

SENATE BILL REPORT

SB 5196

As Passed Senate, March 4, 1999

Title: An act relating to trust and estate dispute resolution.

Brief Description: Resolving trust and estate disputes.

Sponsors: Senators Johnson, Kline and Winsley.

Brief History:

Committee Activity: Judiciary: 2/3/99, 2/8/99 [DP].

Passed Senate, 3/4/99, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; McCaslin, Costa, Goings, Haugen, Johnson, Long and Thibaudeau.

Staff: Penny Nerup (786-7484)

Background: Currently, matters concerning probate and trusts are codified under Title 11 RCW. Procedures for resolving disputes that occur with trusts and estates are scattered throughout the various sections of this title and provide for resolution of disputes in the state courts or by written agreement between the parties.

The Real Property, Probate and Trust Section of the Washington State Bar has studied Title 11 for the past seven years and suggests that all the procedures for resolving trust and estate disputes be consolidated into a separate section of the probate code which would be referred to as the Trust and Estate Dispute Resolution Act (TEDRA). Centralization makes the procedures easier to locate and follow and would codify current practice in this area.

Summary of Bill: The Trust and Estate Dispute Resolution Act is created to centralize all procedures for resolving disputes that occur regarding trusts and estates. The act (1) reaffirms that the courts have full power to administer and settle all matters concerning trusts and estates; (2) specifically provides that the superior courts of each county have original subject matter jurisdiction over the probate of wills and the administration of trusts, identifies in which venue actions may be brought, and provides for a three-year statute of limitations in actions against personal or special representatives for breach of their fiduciary duty; (3) identifies the parties who can sue in state court and the procedures to follow, such as notice requirements, attorney's fees, obtaining jury trials, and execution on judgments; (4) provides mechanisms for resolving disputes by informal binding agreements between parties; and (5) outlines the process by which parties can obtain resolution of disputes using mediation and/or arbitration, methods to select mediators or arbitrators, determine the costs, and to obtain compliance with decisions.

The act also expressly adopts the common law doctrine of "virtual representation," which allows a living person, who is a member of a class of persons, to represent all members of the class in a dispute that determines interests in an estate, trust, or nonprobate asset. For example, if the terms of a trust state that the beneficiaries are the trustee's children during their life and then grandchildren, an adult grandchild could "virtually" represent all grandchildren, even those not yet born, to determine the interests of those grandchildren in the trust.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: January 1, 2000.

Testimony For: This bill has been seven years in the making and has been proposed as a national dispute resolution act to the American Bar Association. TEDRA was designed so that any lawyer can understand and use this bill. In addition, the provisions provide greater safeguards for parties involved in disputes of trusts and estates.

Testimony Against: None.

Testified: PRO: Douglas C. Lawrence, Real Property, Probate and Trust Section, Washington State Bar Association.