

HOUSE BILL REPORT

SHB 1062

*As Passed House
February 27, 1991*

Title: An act relating to power of fiduciaries to divide trusts.

Brief Description: Broadening the power of fiduciaries to divide trusts.

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

Brief History:

Reported by House Committee on:
Judiciary, January 23, 1991, DPS;
Passed House, February 27, 1991, 93-0.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1062 be substituted therefor, and the substitute bill do pass.*
Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Minority Report: *Without recommendation.* Signed by 1 member: Representative Locke.

Staff: Bill Perry (786-7123).

Background: Several provisions in state laws on trusts and estates have been periodically amended to comply with, or to take advantage of, changes in the federal tax code.

In most instances under federal tax law, when one spouse dies, property transferred to the surviving spouse is exempt from taxation. In 1988, however, Congress abolished this estate tax marital deduction when the surviving spouse is not a U.S. citizen, unless the property given to the spouse has been placed in a "qualified domestic trust" ("QDOT"). In 1990, the state legislature enacted a law which allows the personal representative of an estate to take advantage

of the qualified domestic trust provision in the federal law.

Current state law also provides that unless the trust instrument itself prohibits it, a fiduciary may benefit personally from certain of his or her own actions regarding the trust. These actions include electing to come under the QDOT provision, or under another provision of the federal tax law that allows a marital deduction for "qualified terminable interest property" ("QTIP"). The state law also provides that when a fiduciary is not otherwise restricted by the trust instrument, and makes a QDOT or QTIP election, he or she may divide a trust into separate trusts. However, a division may not be made if the division would result in a trust being disqualified from marital deduction eligibility.

The federal tax code has special provisions that impose a tax on the recipient of a distribution from a trust when the distribution is a "generation-skipping transfer" ("GST"). Every person is allowed a GST exemption of \$1,000,000 which he or she may allocate to any property that he or she has the authority to transfer.

Summary of Bill: Allocations of property made under the GST provisions of the federal tax code are treated similarly under state trust law as are distributions made under the QTIP and QDOT provisions. That is, unless the trust instrument itself provides otherwise, the fiduciary of a trust may benefit personally from a GST allocation of trust property and may divide a trust into two or more separate trusts.

Fiscal Note: Not requested.

Effective Date of Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill allows Washington residents to take advantage of provisions in the federal tax code.

Testimony Against: None.

Witnesses: Mike Carrico, Washington State Bar Association (in favor of bill).