
SENATE BILL 5878

State of Washington 56th Legislature 1999 Regular Session

By Senators Prentice, Benton and Winsley

Read first time 02/15/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to financial institutions and other parties that
2 administer nonprobate asset arrangements; amending RCW 11.02.005 and
3 11.07.010; repealing RCW 11.11.003, 11.11.005, 11.11.007, 11.11.010,
4 11.11.020, 11.11.030, 11.11.040, 11.11.050, 11.11.060, 11.11.070,
5 11.11.080, 11.11.090, 11.11.100, 11.11.110, 11.11.900, 11.11.901,
6 11.11.902, and 11.11.903; providing an effective date; and declaring an
7 emergency.

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

9 **Sec. 1.** RCW 11.02.005 and 1998 c 292 s 117 are each amended to
10 read as follows:

11 When used in this title, unless otherwise required from the
12 context:

13 (1) "Personal representative" includes executor, administrator,
14 special administrator, and guardian or limited guardian and special
15 representative.

16 (2) "Net estate" refers to the real and personal property of a
17 decedent exclusive of homestead rights, exempt property, the family
18 allowance and enforceable claims against, and debts of, the deceased or
19 the estate.

1 (3) "Representation" refers to a method of determining distribution
2 in which the takers are in unequal degrees of kinship with respect to
3 the intestate, and is accomplished as follows: After first determining
4 who, of those entitled to share in the estate, are in the nearest
5 degree of kinship, the estate is divided into equal shares, the number
6 of shares being the sum of the number of persons who survive the
7 intestate who are in the nearest degree of kinship and the number of
8 persons in the same degree of kinship who died before the intestate but
9 who left issue surviving the intestate; each share of a deceased person
10 in the nearest degree shall be divided among those of the deceased
11 person's issue who survive the intestate and have no ancestor then
12 living who is in the line of relationship between them and the
13 intestate, those more remote in degree taking together the share which
14 their ancestor would have taken had he or she survived the intestate.
15 Posthumous children are considered as living at the death of their
16 parent.

17 (4) "Issue" includes all the lawful lineal descendants of the
18 ancestor and all lawfully adopted children.

19 (5) "Degree of kinship" means the degree of kinship as computed
20 according to the rules of the civil law; that is, by counting upward
21 from the intestate to the nearest common ancestor and then downward to
22 the relative, the degree of kinship being the sum of these two counts.

23 (6) "Heirs" denotes those persons, including the surviving spouse,
24 who are entitled under the statutes of intestate succession to the real
25 and personal property of a decedent on the decedent's death intestate.

26 (7) "Real estate" includes, except as otherwise specifically
27 provided herein, all lands, tenements, and hereditaments, and all
28 rights thereto, and all interest therein possessed and claimed in fee
29 simple, or for the life of a third person.

30 (8) "Will" means an instrument validly executed as required by RCW
31 11.12.020.

32 (9) "Codicil" means a will that modifies or partially revokes an
33 existing earlier will. A codicil need not refer to or be attached to
34 the earlier will.

35 (10) "Guardian" or "limited guardian" means a personal
36 representative of the person or estate of an incompetent or disabled
37 person as defined in RCW 11.88.010 and the term may be used in lieu of
38 "personal representative" wherever required by context.

1 (11) "Administrator" means a personal representative of the estate
2 of a decedent and the term may be used in lieu of "personal
3 representative" wherever required by context.

4 (12) "Executor" means a personal representative of the estate of a
5 decedent appointed by will and the term may be used in lieu of
6 "personal representative" wherever required by context.

7 (13) "Special administrator" means a personal representative of the
8 estate of a decedent appointed for limited purposes and the term may be
9 used in lieu of "personal representative" wherever required by context.

10 (14) "Trustee" means an original, added, or successor trustee and
11 includes the state, or any agency thereof, when it is acting as the
12 trustee of a trust to which chapter 11.98 RCW applies.

13 (15) "Nonprobate asset" means those rights and interests of a
14 person having beneficial ownership of an asset that pass on the
15 person's death under a written instrument or arrangement other than the
16 person's will. "Nonprobate asset" includes, but is not limited to, a
17 right or interest passing under a joint tenancy with right of
18 survivorship, joint bank account with right of survivorship, payable on
19 death or trust bank account, transfer on death security or security
20 account, deed or conveyance if possession has been postponed until the
21 death of the person, trust of which the person is grantor and that
22 becomes effective or irrevocable only upon the person's death,
23 community property agreement, individual retirement account or bond, or
24 note or other contract the payment or performance of which is affected
25 by the death of the person. "Nonprobate asset" does not include: A
26 payable-on-death provision of a life insurance policy, annuity, or
27 other similar contract, or of an employee benefit plan; a right or
28 interest passing by descent and distribution under chapter 11.04 RCW;
29 a right or interest if, before death, the person has irrevocably
30 transferred the right or interest, the person has waived the power to
31 transfer it or, in the case of contractual arrangement, the person has
32 waived the unilateral right to rescind or modify the arrangement; or a
33 right or interest held by the person solely in a fiduciary capacity.
34 For the definition of "nonprobate asset" relating to revocation of a
35 provision for a former spouse upon dissolution of marriage or
36 declaration of invalidity of marriage, RCW 11.07.010(5) applies. (~~For
37 the definition of "nonprobate asset" relating to revocation of a
38 provision for a former spouse upon dissolution of marriage or
39 declaration of invalidity of marriage, see RCW 11.07.010(5). For the~~

1 ~~definition of "nonprobate asset" relating to testamentary disposition~~
2 ~~of nonprobate assets, see RCW 11.11.010(7).))~~

3 (16) "Internal Revenue Code" means the United States Internal
4 Revenue Code of 1986, as amended or renumbered on January 1, 1998.

5 Words that import the singular number may also be applied to the
6 plural of persons and things.

7 Words importing the masculine gender only may be extended to
8 females also.

9 **Sec. 2.** RCW 11.07.010 and 1998 c 292 s 118 are each amended to
10 read as follows:

11 (1) This section applies to all nonprobate assets, wherever
12 situated, held at the time of entry by a superior court of this state
13 of a decree of dissolution of marriage or a declaration of invalidity.

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

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

23 (i) The instrument governing disposition of the nonprobate asset
24 expressly provides otherwise;

25 (ii) The decree of dissolution or declaration of invalidity
26 requires that the decedent maintain a nonprobate asset for the benefit
27 of a former spouse or children of the marriage, payable on the
28 decedent's death either outright or in trust, and other nonprobate
29 assets of the decedent fulfilling such a requirement for the benefit of
30 the former spouse or children of the marriage do not exist at the
31 decedent's death; or

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

36 (3)(a) A payor or other third party in possession or control of a
37 nonprobate asset at the time of the decedent's death is not liable for
38 making a payment or transferring an interest in a nonprobate asset to

1 a decedent's former spouse whose interest in the nonprobate asset is
2 revoked under this section, or for taking another action in reliance on
3 the validity of the instrument governing disposition of the nonprobate
4 asset, before the payor or other third party has actual knowledge of
5 the dissolution or other invalidation of marriage. A payor or other
6 third party is liable for a payment or transfer made or other action
7 taken after the payor or other third party has actual knowledge of a
8 revocation under this section.

9 (b) This section does not require a payor or other third party to
10 pay or transfer a nonprobate asset to a beneficiary designated in a
11 governing instrument affected by the dissolution or other invalidation
12 of marriage, or to another person claiming an interest in the
13 nonprobate asset, if the payor or third party has actual knowledge of
14 the existence of a dispute between the former spouse and the
15 beneficiaries or other persons concerning rights of ownership of the
16 nonprobate asset as a result of the application of this section among
17 the former spouse and the beneficiaries or among other persons, or if
18 the payor or third party is otherwise uncertain as to who is entitled
19 to the nonprobate asset under this section. In such a case, the payor
20 or third party may, without liability, notify in writing all
21 beneficiaries or other persons claiming an interest in the nonprobate
22 asset of either the existence of the dispute or its uncertainty as to
23 who is entitled to payment or transfer of the nonprobate asset. The
24 payor or third party may also, without liability, refuse to pay or
25 transfer a nonprobate asset in such a circumstance to a beneficiary or
26 other person claiming an interest until the time that either:

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

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

31 (c) Notwithstanding subsections (1) and (2) of this section and (a)
32 and (b) of this subsection, a payor or other third party having actual
33 knowledge of the existence of a dispute between beneficiaries or other
34 persons concerning rights to a nonprobate asset as a result of the
35 application of this section may condition the payment or transfer of
36 the nonprobate asset on execution, in a form and with security
37 acceptable to the payor or other third party, of a bond in an amount
38 that is double the fair market value of the nonprobate asset at the
39 time of the decedent's death or the amount of an adverse claim,

1 whichever is the lesser, or of a similar instrument to provide security
2 to the payor or other third party, indemnifying the payor or other
3 third party for any liability, loss, damage, costs, and expenses for
4 and on account of payment or transfer of the nonprobate asset.

5 (d) As used in this subsection, "actual knowledge" means, for a
6 payor or other third party in possession or control of the nonprobate
7 asset at or following the decedent's death, written notice to the payor
8 or other third party, or to an officer of a payor or third party in the
9 course of his or her employment, received after the decedent's death
10 and within a time that is sufficient to afford the payor or third party
11 a reasonable opportunity to act upon the knowledge. The notice must
12 identify the nonprobate asset with reasonable specificity. The notice
13 also must be sufficient to inform the payor or other third party of the
14 revocation of the provisions in favor of the decedent's spouse by
15 reason of the dissolution or invalidation of marriage, or to inform the
16 payor or third party of a dispute concerning rights to a nonprobate
17 asset as a result of the application of this section. Receipt of the
18 notice for a period of more than thirty days is presumed to be received
19 within a time that is sufficient to afford the payor or third party a
20 reasonable opportunity to act upon the knowledge, but receipt of the
21 notice for a period of less than five business days is presumed not to
22 be a sufficient time for these purposes. These presumptions may be
23 rebutted only by clear and convincing evidence to the contrary.

24 (4)(a) A person who purchases a nonprobate asset from a former
25 spouse or other person, for value and without actual knowledge, or who
26 receives from a former spouse or other person payment or transfer of a
27 nonprobate asset without actual knowledge and in partial or full
28 satisfaction of a legally enforceable obligation, is neither obligated
29 under this section to return the payment, property, or benefit nor is
30 liable under this section for the amount of the payment or the value of
31 the nonprobate asset. However, a former spouse or other person who,
32 with actual knowledge, not for value, or not in satisfaction of a
33 legally enforceable obligation, receives payment or transfer of a
34 nonprobate asset to which that person is not entitled under this
35 section is obligated to return the payment or nonprobate asset, or is
36 personally liable for the amount of the payment or value of the
37 nonprobate asset, to the person who is entitled to it under this
38 section.

1 (b) As used in this subsection, "actual knowledge" means, for a
2 person described in (a) of this subsection who purchases or receives a
3 nonprobate asset from a former spouse or other person, personal
4 knowledge or possession of documents relating to the revocation upon
5 dissolution or invalidation of marriage of provisions relating to the
6 payment or transfer at the decedent's death of the nonprobate asset,
7 received within a time after the decedent's death and before the
8 purchase or receipt that is sufficient to afford the person purchasing
9 or receiving the nonprobate asset reasonable opportunity to act upon
10 the knowledge. Receipt of the personal knowledge or possession of the
11 documents for a period of more than thirty days is presumed to be
12 received within a time that is sufficient to afford the payor or third
13 party a reasonable opportunity to act upon the knowledge, but receipt
14 of the notice for a period of less than five business days is presumed
15 not to be a sufficient time for these purposes. These presumptions may
16 be rebutted only by clear and convincing evidence to the contrary.

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

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

24 ~~((A payable on death, trust, or joint with right of~~
25 ~~survivorship bank account;~~

26 ~~(e))~~ A trust of which the person is a grantor and that becomes
27 effective or irrevocable only upon the person's death; or

28 ~~((d))~~ (c) Transfer on death beneficiary designations of a
29 transfer on death or pay on death security, if such designations are
30 authorized under Washington law. However, for the general definition
31 of "nonprobate asset" in this title, RCW 11.02.005 applies.

32 ~~((For the general definition in this title of "nonprobate asset,"~~
33 ~~see RCW 11.02.005(15) and for the definition of "nonprobate asset"~~
34 ~~relating to testamentary disposition of nonprobate assets, see RCW~~
35 ~~11.11.010(7).))~~

36 (6) This section is remedial in nature and applies as of July 25,
37 1993, to decrees of dissolution and declarations of invalidity entered
38 after July 24, 1993, and this section applies as of January 1, 1995, to

1 decrees of dissolution and declarations of invalidity entered before
2 July 25, 1993.

3 NEW SECTION. **Sec. 3.** The following acts or parts of acts are each
4 repealed:

- 5 (1) RCW 11.11.003 and 1998 c 292 s 102;
- 6 (2) RCW 11.11.005 and 1998 c 292 s 103;
- 7 (3) RCW 11.11.007 and 1998 c 292 s 107;
- 8 (4) RCW 11.11.010 and 1998 c 292 s 104;
- 9 (5) RCW 11.11.020 and 1998 c 292 s 105;
- 10 (6) RCW 11.11.030 and 1998 c 292 s 106;
- 11 (7) RCW 11.11.040 and 1998 c 292 s 108;
- 12 (8) RCW 11.11.050 and 1998 c 292 s 109;
- 13 (9) RCW 11.11.060 and 1998 c 292 s 110;
- 14 (10) RCW 11.11.070 and 1998 c 292 s 111;
- 15 (11) RCW 11.11.080 and 1998 c 292 s 112;
- 16 (12) RCW 11.11.090 and 1998 c 292 s 113;
- 17 (13) RCW 11.11.100 and 1998 c 292 s 114;
- 18 (14) RCW 11.11.110 and 1998 c 292 s 115;
- 19 (15) RCW 11.11.900 and 1998 c 292 s 101;
- 20 (16) RCW 11.11.901 and 1998 c 292 s 116;
- 21 (17) RCW 11.11.902 and 1998 c 292 s 601; and
- 22 (18) RCW 11.11.903 and 1998 c 292 s 603.

23 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and takes effect
26 July 1, 1999.

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