

SENATE BILL REPORT

SB 5037

As of January 16, 2025

Title: An act relating to the uniform custodial trust act.

Brief Description: Enacting the uniform custodial trust act.

Sponsors: Senators Holy, Pedersen, Dhingra, Nobles, Shewmake and Wellman; by request of Uniform Law Commission.

Brief History:

Committee Activity: Law & Justice: 1/16/25.

Brief Summary of Bill

- Enacts the Uniform Custodial Trust Act which enables a person to create a custodial trust by a property transfer or short writing.
- Gives the beneficiary of a custodial trust powers to direct a custodial trustee in managing trust assets and to terminate the custodial trust.
- Allows several categories of persons who are interested in a custodial trust, or in the beneficiary, to petition the court for relief should an issue arise in trust management.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Patrick Moore (786-7535)

Background: A trust is a legal structure for organizing the ownership and management of property on behalf of specified individuals. A transferor places their property in a trust, a trustee manages it, and a beneficiary receives the benefits of the trust such as income and preservation of the property. Trusts can include directions for how property is to be dealt with when a person becomes incapacitated or dies.

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

The Uniform Law Commission (ULC) is an organization composed of practicing lawyers, judges, legislators and legislative staff and law professors who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft, and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical. In 1987, the ULC drafted the Uniform Custodial Trust Act to provide a simple means to create a trust.

Summary of Bill: Creation and Termination of Custodial Trusts. A person may create a custodial trust by a written transfer of property or by a written declaration identifying the property, the custodial trustee, and the beneficiaries. Custodial trusts may be created on the occurrence of a future event involving receiving property, for example, when the transferor receives a house. A trustor may designate that a custodial trust be administered in the manner set for an incapacitated beneficiary. Custodial trusts created under this act terminate when the beneficiary dies or may be terminated earlier by delivering to the trustee a writing signed by the beneficiary declaring the trust terminated.

Custodial Trustee Designation, Acceptance, Resignation, and Removal. The process to designate, accept, decline, or resign as a custodial trustee is created.

Trust Management. Beneficiaries of custodial trusts created under this act can direct the trustee as to how trust property is managed and may order that some or all the trust property be paid to the beneficiary. If a beneficiary is determined to be incapacitated, a custodial trust created under this bill continues in effect with the custodial trustee exercising discretion over trust management until the beneficiary is no longer incapacitated.

Contributions to Custodial Trusts. Any person may add more property into a custodial trust. Those who owe or hold property of an incapacitated person who lacks a conservator may transfer assets to a family member or trust company as custodial trustee for the incapacitated person. Such a transfer of over \$20,000 requires court approval.

Powers and Duties of Custodial Trustees. Custodial trustees have the same powers and duties as trustees of other trusts. Unless otherwise set forth in a trust document, an agreement, or court order, custodial trustees are entitled to reimbursement for expenses, may charge compensation for their services, and need not furnish a bond or other security. Custodial trustees must follow directions from trust beneficiaries. In the absence of direction, custodial trustees are held to a standard of care and required to use relevant skills or expertise if they have such. Property in a custodial trust must be kept separate from other property in a manner sufficient to identify it. Custodial trustees must keep records of transactions, make them available to beneficiaries and report regularly on custodial trust property.

Liability. A statute of limitations is established, within which various claims pertaining to a custodial trust may be brought. In dealing with a custodial trust or trustee, third persons acting in good faith are not responsible for determining the validity, propriety, or authority

of these. Claims of third persons arising from dealings with custodial trusts and trust property may be brought by suing the trustee in their capacity as trustee, whether or not the trustee is personally liable. A custodial trustee is generally not personally liable on such claims unless they failed to identify the trust or their role as trustee or they were personally at fault. A beneficiary is not personally liable to third persons on such claims unless they were in possession of the trust property giving rise to the claim or were personally at fault.

Court Involvement. The Superior Courts of Washington State have jurisdiction over custodial trust matters. Interested parties may petition the court for various relief. Parties may petition the court to remove or designate a custodial trustee, order an accounting, require the trustee post a bond or other security, or they may seek other relief from the court.

Appropriation: None.

Fiscal Note: Requested on January 10, 2024.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This is an agency request bill that adjusts the form and content style of the trust. Stakeholders, estate planning lawyers, and members of the Washington State Bar Association Elder Law Committee have discussed this bill. It is a counterpart to the Uniform Transfers to Minors Act, but for adults. For example, elderly people who have lost capacity and need someone to manage their affairs can make use of this. It provides a short form trust vehicle for creating a trust without paying a lawyer. One could use a power of attorney but the trust vehicle is often easier. This Uniform Custodial Trust Act has been enacted in multiple states. It can help those who may be incapacitated or need help managing assets. It does not disrupt anything, it just provides an additional tool for managing assets in periods of disability for those of modest means and assets.

Persons Testifying: PRO: Senator Jeff Holy, Prime Sponsor; Karen boxx.

Persons Signed In To Testify But Not Testifying: No one.