
SUBSTITUTE SENATE BILL 6004

State of Washington

53rd Legislature

1994 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senator A. Smith)

Read first time 01/13/94.

1 AN ACT Relating to limiting the powers of a trustee; amending RCW
2 11.98.200 and 11.98.240; adding a new section to chapter 11.94 RCW;
3 creating a new section; and declaring an emergency.

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

5 **Sec. 1.** RCW 11.98.200 and 1993 c 339 s 2 are each amended to read
6 as follows:

7 Due to the inherent conflict of interest that exists between a
8 trustee and a beneficiary of a trust, unless the terms of a trust refer
9 specifically to RCW 11.98.200 through 11.98.240 and provide expressly
10 to the contrary, the powers conferred upon a trustee who is a
11 beneficiary of the trust, other than the trustor as a trustee, (~~and
12 other than the decedent's spouse or the testator's spouse where the
13 spouse is the trustee of a trust for which a marital deduction is or
14 was otherwise allowed or allowable, whether or not an appropriate
15 marital deduction election was in fact made,~~) cannot be exercised by
16 the trustee to make:

17 (1) Discretionary distributions of either principal or income to or
18 for the benefit of the trustee, except to provide for the trustee's
19 health, education, maintenance, or support as described under section

1 2041 or 2514 of the Internal Revenue Code and the applicable
2 regulations adopted under that section;

3 (2) Discretionary allocations of receipts or expenses as between
4 principal and income, unless the trustee acts in a fiduciary capacity
5 whereby the trustee has no power to enlarge or shift a beneficial
6 interest except as an incidental consequence of the discharge of the
7 trustee's fiduciary duties; or

8 (3) Discretionary distributions of either principal or income to
9 satisfy a legal ((support)) obligation of the trustee.

10 A proscribed power under this section that is conferred upon two or
11 more trustees may be exercised by the trustees that are not
12 disqualified under this section. If there is no trustee qualified to
13 exercise a power proscribed under this section, a person described in
14 RCW 11.96.070 who is entitled to seek judicial proceedings with respect
15 to a trust may apply to a court of competent jurisdiction to appoint
16 another trustee who would not be disqualified, and the power may be
17 exercised by another trustee appointed by the court. Alternatively,
18 another trustee who would not be disqualified may be appointed in
19 accordance with the provisions of the trust instrument if the
20 procedures are provided, or as set forth in RCW 11.98.039 as if the
21 office of trustee were vacant, or by a nonjudicial dispute resolution
22 agreement under RCW 11.96.170.

23 **Sec. 2.** RCW 11.98.240 and 1993 c 339 s 6 are each amended to read
24 as follows:

25 (1)(a)(i) RCW 11.98.200 and 11.98.210 respectively apply to a trust
26 established under a will, codicil, trust agreement, declaration of
27 trust, deed, or other instrument executed after July 25, 1993, unless
28 the instrument's terms refer specifically to RCW 11.98.200 or 11.98.210
29 respectively and provide expressly to the contrary. However, except
30 for RCW 11.98.200(3), the 1994 c ... (this act) amendments to RCW
31 11.98.200 apply to a trust established under a will, codicil, trust
32 agreement, declaration of trust, deed, or other instrument executed
33 after the effective date of this section, unless the instrument's terms
34 refer specifically to RCW 11.98.200 and provide expressly to the
35 contrary.

36 (ii) Notwithstanding (a)(i) of this subsection, for the purposes of
37 this subsection a codicil to a will or an amendment to a trust does not
38 cause that instrument to be executed after ((the aforementioned date))

1 July 25, 1993, unless the codicil or amendment clearly shows an intent
2 to have RCW 11.98.200 or 11.98.210 apply.

3 (b) Notwithstanding (a) of this subsection, RCW 11.98.200 and
4 11.98.210 respectively apply to a trust established under a will or
5 codicil of a decedent dying on or after July 25, 1993, and to an inter
6 vivos trust to which the trustor had on or after July 25, 1993, the
7 power to terminate, revoke, amend, or modify, unless:

8 (i) The terms of the instrument specifically refer to RCW 11.98.200
9 or 11.98.210 respectively and provide expressly to the contrary; or

10 (ii) The decedent or the trustor was not competent, on July 25,
11 1993, to change the disposition of his or her property, or to
12 terminate, revoke, amend, or modify the trust, and did not regain his
13 or her competence to dispose, terminate, revoke, amend, or modify
14 before the date of the decedent's death or before the trust could not
15 otherwise be revoked, terminated, amended, or modified by the decedent
16 or trustor.

17 (2) RCW 11.98.200 neither creates a new cause of action nor impairs
18 an existing cause of action that, in either case, relates to a power
19 proscribed under RCW 11.98.200 that was exercised before July 25, 1993.
20 RCW 11.98.210 neither creates a new cause of action nor impairs an
21 existing cause of action that, in either case, relates to a power
22 proscribed, limited, or qualified under RCW 11.98.210.

23 NEW SECTION. Sec. 3. A new section is added to chapter 11.94 RCW
24 to read as follows:

25 (1) The restrictions in RCW 11.95.100 through 11.95.150 on the
26 power of a person holding a power of appointment apply to attorneys-in-
27 fact holding the power to appoint to or for the benefit of the
28 powerholder.

29 (2) This section applies retroactively to July 25, 1993.

30 NEW SECTION. Sec. 4. The 1994 c ... (this act) amendments to RCW
31 11.98.200(3) are remedial in nature and apply retroactively to July 25,
32 1993.

33 NEW SECTION. Sec. 5. Section 3 of this act is necessary for the
34 immediate preservation of the public peace, health, or safety, or

1 support of the state government and its existing public institutions,
2 and shall take effect immediately.

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