

SENATE BILL REPORT

SHB 1077

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, MARCH 23, 1993

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

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

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Hargrove, McCaslin, Nelson, Niemi, Rinehart, and Roach.

Staff: Alan Caplan (786-7465)

Hearing Dates: March 19, 1993; March 23, 1993

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. The question may arise as to whether the now divorced person really still wants to leave property to his or her former spouse.

In the case of property left in a will, a statute provides that "A divorce, subsequent to the making of a will, shall revoke the will as to the divorced spouse." Of course, a divorced person who really does want 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, 102 Wn.2d 652, held that a divorced former husband's designation of his former wife as beneficiary under his life insurance policy was valid, notwithstanding the fact of the divorce and a decree that 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 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 if (a) the nonprobate instrument provides otherwise; (b) 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; or (c) the instrument could not have been unilaterally revoked immediately after the dissolution or invalidation of the marriage.

Standards of liability are provided for parties who act on instruments with knowledge that they have been rendered invalid because of the prior dissolution of the makers' marriage. These liability provisions apply to persons who make payments or transfers under a nonprobate instrument, and those who purchase or receive assets or payments.

SUMMARY OF PROPOSED SENATE AMENDMENT:

Cross references are inserted into legislation authorizing certain retirement programs.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

This bill will establish a baseline rule that conforms to the desires of most divorced people; it will not limit the discretion of courts or the rights of individuals; and it will make laws applicable to nonprobate assets consistent with laws applicable to wills.

TESTIMONY AGAINST: None

TESTIFIED: Representative Ludwig, prime sponsor; Mark Roberts, Washington State Bar Association (pro)