

FINAL BILL REPORT

SHB 1062

C 6 L 91

Synopsis As Enacted

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

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

House Committee on Judiciary
Senate Committee on Law & Justice

Background: The state's 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 as a result of the federal estate tax "marital deduction" for surviving spouses. In 1988, however, Congress abolished the 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 QDOT provision in the federal law.

State law also provides that unless a 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: Allocations of property made under the GST provisions of the federal tax code are treated similarly to 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.

Votes on Final Passage:

House	93	0
Senate	48	0

Effective: July 28, 1991