

# HOUSE BILL REPORT

## HB 1011

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As Reported By House Committee On:  
Judiciary

**Title:** An act relating to the uniform simultaneous death act.

**Brief Description:** Enacting the 1991 uniform simultaneous death act.

**Sponsors:** Representatives Appelwick and Shin.

**Brief History:**

Reported by House Committee on:  
Judiciary, February 2, 1993, DPS.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

**Staff:** Patricia Shelledy (786-7149).

**Background:** The Uniform Simultaneous Death Act (USDA) was first promulgated in 1940 and has been enacted in most states, including Washington. The USDA provides that when title to property depends upon priority of death, and no sufficient evidence exists to prove that two people died other than simultaneously, each person's property is distributed as if he or she survived the other. Under the USDA each person's property passes to that person's relatives rather than to the other person's relatives, and double administrative costs are avoided because property does not pass from one estate to another estate.

The basic rule applies to two or more beneficiaries who are designated to take successively or alternately by reason of survivorship, and to joint tenants. If an insured and a beneficiary under the insured's policy die simultaneously, the proceeds of the policy are distributed as if the insured had survived the beneficiary. The USDA does not apply if a testamentary or nonprobate instrument of transfer expressly

provides for a distribution of property other than as provided in the USDA.

The USDA has a narrow application and is restricted to situations in which there is no sufficient evidence that two people died other than simultaneously. According to the Uniform Law Commissioners, in cases in which both people caught in a common tragedy have died by the time third parties arrive at the scene, or shortly thereafter, the narrow application of the original act has sometimes led to litigation in which the representative of one of the persons attempts, through the use of medical evidence, to prove that the one he or she represents survived the other by an instant or two.

The Uniform Law Commissioners contend that the policy of the original act should apply even in cases in which it is undisputed that one of the two survived the other but the period of survival was insubstantial.

**Summary of Substitute Bill:**

Repeal of existing law. The existing Uniform Simultaneous Death Act is repealed and replaced with the 1991 version of the Uniform Simultaneous Death Act.

A new 120-hour general rule. When the title to property depends on the priority of death, a person is deemed to have predeceased the other person unless clear and convincing evidence establishes that the person survived the other person by 120 hours.

The 120-hour rule is adopted from provisions in the Uniform Probate Code. A clear and convincing evidence standard of proof of survival by 120 hours is adopted which is designed to reduce litigation and to resolve close cases in favor of nonsurvival.

The sections specifically pertaining to two or more beneficiaries and insurance policies contained in the original act are omitted from the 1991 version.

Definition of Death and evidentiary proof. A new provision not covered in the original act establishes when a death occurs or when a person is presumed to be dead after missing for several years. The provision also provides that certain documents, such as a certificate of death, constitute prima facie evidence of death. The definition of "death" is from the Uniform Determination of Death Act. The evidentiary provisions are from the Uniform Probate Code. In absence of evidence to the contrary, if a death certificate or other certified document establishing the time of death of the

person sets the time of death as 120 hours or more after the death of the other person, the certificate establishes the time of death by clear, cogent, and convincing evidence.

Protection of good faith payors or bona fide purchasers. Another new section grants protection to payors and other third parties who, before receiving written notice of a claimed lack of entitlement, pay off or in other ways rely on a survivor's apparent entitlement to succeed to property. A payor who receives notice of the lack of entitlement is liable for payments improperly made after receipt of the notice. Notice must be sent to the payor by registered or certified mail. After receipt of the notice, the payor may pay the amount to the court having jurisdiction. Payment to the court relieves the payor of any further obligation or liability. The court must hold the funds until the ownership of the property is determined. Bona fide purchasers of property that should not have been sold, are not required to return the property or pay the person who was entitled to the property for the value of the property. A person who receives property or a payment, but not for value, is required to return the property or reimburse the person entitled to the property. This rule applies if federal law preempts these provisions.

Application of HB 1011. The new provisions do not apply if the governing instrument explicitly provides: (1) for a distribution of property other than as provided in the bill; (2) that the individual is not required to survive the death of another person to receive the money or is required to survive the other person by a specified time period other than 120 hours; or (3) that imposition of the 120-hour requirement would result in a nonvested property interest or power of appointment to be invalid. The provisions also do not apply: (1) if application to multiple governing instruments would result in an unintended failure or duplication of disposition, or (2) if application would result in a taking of an intestate estate by the state.

HB 1011 also provides that the 120-hour rule does not apply for purposes of the "Uniform TOD Security Registration Act." Washington currently does not have a Uniform TOD Security Registration Act. The Judiciary Committee is currently considering HB 1068, which if adopted, will implement the Uniform TOD Security Registration Act with a few minor amendments.

The provisions of this bill apply to instruments executed and multiple party accounts opened before the effective date, unless the documents contain a clear indication of contrary intent. However, the bill does not apply to an "act" completed before the effective date, or a right

acquired, extinguished, or barred upon the expiration of a period of time that commenced prior to the effective date.

**Substitute Bill Compared to Original Bill:** A technical change is made to reference HB 1068, the pending bill concerning adopting the Uniform TOD Security Registration Act.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** None.

**Testimony Against:** None.

**Witnesses:** None.