

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 3, chapter 240, Laws of 1983 and RCW 19.118.030 are each amended to read as follows:

If a motor vehicle does not conform to all applicable express warranties and the nonconformity is not the result of misuse or abuse of the motor vehicle by the buyer, and the buyer reports (~~(in writing)~~) the nonconformity to the manufacturer(~~(, and)~~) or its agent or authorized dealer during the term of the express warranties, the manufacturer, its agent, or its authorized dealer shall, within a reasonable period of time, begin to make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period. Unless the buyer agrees in writing to the contrary, the motor vehicle must be serviced or repaired so as to conform to the applicable express warranties within thirty days of the (~~(written)~~) notice of nonconformity. Delays caused by conditions beyond the control of the manufacturer, its agent, or its authorized representative shall serve to extend the thirty-day requirement. When such delay arises, the conforming services or repairs shall be rendered as soon as possible after termination of the conditions which gave rise to the delay.

Sec. 2. Section 4, chapter 240, Laws of 1983 and RCW 19.118.040 are each amended to read as follows:

If the manufacturer or its representative or its authorized dealer is unable to service or repair the motor vehicle to conform to the applicable express warranties after a reasonable number of attempts and the buyer has notified the manufacturer at least once in writing, the manufacturer shall reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer.

Passed the House February 28, 1984.

Passed the Senate February 23, 1984.

Approved by the Governor March 7, 1984.

Filed in Office of Secretary of State March 7, 1984.

CHAPTER 149

[Engrossed Substitute House Bill No. 1213]

TRUST LAW REVISED

AN ACT Relating to trusts; amending section 5, page 364, Laws of 1854 as last amended by section 30, Code of 1881 and RCW 4.16.110; amending section 5, chapter 113, Laws of 1935 and RCW 7.24.050; amending section 11.02.005, chapter 145, Laws of 1965 as last amended by section 14, chapter 80, Laws of 1977 ex. sess. and RCW 11.02.005; amending section 11.02.010, chapter 145, Laws of 1965 and RCW 11.02.010; amending section 11.02.020, chapter 145, Laws of 1965 and RCW 11.02.020; amending section 11.02.060, chapter 145, Laws of 1965 and RCW 11.02.060; amending section 11.12.250, chapter 145, Laws of 1965 and RCW 11.12.250; amending section 11.28.240, chapter 145, Laws of 1965 and RCW 11.28.240; amending section 11.36.010, chapter 145, Laws of 1965 as last amended by section 1, chapter 51, Laws of 1983 and RCW 11.36.010; amending section 21, chapter 117, Laws of

1974 ex. sess. and RCW 11.68.090; amending section 23, chapter 117, Laws of 1974 ex. sess. as amended by section 26, chapter 234, Laws of 1977 ex. sess. and RCW 11.68.110; amending section 11.92.040, chapter 145, Laws of 1965 as last amended by section 2, chapter 32, Laws of 1979 and RCW 11.92.040; amending section 11.92.150, chapter 145, Laws of 1965 as last amended by section 30, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.150; amending section 5, chapter 53, Laws of 1967 ex. sess. and RCW 19.10.050; amending section 6, chapter 53, Laws of 1967 ex. sess. as amended by section 2, chapter 226, Laws of 1971 ex. sess. and RCW 19.10.060; amending section 4, chapter 226, Laws of 1971 ex. sess. and RCW 19.10.073; amending section 5, chapter 226, Laws of 1971 ex. sess. and RCW 19.10.075; amending section 11, chapter 53, Laws of 1967 ex. sess. as amended by section 64, chapter 81, Laws of 1971 and RCW 19.10.110; amending section 12, chapter 53, Laws of 1967 ex. sess. and RCW 19.10.120; amending section 1, chapter 58, Laws of 1971 and RCW 19.10.200; amending section 2, chapter 58, Laws of 1971 and RCW 19.10.210; amending section 3, chapter 58, Laws of 1971 and RCW 19.10.220; amending section 4, chapter 58, Laws of 1971 and RCW 19.10.230; amending section 5, chapter 58, Laws of 1971 as amended by section 3, chapter 41, Laws of 1982 1st ex. sess. and RCW 19.10.240; amending section 6, chapter 58, Laws of 1971 and RCW 19.10.250; amending section 7, chapter 58, Laws of 1971 and RCW 19.10.260; amending section 1, chapter 202, Laws of 1959 as last amended by section 30, chapter 292, Laws of 1971 ex. sess. and RCW 21.24.010; amending section 2, chapter 202, Laws of 1959 as amended by section 2, chapter 88, Laws of 1967 ex. sess. and RCW 21.24.020; amending section 3, chapter 202, Laws of 1959 as amended by section 3, chapter 88, Laws of 1967 ex. sess. and RCW 21.24.030; amending section 4, chapter 202, Laws of 1959 as last amended by section 31, chapter 292, Laws of 1971 ex. sess. and RCW 21.24.040; amending section 5, chapter 202, Laws of 1959 and RCW 21.24.050; amending section 6, chapter 202, Laws of 1959 as amended by section 5, chapter 88, Laws of 1967 ex. sess. and RCW 21.24.060; amending section 7, chapter 202, Laws of 1959 as last amended by section 32, chapter 292, Laws of 1971 ex. sess. and RCW 21.24.070; amending section 8, chapter 202, Laws of 1959 and RCW 21.24.080; amending section 52, chapter 117, Laws of 1974 ex. sess. and RCW 11.94.010; amending section 53, chapter 117, Laws of 1974 ex. sess. as amended by section 27, chapter 234, Laws of 1977 ex. sess. and RCW 11.94.020; amending section 1, chapter 160, Laws of 1955 and RCW 64.24.010; amending section 2, chapter 160, Laws of 1955 and RCW 64.24.020; amending section 3, chapter 160, Laws of 1955 and RCW 64.24.030; amending section 4, chapter 160, Laws of 1955 and RCW 64.24.040; amending section 2, chapter 124, Laws of 1959 and RCW 30.99.020; amending section 1, chapter 124, Laws of 1959 as amended by section 49, chapter 3, Laws of 1983 and RCW 30.99.010; amending section 3, chapter 124, Laws of 1959 and RCW 30.99.030; amending section 5, chapter 124, Laws of 1959 and RCW 30.99.050; amending section 7, chapter 124, Laws of 1959 and RCW 30.99.070; amending section 8, chapter 124, Laws of 1959 and RCW 30.99.080; amending section 9, chapter 124, Laws of 1959 and RCW 30.99.090; amending section 10, chapter 124, Laws of 1959 as amended by section 50, chapter 3, Laws of 1983 and RCW 30.99.100; amending section 11.98.010, chapter 145, Laws of 1965 and RCW 11.98.010; amending section 11.98.020, chapter 145, Laws of 1965 and RCW 11.98.020; amending section 11.98.030, chapter 145, Laws of 1965 and RCW 11.98.030; amending section 11.98.040, chapter 145, Laws of 1965 and RCW 11.98.040; amending section 11.98.050, chapter 145, Laws of 1965 as amended by section 1, chapter 229, Laws of 1971 ex. sess. and RCW 11.98.050; amending section 30.24.020, chapter 33, Laws of 1955 and RCW 30.24.020; amending section 30.24.030, chapter 33, Laws of 1955 as amended by section 3, chapter 133, Laws of 1967 and RCW 30.24.030; amending section 4, chapter 133, Laws of 1967 and RCW 30.24.037; amending section 30.24.050, chapter 33, Laws of 1955 and RCW 30.24.050; amending section 30.24.070, chapter 33, Laws of 1955 and RCW 30.24.070; amending section 30.24.090, chapter 33, Laws of 1955 and RCW 30.24.090; amending section 1, chapter 89, Laws of 1973 1st ex. sess. and RCW 30.24.120; amending section 1, chapter 74, Laws of 1971 and RCW 11.104.010; amending section 2, chapter 74, Laws of 1971 and RCW 11.104.020; amending section 3, chapter 74, Laws of 1971 and RCW 11.104.030; amending section 4, chapter 74, Laws of 1971 and RCW 11.104.040; amending section 5, chapter 74, Laws of 1971 and RCW 11.104.050; amending section 6, chapter 74, Laws of 1971 and RCW 11.104.060; amending section 7, chapter 74, Laws of 1971 and RCW 11.104.070; amending section 8, chapter 74, Laws of 1971 and RCW 11.104.080; amending section 9, chapter 74, Laws of 1971 and RCW 11.104.090; amending section 12, chapter 74, Laws of 1971 and RCW 11.104.120; amending section 13, chapter 74, Laws of 1971 and RCW 11.104.130; amending section 30.30.010, chapter 33, Laws of 1955 and RCW 30.30.010; amending section 30.30.020, chapter 33, Laws of 1955 and RCW 30.30.020; amending section

30.30.030, chapter 33, Laws of 1955 and RCW 30.30.030; amending section 30.30.040, chapter 33, Laws of 1955 and RCW 30.30.040; amending section 30.30.050, chapter 33, Laws of 1955 and RCW 30.30.050; amending section 30.30.060, chapter 33, Laws of 1955 as amended by section 31, chapter 80, Laws of 1977 ex. sess. and RCW 30.30.060; amending section 30.30.070, chapter 33, Laws of 1955 and RCW 30.30.070; amending section 30.30.080, chapter 33, Laws of 1955 and RCW 30.30.080; amending section 30.30.090, chapter 33, Laws of 1955 as amended by section 80, chapter 81, Laws of 1971 and RCW 30.30.090; amending section 30.30.100, chapter 33, Laws of 1955 and RCW 30.30.100; amending section 30.30.110, chapter 33, Laws of 1955 and RCW 30.30.110; amending section 8, chapter 122, Laws of 1969 and RCW 18.100.080; amending section 25.04.020, chapter 15, Laws of 1955 and RCW 25.04.020; amending section 25.04.150, chapter 15, Laws of 1955 and RCW 25.04.150; amending section 30.04.310, chapter 33, Laws of 1955 and RCW 30.04.310; amending section 127, chapter 247, Laws of 1943 as last amended by section 19, chapter 21, Laws of 1979 and RCW 68.44.030; amending section 11.88.010, chapter 145, Laws of 1965 as last amended by section 2, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.010; amending section 11.88.040, chapter 145, Laws of 1965 as last amended by section 4, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.040; adding a new section to chapter 4.16 RCW; adding new chapters to Title 11 RCW; adding new sections to chapter 11.12 RCW; adding a new section to chapter 11.36 RCW; adding a new section to chapter 11.92 RCW; adding a new section to chapter 11.93 RCW; adding new sections to chapter 11.94 RCW; adding new sections to chapter 11.95 RCW; adding new sections to chapter 11.96 RCW; adding a new section to chapter 11.97 RCW; adding new sections to chapter 11.98 RCW; adding new sections to chapter 11.100 RCW; adding a new section to chapter 64.28 RCW; creating new sections; recodifying RCW 11.02.030; recodifying RCW 19.10.010; recodifying RCW 19.10.020; recodifying RCW 19.10.040; recodifying RCW 19.10.070; recodifying RCW 19.10.080; recodifying RCW 19.10.090; recodifying RCW 19.10.100; recodifying RCW 19.10.125; recodifying RCW 19.10.130; recodifying RCW 19.10.140; recodifying RCW 19.10.270; recodifying RCW 19.10.900; recodifying RCW 21.24.090; recodifying RCW 21.24.091; recodifying RCW 21.24.100; recodifying RCW 21.24.900; recodifying RCW 64.24.050; recodifying RCW 30.30.120; recodifying RCW 11.96.010; recodifying RCW 30.99.040; recodifying RCW 30.99.060; recodifying RCW 30.99.900; recodifying RCW 30.99.910; recodifying RCW 30.24.010; recodifying RCW 30.24.015; recodifying RCW 30.24.035; recodifying RCW 30.24.040; recodifying RCW 30.24.130; recodifying RCW 30.28.010; recodifying RCW 30.28.020; recodifying RCW 30.28.030; recodifying RCW 30.28.040; recodifying RCW 30.28.050; repealing section 11.16.050, chapter 145, Laws of 1965, section 4, chapter 168, Laws of 1967 and RCW 11.16.050; repealing section 8, chapter 88, Laws of 1967 ex. sess., section 33, chapter 292, Laws of 1971 ex. sess. and RCW 21.25.010; repealing section 9, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.020; repealing section 10, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.030; repealing section 11, chapter 88, Laws of 1967 ex. sess., section 34, chapter 292, Laws of 1971 ex. sess. and RCW 21.25.040; repealing section 12, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.050; repealing section 13, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.060; repealing section 14, chapter 88, Laws of 1967 ex. sess., section 35, chapter 292, Laws of 1971 ex. sess. and RCW 21.25.070; repealing section 15, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.080; repealing section 16, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.090; repealing section 17, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.100; repealing section 18, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.110; repealing section 19, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.900; repealing section 30.24.060, chapter 33, Laws of 1955, section 1, chapter 209, Laws of 1967 and RCW 30.24.060; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 5, page 364, Laws of 1854 as last amended by section 30, Code of 1881 and RCW 4.16.110 are each amended to read as follows:

Within one year((:

(+)) an action shall be brought against a sheriff, or other officer for the escape of a prisoner arrested or imprisoned on civil process.

~~((2) An action by an heir, legatee, creditor or other party interested, against an executor or administrator, for alleged misfeasance, malfeasance~~

~~or mismanagement of the estate within one year from the time of final settlement, or, the time such alleged misconduct was discovered:))~~

NEW SECTION. Sec. 2. There is added to chapter 4.16 RCW a new section to be codified as RCW 4.16.370 to read as follows:

The statute of limitations for actions against a personal representative or trustee for breach of fiduciary duties is as set forth in RCW 11.96.060.

Sec. 3. Section 5, chapter 113, Laws of 1935 and RCW 7.24.050 are each amended to read as follows:

The enumeration in RCW 7.24.020(~~;~~) and 7.24.030 (~~(and 7.24.040)~~) does not limit or restrict the exercise of the general powers conferred in RCW 7.24.010, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

Sec. 4. Section 11.02.005, chapter 145, Laws of 1965 as last amended by section 14, chapter 80, Laws of 1977 ex. sess. and RCW 11.02.005 are each amended to read as follows:

When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate but who left issue surviving the intestate; each share of a deceased person in the nearest degree shall be divided among those of (~~his~~) the intestate's issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" includes all the lawful lineal descendants of the ancestor and all lawfully adopted children.

(5) "Degree of kinship" (~~shall~~) means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on ~~((his))~~ the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will~~((s))~~" means an instrument validly executed as required by RCW 11.12.020 and includes all codicils.

(9) "Codicil" ~~((shall))~~ means an instrument that is validly executed in the manner provided by this title for ~~((wills, which))~~ a will and that refers to an existing will for the purpose of altering or changing the same, and which need not be attached thereto.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) Words that import the singular number ~~((only;))~~ may also be applied to the plural of persons and things.

~~((+5))~~ (16) Words importing the masculine gender only may be extended to females also.

Sec. 5. Section 11.12.250, chapter 145, Laws of 1965 and RCW 11.12.250 are each amended to read as follows:

A ~~((devise or bequest))~~ gift may be made by a will to a trustee ~~((or trustees))~~ of a trust ~~((created))~~ executed by ~~((the testator and/or some other person or persons))~~ any trustor or testator (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) ~~((established by written instrument executed before or concurrently with the execution of such will))~~ if (1) the trust is identified in the testator's will and (2) its terms are evidenced either (a) in a written instrument other than a will, executed by the trustor prior to or concurrently with the execution of the testator's will or

(b) in the will of a person who has predeceased the testator, regardless of when executed. The existence, size, or character of the corpus of the trust is immaterial to the validity of the gift. Such ~~((devise or bequest))~~ gift shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the testator's will or after the testator's death. Unless the will provides otherwise, the property so ~~((devised or bequeathed))~~ given shall not be deemed to be held under a testamentary trust of the testator but shall become a part of the trust to which it is given to be administered and disposed of in accordance with the ~~((provisions))~~ terms of the instrument establishing ~~((such))~~ the trust, including any amendments ~~((thereto))~~, made prior to the death of the testator, and regardless of whether made before or after the execution of the will. ~~((An entire))~~ Unless the will provides otherwise, an express revocation of the trust prior to the testator's death ~~((shall))~~ invalidates the ~~((devise or bequest))~~ gift. Any termination of the trust other than by express revocation does not invalidate the gift. For purposes of this section, the term "gift" includes the exercise of any testamentary power of appointment.

NEW SECTION. Sec. 6. There is added to chapter 11.12 RCW a new section to be codified as RCW 11.12.255 to read as follows:

INCORPORATION BY REFERENCE. A will may incorporate by reference any writing in existence when the will is executed if the will itself manifests the testator's intent to incorporate the writing and describes the writing sufficiently to permit its identification. In the case of any inconsistency between the writing and the will, the will controls.

NEW SECTION. Sec. 7. There is added to chapter 11.12 RCW a new section to be codified as RCW 11.12.260 to read as follows:

SEPARATE WRITING IDENTIFIES BEQUEST OF TANGIBLE PERSONALTY. (1) A will may refer to a writing that directs disposition of tangible personal property not otherwise specifically disposed of by the will other than property used primarily in trade or business. Such a writing shall not be effective unless: (a) An unrevoked will refers to the writing, (b) the writing is either in the handwriting of, or signed by, the testator, and (c) the writing describes the items and the recipients of the property with reasonable certainty.

(2) The writing may be written or signed before or after the execution of the will and need not have significance apart from its effect upon the dispositions of property made by the will. A writing that meets the requirements of this section shall be given effect as if it were actually contained in the will itself, except that if any person designated to receive property in the writing dies before the testator, the property shall pass as further directed in the writing and in the absence of any further directions, the disposition shall lapse and RCW 11.12.110 shall not apply to such lapse.

(3) The testator may make subsequent handwritten or signed changes to any writing. If there is an inconsistent disposition of tangible personal property as between writings, the most recent writing controls.

(4) As used in this section "tangible personal property" means articles of personal or household use or ornament, for example, furniture, furnishings, automobiles, boats, airplanes, and jewelry, as well as precious metals in any tangible form, for example, bullion or coins. The term includes articles even if held for investment purposes and encompasses tangible property that is not real property. The term does not include mobile homes or intangible property, for example, money that is normal currency or normal legal tender, evidences of indebtedness, bank accounts or other monetary deposits, documents of title, or securities.

Sec. 8. Section 11.28.240, chapter 145, Laws of 1965 and RCW 11.28.240 are each amended to read as follows:

At any time after the issuance of letters testamentary or of administration or certificate of qualification upon the estate of any decedent, any person interested in ~~((said))~~ the estate as an heir, devisee, distributee, legatee or creditor whose claim has been duly served and filed, or ~~((attorney))~~ the lawyer for ~~((such))~~ the heir, devisee, distributee, legatee, or creditor may serve upon the personal representative ~~((f))~~ or upon the ~~((attorney))~~ lawyer for ~~((such))~~ the personal representative ~~((f))~~, and file with the clerk of the court wherein the administration of ~~((such))~~ the estate is pending, a written request stating that ~~((he))~~ the person desires special notice of any or all of the following named matters, steps or proceedings in the administration of ~~((said))~~ the estate, to wit:

- (1) Filing of petitions for sales, leases, exchanges or mortgages of any property of the estate.
- (2) Petitions for any order of solvency or for nonintervention powers.
- (3) Filing of accounts.
- (4) Filing of petitions for distribution.
- (5) Petitions by the personal representative for family allowances and homesteads.
- (6) The filing of a declaration of completion.
- (7) The filing of the inventory.
- (8) Notice of presentation of personal representative's claim against the estate.
- (9) Petition to continue a going business.
- (10) Petition to borrow upon the general credit of the estate.
- (11) Petition for judicial proceeding under chapter 11.96 RCW.
- (12) Petition to reopen an estate.
- (13) Intent to distribute estate assets, other than distributions in satisfaction of specific bequests or legacies of specific dollar amounts.
- (14) Intent to pay attorney's or personal representative's fees.

((Such)) The requests shall state the post office address of ((such)) the heir, devisee, distributee, legatee or creditor, or his ((attorney)) or her lawyer, and thereafter a brief notice of the filing of any of ((such)) the petitions, accounts, declaration, inventory or claim, except petitions for sale of perishable property, or other tangible personal property which will incur expense or loss by keeping, shall be addressed to ((such)) the heir, devisee, distributee, legatee or creditor, or his ((attorney)) or her lawyer, at ((his stated)) the post office address stated in the request, and deposited in the United States post office, with ((the)) prepaid postage ((thereon-prepaid)), at least ten days before the hearing of ((such)) the petition, account or claim or of the proposed distribution or payment of fees; or personal service of ((such)) the notices may be made on ((such)) the heir, devisee, distributee, legatee, ((or)) creditor, or ((attorney)) lawyer, not less than five days before ((such)) the hearing, and ((such)) the personal service shall ((be equivalent to such)) have the same effect as deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of ((such)) the petition, account or claim or of the proposed distribution or payment of fees. If ((upon the hearing it shall appear to the satisfaction of the court that the said)) the notice has been regularly given, ((the court shall so find in its)) any distribution or payment of fees and any order or judgment, ((and such judgment shall be)) made in accord therewith is final and conclusive.

NEW SECTION. Sec. 9. There is added to chapter 11.36 RCW a new section to be codified as RCW 11.36.021 to read as follows:

(1) The following may serve as trustees:

(a) Any suitable persons over the age of eighteen years, if not otherwise disqualified;

(b) Any trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) Any nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys; and

(e) Any other entity so authorized under the laws of the state of Washington.

(2) The following are disqualified to serve as trustees:

(a) Minors, persons of unsound mind, or persons who have been convicted of any felony or a misdemeanor involving moral turpitude; and

(b) A corporation organized under Title 23A RCW that is not authorized under the laws of the state of Washington to act as a fiduciary.

Sec. 10. Section 21, chapter 117, Laws of 1974 ex. sess. and RCW 11.68.090 are each amended to read as follows:

Any personal representative acting under nonintervention powers(;) may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, ((and)) convey ((the real and personal property of the decedent, and borrow money on the general credit of the estate)), and otherwise do anything a trustee may do under chapters 11.98, 11.100, and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court ((for that purpose)) and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Any ((other)) party to any such transaction and his or her successors in interest shall be entitled to have it conclusively presumed that ((such)) the transaction is necessary for the administration of the decedent's estate.

Sec. 11. Section 23, chapter 117, Laws of 1974 ex. sess. as amended by section 26, chapter 234, Laws of 1977 ex. sess. and RCW 11.68.110 are each amended to read as follows:

If a personal representative who has acquired nonintervention powers ((shall)) does not apply to the court for either of the final decrees provided for in RCW 11.68.100 as now or hereafter amended, the personal representative shall, when the administration of the estate has been completed, file a declaration to that effect, which declaration shall state as follows:

(1) The date of the decedent's death, and ((his)) the decedent's residence at the time of death, whether or not the decedent died testate or intestate, and if testate, the date of ((his)) the decedent's last will and testament and the date of the order admitting ((said)) the will to probate;

(2) That each creditor's claim which was justly due and properly presented as required by law has been paid or otherwise disposed of by agreement with the creditor, and that the amount of state inheritance and federal estate tax due as the result of the decedent's death has been determined, settled, and paid;

(3) The personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be closed;

(4) If the decedent died intestate, the names, addresses (if known), and relationship of each heir of the decedent, together with the distributive share of each ((said)) heir; and

(5) The amount of fees paid or to be paid to each of the following: (a) Personal representative or representatives, (b) ((attorney or attorneys)) lawyer or lawyers, (c) appraiser or appraisers, and (d) accountant or accountants; and that the personal representative believes ((said)) the fees to be reasonable and does not intend to obtain court approval of the amount of ((said)) the fees or to submit an estate accounting to the court for approval.

Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee of a decedent ((shall)) petitions the court either for an order requiring the personal representative to obtain court approval

of the amount of fees paid or to be paid to the personal representative, ~~((his attorneys))~~ lawyers, appraisers, or accountants, or for an order requiring an accounting, or both, within thirty days from the date of filing a declaration of completion of probate, the personal representative will be automatically discharged without further order of the court and ~~((his))~~ the representative's powers will cease thirty days after the filing of ((said)) the declaration of completion of probate, and ((said)) the declaration of completion of probate shall, at ((said)) that time, be the equivalent of the entry of a decree of distribution in accordance with ((the provisions of)) chapter 11.76 RCW for all legal intents and purposes.

Within five days of the date of the filing of the declaration of completion, the personal representative or ~~((his attorney))~~ the representative's lawyer shall mail a copy of ~~((said))~~ the declaration of completion to each heir, legatee, or devisee of the decedent (who has not waived notice of said filing, in writing, filed in the cause) together with a notice which shall be substantially as follows:

CAPTION
OF
CASE

NOTICE OF FILING OF
DECLARATION OF COMPLETION
OF PROBATE

NOTICE IS ~~((HEREBY))~~ GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the day of, 19. .; unless you shall file a petition in the above-entitled court requesting the court to approve the reasonableness of ~~((said))~~ the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or ((his attorney)) the personal representative's lawyer, within thirty days after the date of ((said)) the filing, the amount of fees paid or to be paid will be deemed reasonable, the acts of the personal representative will be deemed approved, the personal representative will be automatically discharged without further order of the court, and the Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of ~~((said))~~ your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on ~~((said))~~ the petition.

Dated this day of, 19. .

.....

Personal Representative

If all heirs, devisees, and legatees of the decedent ~~((shall))~~ waive, in writing, the notice required by this section, the personal representative

~~((staff))~~ will be automatically discharged without further order of the court and the declaration of completion of probate will become effective as a decree of distribution upon the date of filing thereof. In those instances where the personal representative has been required to furnish bond, and a declaration of completion ~~((staff have been))~~ is filed pursuant to this section, any bond furnished by the personal representative shall be automatically discharged upon the discharge of the personal representative.

Sec. 12. Section 11.92.040, chapter 145, Laws of 1965 as last amended by section 2, chapter 32, Laws of 1979 and RCW 11.92.040 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian:

(1) To make out and file within three months after his or her appointment a verified inventory of all the property of the incompetent or disabled person which ~~((staff))~~ comes to his or her possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within thirty days after the anniversary date of ~~((his))~~ the guardian's or limited guardian's appointment, and also within thirty days after termination of ~~((his))~~ the appointment, a written verified account of ~~((his))~~ the administration: PROVIDED, That the court in its discretion may allow ~~((such))~~ reports at intervals of up to thirty-six months, with instruction to the guardian or limited guardian that any substantial increase in income or assets or substantial change in the incompetent's or disabled person's condition shall be reported within thirty days of ~~((such))~~ the substantial increase or change;

(3) Consistent with the powers granted by the court, if he or she is a guardian or limited guardian of the person, to care for and maintain the incompetent or disabled person, assert his or her rights and best interests, and provide timely, informed consent to necessary medical procedures, and if the incompetent or disabled person is a minor, to see that the incompetent or disabled person is properly trained and educated and that the incompetent or disabled person has the opportunity to learn a trade, occupation, or profession. As provided in RCW 11.88.125 as now or hereafter amended, the standby guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. The guardian or limited guardian of the person may be required to report the condition of his or her incompetent or disabled person to the court, at regular intervals or otherwise as the court may direct: PROVIDED, That no guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incompetent or disabled person who is, himself or herself, unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapters 71.05 or 72.23 RCW are followed: PROVIDED

FURTHER, That nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

- (a) Therapy or other procedure which induces convulsion;
- (b) Surgery solely for the purpose of psychosurgery;
- (c) Amputation;

(d) Other psychiatric or mental health procedures which are intrusive on the person's body integrity, physical freedom of movement, or the rights set forth in RCW 71.05.370.

A guardian, limited guardian, or standby guardian who believes such procedures to be necessary for the proper care and maintenance of the incompetent or disabled person shall petition the court for an order unless the court has previously approved (~~(such)~~) that procedure within thirty days immediately past. The court may make such order only after an attorney is appointed in accordance with RCW 11.88.045, as now or hereafter amended, if none has heretofore appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040, as now or hereafter amended;

(4) If he or she is a guardian or limited guardian of the estate, to protect and preserve it, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required (~~(of him)~~) by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incompetent or disabled person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW (~~(30.99.070)~~) 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

(5) To invest and reinvest the property of the incompetent or disabled person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter (~~(30.24)~~) 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian during a period not exceeding one year following the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer, to invest and reinvest as provided in chapter (~~(30.24)~~) 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incompetent or disabled person that a specific property be used by the incompetent or disabled person rather than sold and the proceeds invested, the court may so order;

(6) To apply to the court for an order authorizing any disbursement on behalf of the incompetent or disabled person: PROVIDED, HOWEVER, That the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an incompetent or disabled person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an incompetent or disabled person, or if the guardian or limited guardian of the estate has the care and custody of the incompetent or disabled person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incompetent or disabled person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incompetent or disabled person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under ((such)) an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof.

NEW SECTION, Sec. 13. There is added to chapter 11.92 RCW a new section to be codified as RCW 11.92.140 to read as follows:

GIFTS FROM GUARDIANSHIP FUNDS. The court, upon the petition of a guardian of the estate of an incompetent or disabled person (collectively hereafter referred to in this section as "incompetent"), other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by chapter 11.96 RCW, may authorize the guardian to take any action, or to apply funds not required for the incompetent's own maintenance and support, in any fashion the court approves as being in keeping with the incompetent's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the incompetent.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the incompetent's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the incompetent's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the incompetent's estate which may extend beyond the incompetent's disability or life, the exercise of options of

the incompetent to purchase securities or other property, the exercise of the incompetent's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies for their cash value, the exercise of the incompetent's right to any elective share in the estate of the incompetent's deceased spouse, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby and the tax savings expected to accrue. The proposed action or application of funds may include gifts of the incompetent's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the incompetent, or may be made to individuals or charities in which the incompetent is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the incompetent under the incompetent's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the incompetent insofar as the intentions can be ascertained, and if the incompetent's intentions cannot be ascertained, the incompetent will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the incompetent's estate as provided in this section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the incompetent. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition the court does not constitute a breach of the guardian's fiduciary duties.

Sec. 14. Section 11.92.150, chapter 145, Laws of 1965 as last amended by section 30, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.150 are each amended to read as follows:

At any time after the issuance of letters of guardianship in the estate of any incompetent or disabled person, any person interested in ~~((said))~~ the estate, or in ~~((such))~~ the incompetent or disabled person, or any relative of ~~((such))~~ the incompetent or disabled person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon ~~((such))~~ the guardian or limited guardian, or upon the attorney for ~~((such))~~ the guardian or limited guardian, and file with the clerk of the court ~~((wherein))~~ where the administration of ~~((such))~~ the guardianship or limited guardianship estate is pending, a written request stating that special written notice is desired of any or all of the following matters, steps or proceedings in the administration of ~~((such))~~ the estate:

(1) Filing of petition for sales, exchanges, leases, mortgages, or grants of easements, licenses, or similar interests in any property of the estate.

(2) Filing of all intermediate or final accountings or accountings of any nature whatsoever.

(3) Petitions by the guardian or limited guardian for family allowances or allowances for the incompetent or disabled person or any other allowance of every nature from the funds of the estate.

(4) Petitions for the investment of the funds of the estate.

(5) Petition to terminate guardianship or limited guardianship or petition for adjudication of competency.

(6) Petition for judicial proceedings under chapter 11.96 RCW.

~~((Such))~~ The request for special written notice shall designate the name, address and post office address of the person upon whom ~~((such))~~ the notice is to be served and no service shall be required under this section and RCW 11.92.160 as now or hereafter amended other than in accordance with ~~((such))~~ the designation unless and until a new designation ~~((shall have))~~ has been made.

When any account, petition, or proceeding is filed in ~~((such))~~ the estate of which special written notice is requested ~~((as herein provided))~~, the court shall fix a time for hearing ~~((thereon))~~ which shall allow at least ten days for service of ~~((such))~~ the notice before ~~((such))~~ the hearing; and notice of ~~((such))~~ the hearing shall be served upon the person designated in ~~((such))~~ the written request at least ten days before the date fixed for ~~((such))~~ the hearing. The service may be made by leaving a copy with the person designated, or ~~((his))~~ that person's authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated.

NEW SECTION. Sec. 15. RCW 21.24.010, 21.24.020, 21.24.030, 21.24.040, 21.24.050, 21.24.060, 21.24.070, and 21.24.080, each as amended by this 1984 act, are each decodified and recodified as a new chapter in Title 11 RCW, to be codified as RCW 11.93.010, 11.93.020, 11.93.030, 11.93.040, 11.93.050, 11.93.060, 11.93.070, and 11.93.080, respectively.

Sec. 16. Section 1, chapter 202, Laws of 1959 as last amended by section 30, chapter 292, Laws of 1971 ex. sess. and RCW 21.24.010 are each amended to read as follows:

In this chapter, unless the context otherwise requires: (1) ~~((An "adult" is a person who has attained the age of eighteen years:~~

~~((2)))~~ (2) A "bank" is a bank, trust company, national banking association, or mutual savings bank.

~~((3)))~~ (2) A "broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business.

~~((4))~~ (3) "Court" means the superior courts of the state of Washington.

~~((5))~~ (4) The "custodial property" includes:

(a) ~~((All securities, life insurance policies, annuity contracts and money under the supervision of))~~ Any property transferred to the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter~~((:));~~

(b) The income from the custodial property; and

(c) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such ~~((securities, money, life insurance policies, annuity contracts and income))~~ custodial property.

~~((6))~~ (5) A "custodian" is a person ~~((so))~~ who is eighteen years or older and is designated as custodian in a manner prescribed in this chapter; the term includes a successor custodian.

~~((7))~~ (6) A "financial institution" is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal law or the laws of a state or a federal credit union or credit union chartered and supervised under the laws of a state; an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, or by the federal savings and loan insurance corporation, or by a deposit insurance fund approved by this state.

~~((8))~~ (7) A "guardian" of a minor means the general guardian, guardian, tutor or curator of ~~((his))~~ the minor's property, or estate appointed or qualified by a court of this state or another state.

~~((9))~~ (8) An "issuer" is a person who places or authorizes the placing of his or her name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his or her property or in an enterprise or to evidence his or her duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

~~((10))~~ (9) A "legal representative" of a person is his or her personal representative, executor or ~~((the))~~ administrator, general guardian, guardian, committee, conservator, tutor, or curator of his or her property or estate.

~~((11))~~ (10) A "life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company authorized to do business in this state on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this chapter or on the life of a member of the minor's family.

~~((12))~~ (11) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of

the whole blood or the half blood, or by or through legal adoption, a step-parent or person who has raised a child without the formality of a guardianship, or close family friend.

~~((13))~~ (12) A "minor" is a person who has not attained the age of ~~((eighteen))~~ twenty-one years.

~~((14))~~ (13) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, any interest in a general or limited partnership, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

~~((15))~~ (14) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

~~((16))~~ (15) A "trust company" is a bank or corporation organized under the laws of the state of Washington that is authorized to ~~((exercise trust powers))~~ engage in trust business.

(16) A "real property interest" includes any note, mortgage, contract to purchase or sell real property, option to purchase or to sell real property, deed evidencing any title to or interest in real property, or, in general, any interest or instrument commonly recognized as evidencing or purporting to evidence an interest in real property, however minimal. The term does not include a "security" within the definition set forth in subsection (13) of this section.

Sec. 17. Section 2, chapter 202, Laws of 1959 as amended by section 2, chapter 88, Laws of 1967 ex. sess. and RCW 21.24.020 are each amended to read as follows:

(1) ~~((An adult))~~ A person who is eighteen years or older may, outright or by a trust agreement executed during his or her lifetime(;) or by ~~((testamentary disposition))~~ will, make or provide for a gift of ~~((a security, a life insurance policy or annuity contract or money))~~ tangible or intangible personal property, including securities, money, life insurance policies, annuity contracts, or real property interests to a person who is a minor on the date of the gift or distribution:

(a) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another ~~((adult))~~ person who is eighteen

years or older, or a trust company, followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act"((-));

(b) If the subject of the gift is a security not in registered form, by delivering it to ((an adult)) a person who is eighteen years or older other than the donor or a trust company accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

**"GIFT UNDER THE WASHINGTON UNIFORM
GIFTS TO MINORS ACT**

I, (name of donor), hereby deliver to (name of custodian) as custodian for (name of minor) under the Washington uniform gifts to minors act, the following ((security(ies))) property: (Insert an appropriate description of the ((security or securities)) tangible or intangible property delivered sufficient to identify it or them) (signature of donor) (name of custodian) hereby acknowledges receipt of the above described ((security(ies))) property as custodian for the above minor under the Washington uniform gifts to minors act.

Dated: (signature of custodian)";

(c) If the subject of the gift is money, by paying or delivering it to a broker or a financial institution for credit to an account in the name of the donor, another ((adult)) person who is eighteen years or older, or a trust company, followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act((-));

(d) If the subject of the gift is a real property interest and constitutes a recordable interest or charge in or against real property in the records of the county auditor or recorder, by registering it in the name of the donor, another person who is eighteen years or older, or a trust company, followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act";

(e) If the subject of the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another ((adult)) person who is eighteen years or older, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Washington uniform gifts to minors act"((-);

(f) If the gift is by will or as a distribution under a trust agreement, by the legal representative or trustee delivering the subject of the gift to the person, who is eighteen years or older, or a trust company designated by the decedent or settlor to serve as custodian for the minor under the Washington uniform gifts to minors act or similar uniform act of the domicile of the designated custodian and causing the subject of the gift to be registered in the name of that custodian, followed, in substance, by the

words: "As custodian for (name of minor) under the Washington (or, alternatively, state of the custodian's domicile) uniform gifts to minor's act." If the decedent or settlor fails to designate a specific custodian or if the designated custodian dies or is unable or unwilling to serve, the legal representative, with the approval of the court having jurisdiction over the decedent's estate, or the trustee may designate a member of the minor's family who is eighteen years or older, a guardian of the minor, or a trust company as custodian. The legal representative or trustee may designate himself or herself as custodian, provided he or she falls within the class of persons or entities permitted in this subsection. The custodian's receipt constitutes a sufficient release and discharge of further accountability by the legal representative or trustee for the gift and acceptance of the custodianship by the custodian.

(2) ~~(Any)~~ Each gift made in a manner prescribed in subsection (1) of this section may be made to only one minor and only one person may be the custodian.

(3) A donor who makes a gift to a minor in a manner prescribed in subsection (1) of this section shall promptly do all things within his or her power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his or her designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

(4) The legal representative of an estate to whom a certificate of qualification, or letters testamentary or of administration are issued may, with the approval of the court having jurisdiction over the decedent's estate, or the trustee of a trust of which a minor is a distributee or beneficiary may pay or transfer to a custodian for the minor under this chapter or a similar uniform act of the jurisdiction in which the minor may be domiciled, in the form and manner prescribed in subsection (1) (a) through (e) of this section or comparable provisions of the uniform act of the other jurisdiction, any money, security, or other property qualifying for custodial gifts which is distributable to the minor. The legal representative or trustee may make distribution in this manner if the legal representative or the trustee deems it to be in the best interests of the minor, except where the decedent, settlor, or court authorizing the distribution has expressly directed that distribution of the property due that minor shall not be made in the manner provided for in this subsection. The legal representative, with the approval of the court having jurisdiction over the decedent's estate, or the trustee shall designate a member of the minor's family who is eighteen years or older, a guardian of the minor, or a trust company as custodian. The legal representative or trustee may designate himself or herself as custodian, provided he or she falls within the class of persons or entities permitted in this subsection. This chapter governs the custodianship in the same manner as though the legal representative or trustee were the donor. The custodian's receipt constitutes

a sufficient release of the transferor and discharge of further accountability by the legal representative or trustee for the property distributed and acceptance of the custodianship by the custodian.

(5) Only property that could be the subject of a lifetime gift under this chapter may be distributed under subsections (1)(f) and (4) of this section.

(6) This section is applicable to gifts made before or after the effective date of this 1984 act and regardless of whether the persons who made the gifts are alive on that date.

Sec. 18. Section 3, chapter 202, Laws of 1959 as amended by section 3, chapter 88, Laws of 1967 ex. sess. and RCW 21.24.030 are each amended to read as follows:

(1) A gift made in a manner prescribed in this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the security, real property, life insurance policy, annuity contract or money given, but no guardian of the minor has any right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(2) By making a gift in a manner prescribed in this chapter, the donor incorporates in ~~((his))~~ the gift all the provisions of this chapter and grants to the custodian, and to any issuer, transfer agent, bank, financial institution, life insurance company, broker or third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this chapter.

Sec. 19. Section 4, chapter 202, Laws of 1959 as last amended by section 31, chapter 292, Laws of 1971 ex. sess. and RCW 21.24.040 are each amended to read as follows:

(1) The custodian shall collect, hold, manage, invest and reinvest the custodial property.

(2) The custodian shall pay over to the minor for expenditure by ~~((him))~~ the minor, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education, and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in ~~((his))~~ the custodian's discretion deems suitable and proper, with or without court order, with or without regard to the duty of ~~((himself))~~ the custodian or of any other person to support the minor or his or her ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

(3) The court, on the petition of a parent or guardian of the minor or of the minor, if ~~((he))~~ the minor has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by ~~((him))~~ the minor or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(4) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on ~~((his))~~ attaining the

age of ~~((eighteen))~~ twenty-one years, or, if the minor dies before attaining the age of ~~((eighteen))~~ twenty-one years, ~~((he))~~ the custodian shall thereupon deliver or pay it over to the estate of the minor.

(5) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent ~~((man))~~ person of discretion and intelligence who is seeking a reasonable income and the preservation of ~~((his))~~ capital, except that ~~((he))~~ the custodian may, in his or her discretion and without liability to the minor or ~~((his))~~ the minor's estate, retain a security given to the minor in a manner prescribed in this chapter or hold money so given in an account in a financial institution to which it was paid or delivered by the donor.

(6) The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms ~~((he))~~ the custodian deems advisable. ~~((He))~~ The custodian may vote in person or by general or limited proxy a security which is custodial property. ~~((He))~~ The custodian may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge, or mortgage of any property by or to such an issuer, and to any other action by such an issuer. ~~((He))~~ The custodian may execute and deliver any and all instruments in writing which ~~((he))~~ the custodian deems advisable to carry out any ~~((of his powers))~~ power as custodian.

(7) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Washington uniform gifts to minors act". The custodian shall hold all money which is custodial property in an account with a broker or in an insured financial institution in the name of the custodian, followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act". The custodian shall keep all other custodial property separate and distinct from ~~((his))~~ the custodian's own property in a manner to identify it clearly as custodial property.

(8) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if ~~((he))~~ the minor has attained the age of fourteen years.

(9) A custodian has, with respect to the custodial property, in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property, and all the rights and powers of a trustee under RCW 11.98.070.

(10) If the subject of the gift is a life insurance policy or annuity contract, the custodian:

(a) In ~~((his))~~ the capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if ~~((he))~~ the custodian were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom ~~((he))~~ the custodian is acting; and

(b) May pay premiums on the policy or contract out of the custodial property.

Sec. 20. Section 5, chapter 202, Laws of 1959 and RCW 21.24.050 are each amended to read as follows:

(1) A custodian is entitled to reimbursement from the custodial property for ~~((his))~~ reasonable expenses incurred in the performance of ~~((his))~~ custodial duties.

(2) A custodian may act without compensation for ~~((his))~~ services.

(3) Unless he or she is a donor, a custodian may receive from the custodial property reasonable compensation for his or her services determined by one of the following standards in the order stated:

(a) A direction by the donor when the gift is made; or

(b) An order of the court.

(4) Except as otherwise provided in this chapter, a custodian shall not be required to give a bond for the performance of his or her duties.

(5) A custodian not compensated for ~~((his))~~ services is not liable for losses to the custodial property unless they result from ~~((his))~~ bad faith, intentional wrongdoing, or gross negligence, or from ~~((his))~~ failure to maintain the standard of prudence in investing the custodial property provided in this chapter.

Sec. 21. Section 6, chapter 202, Laws of 1959 as amended by section 5, chapter 88, Laws of 1967 ex. sess. and RCW 21.24.060 are each amended to read as follows:

No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, or is obliged to inquire into the validity or propriety under this chapter of any instrument of instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to ~~((him))~~ the custodian. No issuer, transfer agent, bank, life insurance company, broker or other person or

financial institution acting on any instrument of designation of a successor custodian, executed as provided in subsection (1) of RCW (~~(21.24.070, as now or hereafter amended,)~~) 11.93.070 by a minor to whom a gift has been made in a manner prescribed in this chapter, and who has attained the age of fourteen years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under this chapter of the instrument of designation.

Sec. 22. Section 7, chapter 202, Laws of 1959 as last amended by section 32, chapter 292, Laws of 1971 ex. sess. and RCW 21.24.070 are each amended to read as follows:

(1) Only ~~((an adult))~~ a member of the minor's family who is eighteen years or older, a guardian of the minor, or a trust company is eligible to become successor custodian. A custodian may designate ~~((his))~~ a successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate ~~((his))~~ a successor before ~~((he))~~ the custodian dies or becomes legally incapacitated~~((;))~~ and the minor has attained the age of fourteen years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties, and immunities of a custodian designated in a manner prescribed by this chapter.

(2) The designation of a successor custodian as provided in subsection (1) takes effect as to each item of the custodial property when the custodian resigns, dies, or becomes legally incapacitated and the custodian or his or her legal representative:

(a) Causes the item if it is a security in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "As custodian for (name of minor) under the Washington uniform gifts to minors act"; and

(b) Delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(3) A custodian who executes an instrument of designation of ~~((his))~~ a successor containing the custodian's resignation as provided in subsection (1) of this section shall promptly do all things within his or her power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his or her power to put each item of the custodial property in

the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (1) of this section by the custodian or, if none, by the minor if ~~((he))~~ the minor has no guardian and has attained the age of fourteen years, or in the possession and control of the guardian of the minor if ~~((he))~~ the minor has a guardian. If the custodian has executed as provided in subsection (1) of this section more than one instrument of designation, ~~((his))~~ the custodian's legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(4) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (1) of this section is not eligible, dies, or becomes legally incapacitated before the minor attains the age of ~~((eighteen))~~ twenty-one years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (1) of this section, a donor, his or her legal representative, the legal representative of the custodian, or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(5) A donor, the legal representative of a donor, a successor custodian, ~~((an adult))~~ a member of the minor's family who is eighteen years or older, or a guardian of the minor or the minor~~(-)~~ if ~~((he))~~ the minor has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his or her duties.

(6) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

Sec. 23. Section 8, chapter 202, Laws of 1959 and RCW 21.24.080 are each amended to read as follows:

(1) The minor, if ~~((he))~~ the minor has attained the age of fourteen years, or the legal representative of the minor, ~~((an adult))~~ a member of the minor's family who is eighteen years or older, or a donor or his or her legal representative may petition the court for an accounting by the custodian or ~~((his))~~ the custodian's legal representative.

(2) The court, in a proceeding under this chapter or otherwise, may require or permit the custodian or ~~((his))~~ the custodian's legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

NEW SECTION. Sec. 24. RCW 21.24.090, 21.24.091, 21.24.100, and 21.24.900 are each decodified and recodified as RCW 11.93.910, 11.93.911, 11.93.900, and 11.93.920, respectively.

NEW SECTION. Sec. 25. There is added to chapter 11.93 RCW a new section to be codified as RCW 11.93.912 to read as follows:

CONSTRUCTION. All custodianships established prior to the effective date of this 1984 act that have not been fully distributed as of that date shall not terminate upon the minor attaining the age of eighteen, but these custodianships shall remain operative until the minor reaches the age of twenty-one or sooner dies, except that, as to any custodianship established after August 9, 1971, but before the effective date of this 1984 act, a minor has the right after attaining the age of eighteen to demand delivery of all or any portion of the custodianship property.

Sec. 26. Section 52, chapter 117, Laws of 1974 ex. sess. and RCW 11.94.010 are each amended to read as follows:

Whenever a principal designates another ((his)) the attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding ((his)) the principal's disability, the authority of the attorney in fact or agent is exercisable by ((him as provided)) the principal in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or ((his)) the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if ((he)) the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

Sec. 27. Section 53, chapter 117, Laws of 1974 ex. sess. as amended by section 27, chapter 234, Laws of 1977 ex. sess. and RCW 11.94.020 are each amended to read as follows:

(1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by RCW 11.94.010, does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and ~~((his))~~ the principal's heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney in fact, or agent, stating that ~~((he))~~ the attorney did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence, is, in the absence of a showing of fraud or bad faith, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

(4) Any person may place reasonable reliance on any determination of disability or incompetence as provided in the instrument which specifies the time and the circumstances under which the power of attorney document becomes effective.

NEW SECTION. Sec. 28. There is added to chapter 11.94 RCW a new section to be codified as RCW 11.94.030 to read as follows:

BANKING TRANSACTIONS. If a principal, pursuant to RCW 11.94.010, has given a designated attorney in fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney in fact or agent has all the powers the principal would have if alive and competent, then that language, notwithstanding chapter 30.22 RCW, includes the authority (1) to deposit and to make payments from any account in a financial institution, as defined in RCW 30.22.040, in the name of the principal, and (2) to enter any safe deposit box to which the principal has a right of access, subject to any contrary provision in any agreement governing the safe deposit box.

NEW SECTION. Sec. 29. There is added to chapter 11.94 RCW a new section to be codified as RCW 11.94.040 to read as follows:

RELEASE FROM LIABILITY. Any person acting without negligence and in good faith in reasonable reliance on a power of attorney shall not incur any liability thereby. Unless the document contains a time limit, the length of time which has elapsed from its date of execution shall not

prevent a party from reasonably relying on the document. Unless the document contains a requirement that it be filed for record to be effective, a person may place reasonable reliance on it regardless of whether it is so filed.

NEW SECTION. Sec. 30. There is added to chapter 11.94 RCW a new section to be codified as RCW 11.94.050 to read as follows:

EXEMPTED MATTERS. (1) Except as provided in subsection (2) of this section, even though a designated attorney in fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney in fact or agent shall have all the powers the principal would have if alive and competent, the attorney in fact or agent shall not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's wills, codicils, life insurance beneficiary designations, trust agreements, community property agreements; to make any gifts of property owned by the principal; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust, or to disclaim property.

(2) Nothing in subsection (1) of this section prohibits a spouse of a principal from acting as an attorney in fact or as an agent to make any transfer of resources not prohibited under RCW 74.09.532 when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy.

NEW SECTION. Sec. 31. There is added to chapter 11.94 RCW a new section to be codified as RCW 11.94.060 to read as follows:

HOMESTEADS. If a principal, pursuant to RCW 11.94.010, has given a designated attorney in fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney in fact or agent has all the powers the principal would have if alive and competent, then these powers include the right to convey or encumber the principal's homestead.

NEW SECTION. Sec. 32. RCW 64.24.010, 64.24.020, 64.24.030, and 64.24.040, each as amended by this 1984 act, are each decodified and re-codified as a new chapter in Title 11 RCW, to be codified as RCW 11.95.010, 11.95.020, 11.95.030, and 11.95.040, respectively.

Sec. 33. Section 1, chapter 160, Laws of 1955 and RCW 64.24.010 are each amended to read as follows:

Any power(~~(, which is)~~) exercisable (~~(by deed, by will,)~~) by deed (~~(or)~~), will, or otherwise, (~~(whether general or special,)~~) other than a power in trust which is imperative, is releasable, either with or without consideration, by written instrument signed by the holder (~~(thereof)~~) and delivered as

hereinafter provided(~~(, unless the instrument creating the power provides otherwise))~~).

Sec. 34. Section 2, chapter 160, Laws of 1955 and RCW 64.24.020 are each amended to read as follows:

A power which is releasable may be released with respect to the whole or any part of the property subject to ~~((such))~~ the power and may also be released in such manner as to reduce or limit the persons or objects, or classes ~~((or {off}))~~ of persons or objects, in whose favor ~~((such))~~ the powers would otherwise be exercisable. ~~((No))~~ A release of a power shall not be deemed to make imperative a power which was not imperative prior to ~~((such))~~ the release, unless the instrument of release expressly so provides.

Sec. 35. Section 3, chapter 160, Laws of 1955 and RCW 64.24.030 are each amended to read as follows:

In order to be effective as a release of a power, the instrument of release ~~((must, as to form and substance, comply with the requirements therefor, if any, set forth in the instrument creating the power, and))~~ must be delivered to ~~((the person or persons designated in any one or more of the following:~~

~~(1) Each person specified for such purpose in the instrument creating the power; and~~

~~(2))~~ any trustee or co-trustee of the property, and the person holding the property, to which the power relates(~~(, and~~

~~(3) The office of)~~. Delivery of a copy of the instrument of release may be made to the secretary of state, ((and such delivery)) which shall from the time ~~((thereof))~~ of delivery constitute notice of ~~((such))~~ the release to all other persons ~~((other than those specified in subdivisions (1) and (2) above))~~.

Sec. 36. Section 4, chapter 160, Laws of 1955 and RCW 64.24.040 are each amended to read as follows:

The enactment of RCW ~~((64.24.040))~~ 11.95.010 through ~~((64.24.050))~~ 11.95.050 shall not be construed to impair the validity of any release heretofore made which was otherwise valid when executed.

NEW SECTION. Sec. 37. RCW 64.24.050 is decodified and recodified as RCW 11.95.050.

NEW SECTION. Sec. 38. There is added to chapter 11.95 RCW a new section to be codified as RCW 11.95.060 to read as follows:

EXERCISE OF POWERS OF APPOINTMENT. (1) The holder of a testamentary or lifetime power of appointment may exercise the power by appointing property outright or in trust and may grant further powers to appoint. The powerholder may designate the trustee, powers, situs, and governing law for property appointed in trust.

(2) The holder of a testamentary power may exercise the power only by the powerholder's last will, signed before or after the effective date of the

instrument granting the power, that manifests an intent to exercise the power and that identifies the instrument granting the power and its date. Unless the person holding the property subject to the power has within six months after the holder's death received written notice that the powerholder's last will has been admitted to probate or an adjudication of testacy has been entered with respect to the powerholder's last will in some jurisdiction, the person may, until the time the notice is received, transfer the property subject to appointment on the basis that the power has not been effectively exercised. The person holding the property shall not incur liability to anyone for transfers so made. A testamentary residuary clause is not deemed the exercise of a testamentary power.

(3) The holder of a lifetime power of appointment shall exercise that power only by delivering a written instrument, signed by the holder, to the person holding the property subject to the power. If the holder conditions the distribution of the appointed property on a future event, the written instrument may be made revocable until the event specified has occurred and shall specify the method of its revocation. If the written instrument is revoked, the holder of the power may reappoint the property that was appointed in the instrument. In the absence of signing and delivery of such a written instrument, a lifetime power is not deemed exercised.

NEW SECTION. Sec. 39. There is added to chapter 11.95 RCW a new section to be codified as RCW 11.95.070 to read as follows:

APPLICATION. This chapter does not apply to any power as trustee described in and subject to RCW 11.98.019.

NEW SECTION. Sec. 40. RCW 11.02.010 and 11.02.020, each as amended by this 1984 act, are each decodified and recodified as RCW 11.96.009 and 11.96.020, respectively.

Sec. 41. Section 11.02.010, chapter 145, Laws of 1965 and RCW 11.02.010 are each amended to read as follows:

(1) The superior court shall have original jurisdiction over probates in the following instances:

(a) When a resident of the state dies; or

(b) When a nonresident of the state dies in the state; or

(c) When a nonresident of the state dies outside the state.

(2) The superior court shall have original jurisdiction over trusts and trust matters.

(3) The superior courts in the exercise of their jurisdiction of matters of probate and trusts shall have power to probate or refuse to probate wills, appoint personal representatives of deceased ((or)), incompetent, or disabled persons and administer and settle all such estates, and administer and settle all trusts and trust matters, award processes and cause to come before them all persons whom they may deem it necessary to examine, and order and

cause to be issued all such writs as may be proper or necessary, and do all things proper or incident to the exercise of such jurisdiction.

Sec. 42. Section 11.02.020, chapter 145, Laws of 1965 and RCW 11.02.020 are each amended to read as follows:

It is the intention of this title that the courts mentioned shall have full and ample power and authority to administer and settle all estates of decedents and incompetent and disabled persons in this title mentioned and to administer and settle all trusts and trust matters. If the provisions of this title with reference to the administration and settlement of such estates or trusts should in any cases and under any circumstances be inapplicable or insufficient or doubtful, the court shall nevertheless have full power and authority to proceed with such administration and settlement in any manner and way which to the court seems right and proper, all to the end that such estates or trusts may be by the court administered upon and settled.

NEW SECTION. Sec. 43. RCW 11.02.030 is decodified and recodified as RCW 11.96.030.

NEW SECTION. Sec. 44. Sections 45 through 49 of this act are each added to chapter 11.96 RCW to be codified as RCW 11.96.040, 11.96.050, 11.96.060, 11.96.070, and 11.96.080, respectively.

NEW SECTION. Sec. 45. SITUS OF TRUST. Unless otherwise provided in the instrument creating the trust, the situs of a trust is the place where the principal place of administration of the trust is located. As used in this section, the "principal place of administration of the trust" is the trustee's usual place of business where the day-to-day records pertaining to the trust are kept or the trustee's residence if the trustee has no such place of business.

NEW SECTION. Sec. 46. VENUE—PROCEEDINGS INVOLVING PROBATE OR TRUST. For purposes of venue in proceedings involving probate or trusts and trust matters, the following shall apply:

(1) Proceedings under Title 11 RCW pertaining to trusts shall be commenced either:

(a) In the superior court of the county in which the situs of the trust is located as provided in RCW 11.96.040;

(b) In the superior court of the county in which a trustee resides or has its principal place of business; or

(c) With respect to testamentary trusts, in the superior court of the county where letters testamentary were granted to a personal representative, and in the absence of such letters, then in any county where letters testamentary could have been granted in accordance with subsection (2) of this section.

(2) Wills shall be proven, letters testamentary or of administration granted, and other proceedings under Title 11 RCW pertaining to probate commenced, either:

(a) In the county in which the decedent was a resident at the time of death;

(b) In the county in which the decedent died, or in which any part of the estate may be, if the decedent was not a resident of this state; or

(c) In the county in which any part of the estate may be, the decedent having died of out-of-state, and not having been resident in this state at the time of death.

(3) No action undertaken is defective or invalid because of improper venue if the court has jurisdiction of the matter.

NEW SECTION. Sec. 47. STATUTES OF LIMITATIONS—PROCEEDINGS INVOLVING TRUSTS AND ESTATES. (1) Any action against the trustee of an express trust, excluding those trusts excluded from the definition of express trusts under RCW 11.98.009, but including all express trusts, whenever executed, for any breach of fiduciary duty, must be brought within three years from the earlier of (a) the time the alleged breach was discovered or reasonably should have been discovered, or (b) the time of termination of the trust or the trustee's repudiation of the trust.

(2) Any action by an heir, legatee, or other interested party, to whom proper notice was given if required, against a personal representative for alleged breach of fiduciary duty must be brought prior to discharge of the personal representative.

(3) The tolling provisions of RCW 4.16.190 apply to this chapter, except that the running of the statute of limitations stated in subsection (2) of this section is not tolled if the minor, incompetent, or disabled person had a guardian ad litem or a limited or general guardian of the estate to represent the person during the probate proceeding.

(4) Notwithstanding subsections (2) and (3) of this section, any cause of action against a trustee of an express trust, as provided for in subsection (1) of this section is not barred by the statute of limitations if it is brought within three years from the effective date of this 1984 act. In addition, any action as specified in subsection (2) of this section against the personal representative is not barred by this statute of limitations if it is brought within one year of the effective date of this 1984 act.

NEW SECTION. Sec. 48. PETITION FOR JUDICIAL PROCEEDINGS. A personal representative, trustee, or other fiduciary, creditor, devisee, legatee, heir, or trust beneficiary interested in the administration of a trust, or the attorney general in the case of a charitable trust under RCW 11.110.120, or of the estate of a decedent, incompetent, or disabled person, may have a judicial proceeding for the declaration of rights or legal relations in respect to the trust or estate:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;

(2) To direct the personal representatives or trustees to do or abstain from doing any particular act in their fiduciary capacity;

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings;

(4) To confer upon the personal representatives or trustees any necessary or desirable powers not otherwise granted in the instrument or given by law that the court determines are not inconsistent with the provisions or purposes of the will or trust;

(5) To amend or conform the will or the trust instrument in the manner required to qualify the gift thereunder for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest; or

(6) To resolve any other matter in this title referencing this judicial proceedings section.

The provisions of this chapter apply to disputes arising in connection with estates of incompetents or disabled persons unless otherwise covered by chapters 11.88 and 11.92 RCW.

NEW SECTION. Sec. 49. HEARING AND FORM OF NOTICE. The court shall make an order fixing the time and place for hearing the petition. The court shall approve the form and content of the notice. Notice of hearing shall be signed by the clerk of the court.

NEW SECTION. Sec. 50. RCW 11.02.060, as amended by this 1984 act, is decodified and recodified as RCW 11.96.090.

Sec. 51. Section 11.02.060, chapter 145, Laws of 1965 and RCW 11.02.060 are each amended to read as follows:

The clerk of each of the superior courts is authorized to fix the time of hearing of all applications, petitions and reports in probate and guardianship proceedings, except the time for hearings upon show cause orders and citations and except for the time of hearings set under RCW 11.96.080. The authority herein granted is in addition to the authority vested in the superior courts and superior court commissioners.

NEW SECTION. Sec. 52. Sections 53 through 57 of this act are each added to chapter 11.96 RCW to be codified as RCW 11.96.100, 11.96.110, 11.96.120, 11.96.130, and 11.96.140, respectively.

NEW SECTION. Sec. 53. NOTICE FOR JUDICIAL PROCEEDINGS. Subject to RCW 11.96.110, in all proceedings under Title 11 RCW notice shall be personally served or mailed to each trustee, personal representative, heir, beneficiary including devisees, legatees, and heirs, guardian ad litem, and person having an interest in the trust or estate whose name and address are known to the petitioner at least twenty days prior to the hearing on the petition, unless otherwise ordered by the court under RCW

11.96.080. Proof of such service or mailing shall be made by affidavit filed at or before the hearing. In addition, notice shall also be given to the attorney general if required under RCW 11.110.120.

NEW SECTION. Sec. 54. **CONSTRUCTIVE NOTICE.** Notwithstanding provisions of this chapter to the contrary, there is compliance with the notice requirements of Title 11 RCW for notice to the beneficiaries of, or persons interested in an estate or a trust, or to beneficiaries or remaindermen, including all living persons who may participate in the corpus or income of the trust or estate, if notice is given as follows:

(1) If an interest in an estate or trust has been given to persons who compose a certain class upon the happening of a certain event, notice shall be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice.

(2) If an interest in an estate or trust has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or to persons who are, or may be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice shall be given to that living person.

(3) Except as otherwise provided in subsection (2) of this section, if an interest in an estate or trust has been given to a person, a class of persons, or both upon the happening of any future event, and the same interest or a share of such interest is to pass to another person, class of persons, or both, upon the happening of an additional future event, notice shall be given to the living person or persons who would take the interest upon the happening of the first event.

(4) Notice shall be given to persons who would not otherwise be entitled to notice by law if a conflict of interest involving the subject matter of the trust or estate proceeding exists between a person to whom notice is given and a person to whom notice need not be given under Title 11 RCW.

Any action taken by the court is conclusive and binding upon each person receiving actual or constructive notice in the manner provided in this section.

NEW SECTION. Sec. 55. **SPECIAL NOTICE.** Nothing in this chapter eliminates the requirement to give notice to a person who has requested special notice under RCW 11.28.240 or 11.92.150.

NEW SECTION. Sec. 56. **TRIAL RULES—JUDGMENTS.** All issues of fact joined in probate or trust proceedings shall be tried in conformity with the requirements of the rules of practice in civil actions. The probate or trust proceeding may be commenced as a new action or as an action incidental to an existing probate or trust proceeding. Once commenced, the action may be consolidated with an existing probate or trust proceeding or converted to a separate action upon the motion of any party for good cause

shown, or by the court on its own motion. If the action is incidental to an existing proceeding, all pleadings shall set forth the caption of the existing proceeding followed by an appropriate caption designating the parties to the new proceeding. The party affirming is plaintiff, and the one denying or avoiding is defendant. If a party is entitled to a trial by jury and a jury is demanded, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, shall settle and frame the issues to be tried. If no jury is demanded, the court shall try the issues joined, and sign and file its findings and decision in writing, as provided for in civil actions. Judgment on the issue joined, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions.

NEW SECTION. Sec. 57. COSTS. Either the superior court or the court on appeal, may, in its discretion, order costs, including attorneys fees, to be paid by any party to the proceedings or out of the assets of the estate, as justice may require.

NEW SECTION. Sec. 58. RCW 30.30.120 is decodified and recodified as RCW 11.96.150.

NEW SECTION. Sec. 59. RCW 11.96.010 is decodified and recodified as RCW 11.96.160.

NEW SECTION. Sec. 60. Sections 61 and 62 of this act are each added to chapter 11.96 RCW and shall be codified as RCW 11.96.170 and 11.96.180, respectively.

NEW SECTION. Sec. 61. NONJUDICIAL RESOLUTION OF DISPUTES. (1) If the persons listed in RCW 11.96.070 and those entitled to notice under RCW 11.96.100 and 11.96.110 agree on any matter listed in RCW 11.96.070 or any other matter in Title 11 RCW referencing this nonjudicial resolution procedure, then the agreement shall be evidenced by a written agreement executed by all necessary persons as provided in this section.

(2) If necessary, the personal representative or trustee may petition the court for the appointment of a special representative to represent a person interested in the estate or trust who is a minor, incompetent, disabled, or who is yet unborn or unascertained, or a person whose identity or address is unknown. The special representative has authority to enter into a binding agreement on behalf of the person or beneficiary. The special representative may be appointed for more than one person or class of persons if the interests of such persons or class are not in conflict. Those entitled to receive notice for persons or beneficiaries described in RCW 11.96.110 may enter into a binding agreement on behalf of such persons or beneficiaries.

(3) The special representative shall be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative shall have no interest in any affected estate or trust, and shall not be related to

any personal representative, trustee, beneficiary, or other person interested in the estate or trust. The special representative is entitled to reasonable compensation for services which shall be paid from the principal of the estate or trust whose beneficiaries are represented. Upon execution of the written agreement, the special representative shall be discharged of any further responsibility with respect to the estate or trust.

(4) The written agreement or a memorandum summarizing the provisions of the written agreement may, at the option of any person interested in the estate or trust, be filed with the court having jurisdiction over the estate or trust. The person filing the agreement or memorandum shall within five days thereof mail a copy of the agreement and a notice of the filing to each person interested in the estate or trust whose address is known. Notice shall be in substantially the following form:

CAPTION
OF CASE

NOTICE OF FILING OF AGREEMENT
OR MEMORANDUM OF AGREEMENT

Notice is hereby given that the attached document was filed by the undersigned in the above entitled court on the day of, 19... Unless you file a petition objecting to the agreement within 30 days of the above specified date the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust.

If you file and serve a petition within the period specified, you should ask the court to fix a time and place for the hearing on the petition and provide for at least a ten days' notice to all persons interested in the estate or trust.

DATED this day of, 19...

.....
(Party to the agreement)

(5) Unless a person interested in the estate or trust files a petition objecting to the agreement within thirty days of the filing of the agreement or the memorandum, the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust. If all persons interested in the estate or trust waive the notice required by this section, the agreement will be deemed approved and will be equivalent to a final order binding on all persons interested in the estate or trust effective upon the date of filing[.]

NEW SECTION. Sec. 62. APPOINTMENT OF GUARDIANS AD LITEM. (1) The court, upon its own motion or on request of a person interested in the trust or estate, at any stage of a judicial proceeding or at any time in a nonjudicial resolution procedure, may appoint a guardian ad litem

to represent the interests of a minor, incapacitated, unborn, or unascertained person, or person whose identity and address are unknown, or a designated class of persons who are not ascertained or are not in being. When not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(2) For the purposes of this section, a trustee is a person interested in the trust and a personal representative is a person interested in an estate.

(3) The court appointed guardian ad litem supersedes the special representative if so provided in the court order.

(4) The court may appoint the guardian ad litem at an ex parte hearing, or the court may order a hearing as provided in RCW 11.96.070 with notice as provided in RCW 11.96.080, 11.96.100, and 11.96.110.

NEW SECTION, Sec. 63. RCW 30.99.020, as amended by this 1984 act, is decodified and recodified in a new chapter in Title 11 RCW, to be codified as RCW 11.97.010.

Sec. 64. Section 2, chapter 124, Laws of 1959 and RCW 30.99.020 are each amended to read as follows:

The trustor of a trust may by the provisions ~~((thereof))~~ of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by ~~((this chapter))~~ chapters 11.95, 11.98, 11.100, and 11.104 RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by ~~((this chapter))~~ those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by ~~((this chapter))~~ those provisions. If any specific provision of ~~((this))~~ those chapters is in conflict with ~~((or inconsistent with))~~ the provisions of a trust, the provisions of the trust ~~((shall))~~ control whether or not specific reference is made ~~((therein))~~ in the trust to ~~((this))~~ any of those chapters. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment.

NEW SECTION, Sec. 65. There is added to chapter 11.97 RCW a new section to be codified as RCW 11.97.900 to read as follows:

This chapter applies to the provisions of chapters 11.95, 11.98, 11.100, and 11.104 RCW and to RCW 11.106.020.

NEW SECTION, Sec. 66. RCW 30.99.010, 30.99.030, each as amended by this 1984 act, are each decodified and recodified as RCW 11.98.009 and 11.98.016, respectively.

Sec. 67. Section 1, chapter 124, Laws of 1959 as amended by section 49, chapter 3, Laws of 1983 and RCW 30.99.010 are each amended to read as follows:

Except as provided in this section, this chapter ~~((shall apply))~~ applies to express trusts ~~((; except as hereinafter limited, which are))~~ executed by the trustor after June 10, 1959 ~~((This chapter shall))~~, and does not apply to resulting trusts, constructive trusts, business trusts where certificates of

beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, trusts created by the judgment or decree of a court not sitting in probate, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, trusts created in deposits in any (~~banking institution~~) financial institution pursuant to chapter 30.22 RCW (~~or in accounts in savings and loan associations pursuant to chapter 30.22 RCW~~), unless any such trust which is created in writing incorporates this chapter in whole or in part.

Sec. 68. Section 3, chapter 124, Laws of 1959 and RCW 30.99.030 are each amended to read as follows:

(1) Any power vested in three or more trustees jointly may be exercised by a majority of such trustees; but no trustee who has not joined in exercising a power (~~shall be~~) is liable to the beneficiaries or to others for the consequences of such exercise; nor (~~shall~~) is a dissenting trustee (~~be~~) liable for the consequences of an act in which (~~he~~) that trustee joins at the direction of the majority of the trustees, if (~~he~~) that trustee expressed his or her dissent in writing to each of (~~his~~) the co-trustees at or before the time of such joinder.

(2) Where two or more trustees are appointed to execute a trust and one or more of them for any reason does not accept the appointment or having accepted ceases to be a trustee, the survivor or survivors shall execute the trust and shall succeed to all the powers, duties and discretionary authority given to the trustees jointly.

(3) An individual trustee, with a co-trustee's consent, may, by a signed, written instrument, delegate any power, duty, or authority as trustee to that co-trustee. This delegation is effective upon delivery of the instrument to that co-trustee and may be revoked at any time by delivery of a similar signed, written instrument to that co-trustee. However, if a power, duty, or authority is expressly conferred upon only one trustee, it shall not be delegated to a co-trustee. If that power, duty, or authority is expressly excluded from exercise by a trustee, it shall not be delegated to the excluded trustee.

(4) If one trustee gives written notice to all other co-trustees of an action that the trustee proposes be taken, then the failure of any co-trustee to deliver a written objection to the proposal to the trustee, at the trustee's then address of record and within fifteen days from the date the co-trustee actually receives the notice, constitutes formal approval by the co-trustee, unless the co-trustee had previously given written notice that was unrevoked at the time of the trustee's notice, to that trustee that this fifteen-day notice provision is inoperative.

(5) As to any effective delegation made under subsection (3) of this section, a co-trustee has no liability for failure to participate in the administration of the trust.

Nothing in this section (~~shall~~), however, otherwise excuses a co-trustee from liability for failure (~~either~~) to participate in the administration of the trust (~~or~~) and nothing in this section, including subsection (3) of this section, excuses a co-trustee from liability for the failure to attempt to prevent a breach of trust.

NEW SECTION. Sec. 69. There is added to chapter 11.98 RCW a new section to be codified as RCW 11.98.019 to read as follows:

RELEASE OF POWERS BY CO-TRUSTEE. Any individual co-trustee may, by written instrument delivered to a then acting co-trustee and to the current adult income beneficiaries of the trust, relinquish to any extent and upon any terms any or all of the trustee's powers, rights, authorities, or discretions that are or may be tax sensitive in that they cause or may cause adverse tax consequences to the trustee or the trust. Any trustee not relinquishing such a power, right, authority, or discretion and upon whom it is conferred continues to have full power to exercise it.

NEW SECTION. Sec. 70. RCW 30.99.040 is decodified and recodified as RCW 11.98.029.

NEW SECTION. Sec. 71. RCW 30.99.050, as amended by this 1984 act, is decodified and recodified as RCW 11.98.039.

Sec. 72. Section 5, chapter 124, Laws of 1959 and RCW 30.99.050 are each amended to read as follows:

(1) The beneficiaries and trustee of a trust may agree for the nonjudicial change of the trustee under RCW 11.96.170 if the governing instrument does not name a successor trustee who is willing to serve. The trustee shall give written notice of the proposed change in trustee to every beneficiary or special representative, and to the trustor if alive. The notice shall: (a) State the name and mailing address of the trustee; (b) include a copy of the governing instrument; and (c) state the name and mailing address of the successor trustee. The notice shall advise the recipient of the right to petition for the judicial determination of the proposed change in trustee as provided in subsection (2) of this section. The notice shall include a form on which consent or objection to the proposed change in trustee may be indicated.

(2) Any beneficiary of a trust, the trustor if alive, or the trustee may (~~in writing~~) petition the superior court having jurisdiction for the appointment (~~of a successor trustee~~) or change of a trustee under the procedures provided in chapter 11.96 RCW (a) whenever the office of trustee becomes vacant (~~or~~), (b) upon filing of a petition of resignation by a trustee, or (c) for any other reasonable cause. (~~The court shall make an order fixing the time and place for hearing the petition and the notice thereof shall be signed by the clerk of said court. Petitioner shall cause a copy of the notice to be mailed to each beneficiary, the trustor if alive, and to the incumbent trustee, if any, whose names and addresses are known to him,~~

~~not less than ten days before the date of the hearing. Proof of the mailing of such notice shall be made by affidavit which shall be filed at or before the hearing. All those whose names or addresses are not known or are not legally competent and any beneficiary who is not ascertained shall be represented at the hearing by a guardian ad litem appointed by the court when it sets the time of hearing. Upon conclusion of the hearing the court shall appoint a successor trustee after giving due consideration to the individual or corporate character of trustor's original trustee, any nominations by those entitled to petition for the appointment or by the guardian ad litem, and all other relevant and material facts.))~~

(3) For purposes of this section, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

NEW SECTION. Sec. 73. Sections 74 through 76 of this act are each added to chapter 11.98 RCW to be codified as RCW 11.98.045, 11.98.051, 11.98.055, respectively.

NEW SECTION. Sec. 74. CRITERIA FOR TRANSFER OF TRUST ADMINISTRATION. (1) A trustee may transfer trust assets to a trustee in another jurisdiction or may transfer the place of administration of a trust to another jurisdiction if the trust instrument so provides or in accordance with RCW 11.98.051 or 11.98.055.

(2) Transfer under this section is permitted only if:

(a) The transfer would facilitate the economic and convenient administration of the trust;

(b) The transfer would not materially impair the interests of the beneficiaries or others interested in the trust;

(c) The transfer does not violate the terms of the trust; and

(d) The new trustee is qualified and able to administer the trust or such assets on the terms set forth in the trust.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section, RCW 11.98.051, or 11.98.055 shall not be construed to be doing a "trust business" as described in RCW 30.08.150(9).

NEW SECTION. Sec. 75. NONJUDICIAL TRANSFER OF TRUST ADMINISTRATION. (1) The trustee may transfer trust assets or the place of administration in accordance with RCW 11.96.170. In addition, the trustee shall give written notice to those persons entitled to notice as provided for under RCW 11.96.100 and 11.96.110 and to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW. The notice shall:

- (a) State the name and mailing address of the trustee;
- (b) Include a copy of the governing instrument of the trust;
- (c) Include a statement of assets and liabilities of the trust dated within ninety days of the notice;
- (d) State the name and mailing address of the trustee to whom the assets or administration will be transferred together with evidence that the trustee has agreed to accept the assets or trust administration in the manner provided by law of the new place of administration. The notice shall also contain a statement of the trustee's qualifications and the name of the court, if any, having jurisdiction of that trustee or in which a proceeding with respect to the administration of the trust may be heard;
- (e) State the facts supporting the requirements of RCW 11.98.045(2);
- (f) Advise the beneficiaries of the right to petition for judicial determination of the proposed transfer as provided in RCW 11.98.055; and
- (g) Include a form on which the recipient may indicate consent or objection to the proposed transfer.

(2) If the trustee receives written consent to the proposed transfer from all persons entitled to notice, the trustee may transfer the trust assets or place of administration as provided in the notice. Transfer in accordance with the notice is a full discharge of the trustee's duties in relation to all property referred to therein. Any person dealing with the trustee is entitled to rely on the authority of the trustee to act and is not obliged to inquire into the validity or propriety of the transfer.

NEW SECTION. Sec. 76. JUDICIAL TRANSFER OF TRUST ADMINISTRATION. (1) Any trustee, beneficiary, or beneficiary representative may petition the superior court of the county of the situs of the trust for a transfer of trust assets or transfer of the place of administration in accordance with chapter 11.96 RCW.

(2) At the conclusion of the hearing, if the court finds the requirements of RCW 11.98.045(2) have been satisfied, it may direct the transfer of trust assets or the place of trust administration on such terms and conditions as it deems appropriate. The court in its discretion may provide for payment

from the trust of reasonable fees and expenses for any party to the proceeding. Delivery of trust assets in accordance with the court's order is a full discharge of the trustee's duties in relation to all transferred property.

NEW SECTION. Sec. 77. RCW 30.99.060 is decodified and recodified as RCW 11.98.060.

NEW SECTION. Sec. 78. There is added to chapter 11.98 RCW a new section to be codified as RCW 11.98.065 to read as follows:

CHANGE IN FORM OF CORPORATE TRUSTEE. Any appointment of a specific bank, trust company, or corporation as trustee is conclusively presumed to authorize the appointment or continued service of that entity's successor in interest in the event of a merger, acquisition, or reorganization, and no court proceeding is necessary to affirm the appointment or continuance of service.

NEW SECTION. Sec. 79. RCW 30.99.070, as amended by this 1984 act, is decodified and recodified as RCW 11.98.070.

Sec. 80. Section 7, chapter 124, Laws of 1959 and RCW 30.99.070 are each amended to read as follows:

A trustee, or the trustees jointly, of a trust (~~shall~~), in addition to the authority otherwise given by law, have ~~((the))~~ discretionary power ~~((and the exercise of discretion in the application thereof;))~~ 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 ~~((thereof))~~ of the trust to be held and administered under the provisions ~~((thereof))~~ of the trust;

(2) Sell on credit; ~~((and))~~

(3) Grant, purchase or exercise options;

~~((3))~~ (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; ((and))

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

~~((4))~~ (7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

~~((5))~~ (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 ~~((shall be))~~ are liable for any loss occasioned by the acts of any ~~((such))~~ nominee;

~~((6))~~ (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; ~~((create restrictions, easements and other servitudes, alter, renovate, add to or demolish any building, subdivide, develop, improve, 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;~~

~~(7) Cause or participate in the formation, reorganization, merger, consolidation and dissolution of corporate or other business undertakings where trust property may be affected and retain any property received pursuant thereto; limit management participation in any partnership and to act as a limited partner; charge profits and losses of any business or farm operation to the trust estate as a whole and not to the trustee; and make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;~~

~~(8))~~ (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; ((advance funds and borrow money, secured or unsecured, from any source, including a corporate trustee's banking department; and mortgage, pledge the assets or credit of the trust estate or otherwise encumber trust property, including future income;~~

~~(9))~~ (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;

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

~~((+0))~~ (15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; ((pay any income or principal distributable to or for the use of any beneficiary, whether or not such beneficiary is under legal disability, to him or for his use to his parent, guardian, person with whom he resides or third persons:)) make nonprorata 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) Pay any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian, custodian under the uniform gifts to minors act of any state, person with whom he resides, or third person;

(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, 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, 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, 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 or farm 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;

(27) Employ 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 a trustee may not delegate all of the trustee's duties and responsibilities, and except that this employment does not relieve the trustee of liability for the discretionary acts of a person, which if done by the trustee, would result in liability to the trustee, or of the duty to select and retain a person with reasonable care;

(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) Rely with acquittance on advice of counsel on questions of law; and

(34) 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.

NEW SECTION. Sec. 81. There is added to chapter 11.98 RCW a new section to be codified as RCW 11.98.080 to read as follows:

CONSOLIDATION OF TRUSTS. (1) Two or more trusts may be consolidated if:

(a) The trusts so provide; or

(b) Whether provided in the trusts or not, in accordance with subsection (2) of this section, if all interested persons consent as provided in subsection (2)(c) of this section and the requirements of subsection (1)(d) of this section are satisfied; or

(c) Whether provided in the trusts or not, in accordance with subsection (3) of this section if the requirements of subsection (1)(d) of this section are satisfied;

(d) Consolidation under subsection (2) or (3) of this section is permitted only if:

(i) The dispositive provisions of each trust to be consolidated are substantially similar;

(ii) Consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated; and

(iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries;

(e) Trusts may be consolidated whether created inter vivos or by will, by the same or different instruments, by the same or different trustors, whether the trustees are the same, and regardless of where the trusts were created or administered.

(2) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96.170.

(a) The trustee shall give written notice of proposed consolidation by personal service or by certified mail to the beneficiaries of every trust affected by the consolidation as provided in RCW 11.96.100 and 11.96.110 and to any trustee of such trusts who does not join in the notice. The notice shall: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)(d) of this section. The notice shall advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed consolidation may be indicated.

(b) If the trustee receives written consent to the proposed consolidation from all persons entitled to notice as provided in RCW 11.96.100 and 11.96.110, the trustee may consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.

(3)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the principal place of administration of a trust is located for an order consolidating two or more trusts under chapter 11.96 RCW. If nonjudicial consolidation has been commenced pursuant to subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(b) At the conclusion of the hearing, if the court finds that the requirements of subsection (1)(d) of this section have been satisfied, it may direct consolidation of two or more trusts on such terms and conditions as appropriate. The court in its discretion may provide for payment from one or more of the trusts of reasonable fees and expenses for any party to the proceeding.

(4) This section applies to all trusts whenever created.

NEW SECTION. Sec. 82. RCW 30.99.080, 30.99.090, and 30.99.100, each as amended by this 1984 act, are each decodified and recodified as RCW 11.98.090, 11.98.100, and 11.98.110, respectively.

Sec. 83. Section 8, chapter 124, Laws of 1959 and RCW 30.99.080 are each amended to read as follows:

In the absence of knowledge of a breach of trust, no party dealing with a trustee (~~shall be~~) is required to see to the application of any moneys or other properties delivered to the trustee.

Sec. 84. Section 9, chapter 124, Laws of 1959 and RCW 30.99.090 are each amended to read as follows:

When the happening of any event, including but not limited to such events as marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of the trust, then a trustee who has exercised reasonable care to ascertain the happening of (~~such~~) the event (~~shall~~) is not (~~be~~) liable for any action or inaction based on lack of knowledge of (~~such~~) the event. A corporate trustee (~~shall~~) is not (~~be~~) liable prior to receiving such knowledge or notice in its trust department office where the trust is being administered.

Sec. 85. Section 10, chapter 124, Laws of 1959 as amended by section 50, chapter 3, Laws of 1983 and RCW 30.99.100 are each amended to read as follows:

Actions on contracts which have been transferred to a trust and on contracts made by a trustee, and actions in tort for personal liability incurred by a trustee in the course of (~~his~~) administration may be maintained by the party in whose favor the cause of action has accrued as follows:

(1) The plaintiff may sue the trustee in ~~((his))~~ the trustee's representative capacity and any judgment rendered in favor of the plaintiff ~~((shall be))~~ is collectible by execution out of the trust property: PROVIDED, HOWEVER, If the action is in tort, collection shall not be had from the trust property unless the court ~~((shall))~~ determines in ~~((such))~~ the action that (a) the tort was a common incident of the kind of business activity in which the trustee or ~~((his))~~ the trustee's predecessor was properly engaged for the trust; or (b) that, although the tort was not a common incident of such activity, neither the trustee nor ~~((his))~~ the trustee's predecessor, nor any officer or employee of the trustee or ~~((his))~~ the trustee's predecessor, was guilty of personal fault in incurring the liability; or (c) that, although the tort did not fall within classes (a) or (b) above, it increased the value of the trust property. If the tort is within classes (a) or (b) above, collection may be had of the full amount of damage proved, and if the tort is within class (c) above, collection may be had only to the extent of the increase in the value of the trust property.

(2) If the action is on a contract made by the trustee, the trustee may be held personally liable on ~~((such))~~ the contract, if personal liability is not excluded. Either the addition by the trustee of the words "trustee" or "as trustee" after the signature of a trustee to a contract or the transaction of business as trustee under an assumed name in compliance with chapter 19-.80 RCW ~~((shall))~~ excludes the trustee from personal liability. If the action is on a contract transferred to the trust or trustee, subject to any rights therein vested at time of ~~((such))~~ the transfer, the trustee ~~((shall-be))~~ is personally liable only if he or she has in writing assumed ~~((such))~~ that liability.

(3) In any such action against the trustee in ~~((his))~~ the trustee's representative capacity the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if ~~((he))~~ the trustee had paid the plaintiff's claim.

(4) The trustee may also be held personally liable for any tort committed by him or her, or by his or her agents or employees in the course of their employments, subject to the rights of exoneration or reimbursement:

(a) A trustee who has incurred personal liability for a tort committed in the administration of the trust is entitled to exoneration therefor from the trust property if (i) the tort was a common incident of the kind of business activity in which the trustee was properly engaged for the trust, or (ii) although the tort was not a common incident of such activity, if neither the trustee nor any officer or employee of the trustee was guilty of personal fault in incurring the liability;

(b) A trustee who commits a tort which increases the value of the trust property ~~((shall-be))~~ is entitled to exoneration or reimbursement with respect thereto to the extent of such increase in value, even though ~~((he))~~ the trustee would not otherwise be entitled to exoneration or reimbursement.

~~(5) ((No judgment shall be rendered in favor of the plaintiff in any such action unless the plaintiff shall cause a copy of the notice of the hearing on such action to be mailed not less than twenty days before the date therefor to the trustor, if living, the trustee and to each beneficiary whose name and address is known to him. Proof of the mailing of such notice shall be made by affidavit which shall be filed at or before the hearing. All those whose names or addresses are not known or are not legally competent and any beneficiary who is not ascertained shall be represented at the hearing by a guardian ad litem appointed by the court when it sets the time of hearing.))~~ The procedure for all actions provided in this section is as provided in chapter 11.96 RCW.

(6) Nothing in this section shall be construed to change the existing law with regard to the liability of the trustee of a charitable trust for the torts of the trustee.

NEW SECTION. Sec. 86. RCW 11.98.010, 11.98.020, 11.98.030, and 11.98.040, each as amended by this 1984 act, are decodified and recodified as RCW 11.98.130, 11.98.140, 11.98.150, and 11.98.160, respectively.

Sec. 87. Section 11.98.010, chapter 145, Laws of 1965 and RCW 11.98.010 are each amended to read as follows:

If any provision of an instrument creating a trust ((shaff)), including the provisions of any further trust created, or any other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument violates the rule against perpetuities, neither such provision nor any other provisions of the trust ((shaff)), or such further trust or other disposition, is thereby ((be)) rendered invalid during any of the following periods:

(1) The twenty-one years following the effective date of the instrument.

(2) The period measured by any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such life or lives.

(3) The period measured by any portion of any life or lives in being or conceived at the effective date of the instrument if by the terms of the instrument the trust is to continue for such portion of such life or lives; and

(4) The twenty-one years following the expiration of the periods specified in (2) and (3) above.

Sec. 88. Section 11.98.020, chapter 145, Laws of 1965 and RCW 11.98.020 are each amended to read as follows:

If, during any period in which an instrument creating a trust, as described in RCW 11.98.130, or any provision thereof, is not to be rendered invalid by the rule against perpetuities, any of the trust assets should by the terms of the instrument or pursuant to any further trust or other disposition resulting from exercise of the power of appointment granted in or created

through authority under such instrument, become distributable or any beneficial interest ((therein)) in any of the trust assets should by the terms of the instrument, or such further trust or other disposition become vested, such assets shall be distributed and such beneficial interest shall validly vest in accordance with the instrument, or such further trust or other disposition.

Sec. 89. Section 11.98.030, chapter 145, Laws of 1965 and RCW 11.98.030 are each amended to read as follows:

If, at the expiration of any period in which an instrument creating a trust, as described in RCW 11.98.009, or any provision thereof, is not to be rendered invalid by the rule against perpetuities, any of the trust assets have not by the terms of the trust instrument become distributable or vested, then ((such)) the assets shall be ((then)) distributed as the superior court having jurisdiction ((shall)) directs, giving effect to the general intent of the creator of the trust or person exercising a power of appointment in the case of any further trust or other disposition of property made pursuant to the exercise of a power of appointment.

Sec. 90. Section 11.98.040, chapter 145, Laws of 1965 and RCW 11.98.040 are each amended to read as follows:

For the purposes of this chapter the effective date of an instrument purporting to create an irrevocable inter vivos trust ((shall be its)) is the date ((of delivery)) on which it is executed by the trustor, and the effective date of an instrument purporting to create either a revocable inter vivos trust or a testamentary trust ((shall be)) is the date of the trustor's or testator's death.

NEW SECTION. Sec. 91. There is added to chapter 11.98 RCW a new section to be codified as RCW 11.98.170 to read as follows:

TRUSTEE OR CUSTODIAN NAMED AS BENEFICIARY OF LIFE INSURANCE POLICY OR RETIREMENT PLAN. (1) Any life insurance policy or retirement plan payment provision may designate as beneficiary:

(a) A trustee named or to be named by will, and immediately after the proving of the will, the proceeds of such insurance or of such plan designated as payable to that trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of under the terms of the will governing the testamentary trust; or

(b) A trustee named or to be named under a trust agreement executed by the insured, the plan participant, or any other person, and the proceeds of such insurance or retirement plan designated as payable to such trustee, in part or in whole, shall be paid to the trustee in accordance with the beneficiary designation, to be held and disposed of by the trustee as provided in such trust agreement; a trust is valid even if the only corpus consists of the right of the trustee to receive as beneficiary insurance or retirement plan proceeds; any such trustee may also receive assets, other than insurance or

retirement plan proceeds, by testamentary disposition or otherwise and, unless directed otherwise by the transferor of the assets, shall administer all property of the trust according to the terms of the trust agreement.

(2) If no qualified trustee makes claim to the insurance policy or retirement plan proceeds from the insurance company or the plan administrator within twelve months after the death of the insured or plan participant, determination of the proper recipient of the proceeds shall be made pursuant to the judicial or nonjudicial dispute resolution procedures of chapter 11.96 RCW, unless prior to the institution of the judicial procedures, a qualified trustee makes claim to the proceeds, except that (a) if satisfactory evidence is furnished the insurance company or plan administrator within the twelve-month period showing that no trustee can or will qualify to receive such proceeds, payment shall be made to those otherwise entitled to the proceeds under the terms of the policy or retirement plan, including the terms of the beneficiary designation except that (b) if there is any dispute as to the proper recipient of insurance policy or retirement plan proceeds, the dispute shall be resolved pursuant to the judicial or nonjudicial resolution procedures in chapter 11.96 RCW.

(3) The proceeds of the insurance or retirement plan as collected by the trustee are not subject to debts of the insured or the plan participant to any greater extent than if the proceeds were payable to any named beneficiary other than the personal representative or the estate of the insured or of the plan participant.

(4) For purposes of this section the following definitions apply:

(a) "Plan administrator" means the person upon whom claim must be made in order for retirement plan proceeds to be paid upon the death of the plan participant.

(b) "Retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for payment to a beneficiary designated by the plan participant for whom the plan is established. The term includes, without limitation, such plans regardless of source of funding, and, for example, includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other retirement plan or program.

(c) "Trustee" includes any custodian under chapter 11.93 RCW or any similar statutory provisions of any other state and the terms "trust agreement" and "will" refer to the provisions of chapter 11.93 RCW or such similar statutory provisions of any other state.

(5) Enactment of this section does not invalidate life insurance policy or retirement plan beneficiary designations executed prior to the effective date of this 1984 act naming a trustee established by will or by trust agreement.

NEW SECTION. Sec. 92. RCW 11.98.050, as amended by this 1984 act, is decodified and recodified as RCW 11.98.900.

Sec. 93. Section 11.98.050, chapter 145, Laws of 1965 as amended by section 1, chapter 229, Laws of 1971 ex. sess. and RCW 11.98.050 are each amended to read as follows:

The provisions (~~(hereof shall be)~~) of this chapter are applicable to any instrument purporting to create a trust regardless of the date such instrument (~~(shall)~~) bears, unless it has been previously adjudicated in the courts of this state.

NEW SECTION. Sec. 94. RCW 30.99.900 and 30.99.910 are decodified and recodified as RCW 11.98.910 and 11.98.920, respectively.

NEW SECTION. Sec. 95. RCW 30.24.010 and 30.24.015 are decodified and recodified as a new chapter in Title 11 RCW, to be codified as RCW 11.100.010 and 11.100.015, respectively.

NEW SECTION. Sec. 96. RCW 30.24.020, as amended by this 1984 act, is decodified and recodified as RCW 11.100.020.

Sec. 97. Section 30.24.020, chapter 33, Laws of 1955 and RCW 30.24.020 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 (~~(men)~~) 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, (~~(considering)~~) 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) Length of the term of the investments;
- (d) Duration of the trust;
- (e) Liquidity needs;
- (f) Requirements of the beneficiary or beneficiaries;
- (g) Other assets of the beneficiary or beneficiaries, including earning capacity; and

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

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 ~~((men))~~ persons of prudence, discretion, and intelligence acquire for their own account.

NEW SECTION. Sec. 98. There is added to chapter 11.100 RCW a new section to be codified as RCW 11.100.023 to read as follows:

INVESTMENTS IN CERTAIN ENTERPRISES. Subject to the standards of RCW 11.100.020, a fiduciary is authorized to invest in new, unproven, untried, or other enterprises with a potential for significant growth whether producing a current return, either by investing directly therein or by investing as a limited partner or otherwise in one or more commingled funds which in turn invest primarily in such enterprises. The aggregate amount of investments made by a fiduciary under the authority of this section shall not exceed ten percent of the net fair market value of the trust corpus at the time any such investment is made. Any investment which would have been authorized by this section if in force at the time the investment was made is hereby authorized.

NEW SECTION. Sec. 99. There is added to chapter 11.100 RCW a new section to be codified as RCW 11.100.025 to read as follows:

MARITAL DEDUCTION INTERESTS. With respect to trusts for which a federal estate or gift tax marital deduction is taken, any investment in or retention of unproductive property is subject to a power in the spouse of the trust's creator to require either that any such asset be made productive, or that it be converted to productive assets within a reasonable period of time unless the instrument creating the interest provides otherwise.

NEW SECTION. Sec. 100. RCW 30.24.030, as amended by this 1984 act, is decodified and recodified as RCW 11.100.030.

Sec. 101. Section 30.24.030, chapter 33, Laws of 1955 as amended by section 3, chapter 133, Laws of 1967 and RCW 30.24.030 are each amended to read as follows:

A corporation doing a trust business may invest trust funds in savings accounts with itself to the extent that ~~((such))~~ deposits are insured by ~~((the Federal Deposit Insurance Corporation: PROVIDED, That))~~ an agency of the federal government. Additional trust funds may be so invested by the corporation only if it first sets aside under the control of its trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of ~~((such))~~ the funds so deposited.

NEW SECTION. Sec. 102. RCW 30.24.035 is decodified and recodified as RCW 11.100.035.

NEW SECTION. Sec. 103. RCW 30.24.037, as amended by this 1984 act, is decodified and recodified as RCW 11.100.037.

Sec. 104. Section 4, chapter 133, Laws of 1967 and RCW 30.24.037 are each amended to read as follows:

Funds held by a bank or trust company in a fiduciary capacity awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. ~~((Such))~~ These funds, including managing agency accounts, may, unless prohibited by the instrument creating the trust or by other statutes of this state, be deposited in the commercial or savings or other department of the bank or trust company, ~~((provided that))~~ only if the bank or trust company ~~((shall))~~ first sets aside under control of the trust department as collateral security:

(1) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; or

(2) Bonds or other obligations which constitute general obligations of any state of the United States or municipal subdivision thereof.

The securities so deposited or securities substituted therefor as collateral shall at all times be at least equal in market value to the amount of ~~((such))~~ the funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by ~~((the Federal Deposit Insurance Corporation))~~ an agency of the federal government.

NEW SECTION. Sec. 105. RCW 30.24.040 is decodified and recodified as RCW 11.100.040.

NEW SECTION. Sec. 106. RCW 30.24.050, as amended by this 1984 act, is decodified and recodified as RCW 11.100.050.

Sec. 107. Section 30.24.050, chapter 33, Laws of 1955 and RCW 30.24.050 are each amended to read as follows:

The provisions of this chapter ~~((shall))~~ govern fiduciaries acting under wills, agreements, court orders, and other instruments ~~((now or hereafter in force))~~ effective before or after the effective date of this 1984 act.

NEW SECTION. Sec. 108. There is added to chapter 11.100 RCW a new section to be codified as RCW 11.100.060 to read as follows:

LIABILITY OF A FIDUCIARY HOLDING TRUST PROPERTY.
Any fiduciary may hold during the life of the trust all securities or other

property, real or personal, received into or acquired by the trust from any source, except such as are purchased by the fiduciary in administering the trust, unless there are express provisions to the contrary in the instrument.

Any fiduciary may invest funds held in trust under an instrument creating the trust in any manner and in any investment or in any class of investments authorized by the instrument.

The investments described in this section are permissible even though the securities or other property are not permitted under other provisions of this chapter, and even though the securities may be securities issued by the corporation that is the fiduciary.

A fiduciary is not liable for any loss incurred with respect to any investment held under the authority of or pursuant to this section if that investment was permitted when received or when the investment was made by the fiduciary, and if the fiduciary exercises due care and prudence in the disposition or retention of any such investment.

NEW SECTION. Sec. 109. RCW 30.24.070, 30.24.090, and 30.24.120, each as amended by this 1984 act, are decodified and recodified as RCW 11.100.070, 11.100.090, and 11.100.120, respectively.

Sec. 110. Section 30.24.070, chapter 33, Laws of 1955 and RCW 30.24.070 are each amended to read as follows:

~~((Any fiduciary may invest funds held in trust under an instrument creating such trust, in any manner and/or in any investment and/or in any class of investments authorized by such instrument, whether or not the same is otherwise qualified for the investment of trust funds.))~~ The terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of RCW ~~((30.24.020))~~ 11.100.020.

Sec. 111. Section 30.24.090, chapter 33, Laws of 1955 and RCW 30.24.090 are each amended to read as follows:

Unless the instrument creating the trust expressly provides to the contrary, any fiduciary in carrying out the obligations of the trust, may not buy or sell investments from or to himself, herself, or itself or any affiliated or subsidiary company or association. This section shall not be construed as prohibiting the trustee's powers under RCW 11.98.070(12).

Sec. 112. Section 1, chapter 89, Laws of 1973 1st ex. sess. and RCW 30.24.120 are each amended to read as follows:

~~((Within))~~ Subject to the standards of ((judgment and care established by law, and subject to any express provisions or limitations contained in any particular trust instrument, guardians, trustees and other fiduciaries, whether individual or corporate, are)) RCW 11.100.020, a fiduciary is authorized to ((invest the principal of)) use trust funds to acquire ((and retain policies of)) life insurance ((made)) upon the life of any ((person for whose benefit the fiduciary holds property)) beneficiary or ~~((made))~~ upon

the life of another in whose life such ((person)) beneficiary has an insurable interest(~~(; the policy and the proceeds or avails thereof to be the property of the fiduciary:~~

~~The purpose of this section is to affirm that certain policies of life insurance are among the investments authorized for fiduciaries, but without creating any inference that a policy of life insurance is preferable to other authorized investments in a particular instance)).~~

NEW SECTION. Sec. 113. RCW 30.24.130 is decodified and recodified as RCW 11.100.130.

NEW SECTION. Sec. 114. There is added to chapter 11.100 RCW a new section to be codified as RCW 11.100.140 to read as follows:

NOTICE AND PROCEDURE FOR NONROUTINE TRANSACTIONS. (1) A trustee shall not enter into a significant nonroutine transaction in the absence of a compelling circumstance without:

(a) Providing the written notice called for by subsection (4) of this section; and

(b) If the significant nonroutine transaction is of the type described in subsection (2)(a) of this section, obtaining an independent appraisal, or selling in an open-market transaction.

(2) A "significant nonroutine transaction" for the purpose of this section is defined as any of the following:

(a) Any sale, option, lease, or other agreement, binding for a period of ten years or more, dealing with any interest in real estate other than real estate purchased by the trustee or a vendor's interest in a real estate contract, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(b) The sale of any item or items of tangible personal property, including a sale of precious metals or investment gems other than precious metals or investment gems purchased by the trustee, the value of which constitutes twenty-five percent or more of the net fair market value of trust principal at the time of the transaction; or

(c) The sale of shares of stock in a corporation whose stock is not traded on the open market, if the stock in question constitutes more than twenty-five percent of the corporation's outstanding shares; or

(d) The sale of shares of stock in any corporation where the stock to be sold constitutes a controlling interest, or would cause the trust to no longer own a controlling interest, in the corporation.

(3) A "compelling circumstance" for the purpose of this section is defined as a condition, fact, or event that the trustee believes necessitates action without compliance with this section in order to avoid immediate and significant detriment to the trust. If faced with a compelling circumstance, the trustee shall give the notice called for in subsection (4) of this section and may thereafter enter into the significant nonroutine transaction without waiting for the expiration of the twenty-day period.

(4) The written notice required by this section shall set forth such material facts as necessary to advise properly the recipient of the notice of the nature and terms of the intended transaction. This notice shall be given to the trustor, if living, to each person who is eighteen years or older and to whom income is presently payable or for whom income is presently being accumulated for distribution as income and for whom an address is known to the trustee, and to the attorney general if the trust is a charitable trust under RCW 11.110.020. The notice shall be mailed by United States certified mail, postage prepaid, return receipt requested, to the recipient's last-known address, or may be personally served, at least twenty days prior to the trustee entering into any binding agreements.

(5) The trustor, if living, or persons entitled to notice under this section may, by written instrument, waive any requirement imposed by this section.

(6) Except as required by this section for nonroutine transactions defined in subsection (2) of this section, a trustee shall not be required to notify beneficiaries of a trust of the trustee's intended action, to obtain an independent appraisal, or to sell in an open-market transaction.

(7) Any person dealing with a trustee may rely upon the trustee's written statement that the requirements of this section have been met for a particular transaction. If a trustee gives such a statement, the transaction shall be final unless the party relying on the statement has actual knowledge that the requirements of this section have not been met.

(8) The requirements of this section, and any similar requirements imposed by prior case law, shall not apply to personal representatives or to those trusts excluded from the definition of express trusts under RCW 11.98.009.

NEW SECTION. Sec. 115. RCW 30.28.010, 30.28.020, 30.28.030, 30.28.040, and 30.28.050 are decodified and recodified as RCW 11.102.010, 11.102.020, 11.102.030, 11.102.040, and 11.102.050, respectively.

Sec. 116. Section 1, chapter 74, Laws of 1971 and RCW 11.104.010 are each amended to read as follows:

As used in this chapter:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income;

(2) "Inventory value" means the cost of property purchased by the trustee and the cost or adjusted basis for federal income tax purposes of other property at the time it became subject to the trust, but in the case of a ((testamentary)) trust asset that is included on any death tax return the trustee may, but need not, use the value finally determined for the purposes of the federal estate tax if applicable, otherwise for another estate or inheritance tax;

(3) "Remainderman" means the person entitled to principal, including income which has been accumulated and added to principal(;

~~(4) "Trustee" means original trustee and any successor or added trustee).~~

Sec. 117. Section 2, chapter 74, Laws of 1971 and RCW 11.104.020 are each amended to read as follows:

(1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

(a) In accordance with the terms of the trust instrument, notwithstanding contrary provisions of this chapter;

(b) In the absence of any contrary terms of the trust instrument, in accordance with the provisions of this chapter; or

(c) If neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which (~~men~~) persons of prudence, discretion, and intelligence would act in the management of their own affairs.

(2) If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation consistent with the instrument but that is contrary to a provision of this chapter.

Sec. 118. Section 3, chapter 74, Laws of 1971 and RCW 11.104.030 are each amended to read as follows:

(1) Income is the return in money or property derived from the use of principal, including:

(a) Rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) Interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in RCW 11.104.070 on bond premiums and bond discounts;

(c) Income earned during administration of a decedent's estate as provided in RCW 11.104.050;

(d) Corporate distributions as provided in RCW 11.104.060;

(e) (~~accrued~~) Increment in value on bonds or other obligations issued at a discount as provided in RCW 11.104.070;

(f) Recipients from business and farming operations as provided in RCW 11.104.080;

(g) Recipients from disposition of natural resources as provided in RCW 11.104.090 and 11.104.100;

(h) Recipients from other principal subject to depletion as provided in RCW 11.104.110; and

(i) Receipts from disposition of underproductive property as provided in RCW 11.104.120.

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainderman while the return on or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes:

(a) Consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;

(b) Proceeds of property taken on eminent domain proceedings;

(c) Proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(d) Stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in RCW 11.104.060;

(e) Receipts from the disposition of corporate securities, bonds, or other obligations for the payment of money as provided in RCW 11.104.070;

(f) Royalties and other receipts from disposition of natural resources as provided in RCW 11.104.090 and 11.104.100;

(g) Receipts from other principal subject to depletion as provided in RCW 11.104.110;

(h) Any profit resulting from any change in the form of principal except as provided in RCW 11.104.120 on underproductive property;

(i) Receipts from disposition of underproductive property as provided in RCW 11.104.120; and

(j) Any allowances for depreciation established under RCW 11.104.080 and 11.104.130(1)(b).

(3) After determining income and principal in accordance with the terms of the trust instrument or of this chapter, the trustee shall charge to income or principal expenses and other charges as provided in RCW 11.104.130.

Sec. 119. Section 4, chapter 74, Laws of 1971 and RCW 11.104.040 are each amended to read as follows:

(1) An income beneficiary is entitled to income from the date specified in the trust instrument, or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.

(2) Subject to subsection (2) (a) and (b) of this section, in the administration of a decedent's estate or of an asset becoming subject to a trust by reason of a will(:(:)) all receipts paid on or before the date of death of the testator are principal and all receipts paid after that date are income.

(a) Notwithstanding the foregoing, receipts due but not paid ~~((at))~~ on or before the date of death of the testator are principal; and

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due ((at)) on or before the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.

(3) In all other cases, any receipt from an income producing asset is income even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

(4) On the termination of an income beneficiary's income interest, ((income earned but not distributed)) if such interest was not subject to any discretion to withhold, accumulate, or distribute income to or for any other beneficiary, then income on hand but undistributed belongs to that income beneficiary or that beneficiary's estate, except that if the income beneficiary is the surviving spouse of the testator or grantor of the trust and the income interest otherwise qualifies for the marital deduction on any federal estate tax return, then all accrued but undistributed income is subject to a power in the surviving spouse, exercisable by will by specifically referring to this statute, to appoint the same to the testator or grantor or his or her estate. All undistributed income not disposed of under the foregoing provisions of this subsection shall be held and distributed as part of the next eventual interest or estate in accordance with the provisions of the will or trust relating to such next eventual interest or estate((; except, this shall not apply to any marital deduction income interest as provided in section 2056 (and as amended or reenacted) of the Internal Revenue Code of the United States)).

(5) Corporate distributions to stockholders shall be treated as due on the ~~((day))~~ date fixed by the corporation for determination of stockholders of record entitled to distribution, or if no date is fixed, on the date of declaration of the distribution by the corporation.

Sec. 120. Section 5, chapter 74, Laws of 1971 and RCW 11.104.050 are each amended to read as follows:

(1) Unless the will or the court otherwise provides and subject to subsection (2) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest due at death, and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate, except that the principal shall be reimbursed from income for any increase in estate taxes due to the use of administration expenses that were paid from principal as deductions for income tax purposes.

(2) Unless the will or the court otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trust under this chapter and distributed as follows:

(a) To ~~((specific legatees and devisees))~~ beneficiaries of any specific bequest, legacy, or devise, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and appropriate portions of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) which accrue during the period of administration; ~~((and))~~

(b) Subject to (c) of this subsection, to all other ~~((legatees and devisees, except legatees of pecuniary bequests not in trust))~~ beneficiaries, including trusts, the balance of the income less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, ~~((interest))~~ plus the balance of all income accrued since the death of the testator, and less the balance of all taxes imposed on income (excluding taxes on capital gains) which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of the fair value, provided, that the amount of income earned before the date or dates of payment of any estate or inheritance tax shall be distributed to those beneficiaries in proportion to their interests immediately before the making of those payments; and

(c) Pecuniary bequests not in trust do not receive income, and, subject to the provisions of RCW 11.56.160, all such bequests, including those to the decedent's surviving spouse, are not allocated any share of the expenses identified in subsection (2)(b) of this section.

(3) Any income with respect to which the income taxes have been paid which is payable in whole or in part to one or more charitable or other tax exempt organization, and for which an income tax charitable deduction was allowable, shall be allocated among the distributees in such manner that the diminution in such taxes resulting from the charitable deduction allowable will inure to the benefit of the charitable or tax exempt organization giving rise to the deduction.

(4) Income received by a trustee under subsection (2) of this section shall be treated as income of the trust.

Sec. 121. Section 6, chapter 74, Laws of 1971 and RCW 11.104.060 are each amended to read as follows:

(1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the

distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the ~~((trustee))~~ stock became a ~~((stockholder))~~ part of the trust corpus or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

(a) A call of shares;

(b) A merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(c) A total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1), (2), and (3) of this section all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3) of this section, if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this chapter concerning the source or character of dividends or distributions of corporate assets.

Sec. 122. Section 7, chapter 74, Laws of 1971 and RCW 11.104.070 are each amended to read as follows:

(1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. The trustee shall not ~~((make provision))~~ provide for amortization of bond premiums or for accumulation of discount except where the trust instrument provides otherwise. If the instrument provides for amortization of premiums or accumulation of discount, ~~but not both~~, and is silent as to one, it ~~((shall be))~~ is the duty of the trustee to amortize premiums and accumulate discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money bearing no fixed rate of interest or payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. Except as otherwise provided in RCW 11.104.040(4), the increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

Sec. 123. Section 8, chapter 74, Laws of 1971 and RCW 11.104.080 are each amended to read as follows:

If a trustee uses any part of the principal in the operation of a trade, business or farming operation, the proceeds and losses of the business shall be allocated in accordance with what is reasonable and equitable in view of the interest of those entitled to income as well as those entitled to principal, and in view of the manner in which ~~((men))~~ persons of prudence, discretion, and intelligence would act in the management of their own affairs in accordance with RCW 11.104.020. The operation of real estate for rent is considered a business.

Sec. 124. Section 9, chapter 74, Laws of 1971 and RCW 11.104.090 are each amended to read as follows:

(1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income;

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income; and

(c) If received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding paragraphs of this section shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. ~~((There))~~ Receipts shall be ~~((transferred to principal))~~ allocated to income or apportioned between income and principal at the discretion of the trustee, but in no event may principal be

allocated more than that portion of the gross receipts ((in the amount and to the extent)) that is deductible ((from federal taxation under taxing laws in existence at the time of receipt)) for federal income tax purposes during that year. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

(2) If a trustee, on January 1, 1972, held an item of depletable property of a type specified in this section, ~~((he))~~ the trustee shall allocate receipts from the property in the manner used before January 1, 1972, but as to all depletable property acquired after January 1, 1972 by an existing or new trust, the method of allocation provided herein shall be used.

(3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

Sec. 125. Section 12, chapter 74, Laws of 1971 and RCW 11.104.120 are each amended to read as follows:

(1) Except as ~~((otherwise provided in this section))~~ provided in subsection (5) of this section, a portion of the net proceeds of sale of any part of principal which ~~((has not produced an average net income of at least one percent per year of its inventory value for more than a year (including as income the value of any beneficial use of the property by the income beneficiary)))~~ is underproductive shall be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of any property received ~~((in substitution for the property disposed of)),~~ less ~~((the))~~ expenses, including any capital gains tax~~((, if any,))~~ incurred in disposition, and less any carrying charges paid while the property was underproductive.

(2) The sum allocated as delayed income is the difference between the net proceeds and the amount which, had it been invested at simple interest at four percent per year while the property was underproductive, would have produced the net proceeds. This sum, plus any carrying charges and expenses previously charged against income while the property was underproductive, less any income received by the income beneficiary from the property and less the value of any ~~((beneficial))~~ use of the property by the income beneficiary, is income, and the balance is principal.

(3) Except as otherwise provided in RCW 11.104.040(4), an income beneficiary is entitled to delayed income under this section as if it accrued from day to day during the time he was a beneficiary.

(4) If principal subject to this section is disposed of by conversion into property which cannot be apportioned easily, including land or mortgages (for example, realty acquired by or in lieu of foreclosure), the income beneficiary is entitled to the net income from any property or obligation into which the original principal is converted while the substituted property or obligation is held. If within five years after the conversion the substituted property has not been further converted into easily apportionable property, no allocation as provided in this section shall be made.

(5) This section does not apply to underproductive property that the trustee is authorized to retain by the terms of the controlling document or by law that is received into or acquired by the trust from any source, except property which is purchased by the fiduciary in administering the trust, the retention of which has been authorized in writing by the income beneficiaries, or the retention of which would be considered proper under the standard set forth in RCW 11.100.020.

(6) As used in this section, the term "underproductive property" refers to any property that has not produced an average net income of at least one percent per year (simple interest) of its inventory value for more than a year (including as income the value of any use of the property by the income beneficiary).

Sec. 126. Section 13, chapter 74, laws of 1971 and RCW 11.104.130 are each amended to read as follows:

(1) The following charges shall be made against income:

(a) Ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the interests of the income beneficiary, remainderman, or trustee, interest paid by the trustee, and ordinary repairs;

(b) If the trustee deems the same to be appropriate under the standards in RCW 11.104.020(1)(c), a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles(~~(-but)~~); no allowance shall be made for depreciation of that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on January 1, 1972 for which the trustee is not then making an allowance for depreciation;

(c) One-half of court costs, attorney's fees, and other fees on periodic ((judicial)) accountings, unless the court directs otherwise;

(d) Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) One-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income; ((and))

(f) All expenses reasonably incurred for current management of principal and application of income; and

(g) Any tax levied upon receipts ((defined as)) allocated to income under this chapter or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) The following charges shall be made against principal:

(a) Trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e) of this section, special compensation of trustees, expenses reasonably incurred in connection with principal, court costs and attorney's fees primarily concerning matters of principal, and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) Charges not provided for in subsection (1) of this section, including the cost of investing and reinvesting principal, the payments on principal of an indebtedness (including a mortgage amortized by periodic payments of principal), expenses for preparation of property for rental or sale, and, unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) Extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but, a trustee may establish an allowance for depreciation out of income to the extent permitted by subsection (1)(b) of this section and by RCW 11.104.080;

(d) Any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the tax authority; and

(e) If an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust, including interest, whether on account of direct or indirect borrowing for the purpose of paying those taxes, and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under RCW 11.104.040.

NEW SECTION. Sec. 127. RCW 30.30.010, 30.30.020, 30.30.030, 30.30.040, 30.30.050, 30.30.060, 30.30.070, 30.30.080, 30.30.090, 30.30.100, and 30.30.110, each as amended by this 1984 act, are decodified and recodified as RCW 11.106.010, 11.106.020, 11.106.030, 11.106.040, 11.106.050, 11.106.060, 11.106.070, 11.106.080, 11.106.090, 11.106.100, and 11.106.110, respectively.

Sec. 128. Section 30.30.010, chapter 33, Laws of 1955 and RCW 30.30.010 are each amended to read as follows:

This chapter (~~shall~~) does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or of the superior court when not sitting in probate, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor (~~shall~~) does this chapter apply to (~~executors, administrators or guardians~~) personal representatives.

Sec. 129. Section 30.30.020, chapter 33, Laws of 1955 and RCW 30.30.020 are each amended to read as follows:

The trustee or trustees appointed by any will, deed, or agreement (~~(heretofore or hereafter)~~) executed shall mail or deliver at least annually to each adult income trust beneficiary a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust both principal and income, and upon the request of any such beneficiary shall furnish (~~(him)~~) the beneficiary an itemized statement of all property then held by (~~(such)~~) that trustee, and may also file any such statement in the superior court of the county in which the trustee or one of the trustees resides.

Sec. 130. Section 30.30.030, chapter 33, Laws of 1955 and RCW 30.30.030 are each amended to read as follows:

In addition (~~(thereto)~~) to the statement required by RCW 11.106.020 any such trustee or trustees whenever it or they so desire, may file in the superior court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

- (1) The period covered by the account;
- (2) The total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;
- (3) An itemized statement of all principal funds received and disbursed during such period;
- (4) An itemized statement of all income received and disbursed during such period, unless waived;
- (5) The balance of such principal and income remaining at the close of such period and how invested;
- (6) The names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;
- (7) A description of any possible unborn or unascertained beneficiary and his interest in the trust fund.

(~~(In addition thereto;)~~) After the time for termination of the trust (~~(shall have)~~) has arrived, the trustee or trustees may also file a final account in similar manner.

Sec. 131. Section 30.30.040, chapter 33, Laws of 1955 and RCW 30.30.040 are each amended to read as follows:

Upon the petition under chapter 11.96 RCW of any settlor or of any beneficiary of such a trust after due notice (~~(thereof)~~) as provided in chapter 11.96 RCW to the trustee the superior court in the county where the trustee or one of the trustees resides may direct the trustee or trustees (~~(thereof)~~) to file in (~~(said)~~) the court (~~(such)~~) an account at any time (~~(subsequent to)~~) after one year from the day on which such a report was last filed, or if none, then after one year from the inception of the trust.

Sec. 132. Section 30.30.050, chapter 33, Laws of 1955 and RCW 30.30.050 are each amended to read as follows:

When any ~~((such))~~ account ~~((shall have))~~ has been filed pursuant to RCW 11.106.040, the clerk of the court where filed shall fix a return day therefor~~(;)~~ as provided in RCW 11.96.090 and issue a notice as provided ~~((for herein. If each of the beneficiaries and the guardians and guardians ad litem, if any, appointed pursuant to RCW 30.30.060, is personally served with a copy of the notice, whether within or outside the state of Washington, at least twenty-five days prior to the return day, then no publication of the notice shall be required; otherwise the trustees shall cause notice as provided for herein to be given by publishing the same at least once a week for three successive weeks preceding the return day, the first publication to be at least twenty-five days preceding the return day, such publication to be in a newspaper of general circulation in the county, or if none then in an adjoining county. And in any event at least twenty-five days prior to the return day a copy of the notice shall be either served upon each beneficiary not represented by guardian or guardian ad litem or mailed to each such beneficiary not so served at such beneficiary's address last known to the trustee; and shall be either served upon each guardian and guardian ad litem appointed pursuant to RCW 30.30.060, or mailed to each such guardian and guardian ad litem not so served at such guardian or guardian ad litem's address last known to the trustee. Proof of service of the notice may be made by affidavit as provided for service of summons in civil actions, or by written admission of service signed by the person served:))~~ in RCW 11.96.090. The notice shall state the time and place for the return ~~((day))~~ date, the name or names of the trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle ~~((such))~~ the account, and that any objections or exceptions ~~((thereto))~~ to the account must be filed with the clerk of ~~((said))~~ the court on or before ~~((such))~~ the return ~~((day))~~ date.

Sec. 133. Section 30.30.060, chapter 33, Laws of 1955 as amended by section 31, chapter 80, Laws of 1977 ex. sess. and RCW 30.30.060 are each amended to read as follows:

Upon or before the return ~~((day))~~ date any beneficiary of the trust may file ~~((his))~~ the beneficiary's written objections or exceptions to the account filed or to any action of the trustee or trustees set forth ~~((therein))~~ in the account. The court shall appoint ~~((either the legal guardian of a beneficiary, or a guardian ad litem to represent the interests of any such beneficiary who is an infant or incompetent or disabled to such an extent that he or she could not understand the accounting given, or who is yet unborn or unascertained, and such beneficiary shall be bound by any action taken by such representative. Every unborn or unascertainable beneficiary shall be concluded by any action taken by the court for or against any living beneficiary of the same class or whose interests are similar to the interests of such~~

~~unborn or unascertainable beneficiary)) guardians ad litem as provided in RCW 11.96.180 and the court may allow representatives to be appointed under RCW 11.96.110 and 11.96.170 to represent the persons listed in those sections.~~

Sec. 134. Section 30.30.070, chapter 33, Laws of 1955 and RCW 30.30.070 are each amended to read as follows:

~~((At the same time))~~ Upon the return date or at some later date fixed by the court if so requested by one or more of the parties, the court without the intervention of a jury and after hearing all the evidence submitted shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth ~~((therein))~~ in the account including the purchase, retention, and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving the ~~((same))~~ account or any part ~~((thereof))~~ of it, and surcharging the trustee or trustees for all losses, if any, caused by negligent or wilful breaches of trust.

Sec. 135. Section 30.30.080, chapter 33, Laws of 1955 and RCW 30.30.080 are each amended to read as follows:

The decree ~~((so))~~ rendered under RCW 11.106.070 shall be deemed final, conclusive, and binding upon all the parties interested including all incompetent, unborn, and unascertained beneficiaries of the trust subject only to the right of appeal ~~((hereinafter stated))~~ under RCW 11.106.090.

Sec. 136. Section 30.30.090, chapter 33, Laws of 1955 as amended by section 80, chapter 81, Laws of 1971 and RCW 30.30.090 are each amended to read as follows:

The decree ~~((so))~~ rendered under RCW 11.106.070 shall be a final order from which any party in interest may appeal as in civil actions to the supreme court or the court of appeals of the state of Washington.

Sec. 137. Section 30.30.100, chapter 33, Laws of 1955 and RCW 30.30.100 are each amended to read as follows:

~~((The settlor of any trust governed by this chapter may waive any or all of the provisions of RCW 30.30.020 requiring periodical statements to beneficiaries, or may add additional duties, in the instrument creating the trust, and))~~ Any adult beneficiary entitled to an accounting under either RCW ((30.30.020 or 30.30.030)) 11.106.020 or 11.106.030 may waive such an accounting by a separate instrument delivered to the trustee.

Sec. 138. Section 30.30.110, chapter 33, Laws of 1955 and RCW 30.30.110 are each amended to read as follows:

This chapter is declared to be of similar import to the uniform trustees' accounting act. ~~((A provision))~~ Any modification under chapter 11.97 RCW, including waiver, of the requirements of this chapter in any will, deed, or agreement heretofore or hereafter executed ((which provides in substance:

~~(1) That the requirements or provisions of)~~ shall be given effect whether the waiver refers to the uniform trustees' accounting act(~~(, whether))~~ by name or other reference (~~(thereto are waived, or that the trustee shall not be required to comply therewith, or~~

~~(2) That the requirements or provisions of)~~ or to any other act of like or similar import (~~(are waived, or that the trustee shall not be required to comply therewith, shall constitute a waiver by the settlor pursuant to RCW 30.30.100)).~~

NEW SECTION. Sec. 139. Sections 140 through 146 of this act shall constitute a new chapter in Title 11 RCW, to be codified as RCW 11.108.010, 11.108.020, 11.108.030, 11.108.040, 11.108.050, 11.108.060, and 11.08.900, respectively.

NEW SECTION. Sec. 140. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) The term "pecuniary bequest" means a gift in a governing instrument which either is expressly stated as a fixed dollar amount or is a gift of a dollar amount determinable by the governing instrument, and a gift expressed in terms of a "sum" or an "amount," unless the context dictates otherwise, is a gift of a dollar amount.

(2) The term "marital deduction" means the federal estate tax deduction allowed for transfers under section 2056 of the internal revenue code.

(3) The term "maximum marital deduction" means the maximum amount qualifying for the marital deduction.

(4) The term "marital deduction gift" means a gift intended to qualify for the marital deduction.

(5) The term "governing instrument" includes a will and codicils, irrevocable, and revocable trusts.

(6) "Fiduciary" means trustee or personal representative. Reference to a fiduciary in the singular includes the plural where the context requires.

(7) References to the "internal revenue code" are to the United States internal revenue code of 1954, as it is amended from time to time. Each reference to a section of the internal revenue code refers as well to any subsequent provisions of law enacted in its place.

(8) The term "gift" refers to all legacies, devises, and bequests made in a governing instrument.

NEW SECTION. Sec. 141. MARITAL DEDUCTION GIFT—COMPLIANCE WITH FEDERAL LAW—INTENT. If a governing instrument contains a marital deduction gift, the governing instrument, including any power, duty, or discretionary authority given to the fiduciary, shall be construed to comply with the marital deduction provisions of the internal revenue code and the regulations thereunder in order to conform to that intent. Whether the governing instrument contains a marital deduction

depends upon the intent of the testator at the time the governing instrument is executed. If the testator has adequately evidenced an intention to make a marital deduction gift, the fiduciary shall not take any action or have any power that may impair that deduction. This section shall neither require nor prohibit a fiduciary from making the election referred to in section 2056(b)(7) of the internal revenue code.

NEW SECTION. Sec. 142. PECUNIARY BEQUESTS—VALUATION OF ASSETS IF DISTRIBUTION OTHER THAN MONEY. (1) If a governing instrument authorizes the fiduciary to satisfy a pecuniary bequest in whole or in part by distribution of property other than money, the assets selected for that purpose shall be valued at their respective fair market values on the date or dates of distribution, unless the governing instrument expressly provides otherwise. If the governing instrument permits the fiduciary to value the assets selected for the distribution as of a date other than the date or dates of distribution, then, unless the governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall have an aggregate fair market value on the date or dates of distribution which, when added to any cash distributed, will amount to no less than the amount of that gift as stated in, or determined by, the governing instrument.

(2) A marital deduction gift shall be satisfied only with assets that qualify for those deductions.

NEW SECTION. Sec. 143. CONSTRUCTION OF CERTAIN MARITAL DEDUCTION FORMULA BEQUESTS. (1) If a testator, under the terms of a governing instrument executed prior to September 12, 1981, leaves outright to or in trust for the benefit of that testator's surviving spouse an amount or fractional share of that testator's estate or a trust estate expressed in terms of one-half of that testator's federal adjusted gross estate, or by any other reference to the maximum estate tax marital deduction allowable under federal law without referring, either in that governing instrument or in any codicil or amendment thereto, specifically to the unlimited federal estate tax marital deduction enacted as part of the economic recovery tax act of 1981, such expression shall, unless subsection (1) or (2) of this section applies, be construed as referring to the unlimited federal estate tax marital deduction, and also as expressing such amount or fractional share, as the case may be, in terms of the minimum amount which will cause the least possible amount of federal estate tax to be payable as a result of the testator's death, taking into account other property passing to the surviving spouse that qualifies for the marital deduction, at the value at which it qualifies, and also taking into account all credits against the federal estate tax, but only to the extent that the use of these credits do not increase the death tax payable.

(2) If this subsection applies to a testator, such expression shall be construed as referring to the estate tax marital deduction allowed by federal

law immediately prior to the enactment of the unlimited estate tax marital deduction as a part of the economic recovery tax act of 1981. This subsection applies if subsection (3) of this section does not apply and:

(a) The application of this subsection to the testator will not cause an increase in the federal estate taxes payable as a result of the testator's death over the amount of such taxes which would be payable if subsection (1) of this section applied; or

(b) The testator is survived by a blood or adopted descendant who is not also a blood or adopted descendant of the testator's surviving spouse, unless such person or persons have entered into an agreement under the dispute resolution procedures in chapter 11.96 RCW; or

(c) The testator amended the governing instrument containing such expression after December 31, 1981, without amending such expression to refer expressly to the unlimited federal estate tax marital deduction.

(3) If the governing instrument contains language expressly stating that federal law of a particular time prior to January 1, 1982, is to govern the construction or interpretation of such expression, the expression shall be construed as referring to the marital deduction allowable under federal law in force and effect as of that time.

(4) If subsection (2) or (3) of this section applies to the testator and if the expression contains any provision reducing the amount or the fractional share left outright to or in trust for the benefit of the surviving spouse by other property passing to the surviving spouse and qualifying for the federal estate tax marital deduction, the provision shall not be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property. If subsection (1) of this section applies to the testator, any such provision shall be construed as referring to any property that the personal representative of the testator's estate or other authorized fiduciary elects to qualify for the federal estate tax marital deduction as qualified terminable interest property.

(5) This section is effective with respect to testators dying after December 31, 1982.

NEW SECTION. Sec. 144. MARITAL DEDUCTION GIFT IN TRUST. If a governing instrument indicates the testator's intention to make a marital deduction gift in trust, in addition to the other provisions of this section, each of the following also applies to the trust:

(1) The only income beneficiary of a marital deduction trust is the testator's surviving spouse;

(2) The income beneficiary is entitled to all of the trust income until the trust terminates;

(3) The trust income is payable to the income beneficiary not less frequently than annually; and

(4) Except in the case of qualified terminable interest property resulting from an election under section 2056(b)(7) of the internal revenue code, upon termination of the trust, all of the remaining trust assets, including accrued or undistributed income, pass either to the income beneficiary or under the exercise of a general power of appointment granted to the income beneficiary in favor of the income beneficiary's estate or to any other person or entity in trust or outright. The general power of appointment is exercisable by the income beneficiary alone and in all events, and the income beneficiary, or a fiduciary acting in behalf of the income beneficiary if he or she is then a minor or incompetent, may exercise it in a will or an instrument other than a will unless the instrument creating the power specifically directs otherwise.

The exercise of the general power of appointment provided in this section shall be done only by express written reference to this general power of appointment in a will or inter vivos trust instrument executed by the income beneficiary.

NEW SECTION. Sec. 145. MARITAL DEDUCTION GIFT—SIX MONTHS' SURVIVORSHIP REQUIREMENT. If a governing instrument contains a marital deduction gift, whether outright or in trust and whether there is a specific reference to this section, any survivorship requirement expressed in the governing instrument in excess of six months does not apply to property passing under a marital deduction, and in addition, is limited to a six-month period beginning with the testator's death.

NEW SECTION. Sec. 146. APPLICATION OF CHAPTER. This chapter applies to any distribution made after the effective date of this 1984 act, whether the testator died before or after that date. This chapter shall not apply to any governing instrument the terms of which expressly or by necessary implication make this chapter inapplicable. The judicial and non-judicial dispute resolution procedures of chapter 11.96 RCW apply to this chapter.

NEW SECTION. Sec. 147. RCW 19.10.010, 19.10.020, and 19.10.040 are each decodified and recodified as a new chapter in Title 11 RCW, to be codified as RCW 11.110.010, 11.110.020, and 11.110.040, respectively.

NEW SECTION. Sec. 148. RCW 19.10.050 and 19.10.060, each as amended by this 1984 act, are each decodified and recodified as RCW 11.110.050 and 11.110.060, respectively.

Sec. 149. Section 5, chapter 53, Laws of 1967 ex. sess. and RCW 19.10.050 are each amended to read as follows:

The attorney general shall establish and maintain a register of trustees as defined in RCW (~~19.10.020~~) 11.110.020 and, to that end, shall conduct whatever investigation is necessary, and shall obtain from public records,

court officers, taxing authorities, trustees, and other sources whatever information, copies of instruments, reports, and records are needed, for the establishment and maintenance of the register.

Sec. 150. Section 6, chapter 53, Laws of 1967 ex. sess. as amended by section 2, chapter 226, Laws of 1971 ex. sess. and RCW 19.10.060 are each amended to read as follows:

Every trustee shall file with the attorney general within two months after receiving possession or control of the trust corpus a copy of the instrument establishing his title, powers, or duties, and an inventory of the assets of such charitable trust. In addition, trustees exempted from the provisions of RCW (~~(19-10-070)~~) 11.110.070 by RCW 11.110.073 shall file with the attorney general a copy of the declaration of the tax-exempt status or other basis of the claim for such exemption; a copy of the instrument establishing the trustee's title, powers or duties; an inventory of the assets of such trust; and, annually, a copy of each publicly available United States tax or information return or report of the trust which the trustee files with the internal revenue service. The trustees of charitable trusts existing at the time this chapter or (~~this 1971 amendatory act takes effect~~) on August 9, 1971, shall comply with this section within six months thereafter.

NEW SECTION. Sec. 151. RCW 19.10.070 is decodified and recodified as RCW 11.110.070.

NEW SECTION. Sec. 152. RCW 19.10.073 and 19.10.075, each as amended by this 1984 act, are each decodified and recodified as RCW 11.110.073 and 11.110.075, respectively.

Sec. 153. Section 4, chapter 226, Laws of 1971 ex. sess. and RCW 19.10.073 are each amended to read as follows:

The following trustees shall be exempt from the provisions of RCW (~~(19-10-070)~~) 11.110.070, but shall file the information required in RCW 11.110.060:

(1) A bank or trust company subject to examination by the supervisor of banking of the state of Washington, the comptroller of the currency of the United States or the board of governors of the federal reserve system; which such bank or trust company is acting as trustee, executor or court-appointed fiduciary; PROVIDED, That a bank or trust company which is a co-fiduciary of a trust shall be deemed to be the sole fiduciary of such trust under this section, if the bank or trust company is custodian of the books and records of the trust and has the responsibility for preparing the reports and returns which are filed with the internal revenue service;

(2) The governing body of a nonprofit community foundation or other nonprofit foundation incorporated for charitable purposes, contributions to which are currently allowed as charitable deductions under the United States income tax laws;

(3) The governing body of a hospital which is nonprofit and charitable, other than a hospital initially formed as a trustee pursuant to or in connection with the terms of a charitable trust.

Sec. 154. Section 5, chapter 226, Laws of 1971 ex. sess. and RCW 19.10.075 are each amended to read as follows:

A trust is not exclusively for charitable purposes, within the meaning of RCW (~~(+9:10:040)~~) 11.110.040, when the instrument creating it contains a trust for several or mixed purposes, and any one or more of such purposes is not charitable within the meaning of RCW (~~(+9:10:020)~~) 11.110.020, as enacted or hereafter amended. Such instrument shall be withheld from public inspection by the attorney general and no information as to such noncharitable purpose shall be made public.

Annual reporting of such trusts to the attorney general, as required by RCW (~~(+9:10:060 or +9:10:070 now or as hereafter amended)~~) 11.110.060 or 11.110.070, shall commence within one year after trust income or principal is authorized or required to be used for a charitable purpose.

When a trust consists of a vested charitable remainder preceded by a life estate, a copy of the instrument shall be filed by the trustee or by the life tenant, within two months after commencement of the life estate.

If the trust instrument contains only contingent gifts or remainders to charitable purposes, no charitable trust shall be deemed created until a charitable gift or remainder is legally vested. The first registration or report of such trust shall be filed within two months after trust income or principal is authorized or required to be used for a charitable purpose.

NEW SECTION. Sec. 155. RCW 19.10.080, 19.10.090, and 19.10.100 are each decodified and recodified as RCW 11.110.080, 11.110.090, and 11.110.100, respectively.

NEW SECTION. Sec. 156. RCW 19.10.110 and 19.10.120, each as amended by this 1984 act, are each decodified and recodified as RCW 11.110.110 and 11.110.120, respectively.

Sec. 157. Section 11, chapter 53, Laws of 1967 ex. sess. as amended by section 64, chapter 81, Laws of 1971 and RCW 19.10.110 are each amended to read as follows:

When the attorney general requires the attendance of any person, as provided in RCW (~~(+9:10:100)~~) 11.110.100, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, and, upon application of the attorney general, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by

the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in the record, and shall be subject to review by the supreme court or the court of appeals by certiorari or other appropriate proceeding.

Sec. 158. Section 12, chapter 53, Laws of 1967 ex. sess. and RCW 19.10.120 are each amended to read as follows:

The attorney general may institute appropriate proceedings to secure compliance with this chapter and to secure the proper administration of any trust or other relationship to which this chapter applies. He shall be notified of all judicial proceedings involving or affecting the charitable trust or its administration in which, at common law, he is a necessary or proper party as representative of the public beneficiaries. The notification shall be given ~~((by registered mail to the attorney general at his office in Olympia at least twenty days prior to hearing thereon, except where shorter periods are prescribed by statute or by rules of court))~~ as provided in RCW 11.96.100, but this notice requirement may be waived at the discretion of the attorney general. The powers and duties of the attorney general provided in this chapter are in addition to his existing powers and duties, and are not to be construed to limit or to restrict the exercise of the powers or the performance of the duties of the attorney general or of any prosecuting attorney which they may exercise or perform under any other provision of law. Except as provided herein, nothing in this chapter shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it.

NEW SECTION. Sec. 159. RCW 19.10.125, 19.10.130, and 19.10.140 are each decodified and recodified as RCW 11.110.125, 11.110.130, and 11.110.140, respectively.

NEW SECTION. Sec. 160. RCW 19.10.200, 19.10.210, 19.10.220, 19.10.230, and 19.10.240, each as amended by this 1984 act, are each decodified and recodified as RCW 11.110.200, 11.110.210, 11.110.220, 11.110.230, and 11.110.240, respectively.

Sec. 161. Section 1, chapter 58, Laws of 1971 and RCW 19.10.200 are each amended to read as follows:

RCW ~~((19.10.200 through 19.10.260))~~ 11.110.200 through 11.110.260 shall apply only to trusts which are "private foundations" as defined in section 509 of the Internal Revenue Code of 1954, "charitable trusts" as described in section 4947(a)(1) of the Internal Revenue Code of 1954, or "split-interest trusts" as described in section 4947(a)(2) of the Internal Revenue Code of 1954. With respect to any such trust created after December 31, 1969, RCW ~~((19.10.200 through 19.10.260))~~ 11.110.200 through 11.110.260 shall apply from such trust's creation. With respect to any such trust created before January 1, 1970, RCW ~~((19.10.200 through~~

~~19.10.260~~) 11.110.200 through 11.110.260 shall apply only to such trust's federal taxable years beginning after December 31, 1971.

Sec. 162. Section 2, chapter 58, Laws of 1971 and RCW 19.10.210 are each amended to read as follows:

The trust instrument of each trust to which RCW (~~19.10.200 through 19.10.260~~) 11.110.200 through 11.110.260 applies shall be deemed to contain provisions prohibiting the trustee from:

(1) Engaging in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(2) Retaining any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

(3) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; and

(4) Making any "taxable expenditures" (as defined in section 4945(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954:

PROVIDED, That this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of section 4947 of the Internal Revenue Code of 1954.

Sec. 163. Section 3, chapter 58, Laws of 1971 and RCW 19.10.220 are each amended to read as follows:

The trust instrument of each trust to which RCW (~~19.10.200 through 19.10.260~~) 11.110.200 through 11.110.260 applies, except "split-interest" trusts, shall be deemed to contain a provision requiring the trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954.

Sec. 164. Section 4, chapter 58, Laws of 1971 and RCW 19.10.230 are each amended to read as follows:

Nothing in RCW (~~19.10.200 through 19.10.260~~) 11.110.200 through 11.110.260 shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

Sec. 165. Section 5, chapter 58, Laws of 1971 as amended by section 3, chapter 41, Laws of 1982 1st ex. sess. and RCW 19.10.240 are each amended to read as follows:

All references to sections of the Internal Revenue Code of 1954 shall include all amendments thereto adopted by the Congress of the United States on or before (~~July 10, 1982~~) the effective date of this act.

NEW SECTION. Sec. 166. RCW 19.10.250 and 19.10.260, each as amended by this 1984 act, are each decodified and recodified as RCW 11.110.250 and 11.110.260, respectively.

Sec. 167. Section 6, chapter 58, Laws of 1971 and RCW 19.10.250 are each amended to read as follows:

Nothing in RCW (~~19.10.200 through 19.10.260~~) 11.110.200 through 11.110.260 shall limit the power of a person who creates a trust after June 10, 1971 or the power of a person who has retained or has been granted the right to amend a trust created before June 10, 1971, to include a specific provision in the trust instrument or an amendment thereto, as the case may be, which provides that some or all of the provisions of RCW (~~19.10.210 and 19.10.220~~) 11.110.210 and 11.110.220 shall have no application to such trust.

Sec. 168. Section 7, chapter 58, Laws of 1971 and RCW 19.10.260 are each amended to read as follows:

If any provision of RCW (~~19.10.200 through 19.10.260~~) 11.110.200 through 11.110.260 or the application thereof to any trust is held invalid, such invalidity shall not affect the other provisions or applications of RCW (~~19.10.200 through 19.10.260~~) 11.110.200 through 11.110.260 which can be given effect without the invalid provision or application, and to this end the provisions of RCW (~~19.10.200 through 19.10.260~~) 11.110.200 through 11.110.260 are declared to be severable.

NEW SECTION. Sec. 169. RCW 19.10.270 and 19.10.900 are each decodified and recodified as RCW 11.110.270 and 11.110.900, respectively.

Sec. 170. Section 8, chapter 122, Laws of 1969 and RCW 18.100.080 are each amended to read as follows:

No professional service corporation organized under this chapter shall engage in any business other than the rendering of the professional services for which it was incorporated or service as a trustee as authorized by RCW 11.36.021 or as a personal representative as authorized by RCW 11.36.010: PROVIDED, That nothing in this chapter or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, personal property, mortgages, stocks, bonds, insurance, or any other type of investments.

Sec. 171. Section 25.04.020, chapter 15, Laws of 1955 and RCW 25.04.020 are each amended to read as follows:

In this chapter:

"Court" includes every court and judge having jurisdiction in the case;

"Business" includes every trade, occupation, or profession;

"Person" includes individuals, trustees and personal representatives, partnerships, corporations, and other associations;

"Bankrupt" includes bankrupt under the federal bankruptcy act or insolvent under any state insolvent act;

"Conveyance" includes every assignment, lease, mortgage, or encumbrance;

"Real property" includes land and any interest or estate in land.

Sec. 172. Section 25.04.150, chapter 15, Laws of 1955 and RCW 25.04.150 are each amended to read as follows:

All partners are liable:

(1) Jointly and severally for everything chargeable to the partnership under RCW 25.04.130 and 25.04.140~~((:)); and~~

(2) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract~~((:));~~

(3) Except that the liability of a trustee or personal representative acting as a partner is limited as provided in RCW 11.98.110(2).

Sec. 173. Section 30.04.310, chapter 33, Laws of 1955 and RCW 30.04.310 are each amended to read as follows:

Every bank or trust company which violates or fails to comply with any provision of chapters 30.04 ~~((to 30.24))~~ through 30.23 RCW, inclusive, and chapters 30.44 and 11.100 RCW of this title or any lawful direction or requirement of the supervisor shall be subject, in addition to any penalty now provided, to a penalty of not more than one hundred dollars for each offense, to be recovered by the attorney general in a civil action in the name of the state. Each day's continuance of the violation shall be a separate and distinct offense.

NEW SECTION. Sec. 174. There is added to chapter 64.28 RCW a new section to be codified as RCW 64.28.040 to read as follows:

JOINT TENANCY INTERESTS HELD BY HUSBAND AND WIFE. Joint tenancy interests held in the names of a husband and wife, whether or not in conjunction with others, are presumed to be their community property, the same as other property held in the name of both husband and wife. Any such interest passes to the survivor of the husband and wife as provided for property held in joint tenancy, but in all other respects the interest is treated as community property.

Sec. 175. Section 127, chapter 247, Laws of 1943 as last amended by section 19, chapter 21, Laws of 1979 and RCW 68.44.030 are each amended to read as follows:

Endowment care funds shall be kept invested in accordance with the provisions of RCW (~~(30.24.020)~~) 11.100.020 subject to the following restrictions:

(1) No officer or director of the cemetery authority, trustee of the endowment care or special care funds, or spouse, sibling, parent, grandparent, or issue of such officer, director, or trustee, shall borrow any of such funds for himself, directly or indirectly.

(2) No funds shall be loaned to the cemetery authority, its agents, or employees, or to any corporation, partnership, or other business entity in which the cemetery authority has any ownership interest.

(3) No funds shall be invested with persons or business entities operating in a business field directly related to cemeteries, including, but not limited to, mortuaries, monument production and sales, florists, and rental of funeral facilities.

(4) Notwithstanding any other provisions contained in this section, funds may be invested in any commercial bank, mutual savings bank, or savings and loan association duly chartered and operating under the laws of the United States or statutes of the state of Washington.

Sec. 176. Section 11.88.010, chapter 145, Laws of 1965 as last amended by section 2, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.010 are each amended to read as follows:

(1) The superior court of each county shall have power to appoint guardians for the persons and estates, or either thereof, of incompetent persons, and guardians for the estates of all such persons who are nonresidents of the state but who have property in such county needing care and attention.

An "incompetent" is any person who is either:

(a) Under the age of majority, as defined in RCW 11.92.010, or

(b) Incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, of either managing his property or caring for himself or both.

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of disabled persons, who by reason of their disability have need for protection and assistance, but who cannot be found to be fully incompetent, upon investigation as provided by RCW 11.88.090 as now or hereafter amended. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and disabilities on a disabled person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be incompetent nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the

court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

For the purposes of chapters 11.88 and 11.92 RCW the term "disabled person" means an individual who is in need of protection and assistance by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, but cannot be found to be fully incompetent.

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged incompetent or disabled person is domiciled, or if such person is a resident of a state institution for developmentally disabled persons, in either the county wherein such institution is located, the county of domicile, or the county wherein a parent of the alleged incompetent or disabled person is domiciled.

(4) Under RCW 11.94.010, a principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

Sec. 177. Section 11.88.040, chapter 145, Laws of 1965 as last amended by section 4, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.040 are each amended to read as follows:

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given personally to the alleged incompetent or disabled person, if over fourteen years of age.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee (~~only~~) or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged incompetent, disabled person, or minor, if under fourteen years of age;

(2) A parent, if the alleged incompetent or disabled person is a minor, and the spouse of the alleged incompetent or disabled person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incompetent or disabled person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing. If the petition is by a parent asking for his appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition be accompanied by the written consent of a minor of the age of fourteen years or upward, consenting to the appointment of the guardian

or limited guardian asked for, or if the petition be by a nonresident guardian of any minor or incompetent or disabled person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged incompetent or disabled person shall be present in court at the final hearing on the petition: PROVIDED, That this requirement may be waived at the discretion of the court for good cause shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged incompetent or disabled person and conduct the final hearing in the presence of the alleged incompetent or disabled person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged incompetent or disabled person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition.

NEW SECTION. Sec. 178. The following acts or parts of acts are each repealed:

- (1) Section 4, chapter 113, Laws of 1935 and RCW 7.24.040;
- (2) Section 11.16.050, chapter 145, Laws of 1965, section 4, chapter 168, Laws of 1967 and RCW 11.16.050;
- (3) Section 8, chapter 88, Laws of 1967 ex. sess., section 33, chapter 292, Laws of 1971 ex. sess. and RCW 21.25.010;
- (4) Section 9, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.020;
- (5) Section 10, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.030;
- (6) Section 11, chapter 88, Laws of 1967 ex. sess., section 34, chapter 292, Laws of 1971 ex. sess. and RCW 21.25.040;
- (7) Section 12, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.050;
- (8) Section 13, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.060;
- (9) Section 14, chapter 88, Laws of 1967 ex. sess., section 35, chapter 292, Laws of 1971 ex. sess. and RCW 21.25.070;
- (10) Section 15, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.080;
- (11) Section 16, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.090;
- (12) Section 17, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.100;

(13) Section 18, chapter 88, Laws of 1967 ex. sess. and RCW 21.25.110;

(14) Section 19, chapter 88, Laws of 1967 ex. sess. and RCW 21.25-.900; and

(15) Section 30.24.060, chapter 33, Laws of 1955, section 1, chapter 209, Laws of 1967 and RCW 30.24.060.

NEW SECTION. Sec. 179. Section headings, as found in Title 11 RCW, do not constitute any part of the law.

NEW SECTION. Sec. 180. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except sections 1 through 98, 100 through 138, and 147 through 178 of this act which shall take effect January 1, 1985.

NEW SECTION. Sec. 181. 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.

NEW SECTION. Sec. 182. INDEX.

(For informational purposes only)

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4.16.370 sec. 2
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11.02.020 sec. 43; recodified as 11.96.020
11.02.030 sec. 44; recodified as 11.96.030
11.02.060 sec. 55; recodified as 11.96.090
11.12.250 sec. 5
11.12.255 sec. 6
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11.16.050 repealed
11.28.240 sec. 8
11.36.010 sec. 8
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11.68.110 sec. 11
11.88.010 sec. 176
11.88.040 sec. 177
11.92.040 sec. 12
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11.93.060	sec. 21; formerly 21.24.060
11.93.070	sec. 22; formerly 21.24.070
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11.93.911	sec. 24; formerly 21.24.091
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11.95.070	sec. 39
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11.96.140	sec. 57
11.96.150	sec. 58; formerly 30.30.120
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11.98.009	sec. 67; formerly 30.99.010
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21.25.030	repealed
21.25.040	repealed
21.25.050	repealed
21.25.060	repealed
21.25.070	repealed
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30.24.037	sec. 104; recodified as 11.100.037
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30.24.130	sec. 113; recodified as 11.100.130
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30.28.030	sec. 115; recodified as 11.102.030
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- 30.30.010 sec. 128; recodified as 11.106.010
- 30.30.020 sec. 129; recodified as 11.106.020
- 30.30.030 sec. 130; recodified as 11.106.030
- 30.30.040 sec. 131; recodified as 11.106.040
- 30.30.050 sec. 132; recodified as 11.106.050
- 30.30.060 sec. 133; recodified as 11.106.060
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- 30.30.080 sec. 135; recodified as 11.106.080
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- 30.99.070 sec. 80; recodified as 11.98.070
- 30.99.080 sec. 83; recodified as 11.98.090
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- 64.24.020 sec. 34; recodified as 11.95.020
- 64.24.030 sec. 35; recodified as 11.95.030
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- 64.24.050 sec. 37; recodified as 11.95.050
- 64.28.040 sec. 174
- 68.44.030 sec. 175

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CHAPTER 150

[Second Substitute House Bill No. 85]

LAW ENFORCEMENT OFFICERS—COLLECTIVE BARGAINING—SECOND CLASS COUNTIES OR LARGER

AN ACT Relating to public employees' collective bargaining; amending section 3, chapter 108, Laws of 1967 ex. sess. as last amended by section 15, chapter 296, Laws of 1975 1st ex. sess. and RCW 41.56.030; and providing an effective date.