FINAL BILL REPORT

SHB 1077

Synopsis as Enacted
C 236 L 93

Brief Description: Providing for the revocation of nonprobate asset arrangements for divorce or invalidation of marriage.

By House Committee on Judiciary (originally sponsored by Representatives Ludwig, Padden, Appelwick, Orr, Johanson and Karahalios).

House Committee on Judiciary
Senate Committee on Law & Justice

Background: When a married couple divorces, one or both former spouses may still have a will or other legal instrument that leaves an asset to the former spouse. A question may arise concerning whether the now divorced person still wants to leave property to his or her former spouse.

A Washington statute provides that if a divorce follows the making of a will, the will is revoked with respect to the divorced spouse. Of course, a divorced person who wants to leave property to a former spouse can overcome this statutory provision by making a new will. The statute, however, assumes that most people would prefer to have the will revoked as to a former spouse.

A variety of instruments other than a will may also leave assets to one spouse upon the death of the other. Such instruments include certain trust provisions, payable-on-death bank accounts, insurance policies, retirement accounts, and annuities. Assets created by these instruments are sometimes called "nonprobate assets." A 1984 Washington State Supreme Court decision, Aetna Life Insurance v. Wadsworth, held that a divorced former husband's designation of his former wife as beneficiary under his life insurance policy was valid, although the divorce decree had specifically purported to divest the former wife of her interest in the policy. This treatment of a nonprobate asset has been criticized as contrary to what most divorced persons would want.

The Washington State Bar Association has recommended that nonprobate instruments leaving assets to a spouse be automatically revoked upon the dissolution of the marriage.

Summary: Generally, any instrument leaving nonprobate assets of one spouse to the other is revoked upon the dissolution or invalidation of the marriage.

This automatic revocation does not apply in the following three situations. First, it does not apply if the nonprobate instrument itself provides otherwise. Second, it does not apply if the decree of dissolution requires the maintenance of the nonprobate asset for the benefit of children of the marriage or for the benefit of the former spouse. Third, automatic revocation does not apply if immediately after the dissolution or invalidation of the marriage, the instrument could not have been unilaterally revoked.

Standards of liability are provided for parties who take actions based on an instrument at the death of its maker, notwithstanding the instrument's invalidity because of the prior dissolution of the maker's marriage. These liability provisions apply to those who make payments or transfers under a nonprobate instrument, and those who purchase or receive assets or payments. Generally, a payor is not liable for payments made before he or she had actual notice of the dissolution. On the other hand, a payor need not make payments if he or she has actual knowledge or is uncertain about a possible dispute involving payments. If a payor has actual knowledge of a dispute, he or she may condition payments on execution of a bond by the payee. Generally, a purchaser has no liability and no obligation to return payments if he or she had no actual knowledge of the revocation of the instrument because of a dissolution and he or she paid for the asset or received it in satisfaction of a legally enforceable obligation.

Votes on Final Passage:

House	91	0	
Senate	44	0	(Senate amended)
House	96	0	(House concurred)

Effective: July 25, 1993