
HOUSE BILL 1011

State of Washington

53rd Legislature

1993 Regular Session

By Representatives Appelwick and Shin

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1 AN ACT Relating to the uniform simultaneous death act; adding new
2 sections to chapter 11.05 RCW; creating a new section; and repealing
3 RCW 11.05.010, 11.05.020, 11.05.030, 11.05.040, 11.05.050, 11.05.900,
4 and 11.05.910.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** DEFINITIONS. In this chapter:

7 (1) "Co-owners with right of survivorship" includes joint tenants,
8 tenants by the entireties, and other co-owners of property or accounts
9 held under circumstances that entitles one or more to the whole of the
10 property or account on the death of the other or others.

11 (2) "Governing instrument" means a deed, will, trust, insurance or
12 annuity policy, account with POD designation, pension, profit sharing,
13 retirement, or similar benefit plan, instrument creating or exercising
14 a power of appointment or a power of attorney, or a dispositive,
15 appointive, or nominative instrument of any similar type.

16 (3) "Payor" means a trustee, insurer, business entity, employer,
17 government, governmental agency, subdivision, or instrumentality, or
18 any other person authorized or obligated by law or a governing
19 instrument to make payments.

1 NEW SECTION. **Sec. 2.** REQUIREMENT OF SURVIVAL BY ONE HUNDRED
2 TWENTY HOURS UNDER PROBATE CODE. Except as provided in section 6 of
3 this act, and except for the purposes of the Uniform TOD Security
4 Registration Act, if the title to property, the devolution of property,
5 the right to elect an interest in property, or the right to exempt
6 property, homestead, or family allowance depends upon an individual's
7 survivorship of the death of another individual, an individual who is
8 not established by clear and convincing evidence to have survived the
9 other individual by one hundred twenty hours is deemed to have
10 predeceased the other individual. This section does not apply if its
11 application would result in a taking of intestate estate by the state.

12 NEW SECTION. **Sec. 3.** REQUIREMENT OF SURVIVAL BY ONE HUNDRED
13 TWENTY HOURS UNDER GOVERNING INSTRUMENTS. Except as provided in
14 section 6 of this act, and except for a security registered in
15 beneficiary form (TOD) under the Uniform TOD Security Registration Act,
16 for purposes of a provision of a governing instrument that relates to
17 an individual surviving an event, including the death of another
18 individual, an individual who is not established by clear and
19 convincing evidence to have survived the event by one hundred twenty
20 hours is deemed to have predeceased the event.

21 NEW SECTION. **Sec. 4.** CO-OWNERS WITH RIGHT OF SURVIVORSHIP--
22 REQUIREMENT OF SURVIVAL BY ONE HUNDRED TWENTY HOURS. Except as
23 provided in section 6 of this act, if (1) it is not established by
24 clear and convincing evidence that one of two co-owners with right of
25 survivorship survived the other co-owner by one hundred twenty hours,
26 one-half of the property passes as if one had survived by one hundred
27 twenty hours and one-half as if the other had survived by one hundred
28 twenty hours and (2) there are more than two co-owners and it is not
29 established by clear and convincing evidence that at least one of them
30 survived the others by one hundred twenty hours, the property passes in
31 the proportion that one bears to the whole number of co-owners.

32 NEW SECTION. **Sec. 5.** EVIDENCE OF DEATH OR STATUS. In addition to
33 the rules of evidence in courts of general jurisdiction, the following
34 rules relating to a determination of death and status apply:

35 (1) Death occurs when an individual has sustained either (a)
36 irreversible cessation of circulatory and respiratory functions or (b)

1 irreversible cessation of all functions of the entire brain, including
2 the brain stem. A determination of death must be made in accordance
3 with accepted medical standards.

4 (2) A certified or authenticated copy of a death certificate
5 purporting to be issued by an official or agency of the place where the
6 death purportedly occurred is prima facie evidence of the fact, place,
7 date, and time of death and the identity of the decedent.

8 (3) A certified or authenticated copy of any record or report of a
9 governmental agency, domestic or foreign, that an individual is
10 missing, detained, dead, or alive is prima facie evidence of the status
11 and of the dates, circumstances, and places disclosed by the record or
12 report.

13 (4) In the absence of prima facie evidence of death under
14 subsection (2) or (3) of this section, the fact of death may be
15 established by clear and convincing evidence, including circumstantial
16 evidence.

17 (5) An individual whose death is not established under subsections
18 (1) through (4) of this section who is absent for a continuous period
19 of five years, during which he or she has not been heard from, and
20 whose absence is not satisfactorily explained after diligent search or
21 inquiry, is presumed to be dead. His or her death is presumed to have
22 occurred at the end of the period unless there is sufficient evidence
23 for determining that death occurred earlier.

24 (6) In the absence of evidence disputing the time of death
25 stipulated on a document described in subsection (2) or (3) of this
26 section, a document described in subsection (2) or (3) of this section
27 that stipulates a time of death one hundred twenty hours or more after
28 the time of death of another individual, however the time of death of
29 the other individual is determined, establishes by clear and convincing
30 evidence that the individual survived the other individual by one
31 hundred twenty hours.

32 NEW SECTION. **Sec. 6.** EXCEPTIONS. This chapter does not apply if:

33 (1) The governing instrument contains language dealing explicitly
34 with simultaneous deaths or deaths in a common disaster and that
35 language is operable under the facts of the case;

36 (2) The governing instrument expressly indicates that an individual
37 is not required to survive an event, including the death of another

1 individual, by any specified period or expressly requires the
2 individual to survive the event for a stated period;

3 (3) The imposition of a one hundred twenty-hour requirement of
4 survival would cause a nonvested property interest or a power of
5 appointment to be invalid under the rule against perpetuities; or

6 (4) The application of this chapter to multiple governing
7 instruments would result in an unintended failure or duplication of a
8 disposition.

9 NEW SECTION. **Sec. 7.** PROTECTION OF PAYORS, BONA FIDE PURCHASERS,
10 AND OTHER THIRD PARTIES--PERSONAL LIABILITY OF RECIPIENT. (1)
11 Protection of payors and other third parties.

12 (a) A payor or other third party is not liable for having made a
13 payment or transferred an item of property or any other benefit to a
14 person designated in a governing instrument who, under this chapter, is
15 not entitled to the payment or item of property, or for having taken
16 any other action in good faith reliance on the person's apparent
17 entitlement under the terms of the governing instrument, before the
18 payor or other third party received written notice of a claimed lack of
19 entitlement under this chapter. A payor or other third party is liable
20 for a payment made or other action taken after the payor or other third
21 party received written notice of a claimed lack of entitlement under
22 this chapter.

23 (b) Written notice of a claimed lack of entitlement under (a) of
24 this subsection must be mailed to the payor's or other third party's
25 main office or home by registered or certified mail, return receipt
26 requested, or served upon the payor or other third party in the same
27 manner as a summons in a civil action. Upon receipt of written notice
28 of a claimed lack of entitlement under this chapter, a payor or other
29 third party may pay any amount owed or transfer or deposit any item of
30 property held by it to or with the court having jurisdiction of the
31 probate proceedings relating to the decedent's estate, or if no
32 proceedings have been commenced, to or with the court having
33 jurisdiction of probate proceedings relating to decedents' estates
34 located in the county of the decedent's residence. The court shall
35 hold the funds or item of property and, upon its determination under
36 this chapter, shall order disbursement in accordance with the
37 determination. Payments, transfers, or deposits made to or with the
38 court discharge the payor or other third party from all claims for the

1 value of amounts paid to or items of property transferred to or
2 deposited with the court.

3 (2) Protection of bona fide purchasers--Personal liability of
4 recipient.

5 (a) A person who purchases property for value and without notice,
6 or who receives a payment or other item of property in partial or full
7 satisfaction of a legally enforceable obligation, is neither obligated
8 under this chapter to return the payment, item of property, or benefit
9 nor liable under this chapter for the amount of the payment or the
10 value of the item of property or benefit. But a person who, not for
11 value, receives a payment, item of property, or any other benefit to
12 which the person is not entitled under this chapter is obligated to
13 return the payment, item of property, or benefit, or is personally
14 liable for the amount of the payment or the value of the item of
15 property or benefit, to the person who is entitled to it under this
16 chapter.

17 (b) If this chapter or any part of this chapter is preempted by
18 federal law with respect to a payment, an item of property, or any
19 other benefit covered by this chapter, a person who, not for value,
20 receives the payment, item of property, or any other benefit to which
21 the person is not entitled under this chapter is obligated to return
22 the payment, item of property, or benefit, or is personally liable for
23 the amount of the payment or the value of the item of property or
24 benefit, to the person who would have been entitled to it were this
25 chapter or part of this chapter not preempted.

26 NEW SECTION. **Sec. 8.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.
27 This chapter shall be applied and construed to effectuate its general
28 purpose to make uniform the law with respect to the subject of this
29 chapter among states enacting it.

30 NEW SECTION. **Sec. 9.** SHORT TITLE. This chapter may be cited as
31 the Uniform Simultaneous Death Act.

32 NEW SECTION. **Sec. 10.** REPEALERS. The following acts or parts of
33 acts are each repealed:

34 (1) RCW 11.05.010 and 1965 c 145 s 11.05.010;

35 (2) RCW 11.05.020 and 1965 c 145 s 11.05.020;

36 (3) RCW 11.05.030 and 1965 c 145 s 11.05.030;

- 1 (4) RCW 11.05.040 and 1965 c 145 s 11.05.040;
2 (5) RCW 11.05.050 and 1965 c 145 s 11.05.050;
3 (6) RCW 11.05.900 and 1965 c 145 s 11.05.900; and
4 (7) RCW 11.05.910 and 1965 c 145 s 11.05.910.

5 NEW SECTION. **Sec. 11.** SEVERABILITY. If any provision of this act
6 or its application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 12.** APPLICATION. On the effective date of this
10 act:

11 (1) An act done before the effective date of this act in any
12 proceeding and any accrued right is not impaired by this act. If a
13 right is acquired, extinguished, or barred upon the expiration of a
14 prescribed period of time that has commenced to run by the provisions
15 of any statute before the effective date of this act, the provisions
16 remain in force with respect to that right; and

17 (2) Any rule of construction or presumption provided in this act
18 applies to instruments executed and multiple party accounts opened
19 before the effective date of this act unless there is a clear
20 indication of a contrary intent.

21 NEW SECTION. **Sec. 13.** CAPTIONS NOT LAW. Captions as used in this
22 act constitute no part of the law.

23 NEW SECTION. **Sec. 14.** Sections 1 through 9, 11, and 12 of this
24 act are each added to chapter 11.05 RCW.

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