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**SENATE BILL 5302**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Benton and Mullet; by request of Washington State Bar Association

AN ACT Relating to the prudent investor rule for Washington state trusts, delegation of trustee duties by trustees of a Washington state trust, and standards for authorization and treatment of statutory trust advisors and directed trustees incident to the establishment of Washington state directed trusts; amending RCW 11.98.070 and 11.100.020; reenacting and amending RCW 11.96A.030; adding a new section to chapter 11.98 RCW; and adding a new chapter to Title 11 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 11.96A.030 and 2011 c 327 s 5 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

(2) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; ((~~or~~)) (v) the determination of fees for a personal representative or trustee; or (vi) the powers and duties of a statutory trust advisor or directed trustee of a directed trust under chapter 11.--- RCW (the new chapter created in section 17 of this act);

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust;

(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset; and

(h) The reformation of a will or trust to correct a mistake under RCW 11.96A.125.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Notice agent" has the meanings given in RCW 11.42.010.

(5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

(a) The trustor if living;

(b) The trustee;

(c) The personal representative;

(d) An heir;

(e) A beneficiary, including devisees, legatees, and trust beneficiaries;

(f) The surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property;

(g) A guardian ad litem;

(h) A creditor;

(i) Any other person who has an interest in the subject of the particular proceeding;

(j) The attorney general if required under RCW 11.110.120;

(k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney-in-fact;

(l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;

(m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; ((~~and~~))

(n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200; and

(o) A statutory trust advisor or directed trustee of a directed trust under chapter 11.--- RCW (the new chapter created in section 17 of this act).

(6) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(7) "Representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.

(8) "Trustee" means any acting and qualified trustee of the trust.

**Sec.**  RCW 11.98.070 and 2011 c 327 s 26 are each amended to read as follows:

A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

(1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;

(2) Sell on credit;

(3) Grant, purchase or exercise options;

(4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;

(5) Deposit stock or other corporate securities with any protective or other similar committee;

(6) Assent to corporate sales, leases, and encumbrances;

(7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

(8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by subsection (31) of this section;

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

(10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

(11) Compromise or submit claims to arbitration;

(12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

(13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

(14) Determine the hazards to be insured against and maintain insurance for them;

(15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

(16)(a) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(i) Paying it to the beneficiary's guardian;

(ii) Paying it to the beneficiary's custodian under chapter 11.114 RCW, and, for that purpose, creating a custodianship;

(iii) If the trustee does not know of a guardian or custodian, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, with instructions to expend the funds on the beneficiary's behalf; or

(iv) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(b) If the trustee pays any amount to a third party under (a)(i) through (iii) of this subsection, the trustee has no further obligations regarding the amounts so paid;

(17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

(23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

(24) Limit participation in the management of any partnership and act as a limited or general partner;

(25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee and reimburse the trustee, with interest as appropriate, for expenses that were properly incurred in the administration of the trust;

(27) ((~~Employ~~))Engage persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, ((~~regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except that:~~

~~(a) A trustee may not delegate all of the trustee's duties and responsibilities;~~

~~(b) This power to employ and to delegate duties does not relieve the trustee of liability for such person's discretionary acts, that, if done by the trustee, would result in liability to the trustee;~~

~~(c) This power to employ and to delegate duties does not relieve the trustee of the duty to select and retain a person with reasonable care;~~

~~(d) The trustee, or a successor trustee, may sue the person to collect any damages suffered by the trust estate even though the trustee might not be personally liable for those damages, subject to the statutes of limitation that would have applied had the claim been one against the trustee who was serving when the act or failure to act occurred~~))subject to section 3 of this act;

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

(29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

(30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

(31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;

(33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust;

(34)(a) Donate a qualified conservation easement, as defined by 26 U.S.C. Sec. 2031(c) of the federal internal revenue code, on any real property, or consent to the donation of a qualified conservation easement on any real property by a personal representative of an estate of which the trustee is a devisee, to obtain the benefit of the estate tax exclusion allowed under 26 U.S.C. Sec. 2031(c) of the federal internal revenue code or the deduction allowed under 26 U.S.C. Sec. 2055(f) of the federal internal revenue code as long as:

(i)(A) The governing instrument authorizes the donation of a qualified conservation easement on the real property; or

(B) Each beneficiary that may be affected by the qualified conservation easement consents to the donation under the provisions of chapter 11.96A RCW; and

(ii) The donation of a qualified conservation easement will not result in the insolvency of the decedent's estate.

(b) The authority granted under this subsection includes the authority to amend a previously donated qualified conservation easement, as defined under 26 U.S.C. Sec. 2031(c)(8)(B) of the federal internal revenue code, and to amend a previously donated unqualified conservation easement for the purpose of making the easement a qualified conservation easement under 26 U.S.C. Sec. 2031(c)(8)(B);

(35) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(36) Exercise elections with respect to federal, state, and local taxes;

(37) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(38) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

(39) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

NEW SECTION. **Sec.**  A new section is added to chapter 11.98 RCW to read as follows:

TRUSTEE'S DELEGATION OF DUTIES. (1) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(a) Selecting a delegate;

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;

(c) Periodically reviewing the delegate's actions in order to monitor the delegate's performance and compliance with the terms of the delegation; and

(d) Enforcing the delegate's duties under the terms of the delegation.

(2) In performing a delegated function, in addition to any other duty inherent in the delegation, a delegate owes a duty to the trustee to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with subsection (1) of this section is not liable to the beneficiaries or to the trust for an action of the delegate to whom the function was delegated. Nothing in this section relieves the trustee from any existing duty to compel the delegate to account for the delegate's actions.

(4) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, a delegate submits to the jurisdiction of the courts of this state.

(5) A delegation among co-trustees is governed by RCW 11.98.016.

NEW SECTION. **Sec.**  APPLICATION OF CHAPTER. This chapter applies to a trust only if expressly invoked in a governing instrument, as defined in section 5 of this act, and the trust has its situs in Washington under RCW 11.98.005. This chapter does not create any inference that arrangements similar to a statutory trust advisor or directed trustee under governing instruments that do not expressly invoke this chapter are either invalid or unenforceable.

NEW SECTION. **Sec.**  GOVERNING INSTRUMENT. As used in this chapter, "governing instrument" means the will, trust instrument, court order, exercise of power of appointment, or binding agreement under RCW 11.96A.220 appointing, designating, or providing for a method for appointing a statutory trust advisor under this chapter.

NEW SECTION. **Sec.**  STATUTORY TRUST ADVISOR. (1) As used in this chapter, "statutory trust advisor" means one or more persons as the context requires, including, without limitation, a trust advisor, special trustee, trust protector, or committee, who, under the terms of the governing instrument, is expressly made subject to the provisions of this chapter, and who has a power or duty to direct, consent to, or disapprove an action, or has a power or duty that would normally be required of a trustee. The powers and duties granted to a statutory trust advisor under the governing instrument may include but are not limited to:

(a) The power to direct the acquisition, management, disposition, or retention of any trust investment;

(b) The power to direct a trustee to make or withhold distributions to beneficiaries;

(c) The power to consent to a trustee's action or inaction relating to investments of trust assets;

(d) The power to consent to a trustee's action or inaction in making distributions to beneficiaries;

(e) The power to increase or decrease any interest of any beneficiary in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust. However, a modification, amendment, or grant of a power of appointment may not:

(i) Grant a beneficial interest in a charitable trust with only charitable beneficiaries to any noncharitable interest or purpose; or

(ii) Unless the governing instrument provides otherwise, expressly or impliedly grant any power that would cause all or any portion of the trust estate to be includible in the gross estate of the trustor, trustee, statutory trust advisor, or any trust beneficiary for estate tax purposes;

(f) The power to modify or amend the governing instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including, without limitation, any rulings, regulations, or other guidance implementing or interpreting such laws;

(g) The power to modify or amend the governing instrument to take advantage of changes in (i) the rule against perpetuities, (ii) laws governing restraints on alienation, or (iii) other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(h) The power to appoint a successor trustee, trust advisor, or statutory trust advisor;

(i) The power to change the governing law or principal place of administration of the trust; and

(j) The power to remove a trustee, trust advisor, or statutory trust advisor for the reasons stated in the governing instrument.

(2) Unless provided otherwise in the governing instrument, the exercise of a power by a statutory trust advisor shall be exercised in the sole and absolute discretion of the statutory trust advisor and shall be binding on all other persons.

(3) Any of the powers enumerated in subsection (1) of this section, as they exist at the time of the signing of the governing instrument, may, by appropriate reference made thereto, be incorporated in whole or in part in such instrument, by a clearly expressed intention in the governing instrument.

(4)(a) In exercising any power or refraining from exercising any power granted to such statutory trust advisor in the governing instrument, a statutory trust advisor shall have a fiduciary duty with respect to each power to act in accordance with the terms and purposes of the trust and solely in the interests of the beneficiaries.

(b) Notwithstanding (a) of this subsection, a statutory trust advisor who has accepted appointment and holds any of the powers enumerated in subsection (1)(c) through (j) of this section has no duty to monitor the administration of the trust to determine whether that power should be exercised except upon request of the trustee or a qualified beneficiary under chapter 11.98 RCW, or unless otherwise provided under the governing instrument. The extent of the duty of a statutory trust advisor to monitor the administration of the trust to determine if any other power granted to the statutory trust advisor should be exercised will be determined based upon the scope and nature of the power under the governing instrument and the then existing circumstances of the trust. In no event may the governing instrument relieve the statutory trust advisor from the fiduciary duty described in this subsection or relieve the statutory trust advisor from the duty to act in good faith and with honest judgment.

(5) A statutory trust advisor may accept appointment by written notice to the trustee, by taking affirmative action to exercise powers or perform duties granted to the statutory trust advisor or by any other means provided in the governing instrument.

(6) Unless otherwise provided in the governing instrument, whenever any power is jointly granted to more than one statutory trust advisor, RCW 11.98.016 applies to the exercise of powers by the statutory trust advisors.

(7) A statutory trust advisor is entitled to the same protection from liability provided to a directed trustee under section 13(2) of this act with respect to each power, duty, or function granted or reserved exclusively to the trustee or any one or more other statutory trust advisors.

(8) A statutory trust advisor may at any time decline to serve or resign as statutory trust advisor by written notice to the then serving trustee of the trust, unless another procedure is prescribed by the governing instrument.

(9) Except as otherwise provided in the governing instrument, a statutory trust advisor is entitled to reasonable compensation considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the statutory trust advisor.

NEW SECTION. **Sec.**  REMEDIES FOR BREACH OF DUTY. (1) If a statutory trust advisor breaches a fiduciary duty with respect to a power granted to the statutory trust advisor in the governing instrument, or threatens to commit such a breach, a trustee or beneficiary of the trust may file a petition under chapter 11.96A RCW for any of the following purposes that is appropriate:

(a) To compel the statutory trust advisor to perform the statutory trust advisor's duties;

(b) To enjoin the statutory trust advisor from committing a breach of fiduciary duty;

(c) To compel the statutory trust advisor to redress a breach of fiduciary duty by payment of money or otherwise;

(d) To require the trustee to assume responsibility for a power or duty given to a statutory trust advisor in the governing instrument;

(e) To remove the statutory trust advisor;

(f) To set aside acts of the statutory trust advisor;

(g) To reduce or deny compensation of the statutory trust advisor;

(h) To impose an equitable lien or a constructive trust on trust property; or

(i) To trace trust property that has been wrongfully disposed of and recover the property or its proceeds.

(2) The remedies set forth in this section against a statutory trust advisor are exclusively in equity, but nothing in this section prevents the beneficiary or trustee from seeking any other appropriate remedy provided by statute or the common law, including damages.

NEW SECTION. **Sec.**  MEASURE OF LIABILITY FOR BREACH OF DUTY; EXCUSE FROM LIABILITY. (1) If the statutory trust advisor commits a breach of fiduciary duty, the statutory trust advisor is chargeable in the same manner as a trustee under RCW 11.98.085.

(2) Anything in this Title 11 RCW to the contrary notwithstanding, if the statutory trust advisor has acted reasonably and in good faith under the circumstances as known to the statutory trust advisor, the court, in its discretion, may excuse the statutory trust advisor in whole or in part from liability under subsection (1) of this section if it would be equitable to do so.

(3) The provisions in this section for liability of a statutory trust advisor for breach of fiduciary duty do not prevent resort to any other remedy available under the statutory or common law.

NEW SECTION. **Sec.**  VACANCY; DIRECTED TRUSTS. (1) Except as otherwise provided by the terms of the governing instrument, upon learning of a vacancy in the office of statutory trust advisor, (a) the trustee is vested with any fiduciary power or duty that otherwise would be vested in the trustee but that by the terms of the governing instrument was vested in the statutory trust advisor, until such time that a statutory trust advisor is appointed pursuant to the terms of the governing instrument or by a court upon the petition of any person interested in the trust; and (b) if the trustee determines that the terms of the governing instrument require the vacancy to be filled, the trustee may petition the court to fill the vacancy.

(2) Notwithstanding subsection (1)(a) of this section, a trustee is not liable for failing to exercise or assume any power or duty held by a statutory trust advisor and conferred upon the trustee by subsection (1)(a) of this section for the sixty day period immediately following the date the trustee learns of such vacancy.

NEW SECTION. **Sec.**  STATUTORY TRUST ADVISOR'S DUTY TO INFORM AND REPORT; NOTICE TO BENEFICIARY. (1) A statutory trust advisor shall:

(a) Keep the trustee and the qualified beneficiaries under chapter 11.98 RCW reasonably informed of the administration of the trust with respect to the specific duties or functions being performed by the statutory trust advisor;

(b) Upon request by the trustee, provide the trustee with requested information regarding the administration of the trust with respect to the specific duties or functions being performed by the statutory trust advisor; and

(c) Except as otherwise provided by the terms of the governing instrument, upon request by a qualified beneficiary, provide the requesting qualified beneficiary promptly, unless unreasonable under the circumstances, with such information as is reasonably necessary to enable the qualified beneficiary to enforce his or her rights under the trust with respect to the specific duties or functions being performed by the statutory trust advisor.

(2) Neither the performance nor the failure to perform of a statutory trust advisor designated by the terms of the trust as provided in this subsection affects the limitation on the liability of the directed trustee provided by section 13(2) of this act.

NEW SECTION. **Sec.**  STATUTORY TRUST ADVISOR SUBJECT TO COURT JURISDICTION. (1) By accepting appointment to serve as a statutory trust advisor, the statutory trust advisor submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the statutory trust advisor may be made a party to any action or proceeding relating to a decision, action, or inaction of the statutory trust advisor.

(2) A statutory trust advisor is not a necessary party to a judicial proceeding involving the trust under RCW 11.96A.080 or to a nonjudicial agreement involving the trust made under RCW 11.96A.220, unless the matter that is the subject of the proceeding or agreement affects the duties or functions being performed by the statutory trust advisor.

NEW SECTION. **Sec.**  STATUTORY TRUST ADVISOR'S RIGHT TO REQUEST INFORMATION AND BRING PROCEEDINGS. (1) Except to the extent that the governing instrument provides otherwise, a statutory trust advisor may request the trustee or a beneficiary to provide such information as is reasonably necessary to enable the statutory trust advisor to perform the specific duties or functions given to the statutory trust advisor under the governing instrument.

(2) Except to the extent that the governing instrument provides otherwise, a statutory trust advisor may file a petition under chapter 11.96A RCW for the determination of any matter relating to the specific duties or functions given to the statutory trust advisor under the governing instrument.

NEW SECTION. **Sec.**  DIRECTED TRUSTEE; DIRECTED TRUSTEE'S LIABILITY FOR ACTION OR INACTION OF STATUTORY TRUST ADVISOR; NO DUTY TO REVIEW ACTIONS OF STATUTORY TRUST ADVISOR. (1) As used in this chapter, "directed trustee" means a trustee that, under the terms of the governing instrument:

(a) Must follow the direction of a statutory trust advisor as to a particular duty or function, to the extent the trustee follows any such direction;

(b) May not undertake a particular duty or function without direction from a statutory trust advisor, to the extent the trustee fails to undertake such duty or function due to the absence of such direction;

(c) Must obtain the consent or authorization of a statutory trust advisor with respect to a particular duty or function, to the extent the trustee timely seeks but fails to obtain such consent or authorization; or

(d) Must obtain the consent or authorization of a statutory trust advisor with respect to a particular duty or function, to the extent the trustee obtains such consent or authorization and acts in accordance therewith, but only if and to the extent that the governing instrument clearly indicates that the protections of directed trustee status are intended by the testator, trustor, or power holder.

(2) A directed trustee is not liable, either individually or as trustee, for the following:

(a) Any loss that results from compliance with the statutory trust advisor's direction or from actions taken with the prior consent or authorization of the statutory trust advisor;

(b) Any loss that results from any action or inaction of a statutory trust advisor with respect to any power granted to the statutory trust advisor under the governing instrument; or

(c) Any loss that results from a failure to take any action proposed by a directed trustee that requires the prior consent of a statutory trust advisor, if the directed trustee who had a duty to propose such action timely sought but failed to obtain that consent.

(3) Absent clear and convincing evidence to the contrary, the actions of the directed trustee pertaining to matters within the scope of the statutory trust advisor's authority, such as confirming that the statutory trust advisor's directions have been carried out and recording and reporting actions taken at the statutory trust advisor's direction or other information pursuant to section 10 of this act, are presumed to be administrative actions taken by the directed trustee solely to allow the directed trustee to perform those duties assigned to the directed trustee under the terms of the governing instrument, and the administrative actions do not constitute an undertaking by the directed trustee to monitor the statutory trust advisor or otherwise participate in actions within the scope of the statutory trust advisor's authority.

(4) Whenever a directed trustee is to follow the direction of a statutory trust advisor, then, except to the extent that the terms of the governing instrument provide otherwise, the directed trustee has no duty to:

(a) Monitor the conduct of the statutory trust advisor, or provide advice to the statutory trust advisor or consult with the statutory trust advisor, including, without limitation, any duty to perform investment or suitability reviews, inquiries, or investigations or to make recommendations or evaluations with respect to any investments to the extent the statutory trust advisor has authority to direct the acquisition, disposition, or retention of any such investment;

(b) Communicate with or warn or apprise any beneficiary or third party concerning instances in which the directed trustee would or might have exercised the directed trustee's own discretion in a manner different from the manner directed by the statutory trust advisor; or

(c) Commence a proceeding against the statutory trust advisor.

(5) This section does not relieve the trustee of the trustee's duty under RCW 11.97.010 to act in good faith and with honest judgment.

NEW SECTION. **Sec.**  STATUTES OF LIMITATION. The provisions of RCW 11.96A.070 with respect to limitations on actions against a trustee shall apply to any claims against a statutory trust advisor arising out of any power or duty granted to, or function being performed by, the statutory trust advisor under the governing instrument. For purposes of a report described in RCW 11.96A.070(1)(b), a statutory trust advisor is a trustee only with respect to the specific duties and functions being performed by the statutory trust advisor.

NEW SECTION. **Sec.**  APPLICATION OF OTHER PROVISIONS OF PROBATE AND TRUST LAW. Chapters 11.96A, 11.97, 11.98, 11.100, 11.104A, and 11.108 RCW apply to a statutory trust advisor with respect to the powers, duties, or functions given to a statutory trust advisor in the governing instrument in the same manner as if the statutory trust advisor was acting as trustee with respect to those powers, duties, or functions.

NEW SECTION. **Sec.**  SHORT TITLE. This act may be known and cited as the Washington directed trust act.

NEW SECTION. **Sec.**  Sections 4 through 16 of this act constitute a new chapter in Title 11 RCW, to be codified as chapter 11.98A RCW.

**Sec.**  RCW 11.100.020 and 1995 c 307 s 2 are each amended to read as follows:

(1) ((~~A fiduciary is authorized to acquire and retain every kind of property. In acquiring, investing, reinvesting, exchanging, selling and managing property for the benefit of another, a fiduciary, in determining the prudence of a particular investment, shall give due consideration to the role that the proposed investment or investment course of action plays within the overall portfolio of assets. In applying such total asset management approach, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, and if the fiduciary has special skills or is named trustee on the basis of representations of special skills or expertise, the fiduciary is under a duty to use those skills.~~

~~(2) Except as may be provided to the contrary in the instrument, the following are among the factors that should be considered by a fiduciary in applying this total asset management approach:~~

~~(a) The probable income as well as the probable safety of their capital;~~

~~(b) Marketability of investments;~~

~~(c) General economic conditions;~~

~~(d) Length of the term of the investments;~~

~~(e) Duration of the trust;~~

~~(f) Liquidity needs;~~

~~(g) Requirements of the beneficiary or beneficiaries;~~

~~(h) Other assets of the beneficiary or beneficiaries, including earning capacity; and~~

~~(i) Effect of investments in increasing or diminishing liability for taxes.~~

~~(3) Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a fiduciary is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment specifically including but not by way of limitation, debentures and other corporate obligations, and stocks, preferred or common, which persons of prudence, discretion, and intelligence acquire for their own account.~~))A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among the circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(a) General economic conditions;

(b) The possible effect of inflation or deflation;

(c) The expected tax consequences of investment decisions or strategies;

(d) The role that each investment or course of action plays within the overall portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(e) The expected total return from income and the appreciation of capital;

(f) Other resources of the beneficiaries;

(g) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.

(6) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**