

SENATE BILL REPORT

SSB 5589

As of Third Reading

Title: An act relating to probate.

Brief Description: Concerning probate.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senator Stanford).

Brief History:

Committee Activity: Law & Justice: 2/13/23, 2/16/23 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Modifies provisions relating to family support and exemptions from creditor's claims for probate and non-probate property.
- Clarifies the exemptions from attachment, execution, and forced sale that apply after a decedent's death.
- Establishes a procedure for allocating the exempt property among claimants.
- Establishes a procedure by which the decedent's surviving spouse, surviving registered domestic partner, or surviving dependent children may request basic financial support during the pendency of any court proceedings relating to the decedent's probate or nonprobate assets.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5589 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, Pedersen, Salomon, Valdez and Wagoner.

Minority Report: That it be referred without recommendation.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators McCune, Torres and Wilson, L..

Staff: William Bridges (786-7312)

Background: The probate process is a legal process initiated by filing a petition with the court for the administration of an estate after the death of a decedent. The probate process may apply regardless of whether the decedent has a valid will or dies intestate—without a will.

Court Awards of Family Support. After the death of the decedent a surviving spouse, state registered partner, or the decedents children may petition the court for an award of family support from the community property or separate property of the decedent in the discretion of the court. The right to petition for an award of family support is independent of the terms of any will.

The amount of the basic award is the amount of the homestead exemption with respect to lands in existing law. The homestead exemption amount was changed in 2021, and is currently the greater of \$125,000 or the county median sale price of a single-family home in the preceding calendar year. The amount of the award may be increased or decreased by the court based on certain considerations.

Increases in the Award. A request for an increase may be made at any time during the pendency of probate proceedings. If it is demonstrated with clear, cogent, and convincing evidence that a claimant's present and reasonably anticipated future needs with respect to basic maintenance and support will not otherwise be provided for from other resources, and that the award would not be inconsistent with the decedent's intentions, the amount of the award may be increased in an amount the court determines to be appropriate. The court considers the present and future resources of the claimant and claimant's dependents, benefits flowing from the decedent's estate, and the decedent's intentions.

Decreases in the Award. The court may decrease the amount of the award below the basic amount in the exercise of its discretion if the recipient is entitled to receive probate or non-probate property, including insurance, by reason of the death of the decedent. In such a case, the award must be decreased by no more than the value of such other property as is received by reason of the death of the decedent. The court considers the same factors as it would for a request to increase the award.

The award of family support has priority over all other claims made in the estate. Assets of the estate abate in accordance with law without preference as between real and personal property, in the following order:

- intestate property;
- residuary gifts;
- general gifts; and
- specific gifts.

Property awarded or cash paid for family support is immune from all debts including judgments and liens existing at the time of the decedent's death. Awards of community property are immune from creditor's claims. However, if the property awarded is being purchased on contract or is subject to any encumbrance the property awarded will continue to be subject to any such contract or encumbrance, and any award in excess of the basic award is not immune from any lien for costs of legally recoverable medical expenses.

Conditions to an Award. The court may not make an award unless the court finds that the funeral expenses, expenses of last sickness, and expenses of administration have been paid or provided for. The court may not make an award to a surviving spouse or surviving domestic partner or child who has participated, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.

Exemption of Other Assets. A claimant for an award of family support may petition the court for an order exempting other assets from the claims of creditors provided the aggregate amount of exempt property does not exceed the basic support amount. A petition for an order of exemption must:

- set forth facts to establish that the petitioner is entitled to petition for an award;
- state the nature and value of those assets then held by all claimants that are legally exempt from the claims of creditors; and
- describe the nonexempt assets then held by the claimants, including any interest the claimants may have in any probate or non-probate property of the decedent.

Immunity of Awards. Except for property purchased on contract or subject to any encumbrance, property awarded and cash paid under this law is immune from all debts, including judgments and judgment liens, of the decedent and of the surviving spouse or surviving domestic partner existing at the time of death. Both the decedent's and the surviving spouse's or surviving domestic partner's interests in any community property awarded to the spouse or domestic partner under this law are immune from the claims of creditors.

Venue. The petition for an award of family support, for an increased or modified award, or for the exemption of assets from the claims of creditors must be made to the court of the county in which the probate is being administered. If probate proceedings have not been commenced in the state of Washington, the petition must be made to the court of a county in which the decedent was domiciled at the time of death, or if not domiciled in Washington to the court of any county in which the decedent's estate could be administered under law.

Exhaustion of Estate. If an award of family support will exhaust the estate, the court in the order of award shall order the estate closed, and discharge the personal representative.

Summary of First Substitute Bill: Purposes. A new section provides that the purposes of this law are:

- to clarify the exemptions from attachment, execution, and forced sale that apply after a decedent's death;
- to establish a procedure for allocating the exempt property among claimants; and
- to establish a procedure by which the decedent's surviving spouse, surviving registered domestic partner, or surviving dependent children may request basic financial support during the pendency of any proceedings relating to the decedent's probate or nonprobate assets.

This law applies to probate and non-probate assets.

Definitions. The following definitions are provided:

- "child" and "children," means a child with the decedent, regardless of the child's age, and children includes all persons who have a parent-child relationship as defined in the Uniform Parentage Act;
- "claimant" means a person entitled to petition for an award under this law and if multiple parties are entitled to petition for an award, all of them are a claimant;
- "dependent," when used with reference to a decedent's child, means a person who received more than half of that person's support from the decedent during the 12 months preceding the decedent's death and the term "support" does not include any public or governmental support; and
- "value," when used with reference to any property that may be exempt from the claims of creditors under this chapter or under the laws of another state, and that is being purchased on contract or is subject to any encumbrance, means the value of the property net of the balance due on the contract and the amount of the encumbrance and any property exempted from creditor's claims under the provisions of this law will continue to be subject to any such contract or encumbrance.

Homestead or Other Property Exemptions. The protections of existing statutory homestead and personal property exemptions are expressly extended past the decedent's death and a minimum protection from the claims of creditors is established. The minimum protection includes the amount of the basic award and any additional award a court may grant.

Establishing a process for petitioning for a court order to exempt property from creditor's claims is repealed. The exemptions following a decedent's death no longer requires an award by the court in order to take effect, although the court still has the power to award specific exempt property to one or more claimants—a defined term—if one or more claimants petition the court for an award.

Petition Process for Awards of Family Support. New language is added creating a process for petitioning the court for an award of family support. Any decedent's surviving spouse, surviving registered domestic partner, and dependent children may commence a judicial proceeding for an award from the decedent's separate property and from the community property that are exempt from attachment, execution, and forced sale under this law. The petition must:

- state facts to establish that the claimant is entitled to an award;
- state the nature and value of those assets held by all potential claimants that are legally exempt from the claims of creditors; and
- describe the nonexempt assets then held by the claimants, including any interest the claimants may have in any of the decedent's probate or non-probate property.

If a claimant proves by a preponderance of the evidence that an award of property exempt from the claims of creditors to the claimant would fulfill one or more of the purposes of this law, the court may grant the claimant an award that the court determines to be equitable. Any and all homestead or other property exempt from attachment, execution, and forced sale immediately before the decedent's death shall be included in the basic award.

Conditions of Award. Certain conditions apply before a court may make an award to a claimant. Under existing law the expenses of administration, funeral expenses, and expenses of last sickness must be paid. Added to these conditions, is requiring payment of wages due for labor performed within 60 days immediately preceding the decedent's death. This language is consistent with language in other laws for the settlement of estates. None of the decedent's separate property or community property is exempt from paying these costs.

Existing law prohibited the court from making an award where the claimant participated either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent. This language is changed to a slayer or abuser, as defined in law, of the decedent.

Amount of Award. The basic award as determined by the homestead exemption in lands is repealed. The amount of the basic award is determined to be the greater of the following:

- the value, as of the date of the decedent's death, of the decedent's separate or community property that was exempt as homestead or personal property prior to death; or
- either \$125,000, or \$125,000 multiplied by an inflation factor based on a consumer price index for all urban consumers, all items, in the Seattle area as calculated by the U.S. Department of Labor, whichever is greater.

Adjustments of the Award. The standard of proof by clear, cogent, and convincing evidence is removed from the procedure for making adjustments. A claimant must demonstrate to the satisfaction of the court that a claimant's present and reasonable anticipated future needs with respect to basic maintenance and support will not be provided from other resources. The claimant must demonstrate that an increase of the award would be consistent with the decedent's intentions and new language makes the increase of the award consistent with principles of equity and fairness.

Considerations by the Court. When exercising the court's discretion, the court must consider without limitation:

- existing exemptions under any law;
- whether any separate property of the decedent's surviving spouse or domestic partner is exempted under any law;
- whether any exemptions have been granted in another jurisdiction to the decedent or the decedent's surviving spouse or domestic partner;
- how principles of equity and fairness would allocate the exemptions under any law among the surviving decedent's spouse or domestic partner or dependent children;
- how the laws of intestacy, if the decedent died intestate and without non-probate assets, or the decedent's dispositive intent, if the decedent died testate or with non-probate assets, would direct the decedent's property;
- the extent to which the claimant has other property that will satisfy the claimant's reasonable needs; and
- if the claimant is a child of the decedent, the child's ability or inability to meet the child's basic needs.

Priority of Award. Language stating that the award shall have priority over all other claims against the estate is repealed. New language clarifies that none of the decedent's separate or community property is exempt from the duty to pay the costs of administration, funeral expenses, expenses of the last sickness, and wages due for labor performed within 60 days immediately preceding the decedent's death. No provision may abrogate or diminish the rights associated with a valid lien.

Amendment of Other Laws. Other amendments are made relating to the order for the payment of debts of the estate; for the payment of the expenses of the administration for the settlement of the estate; to recognize the authority of a personal representative with nonintervention powers to determine certain expenses such as funeral expenses and expenses of the last sickness; and for the payment of exemptions and awards.

Continuation of Existing Orders. No act or accrued right shall be impaired for any proceeding commenced prior to the effective date of this law.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on August 1, 2023.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The purpose of this bill is to coordinate references in the RCW 11.54 family support awards statute which allows surviving spouses, domestic partners, and certain children to seek a share of the decedent's estate even when the will provides otherwise. This will provide more clarity and simplicity

than our current law. The current statute defines the basic award with reference to the pre amendment RCW 6.13 Homestead Exemption Act of \$125,000 maximum exemption amount. The changes from 2021 revised this amount to the greater of \$125,000 or the median value of residential properties in the homeowner's county. Absent legislative action, existing references to the prior statute are ambiguous and subject the determination of the family allowance basic award to multiple interpretations. Existing law is unclear as to which county is determinative. This proposal removes those potential ambiguities. This bill will revise provisions contained in RCW 11.76 to render them consistent with the family support award.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Ryan Montgomery, Washington State Bar Association Real Property, Probate and Trust Section; Watson Blair.

Persons Signed In To Testify But Not Testifying: No one.