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HOUSE BILL 1103

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Moeller, Green, Morrell, and Kenney

Read first time 01/13/09. Referred to Committee on Judiciary.

1            AN ACT Relating to the estates of vulnerable adults; amending RCW  
2 11.84.010, 11.84.020, 11.84.025, 11.84.030, 11.84.040, 11.84.050,  
3 11.84.060, 11.84.070, 11.84.080, 11.84.090, 11.84.100, 11.84.110,  
4 11.84.120, 11.84.130, 26.16.120, 41.04.273, and 11.96A.030; and adding  
5 new sections to chapter 11.84 RCW.

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

7            **Sec. 1.** RCW 11.84.010 and 1965 c 145 s 11.84.010 are each amended  
8 to read as follows:

9            As used in this chapter:

10            (1) "Abuser" means any person who participates, either as a  
11 principal or an accessory before the fact, in the willful and unlawful  
12 financial exploitation of a vulnerable adult.

13            (2) "Decedent" means:

14            (a) Any person whose life is taken by a slayer; or

15            (b) Any deceased person who, at any time during life in which he or  
16 she was a vulnerable adult, was the victim of financial exploitation by  
17 an abuser.

18            (3) "Financial exploitation" has the same meaning as provided in  
19 RCW 74.34.020, as enacted or hereafter amended.

1        (4) "Property" includes any real and personal property and any  
2 right or interest therein.

3        (5) "Slayer" (~~((shall))~~) means any person who participates, either as  
4 a principal or an accessory before the fact, in the willful and  
5 unlawful killing of any other person.

6        ~~((2) "Decedent" shall mean any person whose life is so taken.~~

7        ~~(3) "Property" shall include any real and personal property and any~~  
8 ~~right or interest therein.))~~ (6) "Vulnerable adult" has the same  
9 meaning as provided in RCW 74.34.020.

10        **Sec. 2.** RCW 11.84.020 and 1965 c 145 s 11.84.020 are each amended  
11 to read as follows:

12        No slayer or abuser shall in any way acquire any property or  
13 receive any benefit as the result of the death of the decedent, but  
14 such property shall pass as provided in the sections following.

15        **Sec. 3.** RCW 11.84.025 and 1998 c 292 s 502 are each amended to  
16 read as follows:

17        Proceeds payable to a slayer or abuser as the beneficiary of any  
18 benefits flowing from one of the retirement systems listed in RCW  
19 41.50.030, by virtue of the decedent's membership in the department of  
20 retirement systems or by virtue of the death of decedent, shall be paid  
21 instead as designated in RCW 41.04.273.

22        **Sec. 4.** RCW 11.84.030 and 2008 c 6 s 624 are each amended to read  
23 as follows:

24        The slayer or abuser shall be deemed to have predeceased the  
25 decedent as to property which would have passed from the decedent or  
26 his or her estate to the slayer or abuser under the statutes of descent  
27 and distribution or have been acquired by statutory right as surviving  
28 spouse or surviving domestic partner or under any agreement made with  
29 the decedent under the provisions of RCW 26.16.120 as it now exists or  
30 is hereafter amended.

31        **Sec. 5.** RCW 11.84.040 and 1965 c 145 s 11.84.040 are each amended  
32 to read as follows:

33        Property which would have passed to or for the benefit of the

1 slayer or abuser by devise or legacy from the decedent shall be  
2 distributed as if he or she had predeceased the decedent.

3 **Sec. 6.** RCW 11.84.050 and 1965 c 145 s 11.84.050 are each amended  
4 to read as follows:

5 (1) One-half of any property held by the slayer or abuser and the  
6 decedent as joint tenants, joint owners or joint obligees shall pass  
7 upon the death of the decedent to his or her estate, and the other half  
8 shall pass to his or her estate upon the death of the slayer or abuser,  
9 unless the slayer or abuser obtains a separation or severance of the  
10 property or a decree granting partition.

11 (2) As to property held jointly by three or more persons, including  
12 the slayer or abuser and the decedent, any enrichment which would have  
13 accrued to the slayer or abuser as a result of the death of the  
14 decedent shall pass to the estate of the decedent. If the slayer or  
15 abuser becomes the final survivor, one-half of the property shall  
16 immediately pass to the estate of the decedent and the other half shall  
17 pass to his or her estate upon the death of the slayer or abuser,  
18 unless the slayer or abuser obtains a separation or severance of the  
19 property or a decree granting partition.

20 (3) The provisions of this section shall not affect any enforceable  
21 agreement between the parties or any trust arising because a greater  
22 proportion of the property has been contributed by one party than by  
23 the other.

24 **Sec. 7.** RCW 11.84.060 and 1965 c 145 s 11.84.060 are each amended  
25 to read as follows:

26 Provided the property interest was not obtained through an act of  
27 financial exploitation:

28 (1) Property in which the slayer or abuser holds a reversion or  
29 vested remainder and would have obtained the right of present  
30 possession upon the death of the decedent shall pass to the estate of  
31 the decedent during the period of the life expectancy of the  
32 decedent((;if he)).

33 (2) If the slayer or abuser held the particular estate or if the  
34 particular estate is held by a third person it shall remain in his or  
35 her hands for such period.

1       **Sec. 8.** RCW 11.84.070 and 1965 c 145 s 11.84.070 are each amended  
2 to read as follows:

3       Any interest in property whether vested or not, held by the slayer  
4 or abuser, subject to be divested, diminished in any way or  
5 extinguished, if the decedent survives him or her or lives to a certain  
6 age, shall be held by the slayer or abuser during his or her lifetime  
7 or until the decedent would have reached such age, but shall then pass  
8 as if the decedent had died immediately thereafter.

9       **Sec. 9.** RCW 11.84.080 and 1965 c 145 s 11.84.080 are each amended  
10 to read as follows:

11       As to any contingent remainder or executory or other future  
12 interest held by the slayer or abuser, subject to become vested in him  
13 or her or increased in any way for him or her upon the condition of the  
14 death of the decedent:

15       (1) If the interest would not have become vested or increased if he  
16 or she had predeceased the decedent, he or she shall be deemed to have  
17 so predeceased the decedent;

18       (2) In any case the interest shall not be vested or increased  
19 during the period of the life expectancy of the decedent.

20       **Sec. 10.** RCW 11.84.090 and 1965 c 145 s 11.84.090 are each amended  
21 to read as follows:

22       (1) Property appointed by the will of the decedent to or for the  
23 benefit of the slayer or abuser shall be distributed as if the slayer  
24 or abuser had predeceased the decedent.

25       (2) Property held either presently or in remainder by the slayer or  
26 abuser, subject to be divested by the exercise by the decedent of a  
27 power of revocation or a general power of appointment shall pass to the  
28 estate of the decedent, and property so held by the slayer or abuser,  
29 subject to be divested by the exercise by the decedent of a power of  
30 appointment to a particular person or persons or to a class of persons,  
31 shall pass to such person or persons, or in equal shares to the members  
32 of such class of persons, exclusive of the slayer or abuser.

33       **Sec. 11.** RCW 11.84.100 and 1965 c 145 s 11.84.100 are each amended  
34 to read as follows:

35       (1) Insurance proceeds payable to the slayer or abuser as the

1 beneficiary or assignee of any policy or certificate of insurance on  
2 the life of the decedent, or as the survivor of a joint life policy,  
3 shall be paid instead to the estate of the decedent, unless the policy  
4 or certificate designate some person other than the slayer or abuser or  
5 his or her estate as secondary beneficiary to him or her and in which  
6 case such proceeds shall be paid to such secondary beneficiary in  
7 accordance with the applicable terms of the policy.

8 (2) If the decedent is beneficiary or assignee of any policy or  
9 certificate of insurance on the life of the slayer or abuser, the  
10 proceeds shall be paid to the estate of the decedent upon the death of  
11 the slayer or abuser, unless the policy names some person other than  
12 the slayer or abuser or his or her estate as secondary beneficiary, or  
13 unless the slayer or abuser by naming a new beneficiary or assigning  
14 the policy performs an act which would have deprived the decedent of  
15 his or her interest in the policy if he or she had been living.

16 **Sec. 12.** RCW 11.84.110 and 1965 c 145 s 11.84.110 are each amended  
17 to read as follows:

18 Any insurance company making payment according to the terms of its  
19 policy or any bank or other person performing an obligation for the  
20 slayer or abuser as one of several joint obligees shall not be  
21 subjected to additional liability by the terms of this chapter if such  
22 payment or performance is made without written notice, at its home  
23 office or at an individual's home or business address, of the killing  
24 by a slayer or financial exploitation by an abuser.

25 **Sec. 13.** RCW 11.84.120 and 1965 c 145 s 11.84.120 are each amended  
26 to read as follows:

27 The provisions of this chapter shall not affect the rights of any  
28 person who, before the interests of the slayer or abuser have been  
29 adjudicated, purchases or has agreed to purchase, from the slayer or  
30 abuser for value and without notice property which the slayer or abuser  
31 would have acquired except for the terms of this chapter, but all  
32 proceeds received by the slayer or abuser from such sale shall be held  
33 by him or her in trust for the persons entitled to the property under  
34 the provisions of this chapter, and the slayer or abuser shall also be  
35 liable both for any portion of such proceeds which he or she may have

1 dissipated and for any difference between the actual value of the  
2 property and the amount of such proceeds.

3 **Sec. 14.** RCW 11.84.130 and 1965 c 145 s 11.84.130 are each amended  
4 to read as follows:

5 ((The)) Any record of ((his)) conviction ((of)) for having  
6 participated in the ((wilful)) willful and unlawful killing of the  
7 decedent or in conduct constituting financial exploitation against the  
8 decedent shall be admissible in evidence against a claimant of property  
9 in any civil ((action)) proceeding arising under this chapter.

10 NEW SECTION. **Sec. 15.** A new section is added to chapter 11.84 RCW  
11 to read as follows:

12 (1) A final judgment of conviction for the willful and unlawful  
13 killing of a decedent is conclusive for purposes of determining whether  
14 a person is a slayer under this section.

15 (2) In the absence of a criminal conviction, a superior court  
16 finding by a preponderance of the evidence that a person participated  
17 in the willful and unlawful killing of the decedent is conclusive for  
18 purposes of determining whether a person is a slayer under this  
19 section.

20 NEW SECTION. **Sec. 16.** A new section is added to chapter 11.84 RCW  
21 to read as follows:

22 (1) A final judgment of conviction for the financial exploitation  
23 of a decedent is conclusive for purposes of determining whether a  
24 person is an abuser under this section.

25 (2) In the absence of a criminal conviction, a superior court  
26 finding by clear, cogent, and convincing evidence that a person  
27 participated in conduct constituting financial exploitation against the  
28 decedent is conclusive for purposes of determining whether a person is  
29 an abuser under this section.

30 NEW SECTION. **Sec. 17.** A new section is added to chapter 11.84 RCW  
31 to read as follows:

32 (1) In determining whether a person is an abuser for purposes of  
33 this chapter, the court must find by clear, cogent, and convincing  
34 evidence that:

1 (a) The decedent was a vulnerable adult at the time the alleged  
2 financial exploitation took place; and

3 (b) The conduct constituting financial exploitation was willful  
4 action or inaction causing injury to the property of the vulnerable  
5 adult.

6 (2) A finding of abuse by the department of social and health  
7 services is not admissible for any purpose in any claim or proceeding  
8 under this chapter.

9 (3) Except as provided in subsection (2) of this section, evidence  
10 of financial exploitation is admissible if it is not inadmissible  
11 pursuant to the rules of evidence.

12 NEW SECTION. **Sec. 18.** A new section is added to chapter 11.84 RCW  
13 to read as follows:

14 Notwithstanding the provisions of this chapter:

15 (1) An abuser is entitled to acquire or receive an interest in  
16 property or any other benefit described in this chapter if the court  
17 determines by clear, cogent, and convincing evidence that the decedent:

18 (a) Knew of the financial exploitation; and

19 (b) Subsequently ratified his or her intent to transfer the  
20 property interest or benefit to that person.

21 (2) The court may consider the record of proceedings and in its  
22 discretion allow an abuser to acquire or receive an interest in  
23 property or any other benefit described in this chapter in any manner  
24 the court deems equitable. In determining what is equitable, the court  
25 may consider, among other things:

26 (a) The various elements of the decedent's dispositive scheme;

27 (b) The decedent's likely intent given the totality of the  
28 circumstances; and

29 (c) The degree of harm resulting from the abuser's financial  
30 exploitation of the decedent.

31 **Sec. 19.** RCW 26.16.120 and 2008 c 6 s 612 are each amended to read  
32 as follows:

33 Nothing contained in any of the provisions of this chapter or in  
34 any law of this state, shall prevent both spouses or both domestic  
35 partners from jointly entering into any agreement concerning the status  
36 or disposition of the whole or any portion of the community property,

1 then owned by them or afterwards to be acquired, to take effect upon  
2 the death of either. But such agreement may be made at any time by  
3 both spouses or both domestic partners by the execution of an  
4 instrument in writing under their hands and seals, and to be witnessed,  
5 acknowledged and certified in the same manner as deeds to real estate  
6 are required to be, under the laws of the state, and the same may at  
7 any time thereafter be altered or amended in the same manner. Such  
8 agreement shall not derogate from the right of creditors; nor be  
9 construed to curtail the powers of the superior court to set aside or  
10 cancel such agreement for fraud or under some other recognized head of  
11 equity jurisdiction, at the suit of either party; nor prevent the  
12 application of laws governing the community property and inheritance  
13 rights of slayers or abusers under chapter 11.84 RCW.

14 **Sec. 20.** RCW 41.04.273 and 1998 c 292 s 501 are each amended to  
15 read as follows:

16 (1) For purposes of this section, the following definitions shall  
17 apply:

18 (a) (~~("Slayer" means a slayer as defined)~~) "Abuser" has the same  
19 meaning as provided in RCW 11.84.010.

20 (b) "Decedent" means any person (~~(whose life is taken by a slayer,~~  
21 ~~and)~~) who is entitled to benefits from the Washington state department  
22 of retirement systems by written designation or by operation of law:

23 (i) Whose life is taken by a slayer; or

24 (ii) Who is deceased and who, at any time during life in which he  
25 or she was a vulnerable adult, was the victim of financial exploitation  
26 by an abuser, except as provided in section 18 of this act.

27 (c) "Slayer" means a slayer as defined in RCW 11.84.010.

28 (2) Property that would have passed to or for the benefit of a  
29 beneficiary under one of the retirement systems listed in RCW 41.50.030  
30 shall not pass to that beneficiary if the beneficiary was a slayer or  
31 abuser of the decedent and the property shall be distributed as if the  
32 slayer or abuser had predeceased the decedent.

33 (3) A slayer or abuser is deemed to have predeceased the decedent  
34 as to property which, by designation or by operation of law, would have  
35 passed from the decedent to the slayer or abuser because of the  
36 decedent's entitlement to benefits under one of the retirement systems  
37 listed in RCW 41.50.030.



1 (4)(a) The department of retirement systems has no affirmative duty  
2 to determine whether a beneficiary is, or is alleged to be, a slayer or  
3 abuser. However, upon receipt of written notice that a beneficiary is  
4 a defendant in a civil lawsuit or probate proceeding that alleges the  
5 beneficiary is a slayer or abuser, or is charged with a crime that, if  
6 committed, means the beneficiary is a slayer or abuser, the department  
7 of retirement systems shall determine whether the beneficiary is a  
8 defendant in such a civil ((~~suit~~)) proceeding or has been formally  
9 charged in court with the crime, or both. If so, the department shall  
10 withhold payment of any benefits until:

11 (i) The case or charges, or both if both are pending, are  
12 dismissed;

13 (ii) The beneficiary is found not guilty in the criminal case or  
14 prevails in the civil ((~~suit~~)) proceeding, or both if both are pending;  
15 or

16 (iii) The beneficiary is convicted or is found to be a slayer or  
17 abuser in the civil ((~~suit~~)) proceeding.

18 (b) If the case or charges, or both if both are pending, are  
19 dismissed or if a beneficiary is found not guilty or prevails in the  
20 civil ((~~suit~~)) proceeding, or both if both are pending, the department  
21 shall pay the beneficiary the benefits the beneficiary is entitled to  
22 receive. If the beneficiary is convicted or found to be a slayer or  
23 abuser in a civil ((~~suit~~)) proceeding, the department shall distribute  
24 the benefits according to subsection (2) of this section.

25 (5) ((~~The slayer's~~)) Any record of conviction for having  
26 participated in the willful and unlawful killing of the decedent or  
27 superior court finding of financial exploitation as defined in RCW  
28 74.34.020 shall be admissible in evidence against a claimant of  
29 property in any civil action arising under this section.

30 (6) In the absence of a criminal conviction, a superior court may  
31 determine:

32 (a) By a preponderance of the evidence whether a person  
33 participated in the willful and unlawful killing of the decedent;

34 (b) By clear, cogent, and convincing evidence whether a person  
35 participated in conduct constituting financial exploitation against the  
36 decedent, as provided in chapter 11.84 RCW.

37 (7) This section shall not subject the department of retirement  
38 systems to liability for payment made to a slayer or abuser or alleged

1 slayer or abuser, prior to the department's receipt of written notice  
2 that the slayer or abuser has been convicted of, or the alleged slayer  
3 or abuser has been formally criminally or civilly charged in court  
4 with, the death or financial exploitation of the decedent. If the  
5 conviction or civil judgment of a slayer or abuser is reversed on  
6 appeal, the department of retirement systems shall not be liable for  
7 payment made prior to the receipt of written notice of the reversal to  
8 a beneficiary other than the person whose conviction or civil judgment  
9 is reversed.

10 **Sec. 21.** RCW 11.96A.030 and 2008 c 6 s 927 are each amended to  
11 read as follows:

12 The definitions in this section apply throughout this chapter  
13 unless the context clearly requires otherwise.

14 (1) "Matter" includes any issue, question, or dispute involving:

15 (a) The determination of any class of creditors, devisees,  
16 legatees, heirs, next of kin, or other persons interested in an estate,  
17 trust, nonprobate asset, or with respect to any other asset or property  
18 interest passing at death;

19 (b) The direction of a personal representative or trustee to do or  
20 to abstain from doing any act in a fiduciary capacity;

21 (c) The determination of any question arising in the administration  
22 of an estate or trust, or with respect to any nonprobate asset, or with  
23 respect to any other asset or property interest passing at death, that  
24 may include, without limitation, questions relating to: (i) The  
25 construction of wills, trusts, community property agreements, and other  
26 writings; (ii) a change of personal representative or trustee; (iii) a  
27 change of the situs of a trust; (iv) an accounting from a personal  
28 representative or trustee; or (v) the determination of fees for a  
29 personal representative or trustee;

30 (d) The grant to a personal representative or trustee of any  
31 necessary or desirable power not otherwise granted in the governing  
32 instrument or given by law;

33 (e) An action or proceeding under chapter 11.84 RCW;

34 (f) The amendment, reformation, or conformation of a will or a  
35 trust instrument to comply with statutes and regulations of the United  
36 States internal revenue service in order to achieve qualification for  
37 deductions, elections, and other tax requirements, including the

1 qualification of any gift thereunder for the benefit of a surviving  
2 spouse who is not a citizen of the United States for the estate tax  
3 marital deduction permitted by federal law, including the addition of  
4 mandatory governing instrument requirements for a qualified domestic  
5 trust under section 2056A of the internal revenue code, the  
6 qualification of any gift thereunder as a qualified conservation  
7 easement as permitted by federal law, or the qualification of any gift  
8 for the charitable estate tax deduction permitted by federal law,  
9 including the addition of mandatory governing instrument requirements  
10 for a charitable remainder trust; and

11 ~~((f))~~ (g) With respect to any nonprobate asset, or with respect  
12 to any other asset or property interest passing at death, including  
13 joint tenancy property, property subject to a community property  
14 agreement, or assets subject to a pay on death or transfer on death  
15 designation:

16 (i) The ascertaining of any class of creditors or others for  
17 purposes of chapter 11.18 or 11.42 RCW;

18 (ii) The ordering of a qualified person, the notice agent, or  
19 resident agent, as those terms are defined in chapter 11.42 RCW, or any  
20 combination of them, to do or abstain from doing any particular act  
21 with respect to a nonprobate asset;

22 (iii) The ordering of a custodian of any of the decedent's records  
23 relating to a nonprobate asset to do or abstain from doing any  
24 particular act with respect to those records;

25 (iv) The determination of any question arising in the  
26 administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

27 (v) The determination of any questions relating to the abatement,  
28 rights of creditors, or other matter relating to the administration,  
29 settlement, or final disposition of a nonprobate asset under this  
30 title;

31 (vi) The resolution of any matter referencing this chapter,  
32 including a determination of any questions relating to the ownership or  
33 distribution of an individual retirement account on the death of the  
34 spouse of the account holder as contemplated by RCW 6.15.020(6);

35 (vii) The resolution of any other matter that could affect the  
36 nonprobate asset.

37 (2) "Notice agent" has the meanings given in RCW 11.42.010.

38 (3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

1 (4) "Party" or "parties" means each of the following persons who  
2 has an interest in the subject of the particular proceeding and whose  
3 name and address are known to, or are reasonably ascertainable by, the  
4 petitioner:

5 (a) The trustor if living;

6 (b) The trustee;

7 (c) The personal representative;

8 (d) An heir;

9 (e) A beneficiary, including devisees, legatees, and trust  
10 beneficiaries;

11 (f) The surviving spouse or surviving domestic partner of a  
12 decedent with respect to his or her interest in the decedent's  
13 property;

14 (g) A guardian ad litem;

15 (h) A creditor;

16 (i) Any other person who has an interest in the subject of the  
17 particular proceeding;

18 (j) The attorney general if required under RCW 11.110.120;

19 (k) Any duly appointed and acting legal representative of a party  
20 such as a guardian, special representative, or attorney-in-fact;

21 (l) Where applicable, the virtual representative of any person  
22 described in this subsection the giving of notice to whom would meet  
23 notice requirements as provided in RCW 11.96A.120;

24 (m) Any notice agent, resident agent, or a qualified person, as  
25 those terms are defined in chapter 11.42 RCW; and

26 (n) The owner or the personal representative of the estate of the  
27 deceased owner of the nonprobate asset that is the subject of the  
28 particular proceeding, if the subject of the particular proceeding  
29 relates to the beneficiary's liability to a decedent's estate or  
30 creditors under RCW 11.18.200.

31 (5) "Persons interested in the estate or trust" means the trustor,  
32 if living, all persons beneficially interested in the estate or trust,  
33 persons holding powers over the trust or estate assets, the attorney  
34 general in the case of any charitable trust where the attorney general  
35 would be a necessary party to judicial proceedings concerning the  
36 trust, and any personal representative or trustee of the estate or  
37 trust.

1 (6) "Principal place of administration of the trust" means the  
2 trustee's usual place of business where the day-to-day records  
3 pertaining to the trust are kept, or the trustee's residence if the  
4 trustee has no such place of business.

5 (7) The "situs" of a trust means the place where the principal  
6 place of administration of the trust is located, unless otherwise  
7 provided in the instrument creating the trust.

8 (8) "Trustee" means any acting and qualified trustee of the trust.

9 (9) "Representative" and other similar terms refer to a person who  
10 virtually represents another under RCW 11.96A.120.

11 (10) "Citation" or "cite" and other similar terms, when required of  
12 a person interested in the estate or trust or a party to a petition,  
13 means to give notice as required under RCW 11.96A.100. "Citation" or  
14 "cite" and other similar terms, when required of the court, means to  
15 order, as authorized under RCW 11.96A.020 and 11.96A.060, and as  
16 authorized by law.

17 NEW SECTION. **Sec. 22.** A new section is added to chapter 11.84 RCW  
18 to read as follows:

19 The provisions of this act are supplemental to, and do not derogate  
20 from, any other statutory or common law proceedings, theories, or  
21 remedies including, but not limited to, the common law allocation of  
22 the burden of proof or production among the parties.

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