

SENATE BILL REPORT

SB 5012

As Reported by Senate Committee On:
Law & Justice, February 1, 2017

Title: An act relating to the distribution of a Washington trust's assets to another trust.

Brief Description: Concerning the distribution of a Washington trust's assets to another trust.

Sponsors: Senators Pedersen, Padden, Frockt, Fain, Mullet and Kuderer; by request of Washington State Bar Association and Uniform Law Commission.

Brief History:

Committee Activity: Law & Justice: 1/10/17, 2/01/17 [DPS].

Brief Summary of Substitute Bill

- Makes changes to procedures for modifying a trust or for distributing assets from a first trust to a second trust.
- Defines a charitable trust and requires a trustee to give written notice to the state Attorney General prior exercising decanting powers where a trust includes a charitable provision.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5012 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Tim Ford (786-7423)

Background: Trusts provide a means of transferring real or personal property. A trust is created by a trustor, who gives their property to a trustee. The trustee holds the legal title to the property and has fiduciary duties to manage the property for the benefit of other individuals specified by the trustor. The beneficiaries hold the 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

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trustor. Revocable living trusts are commonly used as an alternative to traditional wills as a way to pass property upon death.

Washington statutes and case law governing trust and estate law address a range of issues relating to trusts, including the requisites for creating and amending trusts, the duties and powers of trustees, trust administration, distribution of assets, liability issues, and the investment of trust funds.

The Uniform Law Commission adopted the Uniform Trust Decanting (Uniform) Act in July 2015. Trust decanting is a non-judicial method for modifying an irrevocable trust. The decanting power is the power to modify a first trust, either by changing the terms of the first trust or by distributing property from the first trust to a second trust. The decanting power allows a trustee to modify an irrevocable trust document within reasonable limits to ensure the trust will achieve the original intent. The Uniform Act prevents decanting when it would defeat a charitable or tax-related purpose of the settlor. Several states have enacted legislation on the subject.

Summary of Bill (First Substitute): Decanting power means the trustee can distribute income and principal of a first trust to a second trust, or trusts, and modify the terms of the first trust.

The extent of the decanting authority depends upon the extent of discretion granted to the trustee to distribute principal. A trustee with limited discretion is constrained by an ascertainable or reasonably definite standard. The interests of each beneficiary in the second trust must be substantially similar to such beneficiary's interests in the first trust. Generally, a trustee with limited discretion can modify administrative, but not dispositive, trust provisions. A trustee with expanded discretion may exercise the decanting power to modify some beneficial interests but must protect certain current interests. The trustee may not include a new beneficiary, who is not a beneficiary of the first trust, and may not reduce vested interests.

Decanting powers may be exercised if it is consistent with the trustee's fiduciary duties. The trustee must give written notice to each qualified beneficiary of intent to decant the first trust at least sixty days prior to decanting. A qualified beneficiary of the trust, or another person with a defined interest in the trust, may petition the court over the exercise of decanting power.

All rights, privileges, immunities, powers, and purposes of the first trust remain vested in the second trust. Debts, liabilities, and legal actions enforceable against the first trust continue to the same extent against the second trust. Decanting powers are limited if the first trust instrument expressly limits decanting powers. The restriction must be included in the second trust. Decanting powers may not increase the compensation of the trustee beyond a specified compensation, or above compensation permitted by law, unless all beneficiaries consent or if it is approved by a court.

Charitable trust is defined. A trustee is required to give written notice to the state Attorney General prior exercising decanting powers where a trust includes a charitable provision.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Defines a charitable purpose to mean for the relief of poverty, advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes beneficial to a community.
- A charitable interest includes assets with limits on their uses for only charitable, religious, benevolent, educational, or similar purposes.
- If a trust includes a charitable interest, the trustee must give the state Attorney General written notice prior to exercise decanting powers.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The bill is substantially similar to the Uniform Trust Decanting Act adopted by the Uniform Law Commission. Trusts are created for charities and for persons with disabilities. Trusts last a long time and may become obsolete when a disability occurs. This bill would allow trusts to be modified or reformed through a non-judicial process. A non-judicial process is important for persons with limited means so that the trust is not exhausted by paying for court appearances. The trustee must still comply with their fiduciary duties. The trust would be required to give notice to the beneficiaries prior to the use of decanting powers. A beneficiary would still have the ability to object to any changes in the trust and petition the court.

Persons Testifying: PRO: Senator Pedersen, Prime Sponsor; Michael Carrico, WSBA Real Property and Probate section.

Persons Signed In To Testify But Not Testifying: No one.