
SENATE BILL 5302

State of Washington

64th Legislature

2015 Regular Session

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

Read first time 01/19/15. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to the prudent investor rule for Washington state
2 trusts, delegation of trustee duties by trustees of a Washington
3 state trust, and standards for authorization and treatment of
4 statutory trust advisors and directed trustees incident to the
5 establishment of Washington state directed trusts; amending RCW
6 11.98.070 and 11.100.020; reenacting and amending RCW 11.96A.030;
7 adding a new section to chapter 11.98 RCW; and adding a new chapter
8 to Title 11 RCW.

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

10 **Sec. 1.** RCW 11.96A.030 and 2011 c 327 s 5 are each reenacted and
11 amended to read as follows:

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

14 (1) "Citation" or "cite" and other similar terms, when required
15 of a person interested in the estate or trust or a party to a
16 petition, means to give notice as required under RCW 11.96A.100.
17 "Citation" or "cite" and other similar terms, when required of the
18 court, means to order, as authorized under RCW 11.96A.020 and
19 11.96A.060, and as authorized by law.

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

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

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

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

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

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

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

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

- 1 (i) The ascertaining of any class of creditors or others for
2 purposes of chapter 11.18 or 11.42 RCW;
- 3 (ii) The ordering of a qualified person, the notice agent, or
4 resident agent, as those terms are defined in chapter 11.42 RCW, or
5 any combination of them, to do or abstain from doing any particular
6 act with respect to a nonprobate asset;
- 7 (iii) The ordering of a custodian of any of the decedent's
8 records relating to a nonprobate asset to do or abstain from doing
9 any particular act with respect to those records;
- 10 (iv) The determination of any question arising in the
11 administration under chapter 11.18 or 11.42 RCW of a nonprobate
12 asset;
- 13 (v) The determination of any questions relating to the abatement,
14 rights of creditors, or other matter relating to the administration,
15 settlement, or final disposition of a nonprobate asset under this
16 title;
- 17 (vi) The resolution of any matter referencing this chapter,
18 including a determination of any questions relating to the ownership
19 or distribution of an individual retirement account on the death of
20 the spouse of the account holder as contemplated by RCW 6.15.020(6);
- 21 (vii) The resolution of any other matter that could affect the
22 nonprobate asset; and
- 23 (h) The reformation of a will or trust to correct a mistake under
24 RCW 11.96A.125.
- 25 (3) "Nonprobate assets" has the meaning given in RCW 11.02.005.
- 26 (4) "Notice agent" has the meanings given in RCW 11.42.010.
- 27 (5) "Party" or "parties" means each of the following persons who
28 has an interest in the subject of the particular proceeding and whose
29 name and address are known to, or are reasonably ascertainable by,
30 the petitioner:
- 31 (a) The trustor if living;
- 32 (b) The trustee;
- 33 (c) The personal representative;
- 34 (d) An heir;
- 35 (e) A beneficiary, including devisees, legatees, and trust
36 beneficiaries;
- 37 (f) The surviving spouse or surviving domestic partner of a
38 decedent with respect to his or her interest in the decedent's
39 property;
- 40 (g) A guardian ad litem;

- 1 (h) A creditor;
- 2 (i) Any other person who has an interest in the subject of the
3 particular proceeding;
- 4 (j) The attorney general if required under RCW 11.110.120;
- 5 (k) Any duly appointed and acting legal representative of a party
6 such as a guardian, special representative, or attorney-in-fact;
- 7 (l) Where applicable, the virtual representative of any person
8 described in this subsection the giving of notice to whom would meet
9 notice requirements as provided in RCW 11.96A.120;
- 10 (m) Any notice agent, resident agent, or a qualified person, as
11 those terms are defined in chapter 11.42 RCW; (~~and~~)
- 12 (n) The owner or the personal representative of the estate of the
13 deceased owner of the nonprobate asset that is the subject of the
14 particular proceeding, if the subject of the particular proceeding
15 relates to the beneficiary's liability to a decedent's estate or
16 creditors under RCW 11.18.200; and
- 17 (o) A statutory trust advisor or directed trustee of a directed
18 trust under chapter 11.--- RCW (the new chapter created in section 17
19 of this act).
- 20 (6) "Persons interested in the estate or trust" means the
21 trustor, if living, all persons beneficially interested in the estate
22 or trust, persons holding powers over the trust or estate assets, the
23 attorney general in the case of any charitable trust where the
24 attorney general would be a necessary party to judicial proceedings
25 concerning the trust, and any personal representative or trustee of
26 the estate or trust.
- 27 (7) "Representative" and other similar terms refer to a person
28 who virtually represents another under RCW 11.96A.120.
- 29 (8) "Trustee" means any acting and qualified trustee of the
30 trust.

31 **Sec. 2.** RCW 11.98.070 and 2011 c 327 s 26 are each amended to
32 read as follows:

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

- 1 (1) Receive property from any source as additions to the trust or
2 any fund of the trust to be held and administered under the
3 provisions of the trust;
- 4 (2) Sell on credit;
- 5 (3) Grant, purchase or exercise options;
- 6 (4) Sell or exercise subscriptions to stock or other corporate
7 securities and to exercise conversion rights;
- 8 (5) Deposit stock or other corporate securities with any
9 protective or other similar committee;
- 10 (6) Assent to corporate sales, leases, and encumbrances;
- 11 (7) Vote trust securities in person or by proxy with power of
12 substitution; and enter into voting trusts;
- 13 (8) Register and hold any stocks, securities, or other property
14 in the name of a nominee or nominees without mention of the trust
15 relationship, provided the trustee or trustees are liable for any
16 loss occasioned by the acts of any nominee, except that this
17 subsection shall not apply to situations covered by subsection (31)
18 of this section;
- 19 (9) Grant leases of trust property, with or without options to
20 purchase or renew, to begin within a reasonable period and for terms
21 within or extending beyond the duration of the trust, for any purpose
22 including exploration for and removal of oil, gas and other minerals;
23 enter into community oil leases, pooling and unitization agreements;
- 24 (10) Subdivide, develop, dedicate to public use, make or obtain
25 the vacation of public plats, adjust boundaries, partition real
26 property, and on exchange or partition to adjust differences in
27 valuation by giving or receiving money or money's worth;
- 28 (11) Compromise or submit claims to arbitration;
- 29 (12) Borrow money, secured or unsecured, from any source,
30 including a corporate trustee's banking department, or from the
31 individual trustee's own funds;
- 32 (13) Make loans, either secured or unsecured, at such interest as
33 the trustee may determine to any person, including any beneficiary of
34 a trust, except that no trustee who is a beneficiary of a trust may
35 participate in decisions regarding loans to such beneficiary from the
36 trust and then only to the extent of the loan, and also except that
37 if a beneficiary or the grantor of a trust has the power to change a
38 trustee of the trust, the power to loan shall be limited to loans at
39 a reasonable rate of interest and for adequate security;

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

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

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

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

15 (ii) Paying it to the beneficiary's custodian under chapter
16 11.114 RCW, and, for that purpose, creating a custodianship;

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

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

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

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

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

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

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

39 (21) Manage any business interest, including any farm or ranch
40 interest, regardless of form, received by the trustee from the

1 trustor of the trust, as a result of the death of a person, or by
2 gratuitous transfer from any other transferor, and with respect to
3 the business interest, have the following powers:

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

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

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

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

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

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

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

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

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

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

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

12 (l) To satisfy contractual and tort liabilities arising out of an
13 unincorporated business, including any partnership, first out of the
14 business and second out of the estate or trust, but in no event may
15 there be a liability of the trustee, except as provided in RCW
16 11.98.110 (2) and (4), and if the trustee is liable, the trustee is
17 entitled to indemnification from the business and the trust,
18 respectively;

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (31) Place all or any part of the securities at any time held by
30 the trustee in the care and custody of any bank, trust company, or
31 member firm of the New York Stock Exchange with no obligation while
32 the securities are so deposited to inspect or verify the same and
33 with no responsibility for any loss or misapplication by the bank,
34 trust company, or firm, so long as the bank, trust company, or firm
35 was selected and retained with reasonable care, and have all stocks
36 and registered securities placed in the name of the bank, trust
37 company, or firm, or in the name of its nominee, and to appoint such
38 bank, trust company, or firm agent as attorney to collect, receive,
39 receipt for, and disburse any income, and generally may perform, but

1 is under no requirement to perform, the duties and services incident
2 to a so-called "custodian" account;

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

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

15 (34)(a) Donate a qualified conservation easement, as defined by
16 26 U.S.C. Sec. 2031(c) of the federal internal revenue code, on any
17 real property, or consent to the donation of a qualified conservation
18 easement on any real property by a personal representative of an
19 estate of which the trustee is a devisee, to obtain the benefit of
20 the estate tax exclusion allowed under 26 U.S.C. Sec. 2031(c) of the
21 federal internal revenue code or the deduction allowed under 26
22 U.S.C. Sec. 2055(f) of the federal internal revenue code as long as:

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

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

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

30 (b) The authority granted under this subsection includes the
31 authority to amend a previously donated qualified conservation
32 easement, as defined under 26 U.S.C. Sec. 2031(c)(8)(B) of the
33 federal internal revenue code, and to amend a previously donated
34 unqualified conservation easement for the purpose of making the
35 easement a qualified conservation easement under 26 U.S.C. Sec.
36 2031(c)(8)(B);

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

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

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

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

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

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 11.98
15 RCW to read as follows:

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

20 (a) Selecting a delegate;

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

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

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

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

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

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

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

2 NEW SECTION. **Sec. 4.** APPLICATION OF CHAPTER. This chapter
3 applies to a trust only if expressly invoked in a governing
4 instrument, as defined in section 5 of this act, and the trust has
5 its situs in Washington under RCW 11.98.005. This chapter does not
6 create any inference that arrangements similar to a statutory trust
7 advisor or directed trustee under governing instruments that do not
8 expressly invoke this chapter are either invalid or unenforceable.

9 NEW SECTION. **Sec. 5.** GOVERNING INSTRUMENT. As used in this
10 chapter, "governing instrument" means the will, trust instrument,
11 court order, exercise of power of appointment, or binding agreement
12 under RCW 11.96A.220 appointing, designating, or providing for a
13 method for appointing a statutory trust advisor under this chapter.

14 NEW SECTION. **Sec. 6.** STATUTORY TRUST ADVISOR. (1) As used in
15 this chapter, "statutory trust advisor" means one or more persons as
16 the context requires, including, without limitation, a trust advisor,
17 special trustee, trust protector, or committee, who, under the terms
18 of the governing instrument, is expressly made subject to the
19 provisions of this chapter, and who has a power or duty to direct,
20 consent to, or disapprove an action, or has a power or duty that
21 would normally be required of a trustee. The powers and duties
22 granted to a statutory trust advisor under the governing instrument
23 may include but are not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (b) Notwithstanding (a) of this subsection, a statutory trust
40 advisor who has accepted appointment and holds any of the powers

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

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

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

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

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

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

36 NEW SECTION. **Sec. 7. REMEDIES FOR BREACH OF DUTY.** (1) If a
37 statutory trust advisor breaches a fiduciary duty with respect to a
38 power granted to the statutory trust advisor in the governing
39 instrument, or threatens to commit such a breach, a trustee or

1 beneficiary of the trust may file a petition under chapter 11.96A RCW
2 for any of the following purposes that is appropriate:

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

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

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

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

12 (e) To remove the statutory trust advisor;

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

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

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

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

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

25 NEW SECTION. **Sec. 8.** MEASURE OF LIABILITY FOR BREACH OF DUTY;
26 EXCUSE FROM LIABILITY. (1) If the statutory trust advisor commits a
27 breach of fiduciary duty, the statutory trust advisor is chargeable
28 in the same manner as a trustee under RCW 11.98.085.

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

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

1 NEW SECTION. **Sec. 9.** VACANCY; DIRECTED TRUSTS. (1) Except as
2 otherwise provided by the terms of the governing instrument, upon
3 learning of a vacancy in the office of statutory trust advisor,
4 (a) the trustee is vested with any fiduciary power or duty that
5 otherwise would be vested in the trustee but that by the terms of the
6 governing instrument was vested in the statutory trust advisor, until
7 such time that a statutory trust advisor is appointed pursuant to the
8 terms of the governing instrument or by a court upon the petition of
9 any person interested in the trust; and (b) if the trustee determines
10 that the terms of the governing instrument require the vacancy to be
11 filled, the trustee may petition the court to fill the vacancy.

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

17 NEW SECTION. **Sec. 10.** STATUTORY TRUST ADVISOR'S DUTY TO INFORM
18 AND REPORT; NOTICE TO BENEFICIARY. (1) A statutory trust advisor
19 shall:

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

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

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

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

1 NEW SECTION. **Sec. 11.** STATUTORY TRUST ADVISOR SUBJECT TO COURT
2 JURISDICTION. (1) By accepting appointment to serve as a statutory
3 trust advisor, the statutory trust advisor submits personally to the
4 jurisdiction of the courts of this state even if investment advisory
5 agreements or other related agreements provide otherwise, and the
6 statutory trust advisor may be made a party to any action or
7 proceeding relating to a decision, action, or inaction of the
8 statutory trust advisor.

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

15 NEW SECTION. **Sec. 12.** STATUTORY TRUST ADVISOR'S RIGHT TO
16 REQUEST INFORMATION AND BRING PROCEEDINGS. (1) Except to the extent
17 that the governing instrument provides otherwise, a statutory trust
18 advisor may request the trustee or a beneficiary to provide such
19 information as is reasonably necessary to enable the statutory trust
20 advisor to perform the specific duties or functions given to the
21 statutory trust advisor under the governing instrument.

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

27 NEW SECTION. **Sec. 13.** DIRECTED TRUSTEE; DIRECTED TRUSTEE'S
28 LIABILITY FOR ACTION OR INACTION OF STATUTORY TRUST ADVISOR; NO DUTY
29 TO REVIEW ACTIONS OF STATUTORY TRUST ADVISOR. (1) As used in this
30 chapter, "directed trustee" means a trustee that, under the terms of
31 the governing instrument:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 NEW SECTION. **Sec. 14.** STATUTES OF LIMITATION. The provisions of
19 RCW 11.96A.070 with respect to limitations on actions against a
20 trustee shall apply to any claims against a statutory trust advisor
21 arising out of any power or duty granted to, or function being
22 performed by, the statutory trust advisor under the governing
23 instrument. For purposes of a report described in RCW
24 11.96A.070(1)(b), a statutory trust advisor is a trustee only with
25 respect to the specific duties and functions being performed by the
26 statutory trust advisor.

27 NEW SECTION. **Sec. 15.** APPLICATION OF OTHER PROVISIONS OF
28 PROBATE AND TRUST LAW. Chapters 11.96A, 11.97, 11.98, 11.100,
29 11.104A, and 11.108 RCW apply to a statutory trust advisor with
30 respect to the powers, duties, or functions given to a statutory
31 trust advisor in the governing instrument in the same manner as if
32 the statutory trust advisor was acting as trustee with respect to
33 those powers, duties, or functions.

34 NEW SECTION. **Sec. 16.** SHORT TITLE. This act may be known and
35 cited as the Washington directed trust act.

1 NEW SECTION. **Sec. 17.** Sections 4 through 16 of this act
2 constitute a new chapter in Title 11 RCW, to be codified as chapter
3 11.98A RCW.

4 **Sec. 18.** RCW 11.100.020 and 1995 c 307 s 2 are each amended to
5 read as follows:

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

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

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

25 ~~(b) Marketability of investments;~~

26 ~~(c) General economic conditions;~~

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

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

29 ~~(f) Liquidity needs;~~

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

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

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

35 ~~(3) Within the limitations of the foregoing standard, and subject
36 to any express provisions or limitations contained in any particular
37 trust instrument, a fiduciary is authorized to acquire and retain
38 every kind of property, real, personal, or mixed, and every kind of
39 investment specifically including but not by way of limitation,~~

1 ~~debentures and other corporate obligations, and stocks, preferred or~~
2 ~~common, which persons of prudence, discretion, and intelligence~~
3 ~~acquire for their own account.)) A trustee shall invest and manage
4 trust assets as a prudent investor would, by considering the
5 purposes, terms, distribution requirements, and other circumstances
6 of the trust. In satisfying this standard, the trustee shall exercise
7 reasonable care, skill, and caution.~~

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

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

16 (a) General economic conditions;

17 (b) The possible effect of inflation or deflation;

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

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

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

26 (f) Other resources of the beneficiaries;

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

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

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

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

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

1 NEW SECTION. **Sec. 19.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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