

SENATE BILL REPORT

SHB 1051

As of March 24, 2011

Title: An act relating to trusts and estates.

Brief Description: Amending trusts and estates statutes.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Pedersen, Rodne, Eddy, Goodman, Kelley and Moeller; by request of Washington State Bar Association).

Brief History: Passed House: 3/01/11, 98-0.

Committee Activity: Judiciary: 3/18/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Kim Johnson (786-7472)

Background: Trusts are a means of transferring property. A trust is created by a trustor, who gives their property to a trustee. The trustee holds legal title to the property, but only manages the property for the benefit of other individuals specified by the trustor. The beneficiaries hold equitable title to the property, meaning the beneficiaries enjoy the property, but do not have control over the trustee or how the trustee manages the legal title. Trusts can be made revocable or irrevocable by the trustor. Revocable living trusts are commonly used as an alternative to traditional wills as a way to pass property when you die.

Washington's laws of trusts and estates exist in both statute and common law, and govern a range of issues, including the authority of trustees, trust administration, distribution of assets, liability issues, and the investment of trust funds.

The National Conference of Commissioners on Uniform State Laws has proposed a Uniform Trust Code (UTC) for the purpose of providing a consistent and integrated framework of rules to deal with trusts. The Washington State Bar Association's Section on Real Property, Probate and Trust appointed a task force to review the UTC and Washington's current trust laws. The task force has recommended several amendments and additions to Washington's trust laws, including amending current sections, adopting new language from the UTC and adopting new language to codify preexisting common law.

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

Summary of Bill: Trust Situs. The situs of a trust, or its location, is Washington if the trust instrument designates Washington as the situs and the trust has at least one connection to the state. If the trust instrument does not designate Washington as the situs, the trustee may register the trust in the state as long as the trust has a connection to the state.

The transfer of trust situs is permissible if the new jurisdiction has a connection to the trust. The trustee must provide beneficiaries with 60 days advance notice. If the beneficiaries do not object within that period, the trust situs can be transferred.

Venue. The venue for court proceedings is in the county where the beneficiary resides, where the trustee resides or has a place of business, or where the real property of the trust is located. If the trust was created by a will, then the venue can be in the county where the will was administered. Venue can be changed by request within four months of a notice of court proceedings. Venue must be changed to the county with the strongest connection to the trust.

Trustee's Duty to Give Notice. When a trust becomes irrevocable, the trustee must provide notice of the existence of the trust, the identity and contact information of the trustee, the identity of the trustor, and the right to request information as is reasonably necessary to enable the persons to enforce their rights, to all persons interested in the trust or who are entitled to notice. The trustee must continue to keep all interested persons reasonably informed about the administration of the trust and the material facts necessary for them to protect their interest. A report that contains specified information will be presumed to satisfy the trustee's duty to keep such persons reasonably informed. Electronic transmission is added as an acceptable delivery method for all required notices, so long as the party being served has consented to electronic service.

Statute of Limitations. The statute of limitations for a beneficiary's claims against a trustee for breach of a trust is amended. The claim for breach of trust must be commenced within three years from the date the beneficiary was sent a report that adequately disclosed the existence of a potential claim and informed the beneficiary of the time allowed for commencing a proceeding. The criteria for providing adequate disclosure is specified. If the beneficiary did not receive adequate disclosure, then the proceeding must be commenced within three years from the earlier of the discharge of the trustee, the termination of the beneficiary's interest in the trust, or the termination of the trust.

Certification of a Trust. When a person other than a beneficiary requests information regarding the trust, the trustee may provide the person a certification of trust containing a list of specified information.

Termination of a Trust. Before terminating a trust, a trustee may send notice to the beneficiaries of the proposed plan for termination and distribution of remaining assets. After receiving notice of the plan the beneficiary has 30 days to object to the distribution.

Virtual Representation. Virtual representation refers to circumstances where an individual can be represented by a decision-making process without the ability to participate. Virtual representation is extended to apply to notice to fiduciaries where the fiduciary estate is the interested party. For example, in matters affecting a trust, the trustee can accept notice on behalf of the trust and its beneficiaries.

Damages for Breach. A trustee who commits a breach of trust is liable for the greater of the amount required to restore the value of the property or the profit the trustee made.

Correction of Mistakes. The courts may change the terms of a trust to conform to the trustor's intent if it is proved by clear, cogent, and convincing evidence that a mistake of fact or law affected both the trustor's intent and the terms of the trust. The courts may also change the terms to conform to the trustor's intent if the parties to a binding nonjudicial agreement agree that there is a clear, cogent, and convincing evidence to the same effect.

Noncharitable Trusts Without Beneficiaries. Noncharitable trusts without ascertainable beneficiaries are enforceable as long as there is a valid purpose and the trust complies with the rule against perpetuities.

Revocable Living Trusts. A new chapter is created to supplement trust laws for revocable living trusts. The chapter codifies common law related to amending or revoking revocable living trusts and the limitations of actions on the validity of a revocable living trust.

A beneficiary may commence judicial proceedings to contest the validity of a revocable living trust within the earlier of 24 months after the trustor's death or four months after receiving notice of the trust.

Miscellaneous Provisions. Several other areas of the common law on trusts and estates are codified, including the methods and requirements for creating a trust, trusts in other jurisdictions, the purposes of a trust, oral trusts, trustees' authority and duty of loyalty, the nonliability of third parties acting in good faith, and the cy pres doctrine.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2012.

Staff Summary of Public Testimony: PRO: This is a significant piece of work, and represents the efforts of over ten years by a task force of the Bar Association. The intent of this is basically that trusts are for everyone, not only wealthy people. They are important to a wide swath of people. The problem with the trust law as it stands today is that it originates in court made law, which is limited to the context of the suit before the court which leaves ambiguities for practitioners and trustees. To date we have not really had a comprehensive statutory scheme to govern trusts.

There is a benefit to uniformity as we can look to how other state courts have dealt with issues that arise. This will reduce costs for both courts and persons who use trusts as it provides clarity, not as many cases will have to go to court to seek answers. This bill also helps both the beneficiaries, by ensuring that trustees are doing what they are supposed to be doing, and the trustees as now their duties and jobs are clear. The Uniform Trust Code has

been enacted in 22 states and the District of Columbia, and there are four legislatures considering it this session. The UTC was promulgated in 2000; so, it has some history at this point.

The provision on notice to beneficiaries upon the termination of the trust attempts to balance the interests of all the beneficiaries and avoids court hearings that would be costly both to the participants and to the court system.

Persons Testifying: PRO: Representative Pedersen, prime sponsor; Karen Boxx, Michael Carrico, Washington State Bar Association, Real Property Probate & Trust Section