

government and its existing public institutions, and shall take effect immediately.

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CHAPTER 31

[Senate Bill No. 3079]

TRUST ACT—JURISDICTION AND PROCEDURE IN TRUST AND ESTATE PROCEEDINGS—TECHNICAL CORRECTIONS

AN ACT Relating to jurisdiction and procedure in trust and estate proceedings; making technical corrections to the Washington Trust Act of 1984; reenacting and amending RCW 11.96.060, 11.96.070, 11.96.100, 11.96.110, and 11.96.130; reenacting RCW 11.96.009, 11.96.020, 11.96.030, 11.96.040, 11.96.050, 11.96.080, 11.96.090, 11.96.120, 11.96.140, 11.96.150, 11.96.160, and 11.96.180; reenacting and amending RCW 11.96.170; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution.

Sec. 2. Section 11.02.010, chapter 145, Laws of 1965 as amended by section 41, chapter 149, Laws of 1984 and RCW 11.96.009 are each reenacted 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, 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. 3. Section 11.02.020, chapter 145, Laws of 1965 as amended by section 42, chapter 149, Laws of 1984 and RCW 11.96.020 are each reenacted 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.

Sec. 4. Section 11.02.030, chapter 145, Laws of 1965 and RCW 11.96.030 are each reenacted to read as follows:

In exercising any of the jurisdiction or powers by this title given or intended to be given, the court is authorized to make, issue and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes not inconsistent with the provisions of this title, which may be considered proper or necessary in the exercise of such jurisdiction.

Sec. 5. Section 45, chapter 149, Laws of 1984 and RCW 11.96.040 are each reenacted to read as follows:

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.

Sec. 6. Section 46, chapter 149, Laws of 1984 and RCW 11.96.050 are each reenacted to read as follows:

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 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.

Sec. 7. Section 47, chapter 149, Laws of 1984 and RCW 11.96.060 are each reenacted and amended to read as follows:

(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 discharge of a trustee from the trust as provided in RCW 11.98.040, or (c) 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))~~ The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of any statute of limitations stated in subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under chapter 11.96 RCW, is not tolled if the unascertained or unborn heir, beneficiary, or class of persons, or minor, incompetent, or disabled person, or person identified in RCW 11.96.170(2) or 11.96.180 whose identity or address is unknown, had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution 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 January 1, 1985. 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 January 1, 1985.

Sec. 8. Section 48, chapter 149, Laws of 1984 and RCW 11.96.070 are each reenacted and amended to read as follows:

A trustor, grantor, 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.

Sec. 9. Section 49, chapter 149, Laws of 1984 and RCW 11.96.080 are each reenacted to read as follows:

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.

Sec. 10. Section 11.02.060, chapter 145, Laws of 1985 as amended by section 51, chapter 149, Laws of 1984 and RCW 11.96.090 are each reenacted 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.

Sec. 11. Section 53, chapter 149, Laws of 1984 and RCW 11.96.100 are each reenacted and amended to read as follows:

Subject to RCW 11.96.110, in all judicial proceedings under Title 11 RCW that require notice, such 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 provided by statute or 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.

Sec. 12. Section 54, chapter 149, Laws of 1984 and RCW 11.96.110 are each reenacted and amended to read as follows:

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 is known to exist((s)) 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.

Sec. 13. Section 55, chapter 149, Laws of 1984 and RCW 11.96.120 are each reenacted to read as follows:

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.

Sec. 14. Section 56, chapter 149, Laws of 1984 and RCW 11.96.130 are each reenacted and amended to read as follows:

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.

Sec. 15. Section 57, chapter 149, Laws of 1984 and RCW 11.96.140 are each reenacted to read as follows:

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.

Sec. 16. Section 30.30.120, chapter 33, Laws of 1955 and RCW 11.96.150 are each reenacted to read as follows:

Nothing in RCW 6.32.250 shall forbid execution upon the income of any trust created by a person other than the judgment debtor for debt arising through the furnishing of the necessities of life to the beneficiary of such trust; or as to such income forbid the enforcement of any order of the superior court requiring the payment of support for the children under the age

of eighteen of any beneficiary; or forbid the enforcement of any order of the superior court subjecting the vested remainder of any such trust upon its expiration to execution for the debts of the remainderman.

Sec. 17. Section 11.96.010, chapter 145, Laws of 1965 as amended by section 53, chapter 81, Laws of 1971 and RCW 11.96.160 are each reenacted to read as follows:

Any interested party may appeal to the supreme court or the court of appeals from any final order, judgment or decree of the court, and such appeals shall be in the manner and way provided by law for appeals in civil actions.

Sec. 18. Section 61, chapter 149, Laws of 1984 and RCW 11.96.170 are each reenacted to read as follows:

(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.

Sec. 19. Section 62, chapter 149, Laws of 1984 and RCW 11.96.180 are each reenacted to read as follows:

(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. 20. 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. 21. 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.

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CHAPTER 32

[Senate Bill No. 3551]

EXCISE TAX STATUTES—CLARIFIED IN LIGHT OF BOND V. BURROWS

AN ACT Relating to clarifying the excise tax statutes after Bond v. Burrows, 103 Wn.2d 153 (1984); amending RCW 82.04.255, 82.04.290, and 82.04.2904; reenacting and amending RCW 82.04.2901; reenacting RCW 82.08.020; repealing RCW 82.04.2902 and 82.04.2903; and declaring an emergency.

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

Sec. 1. Section 82.08.020, chapter 15, Laws of 1961 as last amended by section 41, chapter 3, Laws of 1983 2nd ex. sess. and by section 62, chapter 3, Laws of 1983 2nd ex. sess. and RCW 82.08.020 are each reenacted to read as follows:

(1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent of the selling price.

(2) The tax imposed under this chapter shall apply to successive retail sales of the same property.

(3) The rate provided in this section applies to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

Sec. 2. Section 3, chapter 65, Laws of 1970 ex. sess. as last amended by section 1, chapter 3, Laws of 1983 2nd ex. sess. and RCW 82.04.255 are each amended to read as follows:

Upon every person engaging within the state as a real estate broker; as to such persons, the amount of the tax with respect to such business shall be equal to the gross income of the business, multiplied by the rate of 1.50 percent (~~(: PROVIDED, That this tax shall be imposed only if all of the amendments contained in sections 2 through 4 of this 1983 act become law)~~).

The measure of the tax on real estate commissions earned by the real estate broker shall be the gross commission earned by the particular real estate brokerage office including that portion of the commission paid to