

2 SHB 1077 - S COMM AMD
3 By Committee on Law & Justice

4 ADOPTED 4/12/93

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** (1) This section applies to all nonprobate
8 assets, wherever situated, held at the time of entry by a superior
9 court of this state of a decree of dissolution of marriage or a
10 declaration of invalidity.

11 (2)(a) If a marriage is dissolved or invalidated, a provision made
12 prior to that event that relates to the payment or transfer at death of
13 the decedent's interest in a nonprobate asset in favor of or granting
14 an interest or power to the decedent's former spouse is revoked. A
15 provision affected by this section must be interpreted, and the
16 nonprobate asset affected passes, as if the former spouse failed to
17 survive the decedent, having died at the time of entry of the decree of
18 dissolution or declaration of invalidity.

19 (b) This subsection does not apply if and to the extent that:

20 (i) The instrument governing disposition of the nonprobate asset
21 expressly provides otherwise;

22 (ii) The decree of dissolution or declaration of invalidity
23 requires that the decedent maintain a nonprobate asset for the benefit
24 of a former spouse or children of the marriage, payable on the
25 decedent's death either outright or in trust, and other nonprobate
26 assets of the decedent fulfilling such a requirement for the benefit of
27 the former spouse or children of the marriage do not exist at the
28 decedent's death; or

29 (iii) If not for this subsection, the decedent could not have
30 effected the revocation by unilateral action because of the terms of
31 the decree or declaration, or for any other reason, immediately after
32 the entry of the decree of dissolution or declaration of invalidity.

33 (3)(a) A payor or other third party in possession or control of a
34 nonprobate asset at the time of the decedent's death is not liable for
35 making a payment or transferring an interest in a nonprobate asset to
36 a decedent's former spouse whose interest in the nonprobate asset is

1 revoked under this section, or for taking another action in reliance on
2 the validity of the instrument governing disposition of the nonprobate
3 asset, before the payor or other third party has actual knowledge of
4 the dissolution or other invalidation of marriage. A payor or other
5 third party is liable for a payment or transfer made or other action
6 taken after the payor or other third party has actual knowledge of a
7 revocation under this section.

8 (b) This section does not require a payor or other third party to
9 pay or transfer a nonprobate asset to a beneficiary designated in a
10 governing instrument affected by the dissolution or other invalidation
11 of marriage, or to another person claiming an interest in the
12 nonprobate asset, if the payor or third party has actual knowledge of
13 the existence of a dispute between the former spouse and the
14 beneficiaries or other persons concerning rights of ownership of the
15 nonprobate asset as a result of the application of this section among
16 the former spouse and the beneficiaries or among other persons, or if
17 the payor or third party is otherwise uncertain as to who is entitled
18 to the nonprobate asset under this section. In such a case, the payor
19 or third party may, without liability, notify in writing all
20 beneficiaries or other persons claiming an interest in the nonprobate
21 asset of either the existence of the dispute or its uncertainty as to
22 who is entitled to payment or transfer of the nonprobate asset. The
23 payor or third party may also, without liability, refuse to pay or
24 transfer a nonprobate asset in such a circumstance to a beneficiary or
25 other person claiming an interest until the time that either:

26 (i) All beneficiaries and other interested persons claiming an
27 interest have consented in writing to the payment or transfer; or

28 (ii) The payment or transfer is authorized or directed by a court
29 of proper jurisdiction.

30 (c) Notwithstanding subsections (1) and (2) of this section and (a)
31 and (b) of this subsection, a payor or other third party having actual
32 knowledge of the existence of a dispute between beneficiaries or other
33 persons concerning rights to a nonprobate asset as a result of the
34 application of this section may condition the payment or transfer of
35 the nonprobate asset on execution, in a form and with security
36 acceptable to the payor or other third party, of a bond in an amount
37 that is double the fair market value of the nonprobate asset at the
38 time of the decedent's death or the amount of an adverse claim,
39 whichever is the lesser, or of a similar instrument to provide security

1 to the payor or other third party, indemnifying the payor or other
2 third party for any liability, loss, damage, costs, and expenses for
3 and on account of payment or transfer of the nonprobate asset.

4 (d) As used in this subsection, "actual knowledge" means, for a
5 payor or other third party in possession or control of the nonprobate
6 asset at or following the decedent's death, written notice to the payor
7 or other third party, or to an officer of a payor or third party in the
8 course of his or her employment, received after the decedent's death
9 and within a time that is sufficient to afford the payor or third party
10 a reasonable opportunity to act upon the knowledge. The notice must
11 identify the nonprobate asset with reasonable specificity. The notice
12 also must be sufficient to inform the payor or other third party of the
13 revocation of the provisions in favor of the decedent's spouse by
14 reason of the dissolution or invalidation of marriage, or to inform the
15 payor or third party of a dispute concerning rights to a nonprobate
16 asset as a result of the application of this section. Receipt of the
17 notice for a period of more than thirty days is presumed to be received
18 within a time that is sufficient to afford the payor or third party a
19 reasonable opportunity to act upon the knowledge, but receipt of the
20 notice for a period of less than five business days is presumed not to
21 be a sufficient time for these purposes. These presumptions may be
22 rebutted only by clear and convincing evidence to the contrary.

23 (4)(a) A person who purchases a nonprobate asset from a former
24 spouse or other person, for value and without actual knowledge, or who
25 receives from a former spouse or other person payment or transfer of a
26 nonprobate asset without actual knowledge and in partial or full
27 satisfaction of a legally enforceable obligation, is neither obligated
28 under this section to return the payment, property, or benefit nor is
29 liable under this section for the amount of the payment or the value of
30 the nonprobate asset. However, a former spouse or other person who,
31 with actual knowledge, not for value, or not in satisfaction of a
32 legally enforceable obligation, receives payment or transfer of a
33 nonprobate asset to which that person is not entitled under this
34 section is obligated to return the payment or nonprobate asset, or is
35 personally liable for the amount of the payment or value of the
36 nonprobate asset, to the person who is entitled to it under this
37 section.

38 (b) As used in this subsection, "actual knowledge" means, for a
39 person described in (a) of this subsection who purchases or receives a

1 nonprobate asset from a former spouse or other person, personal
2 knowledge or possession of documents relating to the revocation upon
3 dissolution or invalidation of marriage of provisions relating to the
4 payment or transfer at the decedent's death of the nonprobate asset,
5 received within a time after the decedent's death and before the
6 purchase or receipt that is sufficient to afford the person purchasing
7 or receiving the nonprobate asset reasonable opportunity to act upon
8 the knowledge. Receipt of the personal knowledge or possession of the
9 documents for a period of more than thirty days is presumed to be
10 received within a time that is sufficient to afford the payor or third
11 party a reasonable opportunity to act upon the knowledge, but receipt
12 of the notice for a period of less than five business days is presumed
13 not to be a sufficient time for these purposes. These presumptions may
14 be rebutted only by clear and convincing evidence to the contrary.

15 (5) As used in this section, "nonprobate asset" means those rights
16 and interests of a person having beneficial ownership of an asset that
17 pass on the person's death under only the following written instruments
18 or arrangements other than the decedent's will:

19 (a) A payable-on-death provision of a life insurance policy,
20 employee benefit plan, annuity or similar contract, or individual
21 retirement account;

22 (b) A payable-on-death, trust, or joint with right of survivorship
23 bank account;

24 (c) A trust of which the person is a grantor and that becomes
25 effective or irrevocable only upon the person's death; or

26 (d) Transfer on death beneficiary designations of a transfer on
27 death or pay on death security, if such designations are authorized
28 under Washington law.

29 NEW SECTION. **Sec. 2.** Section 1 of this act shall constitute a new
30 chapter in Title 11 RCW.

31 **Sec. 3.** RCW 41.26.510 and 1991 c 365 s 31 are each amended to read
32 as follows:

33 (1) Except as provided in section 1 of this act, if a member or a
34 vested member who has not completed at least ten years of service dies,
35 the amount of the accumulated contributions standing to such member's
36 credit in the retirement system at the time of such member's death,
37 less any amount identified as owing to an obligee upon withdrawal of

1 accumulated contributions pursuant to a court order filed under RCW
2 41.50.670, shall be paid to such person or persons having an insurable
3 interest in such member's life as the member shall have nominated by
4 written designation duly executed and filed with the department. If
5 there be no such designated person or persons still living at the time
6 of the member's death, such member's accumulated contributions standing
7 to such member's credit in the retirement system, less any amount
8 identified as owing to an obligee upon withdrawal of accumulated
9 contributions pursuant to a court order filed under RCW 41.50.670,
10 shall be paid to the member's surviving spouse as if in fact such
11 spouse had been nominated by written designation, or if there be no
12 such surviving spouse, then to such member's legal representatives.

13 (2) If a member who is eligible for retirement or a member who has
14 completed at least ten years of service dies, the surviving spouse or
15 eligible child or children shall elect to receive either:

16 (a) A retirement allowance computed as provided for in RCW
17 41.26.430(1), actuarially reduced by the amount of any lump sum benefit
18 identified as owing to an obligee upon withdrawal of accumulated
19 contributions pursuant to a court order filed under RCW 41.50.670 and
20 actuarially adjusted to reflect a joint and one hundred percent
21 survivor option under RCW 41.26.460 and if the member was not eligible
22 for normal retirement at the date of death a further reduction as
23 described in RCW 41.26.430(2); if a surviving spouse who is receiving
24 a retirement allowance dies leaving a child or children of the member
25 under the age of majority, then such child or children shall continue
26 to receive an allowance in an amount equal to that which was being
27 received by the surviving spouse, share and share alike, until such
28 child or children reach the age of majority; if there is no surviving
29 spouse eligible to receive an allowance at the time of the member's
30 death, such member's child or children under the age of majority shall
31 receive an allowance share and share alike calculated as herein
32 provided making the assumption that the ages of the spouse and member
33 were equal at the time of the member's death; or

34 (b) The member's accumulated contributions, less any amount
35 identified as owing to an obligee upon withdrawal of accumulated
36 contributions pursuant to a court order filed under RCW 41.50.670.

37 (3) If a member who is eligible for retirement or a member who has
38 completed at least ten years of service dies after October 1, 1977, and
39 is not survived by a spouse or an eligible child, then the accumulated

1 contributions standing to the member's credit, less any amount
2 identified as owing to an obligee upon withdrawal of accumulated
3 contributions pursuant to a court order filed under RCW 41.50.670,
4 shall be paid:

5 (a) To a person or persons, having an insurable interest in the
6 member's life, as the member shall have nominated by written
7 designation duly executed and filed with the department; or

8 (b) If there is no such designated person or persons still living
9 at the time of the member's death, then to the member's legal
10 representatives.

11 **Sec. 4.** RCW 41.32.805 and 1991 c 365 s 30 are each amended to read
12 as follows:

13 (1) Except as provided in section 1 of this act, if a member or a
14 vested member who has not completed at least ten years of service dies,
15 the amount of the accumulated contributions standing to such member's
16 credit in the retirement system, less any amount identified as owing to
17 an obligee upon withdrawal of accumulated contributions pursuant to a
18 court order filed under RCW 41.50.670, at the time of such member's
19 death shall be paid to such person or persons having an insurable
20 interest in such member's life as the member shall have nominated by
21 written designation duly executed and filed with the department. If
22 there be no such designated person or persons still living at the time
23 of the member's death, such member's accumulated contributions standing
24 to such member's credit in the retirement system, less any amount
25 identified as owing to an obligee upon withdrawal of accumulated
26 contributions pursuant to a court order filed under RCW 41.50.670,
27 shall be paid to the member's surviving spouse as if in fact such
28 spouse had been nominated by written designation, or if there be no
29 such surviving spouse, then to such member's legal representatives.

30 (2) If a member who is eligible for retirement or a member who has
31 completed at least ten years of service dies, the surviving spouse or
32 eligible children shall elect to receive either:

33 (a) A retirement allowance computed as provided for in RCW
34 41.32.765(1), actuarially reduced by the amount of any lump sum benefit
35 identified as owing to an obligee upon withdrawal of accumulated
36 contributions pursuant to a court order filed under RCW 41.50.670 and
37 actuarially adjusted to reflect a joint and one hundred percent
38 survivor option under RCW 41.32.785 and if the member was not eligible

1 for normal retirement at the date of death a further reduction as
2 described in RCW 41.32.765(2); if a surviving spouse who is receiving
3 a retirement allowance dies leaving a child or children of the member
4 under the age of majority, then such child or children shall continue
5 to receive an allowance in an amount equal to that which was being
6 received by the surviving spouse, share and share alike, until such
7 child or children reach the age of majority; if there is no surviving
8 spouse eligible to receive an allowance at the time of the member's
9 death, such member's child or children under the age of majority shall
10 receive an allowance share and share alike calculated as herein
11 provided making the assumption that the ages of the spouse and member
12 were equal at the time of the member's death; or

13 (b) The member's accumulated contributions, less any amount
14 identified as owing to an obligee upon withdrawal of accumulated
15 contributions pursuant to a court order filed under RCW 41.50.670.

16 (3) If a member who is eligible for retirement or a member who has
17 completed at least ten years of service dies after October 1, 1977, and
18 is not survived by a spouse or an eligible child, then the accumulated
19 contributions standing to the member's credit, less any amount
20 identified as owing to an obligee upon withdrawal of accumulated
21 contributions pursuant to a court order filed under RCW 41.50.670,
22 shall be paid:

23 (a) To a person or persons, having an insurable interest in the
24 member's life, as the member shall have nominated by written
25 designation duly executed and filed with the department; or

26 (b) If there is no such designated person or persons still living
27 at the time of the member's death, then to the member's legal
28 representatives.

29 **Sec. 5.** RCW 41.40.700 and 1991 c 365 s 28 are each amended to read
30 as follows:

31 (1) Except as provided in section 1 of this act, if a member or a
32 vested member who has not completed at least ten years of service dies,
33 the amount of the accumulated contributions standing to such member's
34 credit in the retirement system at the time of such member's death,
35 less any amount identified as owing to an obligee upon withdrawal of
36 accumulated contributions pursuant to a court order filed under RCW
37 41.50.670, shall be paid to such person or persons having an insurable
38 interest in such member's life as the member shall have nominated by

1 written designation duly executed and filed with the department. If
2 there be no such designated person or persons still living at the time
3 of the member's death, such member's accumulated contributions standing
4 to such member's credit in the retirement system, less any amount
5 identified as owing to an obligee upon withdrawal of accumulated
6 contributions pursuant to a court order filed under RCW 41.50.670,
7 shall be paid to the member's surviving spouse as if in fact such
8 spouse had been nominated by written designation, or if there be no
9 such surviving spouse, then to such member's legal representatives.

10 (2) If a member who is eligible for retirement or a member who has
11 completed at least ten years of service dies, the surviving spouse or
12 eligible child or children shall elect to receive either:

13 (a) A retirement allowance computed as provided for in RCW
14 41.40.630(1), actuarially reduced by the amount of any lump sum benefit
15 identified as owing to an obligee upon withdrawal of accumulated
16 contributions pursuant to a court order filed under RCW 41.50.670 and
17 actuarially adjusted to reflect a joint and one hundred percent
18 survivor option under RCW 41.40.660 and if the member was not eligible
19 for normal retirement at the date of death a further reduction as
20 described in RCW 41.40.630(2); if a surviving spouse who is receiving
21 a retirement allowance dies leaving a child or children of the member
22 under the age of majority, then such child or children shall continue
23 to receive an allowance in an amount equal to that which was being
24 received by the surviving spouse, share and share alike, until such
25 child or children reach the age of majority; if there is no surviving
26 spouse eligible to receive an allowance at the time of the member's
27 death, such member's child or children under the age of majority shall
28 receive an allowance share and share alike calculated as herein
29 provided making the assumption that the ages of the spouse and member
30 were equal at the time of the member's death; or

31 (b) The member's accumulated contributions, less any amount
32 identified as owing to an obligee upon withdrawal of accumulated
33 contributions pursuant to a court order filed under RCW 41.50.670.

34 (3) If a member who is eligible for retirement or a member who has
35 completed at least ten years of service dies after October 1, 1977, and
36 is not survived by a spouse or an eligible child, then the accumulated
37 contributions standing to the member's credit, less any amount
38 identified as owing to an obligee upon withdrawal of accumulated

1 contributions pursuant to a court order filed under RCW 41.50.670,
2 shall be paid:

3 (a) To a person or persons, having an insurable interest in the
4 member's life, as the member shall have nominated by written
5 designation duly executed and filed with the department; or

6 (b) If there is no such designated person or persons still living
7 at the time of the member's death, then to the member's legal
8 representatives."

9 **SHB 1077** - S COMM AMD
10 By Committee on Law & Justice

11 ADOPTED 4/12/93

12 On page 1, line 2 of the title, after "marriage;" strike the
13 remainder of the title and insert "amending RCW 41.26.510, 41.32.805,
14 and 41.40.700; and adding a new chapter to Title 11 RCW."

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