

# HOUSE BILL REPORT

## HB 1078

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As Amended by the Senate

**Title:** An act relating to nontestamentary characterization of interests passing at death.

**Brief Description:** Regulating the passing of interests at death.

**Sponsors:** Representatives Appelwick, Padden, Ludwig, Orr and Johanson.

**Brief History:**

Reported by House Committee on:  
Judiciary, February 2, 1993, DP;  
Passed House, February 22, 1993, 96-0;  
Amended by Senate.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 17 members:  
Representatives Appelwick, Chair; Ludwig, Vice Chair;  
Padden, Ranking Minority Member; Ballasiotes, Assistant  
Ranking Minority Member; Campbell; Chappell; Forner;  
Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt;  
Scott; Tate; and Wineberry.

**Staff:** Patricia Shelledy (786-7149).

**Background:** RCW 11.02.090 provides that a variety of instruments can effectively dispose of property at death without being signed with the formalities of a Washington will. For example, property may transfer through an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, joint tenancy, community property agreement, or other instruments. RCW 11.02.090 sets forth the criteria for a valid transfer of property through the instruments.

In 1988, the Washington Supreme Court interpreted RCW 11.02.090 as validating those arrangements regardless of whether they were otherwise valid, if abundant evidence existed that the property owner intended that ownership pass at death.

Apparently disputes have arisen over a variety of otherwise invalid lifetime estate planning arrangements. The

Washington State Bar Association recommends that the law be clarified to state clearly that estate planning instruments of transfer must be otherwise valid before they are effective.

RCW 11.02.090 also contains a provision governing provisions purporting to create a joint tenancy in a safety deposit box. No change is recommended.

**Summary of Bill:** RCW 11.02.090 is repealed. A new statute replacing RCW 11.02.090 is adopted. The new statute provides that an otherwise effective written instrument is not testamentary solely because the instrument contains a provision for a nonprobate transfer of property at death. An instrument of transfer is effective if the instrument would be effective if it did not contain the provision for the nonprobate transfer at death.

The new provision explicitly provides that the only purpose of the section is to eliminate any requirement that instruments of transfer comply with formalities for executing wills. The provision does not make a written instrument effective as a contract, gift, conveyance, deed, or trust that would not otherwise be effective.

The provisions governing joint tenancy of safety deposit boxes is recodified in a separate section but is not amended.

**EFFECT OF SENATE AMENDMENT(S):** Under current law, a person or entity that is in possession of personal property of a decedent whose estate consists entirely of personal property, must give the property to the decedent's successor in interest, if the successor gives the person or entity an affidavit, which among other things, states that the value of the decedent's estate does not exceed the value of the homestead exemption, which currently is \$30,000. The person or entity who gives the successor the property is released from liability for the transfer unless the person or entity has actual knowledge that the affidavit is false. The Senate amendment (1) removes the link between the value of the homestead exemption and the affidavit procedure, and (2) establishes a new limit of \$60,000. California has a \$60,000 limit for its affidavit procedure for small estates.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Many people make gifts other than by will. This statute was intended to eliminate the need for

complying with the requirements of a will when making gifts in other instruments of transfer. The Washington case was incorrectly decided and has created uncertainty and lawsuits. The law should be rewritten to reflect the Uniform Probate Code's provision.

**Testimony Against:** None.

**Witnesses:** Michael D. Carrico, Washington State Bar Association Real Property, Probate, and Trust Section (pro).

**VOTE ON FINAL PASSAGE:**

Yeas 96; Excused 2

Excused: Representatives Roland, Schmidt