

HOUSE BILL REPORT

SSB 5066

As Passed House
April 13, 1993

Title: An act relating to limiting the powers of a trustee.

Brief Description: Limiting powers of trustees.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, McCaslin and Nelson).

Brief History:

Reported by House Committee on:
Judiciary, March 19, 1993, DP;
Passed House, April 13, 1993, 98-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members:
Representatives Appelwick, Chair; Ludwig, Vice Chair;
Padden, Ranking Minority Member; Ballasiotes, Assistant
Ranking Minority Member; Campbell; Chappell; Forner;
Johanson; Long; Mastin; H. Myers; Riley; and Tate.

Staff: Patricia Shelledy (786-7149).

Background: If an individual has an unrestricted legal power to appropriate someone else's property for his or her own benefit, that person may possess a "general power of appointment." General powers of appointment often arise when a person is a trustee and a beneficiary of the same trust, or when a child administering an incompetent parent's living gift plan is entitled to transfer the parent's property to himself or herself.

Under some circumstances, holders of general powers of appointment (or their estates) may become liable for federal gift or estate taxes. According to the Internal Revenue Code of 1986, these taxes can be avoided if the powerholder's abilities are limited by an "ascertainable standard" relating to that person's "health, education, support, or maintenance."

The Washington State Bar Association has noted that Washington citizens sometimes fall into federal tax "traps" when their agreements do not contain the exact language of the statutory exception. In such cases, a power of

appointment intended to be limited by an ascertainable standard may be construed to be general, and a power-holder inadvertently may become subject to federal estate or gift taxes. It has been recommended that legislative action be taken to eliminate this problem.

Summary of Bill: Holders of powers of appointment are prohibited from making discretionary distributions of property for their own benefit, except to provide for their health, education, maintenance, or support. An exception is provided when the terms of an agreement granting a power of appointment expressly state that this prohibition shall not apply.

Powers of appointment must be exercised in a reasonable manner, regardless of language purporting to grant absolute discretion to the power-holder.

Trustees who are also trust beneficiaries are prohibited from taking certain discretionary actions with respect to trust property. Provisions are made to confer prohibited powers on noninterested trustees.

A person entitled to remove or replace a trustee shall not be deemed, by virtue of that power, to possess the powers of the trustee subject to removal or replacement.

To avoid creating releases that would be subject to federal gift taxes, this bill generally is not applicable to powers of appointment created prior to its effect.

The bill does not apply to the distribution of income of a trust that qualifies or could have qualified for a marital deduction under the Internal Revenue Code which requires that all income be distributed to the spouse of the decedent at least annually.

Fiscal Note: Not requested.

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

Testimony For: None.

Testimony Against: None.

Witnesses: None.