediation is not necessary, the court has ordered arbitration, or all parties agree to proceed directly to arbitration. A party can proceed to arbitration without court authority unless there has already been a judicial hearing on the matter.

Once a party has moved for arbitration, the court must order arbitration unless the court finds for good cause shown that arbitration will not serve the best interests of the parties. If the court decides not to order the parties into arbitration, it may decide the issues itself or order further judicial proceedings.

After being ordered into arbitration, the parties must select an arbitrator. If the parties cannot agree, they may petition the court to select an arbitrator. The arbitrator must be an experienced attorney or other individual with special training or skill with respect to the matter. The arbitrator may be the same person as the mediator. The arbitrator must be compensated by agreement of the parties.

During the arbitration, the rules of evidence and discovery applicable to all civil cases apply unless the parties agree otherwise. Once the arbitrator has reached a decision, the decision must be filed with the court. The decision can be appealed within 30 days of the filing. If the decision is not so appealed, it becomes binding upon the parties. An appeal of an arbitration decision will be heard de novo. Costs of the appeal will be awarded to the moving party.

If a party fails to follow the arbitration procedures above, another party can seek a court order compelling a party to do so. The costs of obtaining such an order may be awarded to the prevailing party.

### IV. Statutes of Limitation

An action against a special representative must be brought before the earlier of (a) when a court approves a nonjudicial dispute resolution agreement or (b) three years after the representative's discharge. The statute of limitations regarding actions against a trustee for breach of fiduciary duty applies to trusts created before June 10, 1959, beginning after the year 2002.

**Fiscal Note:** Requested January 22, 1999.

**Effective Date:** The bill takes effect January 1, 2000.

Office of Program Research