

FINAL BILL REPORT

HB 1078

C 291 L 93
Synopsis as Enacted

Brief Description: Regulating the passing of interests at death.

By Representatives Appelwick, Padden, Ludwig, Orr and Johanson.

House Committee on Judiciary
Senate Committee on Law & Justice

Background: A Washington statute 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. This statute sets forth the criteria for a valid transfer of property through the instruments.

In 1988, the Washington Supreme Court interpreted the statute as validating those transfers regardless of whether the transfer instruments were otherwise valid, if abundant evidence existed that the property owner intended that ownership pass at death. As a result, disputes have arisen over otherwise invalid lifetime estate planning instruments. 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.

Special rules apply to small estates of decedents whose estates consist entirely of personal property. The successor in interest to the decedent's personal property which is possessed by others has a right to obtain that personal property from the entity or person in possession of it. The successor obtains the property through use of a special affidavit procedure.

For example, a bank may be in possession of money in the decedent's bank account. To obtain the money in the account, the successor in interest must give the bank an affidavit which states, among other things, that the decedent's estate does not exceed the value of the homestead exemption. The current value of the homestead exemption is

\$30,000. The bank is released from liability for giving the successor the money in the account unless the person or entity has actual knowledge that the affidavit is false.

California has a similar procedure but the limit on the estate value is \$60,000 instead of \$30,000.

Summary: The statute permitting various instruments to dispose of property at death is repealed and a new statute adopted.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.

The new provision explicitly provides that the sections only purpose 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 in the repealed statute governing joint tenancy of safety deposit boxes are recodified without amendment in a separate section.

For small estates consisting entirely of personal property, the affidavit procedure to obtain the property may be used for estates with a value not exceeding \$60,000.

Votes on Final Passage:

House	96	0	
Senate	47	0	(Senate amended)
House	95	1	(House concurred)

Effective: July 25, 1993