

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1077**

53rd Legislature  
1993 Regular Session

Passed by the House April 19, 1993  
Yeas 96 Nays 0

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**Speaker of the  
House of Representatives**

Passed by the Senate April 12, 1993  
Yeas 44 Nays 0

\_\_\_\_\_  
**President of the Senate**

Approved

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1077** as passed by the House of Representatives and the Senate on the dates hereon set forth.

\_\_\_\_\_  
**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1077**

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AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

**State of Washington                      53rd Legislature                      1993 Regular Session**

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

Read first time 02/05/93.

1            AN ACT Relating to the revocation of nonprobate asset arrangements  
2 for divorce or invalidation of marriage; amending RCW 41.26.510,  
3 41.32.805, and 41.40.700; and adding a new chapter to Title 11 RCW.

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

5            NEW SECTION.    **Sec. 1.**    (1) This section applies to all nonprobate  
6 assets, wherever situated, held at the time of entry by a superior  
7 court of this state of a decree of dissolution of marriage or a  
8 declaration of invalidity.

9            (2)(a) If a marriage is dissolved or invalidated, a provision made  
10 prior to that event that relates to the payment or transfer at death of  
11 the decedent's interest in a nonprobate asset in favor of or granting  
12 an interest or power to the decedent's former spouse is revoked. A  
13 provision affected by this section must be interpreted, and the  
14 nonprobate asset affected passes, as if the former spouse failed to  
15 survive the decedent, having died at the time of entry of the decree of  
16 dissolution or declaration of invalidity.

17            (b) This subsection does not apply if and to the extent that:

18            (i) The instrument governing disposition of the nonprobate asset  
19 expressly provides otherwise;

1 (ii) The decree of dissolution or declaration of invalidity  
2 requires that the decedent maintain a nonprobate asset for the benefit  
3 of a former spouse or children of the marriage, payable on the  
4 decedent's death either outright or in trust, and other nonprobate  
5 assets of the decedent fulfilling such a requirement for the benefit of  
6 the former spouse or children of the marriage do not exist at the  
7 decedent's death; or

8 (iii) If not for this subsection, the decedent could not have  
9 effected the revocation by unilateral action because of the terms of  
10 the decree or declaration, or for any other reason, immediately after  
11 the entry of the decree of dissolution or declaration of invalidity.

12 (3)(a) A payor or other third party in possession or control of a  
13 nonprobate asset at the time of the decedent's death is not liable for  
14 making a payment or transferring an interest in a nonprobate asset to  
15 a decedent's former spouse whose interest in the nonprobate asset is  
16 revoked under this section, or for taking another action in reliance on  
17 the validity of the instrument governing disposition of the nonprobate  
18 asset, before the payor or other third party has actual knowledge of  
19 the dissolution or other invalidation of marriage. A payor or other  
20 third party is liable for a payment or transfer made or other action  
21 taken after the payor or other third party has actual knowledge of a  
22 revocation under this section.

23 (b) This section does not require a payor or other third party to  
24 pay or transfer a nonprobate asset to a beneficiary designated in a  
25 governing instrument affected by the dissolution or other invalidation  
26 of marriage, or to another person claiming an interest in the  
27 nonprobate asset, if the payor or third party has actual knowledge of  
28 the existence of a dispute between the former spouse and the  
29 beneficiaries or other persons concerning rights of ownership of the  
30 nonprobate asset as a result of the application of this section among  
31 the former spouse and the beneficiaries or among other persons, or if  
32 the payor or third party is otherwise uncertain as to who is entitled  
33 to the nonprobate asset under this section. In such a case, the payor  
34 or third party may, without liability, notify in writing all  
35 beneficiaries or other persons claiming an interest in the nonprobate  
36 asset of either the existence of the dispute or its uncertainty as to  
37 who is entitled to payment or transfer of the nonprobate asset. The  
38 payor or third party may also, without liability, refuse to pay or

1 transfer a nonprobate asset in such a circumstance to a beneficiary or  
2 other person claiming an interest until the time that either:

3 (i) All beneficiaries and other interested persons claiming an  
4 interest have consented in writing to the payment or transfer; or

5 (ii) The payment or transfer is authorized or directed by a court  
6 of proper jurisdiction.

7 (c) Notwithstanding subsections (1) and (2) of this section and (a)  
8 and (b) of this subsection, a payor or other third party having actual  
9 knowledge of the existence of a dispute between beneficiaries or other  
10 persons concerning rights to a nonprobate asset as a result of the  
11 application of this section may condition the payment or transfer of  
12 the nonprobate asset on execution, in a form and with security  
13 acceptable to the payor or other third party, of a bond in an amount  
14 that is double the fair market value of the nonprobate asset at the  
15 time of the decedent's death or the amount of an adverse claim,  
16 whichever is the lesser, or of a similar instrument to provide security  
17 to the payor or other third party, indemnifying the payor or other  
18 third party for any liability, loss, damage, costs, and expenses for  
19 and on account of payment or transfer of the nonprobate asset.

20 (d) As used in this subsection, "actual knowledge" means, for a  
21 payor or other third party in possession or control of the nonprobate  
22 asset at or following the decedent's death, written notice to the payor  
23 or other third party, or to an officer of a payor or third party in the  
24 course of his or her employment, received after the decedent's death  
25 and within a time that is sufficient to afford the payor or third party  
26 a reasonable opportunity to act upon the knowledge. The notice must  
27 identify the nonprobate asset with reasonable specificity. The notice  
28 also must be sufficient to inform the payor or other third party of the  
29 revocation of the provisions in favor of the decedent's spouse by  
30 reason of the dissolution or invalidation of marriage, or to inform the  
31 payor or third party of a dispute concerning rights to a nonprobate  
32 asset as a result of the application of this section. Receipt of the  
33 notice for a period of more than thirty days is presumed to be received  
34 within a time that is sufficient to afford the payor or third party a  
35 reasonable opportunity to act upon the knowledge, but receipt of the  
36 notice for a period of less than five business days is presumed not to  
37 be a sufficient time for these purposes. These presumptions may be  
38 rebutted only by clear and convincing evidence to the contrary.

1 (4)(a) A person who purchases a nonprobate asset from a former  
2 spouse or other person, for value and without actual knowledge, or who  
3 receives from a former spouse or other person payment or transfer of a  
4 nonprobate asset without actual knowledge and in partial or full  
5 satisfaction of a legally enforceable obligation, is neither obligated  
6 under this section to return the payment, property, or benefit nor is  
7 liable under this section for the amount of the payment or the value of  
8 the nonprobate asset. However, a former spouse or other person who,  
9 with actual knowledge, not for value, or not in satisfaction of a  
10 legally enforceable obligation, receives payment or transfer of a  
11 nonprobate asset to which that person is not entitled under this  
12 section is obligated to return the payment or nonprobate asset, or is  
13 personally liable for the amount of the payment or value of the  
14 nonprobate asset, to the person who is entitled to it under this  
15 section.

16 (b) As used in this subsection, "actual knowledge" means, for a  
17 person described in (a) of this subsection who purchases or receives a  
18 nonprobate asset from a former spouse or other person, personal  
19 knowledge or possession of documents relating to the revocation upon  
20 dissolution or invalidation of marriage of provisions relating to the  
21 payment or transfer at the decedent's death of the nonprobate asset,  
22 received within a time after the decedent's death and before the  
23 purchase or receipt that is sufficient to afford the person purchasing  
24 or receiving the nonprobate asset reasonable opportunity to act upon  
25 the knowledge. Receipt of the personal knowledge or possession of the  
26 documents for a period of more than thirty days is presumed to be  
27 received within a time that is sufficient to afford the payor or third  
28 party a reasonable opportunity to act upon the knowledge, but receipt  
29 of the notice for a period of less than five business days is presumed  
30 not to be a sufficient time for these purposes. These presumptions may  
31 be rebutted only by clear and convincing evidence to the contrary.

32 (5) As used in this section, "nonprobate asset" means those rights  
33 and interests of a person having beneficial ownership of an asset that  
34 pass on the person's death under only the following written instruments  
35 or arrangements other than the decedent's will:

36 (a) A payable-on-death provision of a life insurance policy,  
37 employee benefit plan, annuity or similar contract, or individual  
38 retirement account;

1 (b) A payable-on-death, trust, or joint with right of survivorship  
2 bank account;

3 (c) A trust of which the person is a grantor and that becomes  
4 effective or irrevocable only upon the person's death; or

5 (d) Transfer on death beneficiary designations of a transfer on  
6 death or pay on death security, if such designations are authorized  
7 under Washington law.

8 NEW SECTION. **Sec. 2.** Section 1 of this act shall constitute a new  
9 chapter in Title 11 RCW.

10 **Sec. 3.** RCW 41.26.510 and 1991 c 365 s 31 are each amended to read  
11 as follows:

12 (1) Except as provided in section 1 of this act, if a member or a  
13 vested member who has not completed at least ten years of service dies,  
14 the amount of the accumulated contributions standing to such member's  
15 credit in the retirement system at the time of such member's death,  
16 less any amount identified as owing to an obligee upon withdrawal of  
17 accumulated contributions pursuant to a court order filed under RCW  
18 41.50.670, shall be paid to such person or persons having an insurable  
19 interest in such member's life as the member shall have nominated by  
20 written designation duly executed and filed with the department. If  
21 there be no such designated person or persons still living at the time  
22 of the member's death, such member's accumulated contributions standing  
23 to such member's credit in the retirement system, less any amount  
24 identified as owing to an obligee upon withdrawal of accumulated  
25 contributions pursuant to a court order filed under RCW 41.50.670,  
26 shall be paid to the member's surviving spouse as if in fact such  
27 spouse had been nominated by written designation, or if there be no  
28 such surviving spouse, then to such member's legal representatives.

29 (2) If a member who is eligible for retirement or a member who has  
30 completed at least ten years of service dies, the surviving spouse or  
31 eligible child or children shall elect to receive either:

32 (a) A retirement allowance computed as provided for in RCW  
33 41.26.430(1), actuarially reduced by the amount of any lump sum benefit  
34 identified as owing to an obligee upon withdrawal of accumulated  
35 contributions pursuant to a court order filed under RCW 41.50.670 and  
36 actuarially adjusted to reflect a joint and one hundred percent  
37 survivor option under RCW 41.26.460 and if the member was not eligible

1 for normal retirement at the date of death a further reduction as  
2 described in RCW 41.26.430(2); if a surviving spouse who is receiving  
3 a retirement allowance dies leaving a child or children of the member  
4 under the age of majority, then such child or children shall continue  
5 to receive an allowance in an amount equal to that which was being  
6 received by the surviving spouse, share and share alike, until such  
7 child or children reach the age of majority; if there is no surviving  
8 spouse eligible to receive an allowance at the time of the member's  
9 death, such member's child or children under the age of majority shall  
10 receive an allowance share and share alike calculated as herein  
11 provided making the assumption that the ages of the spouse and member  
12 were equal at the time of the member's death; or

13 (b) The member's accumulated contributions, less any amount  
14 identified as owing to an obligee upon withdrawal of accumulated  
15 contributions pursuant to a court order filed under RCW 41.50.670.

16 (3) If a member who is eligible for retirement or a member who has  
17 completed at least ten years of service dies after October 1, 1977, and  
18 is not survived by a spouse or an eligible child, then the accumulated  
19 contributions standing to the member's credit, less any amount  
20 identified as owing to an obligee upon withdrawal of accumulated  
21 contributions pursuant to a court order filed under RCW 41.50.670,  
22 shall be paid:

23 (a) To a person or persons, having an insurable interest in the  
24 member's life, as the member shall have nominated by written  
25 designation duly executed and filed with the department; or

26 (b) If there is no such designated person or persons still living  
27 at the time of the member's death, then to the member's legal  
28 representatives.

29 **Sec. 4.** RCW 41.32.805 and 1991 c 365 s 30 are each amended to read  
30 as follows:

31 (1) Except as provided in section 1 of this act, if a member or a  
32 vested member who has not completed at least ten years of service dies,  
33 the amount of the accumulated contributions standing to such member's  
34 credit in the retirement system, less any amount identified as owing to  
35 an obligee upon withdrawal of accumulated contributions pursuant to a  
36 court order filed under RCW 41.50.670, at the time of such member's  
37 death shall be paid to such person or persons having an insurable  
38 interest in such member's life as the member shall have nominated by

1 written designation duly executed and filed with the department. If  
2 there be no such designated person or persons still living at the time  
3 of the member's death, such member's accumulated contributions standing  
4 to such member's credit in the retirement system, less any amount  
5 identified as owing to an obligee upon withdrawal of accumulated  
6 contributions pursuant to a court order filed under RCW 41.50.670,  
7 shall be paid to the member's surviving spouse as if in fact such  
8 spouse had been nominated by written designation, or if there be no  
9 such surviving spouse, then to such member's legal representatives.

10 (2) If a member who is eligible for retirement or a member who has  
11 completed at least ten years of service dies, the surviving spouse or  
12 eligible children shall elect to receive either:

13 (a) A retirement allowance computed as provided for in RCW  
14 41.32.765(1), actuarially reduced by the amount of any lump sum benefit  
15 identified as owing to an obligee upon withdrawal of accumulated  
16 contributions pursuant to a court order filed under RCW 41.50.670 and  
17 actuarially adjusted to reflect a joint and one hundred percent  
18 survivor option under RCW 41.32.785 and if the member was not eligible  
19 for normal retirement at the date of death a further reduction as  
20 described in RCW 41.32.765(2); if a surviving spouse who is receiving  
21 a retirement allowance dies leaving a child or children of the member  
22 under the age of majority, then such child or children shall continue  
23 to receive an allowance in an amount equal to that which was being  
24 received by the surviving spouse, share and share alike, until such  
25 child or children reach the age of majority; if there is no surviving  
26 spouse eligible to receive an allowance at the time of the member's  
27 death, such member's child or children under the age of majority shall  
28 receive an allowance share and share alike calculated as herein  
29 provided making the assumption that the ages of the spouse and member  
30 were equal at the time of the member's death; or

31 (b) The member's accumulated contributions, less any amount  
32 identified as owing to an obligee upon withdrawal of accumulated  
33 contributions pursuant to a court order filed under RCW 41.50.670.

34 (3) If a member who is eligible for retirement or a member who has  
35 completed at least ten years of service dies after October 1, 1977, and  
36 is not survived by a spouse or an eligible child, then the accumulated  
37 contributions standing to the member's credit, less any amount  
38 identified as owing to an obligee upon withdrawal of accumulated



1 contributions pursuant to a court order filed under RCW 41.50.670,  
2 shall be paid:

3 (a) To a person or persons, having an insurable interest in the  
4 member's life, as the member shall have nominated by written  
5 designation duly executed and filed with the department; or

6 (b) If there is no such designated person or persons still living  
7 at the time of the member's death, then to the member's legal  
8 representatives.

9 **Sec. 5.** RCW 41.40.700 and 1991 c 365 s 28 are each amended to read  
10 as follows:

11 (1) Except as provided in section 1 of this act, if a member or a  
12 vested member who has not completed at least ten years of service dies,  
13 the amount of the accumulated contributions standing to such member's  
14 credit in the retirement system at the time of such member's death,  
15 less any amount identified as owing to an obligee upon withdrawal of  
16 accumulated contributions pursuant to a court order filed under RCW  
17 41.50.670, shall be paid to such person or persons having an insurable  
18 interest in such member's life as the member shall have nominated by  
19 written designation duly executed and filed with the department. If  
20 there be no such designated person or persons still living at the time  
21 of the member's death, such member's accumulated contributions standing  
22 to such member's credit in the retirement system, less any amount  
23 identified as owing to an obligee upon withdrawal of accumulated  
24 contributions pursuant to a court order filed under RCW 41.50.670,  
25 shall be paid to the member's surviving spouse as if in fact such  
26 spouse had been nominated by written designation, or if there be no  
27 such surviving spouse, then to such member's legal representatives.

28 (2) If a member who is eligible for retirement or a member who has  
29 completed at least ten years of service dies, the surviving spouse or  
30 eligible child or children shall elect to receive either:

31 (a) A retirement allowance computed as provided for in RCW  
32 41.40.630(1), actuarially reduced by the amount of any lump sum benefit  
33 identified as owing to an obligee upon withdrawal of accumulated  
34 contributions pursuant to a court order filed under RCW 41.50.670 and  
35 actuarially adjusted to reflect a joint and one hundred percent  
36 survivor option under RCW 41.40.660 and if the member was not eligible  
37 for normal retirement at the date of death a further reduction as  
38 described in RCW 41.40.630(2); if a surviving spouse who is receiving

1 a retirement allowance dies leaving a child or children of the member  
2 under the age of majority, then such child or children shall continue  
3 to receive an allowance in an amount equal to that which was being  
4 received by the surviving spouse, share and share alike, until such  
5 child or children reach the age of majority; if there is no surviving  
6 spouse eligible to receive an allowance at the time of the member's  
7 death, such member's child or children under the age of majority shall  
8 receive an allowance share and share alike calculated as herein  
9 provided making the assumption that the ages of the spouse and member  
10 were equal at the time of the member's death; or

11 (b) The member's accumulated contributions, less any amount  
12 identified as owing to an obligee upon withdrawal of accumulated  
13 contributions pursuant to a court order filed under RCW 41.50.670.

14 (3) If a member who is eligible for retirement or a member who has  
15 completed at least ten years of service dies after October 1, 1977, and  
16 is not survived by a spouse or an eligible child, then the accumulated  
17 contributions standing to the member's credit, less any amount  
18 identified as owing to an obligee upon withdrawal of accumulated  
19 contributions pursuant to a court order filed under RCW 41.50.670,  
20 shall be paid:

21 (a) To a person or persons, having an insurable interest in the  
22 member's life, as the member shall have nominated by written  
23 designation duly executed and filed with the department; or

24 (b) If there is no such designated person or persons still living  
25 at the time of the member's death, then to the member's legal  
26 representatives.

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