

SENATE BILL REPORT

SB 5344

As Amended by House, 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: Financial Institutions, Housing & Insurance: 1/31/13, 2/05/13 [DP].

Passed Senate: 2/26/13, 47-2.

Passed House: 4/15/13, 97-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Hobbs, Chair; Mullet, Vice Chair; Benton, Ranking Member; Fain, Hatfield and Nelson.

Staff: Edward Redmond (786-7471)

Background: Trusts are a means of transferring property. A trust is created by a trustor, who gives the trustor's 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, referred to as beneficiaries. 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. Trusts may 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's laws of trusts and estates exist in both statute and common law. Washington statutes govern a range of trust issues, including the authority of trustees, trust administration, distribution of assets, liability issues, and the investment of trust funds. In 2011, the Legislature unanimously passed SHB 1051 which made major revisions to the Washington Trust Act (Act) in response to recommendations from the National Conference of Commissioners on Uniform State Laws to provide consistency and an integrated framework of rules to deal with trusts.

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.

The Washington State Bar Association's taskforce on probate and trust law are recommending additional uniformity updates to the Act.

Summary of Bill: 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.

Virtual Representation. A person with a substantially identical interest with respect to a particular question or dispute concerning the trust is authorized to represent and bind an unrepresented minor, incapacitated or unborn individual, or person whose location is unknown and not reasonably ascertainable. Any notice to a representative of the beneficiary has the same effect as if it were given directly to the beneficiary. A person may not, however, represent and bind a beneficiary with respect to the termination or modification of an irrevocable trust.

The Attorney General may represent remote charitable beneficiaries or non-specific charitable beneficiaries for trust administration purposes including receipt of notice, objection to the transfer of location, or as a party to a binding nonjudicial agreement as authorized under statute.

Duty to Keep Beneficiaries Informed. A trustee must keep all qualified beneficiaries of a trust reasonably informed about the administration of the trust and of any other relevant information necessary to protect their interests in the trust. Within 60 days of accepting the trusteeship, unless waived or modified, a trustee must give notice to the qualified beneficiaries of the trust about the existence of the trust, the identity of the trust or trustors, the trustee's contact information, and the qualified beneficiaries' right to request information reasonably necessary to enforce their rights under the trust.

Statute of Limitations. A beneficiary of a trust may not commence a breach of trust proceeding against a trustee more than three years after the date a report concerning the potential breach has been delivered to the beneficiary or representative of the beneficiary. The report must also include information regarding the time allowed for the commencement of a breach of trust proceeding. Adequate information in the report may include the trust's income tax returns and monthly brokerage accounts statements if such information is complete and sufficiently clear.

Judicial Reform of Will or Trust Due to Mistake of Fact or Law. The terms of a will or trust may be reformed by judicial proceeding to conform to the trustor's original intent. A higher standard of clear and convincing proof must be met in order to substantiate a claim that the intent of the testator or trustor and the terms of the will or trust were affected by a mistake of fact or law, whether in expression or inducement.

Accepting or Declining Trusteeship. In order to accept the trusteeship, a designated trustee must substantially comply with the method of acceptance provided in the terms of the trust. If a method for acceptance is not provided or is unclear, the designated trustee may accept a

trusteeship by accepting delivery of the trust property, exercising powers or performing duties as trustee, or by indicating acceptance of the trusteeship.

Without accepting the trusteeship, a designated trustee may act to preserve the trust property and inspect the property for potential legal liability or other purposes if, within a reasonable time of acting, the designated trustee sends a written notice of refusal to the trustor, a successor trustee, or a qualified beneficiary.

A designated trustee that has not yet accepted the trusteeship may decline the trusteeship by delivering written notice of such refusal to the trustor, a successor trustee, or a qualified beneficiary.

Applicability. Unless otherwise provided for in statute, the amendments to the Act apply to all trusts created before, on, or after January 1, 2013, and to all judicial proceedings concerning trusts commenced on or after January 1, 2013. The amendments to the Act, however, are not applicable to any action taken before January 1, 2013.

If any other statute provides a right under the trust which is acquired, extinguished, or barred after a defined period of time has expired, that statute applies even if it has been repealed or superseded if the defined period of time under that statute has commenced to run before January 1, 2013.

Miscellaneous Provisions. Additional definitions are added and several technical changes are made throughout the Act.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Unless otherwise specified, provisions in the bill apply to all trusts created before, on, or after January 1, 2013. Please refer to the bill.

Staff Summary of Public Testimony: PRO: This bill comes out of a financial cluster stakeholder meeting recently held. The goal from that meeting was to try and create a framework in Washington State that made it easier for people to do business in the financial service industry here. Some models in trust language were reviewed and then the trust act was updated from a couple of years ago in order to put it on par with states like Delaware. That is the intent of this legislation.

There was a massive trust act in 2011 which helped to update and streamline Washington's trust act. Washington has always been very progressive in its trust laws and there is support to continue that model. Now that the 2011 act has been implemented, a few things were found that were not as positive in implementation as hoped and things were found that would further improve trust laws. This bill accommodates those concerns. The one primary change that is worth mentioning is that the 2011 act required mandatory notice in certain

circumstances which was not previously required. As a result of implementing that provision, there were several individuals who were moving their trusts out of the state of Washington. The passage of this bill will reverse that trend. Washington will retain those trusts in statute and will once again have a very advantageous environment for trusts.

OTHER: Community Bankers of Washington signed in as other to let the Committee know that they were watching this bill. After speaking with the prime sponsor and DFI, they are now in support of this bill.

Persons Testifying: PRO: Senator Mullet, prime sponsor; Douglas Lawrence, Karen Boxx, Real Property Probate and Trust Section, WA State Bar Assn.

OTHER: Brad Tower, Community Bankers of WA.

House Amendment(s):

- Authorizes Washington limited liability partnerships whose partners are attorneys to serve as trustees or personal representatives.
- Clarifies that only Washington limited liability companies whose members are attorneys may serve as personal representatives.
- Makes various technical corrections for clarity.