

**FINAL BILL REPORT**

**SSB 5066**

**C 339 L 93**

**SYNOPSIS AS ENACTED**

**Brief Description:** Limiting powers of trustees.

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

**SENATE COMMITTEE ON LAW & JUSTICE**

**HOUSE COMMITTEE ON JUDICIARY**

**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 power-holder'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:**

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 non-interested 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 act generally is not applicable to powers of appointment created prior to its effectiveness.

**VOTES ON FINAL PASSAGE:**

Senate	47	1
House	98	0

**EFFECTIVE:** July 25, 1993