

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2270

Chapter 221, Laws of 1994

53rd Legislature
1994 Regular Session

PROBATE AND TRUST--REVISED PROVISIONS

EFFECTIVE DATE: Section 3 takes effect 4/1/94; Sections 1, 2, & 4 through 72 take effect 1/1/95; and Sections 73 & 74 take effect on 6/9/94

Passed by the House March 9, 1994
Yeas 97 Nays 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Passed by the Senate March 9, 1994
Yeas 48 Nays 0

JOEL PRITCHARD

President of the Senate

Approved April 1, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2270** as passed by the House of Representatives and the Senate on the dates hereon set forth.

MARILYN SHOWALTER

Chief Clerk

FILED

April 1, 1994 - 10:16 a.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2270

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

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

Read first time 01/28/94.

1 AN ACT Relating to probate and trust matters; amending RCW
2 11.02.005, 11.07.010, 11.08.170, 11.12.040, 11.12.080, 11.12.110,
3 11.12.120, 11.12.160, 11.12.180, 11.20.070, 11.24.010, 11.24.040,
4 11.28.120, 11.28.237, 11.40.010, 11.40.013, 11.40.015, 11.40.040,
5 11.40.080, 11.48.010, 11.56.050, 11.68.010, 11.96.009, 11.96.020,
6 11.96.050, 11.96.060, 11.96.070, 11.96.080, 11.96.090, 11.96.100,
7 11.96.110, 11.96.130, 11.96.140, 11.96.160, 11.96.170, 11.96.180,
8 11.98.200, 11.98.240, 11.100.035, 82.32.240, 83.100.020, and
9 83.110.010; adding new sections to chapter 11.12 RCW; adding a new
10 section to chapter 11.94 RCW; adding new chapters to Title 11 RCW;
11 creating a new section; repealing RCW 11.12.050, 11.12.090, 11.12.130,
12 11.12.140, 11.12.150, 11.12.200, 11.12.210, 11.56.015, 11.56.140,
13 11.56.150, 11.56.160, and 11.56.170; providing an effective date; and
14 declaring an emergency.

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

16 **Sec. 1.** RCW 11.02.005 and 1993 c 73 s 1 are each amended to read
17 as follows:

18 When used in this title, unless otherwise required from the
19 context:

1 (1) "Personal representative" includes executor, administrator,
2 special administrator, and guardian or limited guardian and special
3 representative.

4 (2) "Net estate" refers to the real and personal property of a
5 decedent exclusive of homestead rights, exempt property, the family
6 allowance and enforceable claims against, and debts of, the deceased or
7 the estate.

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

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

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

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

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

37 (8) "Will" means an instrument validly executed as required by RCW
38 11.12.020 (~~and includes all codicils~~).

1 (9) "~~Codicil~~" means (~~(an instrument that is validly executed in the~~
2 ~~manner provided by this title for a will and that refers to an existing~~
3 ~~will for the purpose of altering or changing the same, and which need~~
4 ~~not be attached thereto))~~ a will that modifies or partially revokes an
5 existing earlier will. A codicil need not refer to or be attached to
6 the earlier will.

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

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

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

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

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

23 (15) "Nonprobate asset" means those rights and interests of a
24 person having beneficial ownership of an asset that pass on the
25 person's death under a written instrument or arrangement other than the
26 person's will. "Nonprobate asset" includes, but is not limited to, a
27 right or interest passing under a joint tenancy with right of
28 survivorship, joint bank account with right of survivorship, payable on
29 death or trust bank account or security, deed or conveyance if
30 possession has been postponed until the death of the person, trust of
31 which the person is grantor and that becomes effective or irrevocable
32 only upon the person's death, community property agreement, individual
33 retirement account or bond, or note or other contract the payment or
34 performance of which is affected by the death of the person.
35 "Nonprobate asset" does not include: A payable-on-death provision of
36 a life insurance policy, annuity, or other similar contract, or of an
37 employee benefit plan; a right or interest passing by descent and
38 distribution under chapter 11.04 RCW; a right or interest if, before
39 death, the person has irrevocably transferred the right or interest,

1 the person has waived the power to transfer it or, in the case of
2 contractual arrangement, the person has waived the unilateral right to
3 rescind or modify the arrangement; or a right or interest held by the
4 person solely in a fiduciary capacity.

5 (16) "Internal Revenue Code" means the United States Internal
6 Revenue Code of 1986, as amended or renumbered on (~~July 25, 1993~~) the
7 effective date of this section.

8 (~~(16)~~) Words that import the singular number may also be applied
9 to the plural of persons and things.

10 (~~(17)~~) Words importing the masculine gender only may be extended
11 to females also.

12 **Sec. 2.** RCW 11.07.010 and 1993 c 236 s 1 are each amended to read
13 as follows:

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

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

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

26 (i) The instrument governing disposition of the nonprobate asset
27 expressly provides otherwise;

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

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

1 (3)(a) A payor or other third party in possession or control of a
2 nonprobate asset at the time of the decedent's death is not liable for
3 making a payment or transferring an interest in a nonprobate asset to
4 a decedent's former spouse whose interest in the nonprobate asset is
5 revoked under this section, or for taking another action in reliance on
6 the validity of the instrument governing disposition of the nonprobate
7 asset, before the payor or other third party has actual knowledge of
8 the dissolution or other invalidation of marriage. A payor or other
9 third party is liable for a payment or transfer made or other action
10 taken after the payor or other third party has actual knowledge of a
11 revocation under this section.

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

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

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

34 (c) Notwithstanding subsections (1) and (2) of this section and (a)
35 and (b) of this subsection, a payor or other third party having actual
36 knowledge of the existence of a dispute between beneficiaries or other
37 persons concerning rights to a nonprobate asset as a result of the
38 application of this section may condition the payment or transfer of
39 the nonprobate asset on execution, in a form and with security

1 acceptable to the payor or other third party, of a bond in an amount
2 that is double the fair market value of the nonprobate asset at the
3 time of the decedent's death or the amount of an adverse claim,
4 whichever is the lesser, or of a similar instrument to provide security
5 to the payor or other third party, indemnifying the payor or other
6 third party for any liability, loss, damage, costs, and expenses for
7 and on account of payment or transfer of the nonprobate asset.

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

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

1 nonprobate asset, to the person who is entitled to it under this
2 section.

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

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

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

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

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

30 (d) Transfer on death beneficiary designations of a transfer on
31 death or pay on death security, if such designations are authorized
32 under Washington law.

33 (6) This section is remedial in nature and applies as of July 25,
34 1993, to decrees of dissolution and declarations of invalidity entered
35 after July 24, 1993, and this section applies as of the effective date
36 of this act to decrees of dissolution and declarations of invalidity
37 entered before July 25, 1993.

1 **Sec. 3.** RCW 11.08.170 and 1990 c 225 s 1 are each amended to read
2 as follows:

3 Escheat property may be probated under the provisions of the
4 probate laws of this state. Whenever such probate proceedings are
5 instituted, whether by special administration or otherwise, the
6 petitioner shall promptly notify the department of revenue in writing
7 thereof on forms furnished by the department of revenue to the county
8 clerks. Thereafter, the department of revenue shall be served with
9 written notice at least twenty days prior to any hearing on proceedings
10 involving the valuation or sale of property, on any petition for the
11 allowance of fees, and on all interim reports, final accounts or
12 petitions for the determination of heirship. Like notice shall be
13 given of the presentation of any claims to the court for allowance.
14 Failure to furnish such notice shall be deemed jurisdictional and any
15 order of the court entered without such notice shall be void. The
16 department of revenue may waive the provisions of this section in its
17 discretion. The department shall be deemed to have waived its right to
18 administer in such probate proceedings under RCW 11.28.120(~~(+3+)~~) (5)
19 unless application for appointment of the director or the director's
20 designee is made within forty days immediately following receipt of
21 notice of institution of proceedings.

22 NEW SECTION. **Sec. 4.** This chapter applies in all instances in
23 which no other abatement scheme is expressly provided.

24 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of
25 this section, property of a decedent abates, without preference as
26 between real and personal property, in the following order:

- 27 (a) Intestate property;
- 28 (b) Residuary gifts;
- 29 (c) General gifts;
- 30 (d) Specific gifts.

31 For purposes of abatement a demonstrative gift, defined as a
32 general gift charged on any specific property or fund, is deemed a
33 specific gift to the extent of the value of the property or fund on
34 which it is charged, and a general gift to the extent of a failure or
35 insufficiency of that property or fund. Abatement within each
36 classification is in proportion to the amounts of property each of the

1 beneficiaries would have received if full distribution of the property
2 had been made in accordance with the terms of the will.

3 (2) If the will expresses an order of abatement, or if the
4 testamentary plan or the express or implied purpose of the devise would
5 be defeated by the order of abatement stated in subsection (1) of this
6 section, a gift abates as may be found necessary to give effect to the
7 intention of the testator.

8 (3) If the subject of a preferred gift is sold, diminished, or
9 exhausted incident to administration, not including satisfaction of
10 debts or liabilities according to their community or separate status
11 under section 7 of this act, abatement must be achieved by appropriate
12 adjustments in, or contribution from, other interests in the remaining
13 assets.

14 (4) To the extent that the whole of the community property is
15 subject to abatement, the shares of the decedent and of the surviving
16 spouse in the community property abate equally.

17 (5) If required under section 8 of this act, nonprobate assets must
18 abate with those disposed of under the will and passing by intestacy.

19 NEW SECTION. **Sec. 6.** To the extent that a gift is to be satisfied
20 out of a source that consists of both separate and community property,
21 unless otherwise indicated in the will it is presumed to be a gift from
22 separate and community property in proportion to their relative value
23 in the property or fund from which the gift is to be satisfied.

24 NEW SECTION. **Sec. 7.** (1) A community debt or liability is charged
25 against the entire community property, with the surviving spouse's half
26 and the decedent spouse's half charged equally.

27 (2) A separate debt or liability is charged first against separate
28 property, and if that is insufficient against the balance of decedent's
29 half of community property remaining after community debts and
30 liabilities are satisfied.

31 (3) A community debt or liability that is also the separate debt or
32 liability of the decedent is charged first against the whole of the
33 community property and then against the decedent's separate property.

34 (4) An expense of administration is charged against the separate
35 property and the decedent's half of the community property in
36 proportion to the relative value of the property, unless a different
37 charging of expenses is shown to be appropriate under the circumstances

1 including against the surviving spouse's share of the community
2 property.

3 (5) Property of a similar type, community or separate, is
4 appropriated in accordance with the abatement priorities of section 5
5 of this act.

6 (6) Property that is primarily chargeable for a debt or liability
7 is exhausted, in accordance with the abatement priorities of section 5
8 of this act, before resort is had, also in accordance with section 5 of
9 this act, to property that is secondarily chargeable.

10 NEW SECTION. **Sec. 8.** (1) If abatement is necessary among takers
11 of a nonprobate asset, the court shall adopt the abatement order and
12 limitations set out in sections 5, 6, and 7 of this act, assigning
13 categories in accordance with subsection (2) of this section.

14 (2) A nonprobate transfer must be categorized for purposes of
15 abatement, within the list of priorities set out in section 5(1) of
16 this act, as follows:

17 (a) All nonprobate forms of transfer under which an identifiable
18 nonprobate asset passes to a beneficiary or beneficiaries on the event
19 of the decedent's death, such as, but not limited to, joint tenancies
20 and payable-on-death accounts, are categorized as specific bequests.

21 (b) With respect to all other interests passing under nonprobate
22 forms of transfer, each must be categorized in the manner that is most
23 closely comparable to the nature of the transfer of that interest.

24 (3) If and to the extent that a nonprobate asset is subject to the
25 same obligations as are assets disposed of under the decedent's will,
26 the nonprobate assets abate ratably with the probate assets, within the
27 categories set out in subsection (2) of this section.

28 (4) If the nonprobate instrument of transfer or the decedent's will
29 expresses a different order of abatement, or if the decedent's overall
30 dispositive plan or the express or implied purpose of the transfer
31 would be defeated by the order of abatement stated in subsections (1)
32 through (3) of this section, the nonprobate assets abate as may be
33 found necessary to give effect to the intention of the decedent.

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 11.12 RCW
35 to read as follows:

36 (1) If a will fails to name or provide for a child of the decedent
37 who is born or adopted by the decedent after the will's execution and

1 who survives the decedent, referred to in this section as an "omitted
2 child", the child must receive a portion of the decedent's estate as
3 provided in subsection (3) of this section, unless it appears either
4 from the will or from other clear and convincing evidence that the
5 failure was intentional.

6 (2) In determining whether an omitted child has been named or
7 provided for, the following rules apply:

8 (a) A child identified in a will by name is considered named
9 whether identified as a child or in any other manner.

10 (b) A reference in a will to a class described as the children,
11 descendants, or issue of the decedent who are born after the execution
12 of the will, or words of similar import, constitutes a naming of a
13 person who falls within the class. A reference to another class, such
14 as a decedent's heirs or family, does not constitute such a naming.

15 (c) A nominal interest in an estate does not constitute a provision
16 for a child receiving the interest.

17 (3) The omitted child must receive an amount equal in value to that
18 which the child would have received under RCW 11.04.015 if the decedent
19 had died intestate, unless the court determines on the basis of clear
20 and convincing evidence that a smaller share, including no share at
21 all, is more in keeping with the decedent's intent. In making the
22 determination, the court may consider, among other things, the various
23 elements of the decedent's dispositive scheme, provisions for the
24 omitted child outside the decedent's will, provisions for the
25 decedent's other children under the will and otherwise, and provisions
26 for the omitted child's other parent under the will and otherwise.

27 (4) In satisfying a share provided by this section, the bequests
28 made by the will abate as provided in chapter 11.-- RCW (sections 4
29 through 8 of this act).

30 NEW SECTION. Sec. 10. A new section is added to chapter 11.12 RCW
31 to read as follows:

32 (1) If a will fails to name or provide for a spouse of the decedent
33 whom the decedent marries after the will's execution and who survives
34 the decedent, referred to in this section as an "omitted spouse", the
35 spouse must receive a portion of the decedent's estate as provided in
36 subsection (3) of this section, unless it appears either from the will
37 or from other clear and convincing evidence that the failure was
38 intentional.

1 (2) In determining whether an omitted spouse has been named or
2 provided for, the following rules apply:

3 (a) A spouse identified in a will by name is considered named
4 whether identified as a spouse or in any other manner.

5 (b) A reference in a will to the decedent's future spouse or
6 spouses, or words of similar import, constitutes a naming of a spouse
7 whom the decedent later marries. A reference to another class such as
8 the decedent's heirs or family does not constitute a naming of a spouse
9 who falls within the class.

10 (c) A nominal interest in an estate does not constitute a provision
11 for a spouse receiving the interest.

12 (3) The omitted spouse must receive an amount equal in value to
13 that which the spouse would have received under RCW 11.04.015 if the
14 decedent had died intestate, unless the court determines on the basis
15 of clear and convincing evidence that a smaller share, including no
16 share at all, is more in keeping with the decedent's intent. In making
17 the determination the court may consider, among other things, the
18 spouse's property interests under applicable community property or
19 quasi-community property laws, the various elements of the decedent's
20 dispositive scheme, and a marriage settlement or other provision and
21 provisions for the omitted spouse outside the decedent's will.

22 (4) In satisfying a share provided by this section, the bequests
23 made by the will abate as provided in chapter 11.-- RCW (sections 4
24 through 8 of this act).

25 NEW SECTION. **Sec. 11.** A new section is added to chapter 11.12 RCW
26 to read as follows:

27 (1) If, after making a will, the testator's marriage is dissolved
28 or invalidated, all provisions in the will in favor of or granting any
29 interest or power to the testator's former spouse are revoked, unless
30 the will expressly provides otherwise. Provisions affected by this
31 section must be interpreted, and property affected passes, as if the
32 former spouse failed to survive the testator, having died at the time
33 of entry of the decree of dissolution or declaration of invalidity.
34 Provisions revoked by this section are revived by the testator's
35 remarriage to the former spouse. Revocation of certain nonprobate
36 transfers is provided under RCW 11.07.010.

1 (2) This section is remedial in nature and applies to decrees of
2 dissolution and declarations of invalidity entered before, on, or after
3 the effective date of this act.

4 **Sec. 12.** RCW 11.12.040 and 1965 c 145 s 11.12.040 are each amended
5 to read as follows:

6 (1) A will, or any part thereof, can be revoked:

7 ~~((1))~~ (a) By a ~~((written))~~ subsequent will that revokes, or
8 partially revokes, the prior will expressly or by inconsistency; or

9 ~~((2))~~ (b) By being burnt, torn, canceled, obliterated, or
10 destroyed, with the intent and for the purpose of revoking the same, by
11 the testator ~~((himself))~~ or by another person in ~~((his))~~ the presence
12 and by ~~((his))~~ the direction of the testator. If such act is done by
13 any person other than the testator, the direction of the testator and
14 the facts of such injury or destruction must be proved by two
15 witnesses.

16 (2) Revocation of a will in its entirety revokes its codicils,
17 unless revocation of a codicil would be contrary to the testator's
18 intent.

19 **Sec. 13.** RCW 11.12.080 and 1965 c 145 s 11.12.080 are each amended
20 to read as follows:

21 (1) If, after making any will, the testator shall ~~((duly make and))~~
22 execute a ~~((second))~~ later will that wholly revokes the former will,
23 the destruction, cancellation, or revocation of ~~((such second))~~ the
24 later will shall not revive the ~~((first))~~ former will, unless it was
25 the testator's intention to revive it.

26 (2) Revocation of a codicil shall revive a prior will or part of a
27 prior will that the codicil would have revoked had it remained in
28 effect at the death of the testator, unless it was the testator's
29 intention not to revive the prior will or part.

30 (3) Evidence that revival was or was not intended includes, in
31 addition to a writing by which the later will or codicil is revoked,
32 the circumstances of the revocation or contemporary or subsequent
33 declarations of the testator.

34 **Sec. 14.** RCW 11.12.110 and 1965 c 145 s 11.12.110 are each amended
35 to read as follows:

1 Unless otherwise provided, when any ((estate shall be devised or
2 bequeathed to any child, grandchild, or other relative of the testator,
3 and such devisee or legatee shall die before the testator, having
4 lineal descendants who survive the testator, such descendants shall
5 take the estate, real and personal, as such devisee or legatee would
6 have done in the case he had survived the testator; if such descendants
7 are all in the same degree of kinship to the predeceased devisee or
8 legatee)) property shall be given under a will, or under a trust of
9 which the decedent is a grantor and which by its terms becomes
10 irrevocable upon the grantor's death, to any issue of a grandparent of
11 the decedent and that issue dies before the decedent leaving
12 descendants who survive the decedent, those descendants shall take that
13 property as the predeceased issue would have done if the predeceased
14 issue had survived the decedent. If those descendants are all in the
15 same degree of kinship to the predeceased issue they shall take
16 equally(($\frac{1}{n}$)) or, if of unequal degree, then those of more remote degree
17 shall take by representation with respect to ((such)) the predeceased
18 ((devisee or legatee. A spouse is not a relative under the provisions
19 of this section)) issue.

20 **Sec. 15.** RCW 11.12.120 and 1974 ex.s. c 117 s 51 are each amended
21 to read as follows:

22 ((Whenever any person having died leaving)) (1) If a will ((which
23 has been admitted to probate or established by an adjudication of
24 testacy, shall by said will have given, devised or bequeathed unto any
25 person, a legacy or a devise upon the condition that said person
26 survive him, and not otherwise, such legacy or devise shall lapse and
27 fall into the residue of said estate to be distributed according to the
28 residuary clause, if there be one, of said will, and if there be none
29 then according to the laws of descent, unless said legatee or devisee,
30 as the case may be, or his heirs, personal representative, or someone
31 in behalf of such legatee or devisee, shall appear before the court
32 which is administering said estate within three years from and after
33 the date the said will was admitted to probate or established by an
34 adjudication of testacy, and prove to the satisfaction of the court
35 that the said legatee or devisee, as the case may be, did in fact
36 survive the testator)) makes a gift to a person on the condition that
37 the person survive the testator and the person does not survive the
38 testator, then, unless otherwise provided, the gift lapses and falls

1 into the residue of the estate to be distributed under the residuary
2 clause of the will, if any, but otherwise according to the laws of
3 descent and distribution.

4 (2) If the will gives the residue to two or more persons, the share
5 of a person who does not survive the testator passes, unless otherwise
6 provided, and subject to RCW 11.12.110, to the other person or persons
7 receiving the residue, in proportion to the interest of each in the
8 remaining part of the residue.

9 (3) The personal representative of the testator, a person who would
10 be affected by the lapse or distribution of a gift under this section,
11 or a guardian ad litem or other representative appointed to represent
12 the interests of a person so affected may petition the court for a
13 determination under this section, and the petition must be heard under
14 the procedures of chapter 11.96 RCW.

15 **Sec. 16.** RCW 11.12.160 and 1965 c 145 s 11.12.160 are each amended
16 to read as follows:

17 ~~((All beneficial devises, legacies, and gifts whatever, made or~~
18 ~~given in any will to a subscribing witness thereto, shall be void~~
19 ~~unless there are two other competent witnesses to the same; but a mere~~
20 ~~charge on the estate of the testator for the payment of debts shall not~~
21 ~~prevent his creditors from being competent witnesses to his will. If~~
22 ~~such witness, to whom any beneficial devise, legacy or gift may have~~
23 ~~been made or given, would have been entitled to any share in the~~
24 ~~testator's estate in case the will is not established, then so much of~~
25 ~~the estate as would have descended or would have been distributed to~~
26 ~~such witness shall be saved to him as will not exceed the value of the~~
27 ~~devise or bequest made to him in the will; and he may recover the same~~
28 ~~from the devisees or legatees named in the will in proportion to and~~
29 ~~out of the parts devised and bequeathed to him.)) (1) An interested~~
30 witness to a will is one who would receive a gift under the will.

31 (2) A will or any of its provisions is not invalid because it is
32 signed by an interested witness. Unless there are at least two other
33 subscribing witnesses to the will who are not interested witnesses, the
34 fact that the will makes a gift to a subscribing witness creates a
35 rebuttable presumption that the witness procured the gift by duress,
36 menace, fraud, or undue influence.

37 (3) If the presumption established under subsection (2) of this
38 section applies and the interested witness fails to rebut it, the

1 interested witness shall take so much of the gift as does not exceed
2 the share of the estate that would be distributed to the witness if the
3 will were not established.

4 (4) The presumption established under subsection (2) of this
5 section has no effect other than that stated in subsection (3) of this
6 section.

7 **Sec. 17.** RCW 11.12.180 and 1965 c 145 s 11.12.180 are each amended
8 to read as follows:

9 ~~((If any person, by last will, devise any real estate to any person~~
10 ~~for the term of such person's life, such devise vests in the devisee an~~
11 ~~estate for life, and unless the remainder is specially devised, it~~
12 ~~shall revert to the heirs at law of the testator.)) The Rule in
13 Shelley's Case is abolished as a rule of law and as a rule of
14 construction. If an applicable statute or a governing instrument calls
15 for a future distribution to or creates a future interest in a
16 designated individual's "heirs," "heirs at law," "next of kin,"
17 "relatives," or "family," or language of similar import, the property
18 passes to those persons, including the state under chapter 11.08 RCW,
19 that would succeed to the designated individual's estate under chapter
20 11.04 RCW. The property must pass to those persons as if the
21 designated individual had died when the distribution or transfer of the
22 future interest was to take effect in possession or enjoyment. For
23 purposes of this section and section 18 of this act, the designated
24 individual's surviving spouse is deemed to be an heir, regardless of
25 whether the surviving spouse has remarried.~~

26 NEW SECTION. **Sec. 18.** A new section is added to chapter 11.12 RCW
27 to read as follows:

28 The Doctrine of Worthier Title is abolished as a rule of law and as
29 a rule of construction. However, the Doctrine of Worthier Title is
30 preserved as a rule of construction if:

31 (1) A grantor has established in inter vivos trust of real
32 property;

33 (2) The grantor has expressly reserved a reversion to himself or
34 herself; and

35 (3) The words "heirs" or "heirs at law" are used by the grantor to
36 describe the quality of the grantor's title in the reversion as an

1 estate in fee simple in the event that the property reverts to the
2 grantor.

3 In all other cases, language in a governing instrument describing the
4 beneficiaries of a donative disposition as the transferor's "heirs,"
5 "heirs at law," "next of kin," "distributees," "relatives," or
6 "family," or language of similar import, does not create or
7 presumptively create a reversionary interest in the transferor.

8 NEW SECTION. **Sec. 19.** (1) Unless expressly exempted by statute,
9 a beneficiary of a nonprobate asset that was subject to satisfaction of
10 the decedent's general liabilities immediately before the decedent's
11 death takes the asset subject to liabilities, claims, estate taxes, and
12 the fair share of expenses of administration reasonably incurred by the
13 personal representative in the transfer of or administration upon the
14 asset. The beneficiary of such an asset is liable to account to the
15 personal representative to the extent necessary to satisfy liabilities,
16 claims, the asset's fair share of expenses of administration, and the
17 asset's share of estate taxes under chapter 83.110 RCW. Before making
18 demand that a beneficiary of a nonprobate asset account to the personal
19 representative, the personal representative shall give notice to the
20 beneficiary, in the manner provided in chapter 11.96 RCW, that the
21 beneficiary is liable to account under this section.

22 (2) The following rules govern in applying subsection (1) of this
23 section:

24 (a) A beneficiary of property passing at death under a community
25 property agreement takes the property subject to the decedent's
26 liabilities, claims, estate taxes, and administration expenses as
27 described in subsection (1) of this section. However, assets existing
28 as community or separate property immediately before the decedent's
29 death under the community property agreement are subject to the
30 decedent's liabilities and claims to the same extent that they would
31 have been had they been assets of the probate estate.

32 (b) A beneficiary of property held in joint tenancy form with right
33 of survivorship, including without limitation United States savings
34 bonds or similar obligations, takes the property subject to the
35 decedent's liabilities, claims, estate taxes, and administration
36 expenses as described in subsection (1) of this section to the extent
37 of the decedent's beneficial ownership interest in the property
38 immediately before death.

1 (c) A beneficiary of payable-on-death or trust bank accounts,
2 bonds, securities, or similar obligations, including without limitation
3 United States bonds or similar obligations, takes the property subject
4 to the decedent's liabilities, claims, estate taxes, and administration
5 expenses as described in subsection (1) of this section, to the extent
6 of the decedent's beneficial ownership interest in the property
7 immediately before death.

8 (d) A beneficiary of deeds or conveyances made by the decedent if
9 possession has been postponed until the death of the decedent takes the
10 property subject to the decedent's liabilities, claims, estate taxes,
11 and administration expenses as described in subsection (1) of this
12 section, to the extent of the decedent's beneficial ownership interest
13 in the property immediately before death.

14 (e) A trust for the decedent's use of which the decedent is the
15 grantor is subject to the decedent's liabilities, claims, estate taxes,
16 and administration expenses as described in subsection (1) of this
17 section, to the same extent as the trust was subject to claims of the
18 decedent's creditors immediately before death under RCW 19.36.020.

19 (f) A trust not for the use of the grantor but of which the
20 decedent is the grantor and that becomes effective or irrevocable only
21 upon the decedent's death is subject to the decedent's claims,
22 liabilities, estate taxes, and expenses of administration as described
23 in subsection (1) of this section.

24 (g) Anything in this section to the contrary notwithstanding,
25 nonprobate assets that existed as community property immediately before
26 the decedent's death are subject to the decedent's liabilities and
27 claims to the same extent that they would have been had they been
28 assets of the probate estate.

29 (h) The liability of a beneficiary of life insurance is governed by
30 chapter 48.18 RCW.

31 (i) The liability of a beneficiary of pension or retirement
32 employee benefits is governed by chapter 6.15 RCW.

33 (j) An inference may not be drawn from (a) through (i) of this
34 subsection that a beneficiary of nonprobate assets other than those
35 assets specifically described in (a) through (i) of this subsection
36 does or does not take the assets subject to claims, liabilities, estate
37 taxes, and administration expenses as described in subsection (1) of
38 this section.

1 (3) Nothing in this section derogates from the rights of a person
2 interested in the estate to recover tax under chapter 83.110 RCW or
3 from the liability of any beneficiary for estate tax under chapter
4 83.110 RCW.

5 **Sec. 20.** RCW 11.20.070 and 1965 c 145 s 11.20.070 are each amended
6 to read as follows:

7 ~~((Whenever any will is lost or destroyed, the court may take proof
8 of the execution and validity of such will and establish it, notice to
9 all persons interested having been first given. Such proof shall be
10 reduced to writing and signed by the witnesses and filed with the clerk
11 of the court.~~

12 ~~No will shall be allowed to be proved as a lost or destroyed will
13 unless it is proved to have been in existence at the time of the death
14 of the testator, or is shown to have been destroyed, canceled or
15 mutilated in whole or in part as a result of actual or constructive
16 fraud or in the course of an attempt to change the will in whole or in
17 part, which attempt has failed, or as the result of a mistake of fact,
18 nor unless its provisions are clearly and distinctly proved by at least
19 two witnesses, and when any such will is so established, the provisions
20 thereof shall be distinctly stated in the judgment establishing it, and
21 such judgment shall be recorded as wills are required to be recorded.
22 Executors of such will or administrators with the will annexed)) (1) If
23 a will has been lost or destroyed under circumstances such that the
24 loss or destruction does not have the effect of revoking the will, the
25 court may take proof of the execution and validity of the will and
26 establish it, notice to all persons interested having been first given.
27 The proof must be reduced to writing and signed by any witnesses who
28 have testified as to the execution and validity, and must be filed with
29 the clerk of the court.~~

30 (2) The provisions of a lost or destroyed will must be proved by
31 clear, cogent, and convincing evidence, consisting at least in part of
32 a witness to either its contents or the authenticity of a copy of the
33 will.

34 (3) When a lost or destroyed will is established under subsections
35 (1) and (2) of this section, its provisions must be distinctly stated
36 in the judgment establishing it, and the judgment must be recorded as
37 wills are required to be recorded. A personal representative may be

1 appointed by the court in the same manner as is herein provided with
2 reference to original wills presented to the court for probate.

3 **Sec. 21.** RCW 11.24.010 and 1971 c 7 s 1 are each amended to read
4 as follows:

5 If any person interested in any will shall appear within four
6 months immediately following the probate or rejection thereof, and by
7 petition to the court having jurisdiction contest the validity of said
8 will, or appear to have the will proven which has been rejected, he or
9 she shall file a petition containing his or her objections and
10 exceptions to said will, or to the rejection thereof. (~~Issue shall be~~
11 ~~made up, tried and determined in said court respecting the competency~~
12 ~~of the deceased to make a last will and testament, or respecting the~~
13 ~~execution by a deceased of such last will and testament under restraint~~
14 ~~or undue influence or fraudulent representations, or for any other~~
15 ~~cause affecting the validity of such will.)) Issues respecting the
16 competency of the deceased to make a last will and testament, or
17 respecting the execution by a deceased of the last will and testament
18 under restraint or undue influence or fraudulent representations, or
19 for any other cause affecting the validity of the will or a part of it,
20 shall be tried and determined by the court.~~

21 If no person shall appear within the time ((aforesaid)) under this
22 section, the probate or rejection of such will shall be binding and
23 final.

24 **Sec. 22.** RCW 11.24.040 and 1965 c 145 s 11.24.040 are each amended
25 to read as follows:

26 If, upon the trial of said issue, it shall be decided that the will
27 or a part of it is for any reason invalid, or that it is not
28 sufficiently proved to have been the last will of the testator, the
29 will or part and probate thereof shall be annulled and revoked(~~(, and~~
30 ~~thereupon and thereafter the powers of the executor or administrator~~
31 ~~with the will annexed shall cease, but such executor or administrator))
32 and to that extent the powers of the personal representative shall
33 cease, but the personal representative shall not be liable for any act
34 done in good faith previous to such annulling or revoking.~~

35 **Sec. 23.** RCW 11.28.120 and 1985 c 133 s 1 are each amended to read
36 as follows:

1 Administration of ~~((the))~~ an estate ~~((of))~~ if the ~~((person dying))~~
2 decedent died intestate or if the personal representative or
3 representatives named in the will declined or were unable to serve
4 shall be granted to some one or more of the persons hereinafter
5 mentioned, and they shall be respectively entitled in the following
6 order:

7 (1) The surviving ~~((husband or wife))~~ spouse, or such person as he
8 or she may request to have appointed.

9 (2) The next of kin in the following order: (a) Child or children;
10 (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e)
11 nephews or nieces.

12 (3) The trustee named by the decedent in an inter vivos trust
13 instrument, testamentary trustee named in the will, guardian of the
14 person or estate of the decedent, or attorney in fact appointed by the
15 decedent, if any such a fiduciary controlled or potentially controlled
16 substantially all of the decedent's probate and nonprobate assets.

17 (4) One or more of the beneficiaries or transferees of the
18 decedent's probate or nonprobate assets.

19 (5) The director of revenue, or the director's designee, for those
20 estates having property subject to the provisions of chapter 11.08 RCW;
21 however, the director may waive this right.

22 ~~((+4))~~ (6) One or more of the principal creditors.

23 ~~((+5))~~ (7) If the persons so entitled shall fail for more than
24 forty days after the death of the ~~((intestate))~~ decedent to present a
25 petition for letters of administration, or if it appears to the
26 satisfaction of the court that there ~~((are))~~ is no ~~((relatives or))~~
27 next of kin, as above specified eligible to appointment, or they waive
28 their right, and there are no principal creditor or creditors, or such
29 creditor or creditors waive their right, then the court may appoint any
30 suitable person to administer such estate.

31 **Sec. 24.** RCW 11.28.237 and 1977 ex.s. c 234 s 6 are each amended
32 to read as follows:

33 Within twenty days after appointment, the personal representative
34 of the estate of a decedent shall cause written notice of his or her
35 appointment and the pendency of said probate proceedings, to be served
36 personally or by mail to each heir, legatee and devisee of the estate
37 and each beneficiary or transferee of a nonprobate asset of the
38 decedent whose names and addresses are known to him or her, and proof

1 of such mailing or service shall be made by affidavit and filed in the
2 cause.

3 **Sec. 25.** RCW 11.40.010 and 1991 c 5 s 1 are each amended to read
4 as follows:

5 Every personal representative shall, after appointment and
6 qualification, give a notice to the creditors of the deceased, stating
7 such appointment and qualification as personal representative and
8 requiring all persons having claims against the deceased to serve the
9 same on the personal representative or the estate's attorney of record,
10 and file an executed copy thereof with the clerk of the court, within
11 four months after the date of the first publication of such notice
12 described in this section or within four months after the date of the
13 filing of the copy of such notice with the clerk of the court,
14 whichever is the later, or within the time otherwise provided in RCW
15 11.40.013. The four-month time period after the later of the date of
16 the first publication of the notice to creditors or the date of the
17 filing of such notice with the clerk of the court is referred to in
18 this chapter as the "four-month time limitation." Such notice shall be
19 given as follows:

20 (1) The personal representative shall give actual notice, as
21 provided in RCW 11.40.013, to such creditors who become known to the
22 personal representative within such four-month time limitation;

23 (2) The personal representative shall cause such notice to be
24 published once in each week for three successive weeks in the county in
25 which the estate is being administered; and

26 (3) The personal representative shall file a copy of such notice
27 with the clerk of the court.

28 Except as otherwise provided in RCW 11.40.011 or 11.40.013, any
29 claim not filed within the four-month time limitation shall be forever
30 barred, if not already barred by any otherwise applicable statute of
31 limitations. This bar is effective as to claims against both the
32 decedent's probate assets and nonprobate assets as described in section
33 19 of this act. Proof by affidavit of the giving and publication of
34 such notice shall be filed with the court by the personal
35 representative.

36 Acts of a notice agent in complying with chapter ..., Laws of 1994
37 (this act) may be adopted and ratified by the personal representative
38 as if done by the personal representative in complying with this

1 representative shall collect all debts due the deceased and pay all
2 debts as hereinafter provided. ((He)) The personal representative
3 shall be authorized in his or her own name to maintain and prosecute
4 such actions as pertain to the management and settlement of the estate,
5 and may institute suit to collect any debts due the estate or to
6 recover any property, real or personal, or for trespass of any kind or
7 character.

8 NEW SECTION. Sec. 31. (1) Subject to the conditions stated in
9 this section and if no personal representative has been appointed and
10 qualified in the decedent's estate in Washington, the following members
11 of a group, defined as the "qualified group", are qualified to give
12 "nonprobate notice to creditors" of the decedent:

13 (a) Decedent's surviving spouse;

14 (b) The person appointed in an agreement made under chapter 11.96
15 RCW to give nonprobate notice to creditors of the decedent;

16 (c) The trustee, except a testamentary trustee under the will of
17 the decedent not probated in another state, having authority over any
18 of the property of the decedent; and

19 (d) A person who has received any property of the decedent by
20 reason of the decedent's death.

21 (2) The "included property" means the property of the decedent that
22 was subject to satisfaction of the decedent's general liabilities
23 immediately before the decedent's death and that either:

24 (a) Constitutes a nonprobate asset; or

25 (b) Has been received, or is entitled to be received, either under
26 chapter 11.62 RCW or by the personal representative of the decedent's
27 probate estate administered outside the state of Washington, or both.

28 (3) The qualified person shall give the nonprobate notice to
29 creditors. The "qualified person" must be:

30 (a) The person in the qualified group who has received, or is
31 entitled to receive, by reason of the decedent's death, all, or
32 substantially all, of the included property; or

33 (b) If there is no person in (a) of this subsection, then the
34 person who has been appointed by those persons, including any
35 successors of those persons, in the qualified group who have received,
36 or are entitled to receive, by reason of the decedent's death, all, or
37 substantially all, of the included property.

1 (4) The requirement in subsection (3) of this section of the
2 receipt of all, or substantially all, of the included property is
3 satisfied if:

4 (a) The person described in subsection (3)(a) of this section at
5 the time of the filing of the declaration and oath referred to in
6 subsection (5) of this section in reasonable good faith believed that
7 the person had received, or was entitled to receive, by reason of the
8 decedent's death, all, or substantially all, of the included property;
9 or

10 (b) The persons described in subsection (3)(b) of this section at
11 the time of their entry into the agreement under chapter 11.96 RCW in
12 which they appoint the person to give the nonprobate notice to
13 creditors in reasonable good faith believed that they had received, or
14 were entitled to receive, by reason of the decedent's death, all, or
15 substantially all, of the included property.

16 (5) The "notice agent" means the qualified person who:

17 (a) Files a declaration and oath with the clerk of the superior
18 court in a county in which probate may be commenced regarding the
19 decedent as provided in RCW 11.96.050(2);

20 (b) Pays a filing fee to the clerk equal in amount to the filing
21 fee charged by the clerk for the probate of estates; and

22 (c) Receives from the clerk a cause number.

23 The county in which the notice agent files the declaration is the
24 "notice county." The declaration and oath must be made in affidavit
25 form or under penalty of perjury under the laws of the state in the
26 form provided in RCW 9A.72.085 and must state that the person making
27 the declaration believes in reasonable good faith that the person is
28 qualified under this chapter to act as the notice agent and that the
29 person faithfully will execute the duties of the notice agent as
30 provided in this chapter.

31 (6) The following persons may not act as notice agent:

32 (a) Corporations, trust companies, and national banks, except:

33 (i) Professional service corporations that are regularly organized
34 under the laws of this state whose shareholder or shareholders are
35 exclusively attorneys; and

36 (ii) Other corporations, trust companies, and national banks that
37 are authorized to do trust business in this state;

38 (b) Minors;

39 (c) Persons of unsound mind; or

1 (d) Persons who have been convicted of a felony or of a misdemeanor
2 involving moral turpitude.

3 (7) A person who has given notice under this chapter and who
4 thereafter becomes of unsound mind or is convicted of a crime or
5 misdemeanor involving moral turpitude is no longer qualified to act as
6 notice agent under this chapter. The disqualification does not bar
7 another person, otherwise qualified, from acting as notice agent under
8 this chapter.

9 (8) A nonresident may act as notice agent if the nonresident
10 appoints an agent who is a resident of the notice county or who is
11 attorney of record for the notice agent upon whom service of all papers
12 may be made. The appointment must be made in writing and filed by the
13 clerk of the notice county with the other papers relating to the notice
14 given under this chapter.

15 (9) The powers and authority of a notice agent cease, and the
16 office of notice agent becomes vacant, upon the appointment and
17 qualification of a personal representative for the estate of the
18 decedent. Except as provided in section 48 of this act, the cessation
19 of the powers and authority does not affect a published notice under
20 this chapter if the publication commenced before the cessation and does
21 not affect actual notice to creditors given by the notice agent before
22 the cessation.

23 NEW SECTION. **Sec. 32.** (1) The notice agent may give nonprobate
24 notice to the creditors of the decedent if:

25 (a) As of the date of the filing of a copy of the notice with the
26 clerk of the superior court for the notice county, the notice agent has
27 no knowledge of the appointment and qualification of a personal
28 representative in the decedent's estate in the state of Washington or
29 of another person becoming a notice agent; and

30 (b) According to the records of the clerk of the superior court for
31 the notice county as of 8:00 a.m. on the date of the filing, no
32 personal representative of the decedent's estate had been appointed and
33 qualified and no cause number regarding the decedent had been issued to
34 any other notice agent by the clerk under section 31 of this act.

35 (2) The notice must state that all persons having claims against
36 the decedent shall: (a) Serve the same on the notice agent if the
37 notice agent is a resident of the state of Washington upon whom service
38 of all papers may be made, or on the nonprobate resident agent for the

1 notice agent, if any, or on the attorneys of record of the notice agent
2 at their respective address in the state of Washington; and (b) file an
3 executed copy of the notice with the clerk of the superior court for
4 the notice county, within: (i) (A) Four months after the date of the
5 first publication of the notice described in this section; or (B) four
6 months after the date of the filing of the copy of the notice with the
7 clerk of the superior court for the notice county, whichever is later;
8 or (ii) the time otherwise provided in section 35 of this act. The
9 four-month time period after the later of the date of the first
10 publication of the notice to creditors or the date of the filing of the
11 notice with the clerk of the court is referred to in this chapter as
12 the "four-month time limitation."

13 (3) The notice agent shall declare in the notice in affidavit form
14 or under the penalty of perjury under the laws of the state of
15 Washington as provided in RCW 9A.72.085 that: (a) The notice agent is
16 entitled to give the nonprobate notice under subsection (1) of this
17 section; and (b) the notice is being given by the notice agent as
18 permitted by this section.

19 (4) The notice agent shall sign the notice and file it with the
20 clerk of the superior court for the notice county. The notice must be
21 given as follows:

22 (a) The notice agent shall give actual notice as to creditors of
23 the decedent who become known to the notice agent within the four-month
24 time limitation as required in section 35 of this act;

25 (b) The notice agent shall cause the notice to be published once in
26 each week for three successive weeks in the notice county; and

27 (c) The notice agent shall file a copy of the notice with the clerk
28 of the superior court for the notice county.

29 (5) A claim not filed within the four-month time limitation is
30 forever barred, if not already barred by an otherwise applicable
31 statute of limitations, except as provided in section 33 or 35 of this
32 act. The bar is effective to bar claims against both the probate
33 estate of the decedent and nonprobate assets that were subject to
34 satisfaction of the decedent's general liabilities immediately before
35 the decedent's death. If a notice to the creditors of a decedent is
36 published by more than one notice agent and the notice agents are not
37 acting jointly, the four-month time limitation means the four-month
38 time limitation that applies to the notice agent who first publishes
39 the notice. Proof by affidavit or perjury declaration made under RCW

1 9A.72.085 of the giving and publication of the notice must be filed
2 with the clerk of the superior court for the notice county by the
3 notice agent.

4 NEW SECTION. **Sec. 33.** The time limitations under this chapter for
5 serving and filing claims do not accrue to the benefit of a liability
6 or casualty insurer as to claims against either the decedent or the
7 marital community of which the decedent was a member, or both, and:

8 (1) The claims, subject to applicable statutes of limitation, may
9 at any time be: (a) Served on the duly acting notice agent, the duly
10 acting resident agent for the notice agent, or on the attorney for
11 either of them; and (b) filed with the clerk of the superior court for
12 the notice county; or

13 (2) If there is no duly acting notice agent or resident agent for
14 the notice agent, the claimant as a creditor shall proceed as provided
15 in chapter 11.40 RCW. However, if no personal representative ever has
16 been appointed for the decedent, a personal representative must be
17 appointed as provided in chapter 11.28 RCW and the estate opened, in
18 which case the claimant then shall proceed as provided in chapter 11.40
19 RCW.

20 A claim may be served and filed as provided in this section,
21 notwithstanding that there is no duly acting notice agent and that no
22 personal representative previously has been appointed. However, the
23 amount of recovery under the claim may not exceed the amount of
24 applicable insurance coverages and proceeds, and the claim so served
25 and filed may not constitute a cloud or lien upon the title to the
26 assets of the decedent or delay or prevent the transfer or distribution
27 of assets of the decedent. This section does not serve to extend the
28 applicable statute of limitations regardless of whether a declaration
29 and oath has been filed by a notice agent as provided in section 31 of
30 this act.

31 NEW SECTION. **Sec. 34.** The notice agent shall exercise reasonable
32 diligence to discover, within the four-month time limitation,
33 reasonably ascertainable creditors of the decedent. The notice agent
34 is deemed to have exercised reasonable diligence to ascertain the
35 creditors upon:

36 (1) Conducting, within the four-month time limitation, a reasonable
37 review of the decedent's correspondence including correspondence

1 received after the date of death and financial records including
2 checkbooks, bank statements, income tax returns, and similar materials,
3 that are in the possession of, or reasonably available to, the notice
4 agent; and

5 (2) Having made, with regard to claimants, inquiry of the
6 nonprobate takers of the decedent's property and of the presumptive
7 heirs, devisees, and legatees of the decedent, all of whose names and
8 addresses are known, or in the exercise of reasonable diligence should
9 have been known, to the notice agent.

10 If the notice agent conducts the review and makes an inquiry, the
11 notice agent is presumed to have exercised reasonable diligence to
12 ascertain creditors of the decedent, and creditors not ascertained in
13 the review or in an inquiry are presumed not reasonably ascertainable.
14 These presumptions may be rebutted only by clear, cogent, and
15 convincing evidence. The notice agent may evidence the review and
16 inquiry by filing an affidavit or declaration under penalty of perjury
17 form as provided in RCW 9A.72.085 to the effect in the nonprobate
18 proceeding in the notice county. The notice agent also may petition
19 the superior court of the notice county for an order declaring that the
20 notice agent has made a review and inquiry and that only creditors
21 known to the notice agent after the review and inquiry are reasonably
22 ascertainable. The petition and hearing must be under the procedures
23 provided in chapter 11.96 RCW, and the notice specified under RCW
24 11.96.100 must also be given by publication.

25 NEW SECTION. **Sec. 35.** The actual notice described in section
26 32(4)(a) of this act, as to a creditor becoming known to the notice
27 agent within the four-month time limitation, must be given the creditor
28 by personal service or regular first class mail, addressed to the
29 creditor's last known address, postage prepaid. The actual notice must
30 be given before the later of the expiration of the four-month time
31 limitation or thirty days after a creditor became known to the notice
32 agent within the four-month time limitation. A known creditor is
33 barred unless the creditor has filed a claim, as provided in this
34 chapter, within the four-month time limitation or within thirty days
35 following the date of actual notice to that creditor, whichever is
36 later. If notice is given by mail, the date of mailing is the date of
37 notice. This bar is effective as to claims against the included
38 property as defined in section 31 of this act.

1) No.
2)
3) NONPROBATE NOTICE TO CREDITORS
4 Deceased.)
5 _____)

6 _____, the undersigned Notice
7 Agent, has elected to give notice to creditors of the decedent above
8 named under section 32 of this act. As of the date of the filing of a
9 copy of this notice with the Clerk of this Court, the Notice Agent has
10 no knowledge of the appointment and qualification of a personal
11 representative in the decedent's estate in the state of Washington or
12 of any other person becoming a Notice Agent. According to the records
13 of the Clerk of this Court as of 8:00 a.m. on the date of the filing of
14 this notice with the Clerk, no personal representative of the
15 decedent's estate had been appointed and qualified and no cause number
16 regarding the decedent had been issued to any other Notice Agent by the
17 Clerk of this Court under section 31 of this act.

18 Persons having claims against the decedent named above must, before
19 the time the claims would be barred by any otherwise applicable statute
20 of limitations, serve their claims on: The notice agent if the Notice
21 Agent is a resident of the state of Washington upon whom service of all
22 papers may be made; the Nonprobate Resident Agent for the Notice Agent,
23 if any; or the attorneys of record for the Notice Agent at the
24 respective address in the state of Washington listed below, and file an
25 executed copy of the claim with the Clerk of this Court within four
26 months after the date of first publication of this notice, or within
27 four months after the date of the filing of the copy of this notice
28 with the Clerk of the Court, whichever is later, or, except under those
29 provisions included in section 33 or 35 of this act, the claim will be
30 forever barred. This bar is effective as to all assets of the decedent
31 that were subject to satisfaction of the decedent's general liabilities
32 immediately before the decedent's death regardless of whether those
33 assets are or would be assets of the decedent's probate estate or
34 nonprobate assets of the decedent.

35 Date of filing of this notice with the
36 Clerk of the Court: _____

1 Date of first publication of this notice: _____

2 The Notice Agent declares under penalty of perjury under the laws
3 of the State of Washington on _____, 19__ at _____
4 [City] _____, _____ [State] _____ that the
5 foregoing is true and correct.

6 _____
7 Notice Agent [signature] Nonprobate Resident Agent [if appointed]
8 [address in Washington, if any] [address in Washington]

9 _____
10 Attorney for Notice Agent
11 [address in Washington]
12 [telephone]

13 NEW SECTION. **Sec. 38.** RCW 11.40.020 applies to claims subject to
14 this chapter.

15 NEW SECTION. **Sec. 39.** (1) Property of the decedent that was
16 subject to the satisfaction of the decedent's general liabilities
17 immediately before the decedent's death is liable for claims. The
18 property includes, but is not limited to, property of the decedent that
19 is includable in the decedent's probate estate, whether or not there is
20 a probate administration of the decedent's estate.

21 (2) A claim approved by the notice agent, and a judgment on a claim
22 first prosecuted against a notice agent, may be paid only out of assets
23 received as a result of the death of the decedent by the notice agent
24 or by those appointing the notice agent under chapter 11.96 RCW, except
25 as may be provided by agreement under RCW 11.96.170 or by court order
26 under RCW 11.96.070.

27 NEW SECTION. **Sec. 40.** (1) The notice agent shall approve or
28 reject claims no later than by the end of a period that is two months
29 after the end of the four-month time limitation defined as the "review
30 period."

31 (2) The notice agent may approve a claim, in whole or in part.

32 (3) If the notice agent rejects a claim, in whole or in part, the
33 notice agent shall notify the claimant of the rejection and file in the

1 office of the clerk of the court in the notice county an affidavit or
2 declaration under penalty of perjury under RCW 9A.72.085 showing the
3 notification and the date of the notification. The notification must
4 be by personal service or certified mail addressed to the claimant at
5 the claimant's address as stated in the claim. If a person other than
6 the claimant signed the claim for or on behalf of the claimant, and the
7 person's business address as stated in the claim is different from that
8 of the claimant, notification of the rejection also must be made by
9 personal service or certified mail upon that person. The date of the
10 postmark is the date of the notification. The notification of the
11 rejection must advise the claimant, and the person making claim on his,
12 her, or its behalf, if any, that the claimant must bring suit in the
13 proper court in the notice county against the notice agent: (a) Within
14 thirty days after notification of rejection if the notification is made
15 during or after the review period; or (b) before expiration of thirty
16 days after the end of the four-month time limitation, if the
17 notification is made during the four-month time limitation, and that
18 otherwise the claim is forever barred.

19 (4) A claimant whose claim either has been rejected by the notice
20 agent or has not been acted upon within twenty days of written demand
21 for the action having been given to the notice agent by the claimant
22 during or after the review period must commence an action against the
23 notice agent in the proper court in the notice county to enforce the
24 claim of the claimant within the earlier of:

25 (a) If the notice of the rejection of the claim has been sent as
26 provided in subsection (3) of this section: The time for filing an
27 action on a rejected claim is as provided in subsection (3) of this
28 section; or

29 (b) If written demand for approval or rejection is made on the
30 notice agent before the claim is rejected: Within 30 days following
31 the end of the twenty-day written demand period where the demand period
32 ends during or after the review period;
33 otherwise the claim is forever barred.

34 (5) The notice agent may, either before or after rejection of a
35 claim, compromise the claim, whether due or not, absolute or
36 contingent, liquidated or unliquidated.

37 (6) A personal representative of the decedent's estate may revoke
38 either or both of: (a) The rejection of a claim that has been rejected

1 by the notice agent; or (b) the approval of a claim that has been
2 either approved or compromised by the notice agent, or both.

3 (7) If a notice agent pays a claim that subsequently is revoked by
4 a personal representative of the decedent, the notice agent may file a
5 claim in the decedent's estate for the notice agent's payment, and the
6 claim may be allowed or rejected as other claims, at the election of
7 the personal representative.

8 (8) If the notice agent has not received substantially all assets
9 of the decedent that are liable for claims, then although an action may
10 be commenced on a rejected claim by a creditor against the notice
11 agent, the notice agent, notwithstanding any provision in this chapter,
12 may only make an appearance in the litigation. The Notice Agent may
13 not answer the action, but must, instead, cause a petition to be filed
14 for the appointment of a personal representative of the decedent within
15 thirty days of the service of the creditor's summons and complaint on
16 the notice agent. A judgment may not be entered in an action brought
17 by a creditor against the notice agent earlier than twenty days after
18 the duly appointed, qualified, and acting personal representative of
19 the decedent has been substituted in that action for the notice agent.

20 NEW SECTION. **Sec. 41.** If a claim has been filed and presented to
21 a notice agent, and a part of the claim is allowed, the amount of the
22 allowance must be stated in the indorsement. If the creditor refuses
23 to accept the amount so allowed in satisfaction of the claim, the
24 creditor may not recover costs in an action the creditor may bring
25 against the notice agent and against any substituted personal
26 representative unless the creditor recovers a greater amount than that
27 offered to be allowed, exclusive of interest and costs.

28 NEW SECTION. **Sec. 42.** A debt of a decedent for whose estate no
29 personal representative has been appointed must be paid in the
30 following order by the notice agent from the assets of the decedent
31 that are subject to the payment of claims as provided in section 39 of
32 this act:

33 (1) Costs of administering the assets subject to the payment of
34 claims, including a reasonable fee to the notice agent, the resident
35 agent for the notice agent, if any, reasonable attorneys' fees for the
36 attorney for each of them, filing fees, publication costs, mailing
37 costs, and similar costs and fees.

- 1 (2) Funeral expenses in a reasonable amount.
- 2 (3) Expenses of the last sickness in a reasonable amount.
- 3 (4) Wages due for labor performed within sixty days immediately
- 4 preceding the death of the decedent.
- 5 (5) Debts having preference by the laws of the United States.
- 6 (6) Taxes or any debts or dues owing to the state.
- 7 (7) Judgments rendered against the decedent in the decedent's
- 8 lifetime that are liens upon real estate on which executions might have
- 9 been issued at the time of the death of the decedent and debts secured
- 10 by mortgages in the order of their priority. However, the real estate
- 11 is subject to the payment of claims as provided in section 40 of this
- 12 act.
- 13 (8) All other demands against the assets subject to the payment of
- 14 claims as provided in section 40 of this act.

15 A claim of the notice agent or other person who has received
16 property by reason of the decedent's death may not be paid by the
17 notice agent unless all other claims that have been filed under this
18 chapter, and all debts having priority to the claim, are paid in full
19 or otherwise settled by agreement, regardless of whether the other
20 claims are allowed or rejected, or partly allowed or partly rejected.
21 In the event of the probate of the decedent's estate, the personal
22 representative's payment from estate assets of the claim of the notice
23 agent or other person who has received property by reason of the
24 decedent's death is not affected by the priority payment provisions of
25 this section.

26 NEW SECTION. **Sec. 43.** The notice agent may not allow a claim that
27 is barred by the statute of limitations.

28 NEW SECTION. **Sec. 44.** A holder of a claim against a decedent may
29 not maintain an action on the claim against a notice agent, unless the
30 claim has been first presented as provided in this chapter. This
31 chapter does not affect RCW 82.32.240.

32 NEW SECTION. **Sec. 45.** The time during which there is a vacancy in
33 the office of notice agent is not included in a limitation prescribed
34 in this chapter.

1 NEW SECTION. **Sec. 46.** If a judgment has been rendered against a
2 decedent in the decedent's lifetime, an execution may not issue on the
3 judgment after the death of the decedent, but the judgment must be
4 presented in the form of a claim to the notice agent, if any, as any
5 other claim. The claim need not be supported by the affidavit of the
6 claimant. If the claim is justly due and unsatisfied, it must be paid
7 in due course in accordance with this chapter for the payment of
8 claims. However, if the judgment is a lien on property classified
9 within the definition of the included property in section 31 of this
10 act, the property may be sold for the satisfaction of the judgment, and
11 the officer making the sale shall account to the notice agent for any
12 surplus.

13 NEW SECTION. **Sec. 47.** The personal claim of a Notice Agent, as a
14 creditor of the decedent, must be authenticated by affidavit, and must
15 be filed and presented for allowance to the superior court in the
16 notice county. The allowance of the claim by the court is sufficient
17 evidence of the correctness of the claim.

18 NEW SECTION. **Sec. 48.** In case the office of notice agent becomes
19 vacant for any reason, including resignation, death, removal, or
20 replacement, after notice by publication has been commenced as provided
21 in section 32 of this act, the personal representative of the decedent
22 or the successor notice agent shall publish notice of the vacancy and
23 succession for two successive weeks in a legal newspaper published in
24 the notice county. The time between the commencement of the vacancy
25 and the publication by the successor notice agent or personal
26 representative must be added to the time within which claims must be
27 filed: (1) As fixed by the first published nonprobate notice to
28 creditors; and (2) as extended in the case of actual notice under
29 section 35 of this act, unless the time expired before the vacancy.
30 Notice is not required if the period for filing claims has expired
31 during the time that the former notice agent was qualified.

32 **Sec. 49.** RCW 11.56.050 and 1965 c 145 s 11.56.050 are each amended
33 to read as follows:

34 If the court should determine that it is necessary to sell any or
35 all of the real estate for the purposes mentioned in this title, then
36 it may make and cause to be entered an order directing the personal

1 representative to sell so much of the real estate as the court may
2 determine necessary for the purposes aforesaid. Such order shall give
3 a particular description of the property to be sold and the terms of
4 such sale and shall provide whether such property shall be sold at
5 public or private sale, or by negotiation. (~~The court shall order
6 sold that part of the real estate which is generally devised, rather
7 than any part which may have been specifically devised, but the court
8 may, if it appears necessary, sell any or all of the real estate so
9 devised.~~) After the giving of such order it shall be the duty of the
10 personal representative to sell such real estate in accordance with the
11 order of the court and as in this title provided with reference to the
12 public or private sales of real estate.

13 **Sec. 50.** RCW 11.68.010 and 1977 ex.s. c 234 s 18 are each amended
14 to read as follows:

15 Subject to the provisions of this chapter, if the estate of a
16 decedent, who died either testate or intestate, is solvent taking into
17 account both probate and nonprobate assets of the decedent, and if the
18 personal representative is other than a creditor of the decedent not
19 designated as personal representative in the decedent's will, such
20 estate shall be managed and settled without the intervention of the
21 court; the fact of solvency shall be established by the entry of an
22 order of solvency. An order of solvency may be entered at the time of
23 the appointment of the personal representative or at any time
24 thereafter where it appears to the court by the petition of the
25 personal representative, or the inventory filed, and/or other proof
26 submitted, that the estate of the decedent is solvent, and that notice
27 of the application for an order of solvency has been given to those
28 persons entitled thereto when required by RCW 11.68.040 as now or
29 hereafter amended.

30 **Sec. 51.** RCW 11.96.009 and 1985 c 31 s 2 are each amended to read
31 as follows:

32 (1) The superior court shall have original subject-matter
33 jurisdiction over ((probates in the following instances)) the probate
34 of wills and the administration of estates of incapacitated, missing,
35 and deceased individuals in all instances, including without
36 limitation:

37 (a) When a resident of the state dies; or

1 (b) When a nonresident of the state dies in the state; or

2 (c) When a nonresident of the state dies outside the state.

3 (2) The superior court shall have original subject-matter
4 jurisdiction over trusts and (~~trust~~) matters relating to trusts.

5 (3) The superior courts in the exercise of their jurisdiction of
6 matters of (~~probate and~~) trusts and estates shall have the power to
7 probate or refuse to probate wills, appoint personal representatives
8 (~~of deceased, incompetent, or disabled persons and~~), administer and
9 settle (~~all such estates, and~~) the affairs and the estates of
10 incapacitated, missing, or deceased individuals including but not
11 limited to decedents' estates only containing nonprobate assets,
12 administer and settle matters that relate to nonprobate assets and
13 arise under chapter 11.-- (section 19 of this act) or 11.-- RCW
14 (sections 31 through 48 of this act), administer and settle all trusts
15 and trust matters, award processes and cause to come before them all
16 persons whom they may deem it necessary to examine, and order and cause
17 to be issued all such writs as may be proper or necessary, and do all
18 things proper or incident to the exercise of such jurisdiction.

19 **Sec. 52.** RCW 11.96.020 and 1985 c 31 s 3 are each amended to read
20 as follows:

21 It is the intention of (~~this title~~) the legislature that the
22 courts (~~mentioned~~) shall have full and ample power and authority
23 under this title to:

24 (1) Administer and settle (~~all estates of decedents and~~
25 ~~incompetent and disabled persons in this title mentioned and to~~) the
26 affairs and the estates of all incapacitated, missing, and deceased
27 persons in accordance with this title;

28 (2) Administer and settle all trusts and trust matters; and

29 (3) Administer and settle matters arising with respect to
30 nonprobate assets under chapters 11.-- (section 19 of this act) and
31 11.-- RCW (sections 31 through 48 of this act).

32 If the provisions of this title with reference to the
33 administration and settlement of such (~~estates or trusts~~) matters
34 should in any cases and under any circumstances be inapplicable (~~or~~),
35 insufficient, or doubtful, the court shall nevertheless have full power
36 and authority to proceed with such administration and settlement in any
37 manner and way which to the court seems right and proper, all to the

1 end that such (~~estates or trusts may be by the court administered upon~~
2 ~~and settled~~) matters may be administered and settled by the court.

3 **Sec. 53.** RCW 11.96.050 and 1985 c 31 s 6 are each amended to read
4 as follows:

5 For purposes of venue in proceedings involving: The probate of
6 wills; the administration and disposition of estates of incapacitated,
7 missing, or deceased individuals, including but not limited to estates
8 only containing nonprobate assets; or trusts and trust matters, the
9 following shall apply:

10 (1) Proceedings under Title 11 RCW pertaining to trusts shall be
11 commenced (~~either~~):

12 (a) In the superior court of the county in which the situs of the
13 trust is located as provided in RCW 11.96.040; or

14 (~~In the superior court of the county in which a trustee~~
15 ~~resides or has its principal place of business; or~~

16 ~~(e))~~ With respect to testamentary trusts, in the superior court of
17 the county where letters testamentary were granted to a personal
18 representative(~~, and in the absence of~~) or, where no such letters
19 have been granted to a personal representative, then in any county
20 where letters testamentary could have been granted in accordance with
21 subsection (2) of this section.

22 (2) Wills shall be proven, letters testamentary or of
23 administration granted, and other proceedings pertaining to the probate
24 of wills, the administration and disposition of estates including but
25 not limited to estates containing only nonprobate assets under Title 11
26 RCW (~~pertaining to probate~~) shall be commenced(~~, either~~):

27 (a) In the county in which the decedent was a resident at the time
28 of death;

29 (b) In the county in which the decedent died, or in which any part
30 of the estate may be, if the decedent was not a resident of this state;
31 (~~or~~)

32 (c) In the county in which any part of the estate may be, if the
33 decedent (~~having~~) died out-of-state(~~,~~) and was not (~~having been~~)
34 a resident (~~in~~) of this state at the time of death; or

35 (d) In the county in which any nonprobate asset may be, if the
36 decedent died out-of-state, was not a resident of this state at the
37 time of death, and left no assets subject to probate administration in
38 this state.

1 (3) No action undertaken is defective or invalid because of
2 improper venue if the court has jurisdiction of the matter.

3 **Sec. 54.** RCW 11.96.060 and 1985 c 31 s 7 are each amended to read
4 as follows:

5 (1) Any action against the trustee of an express trust, excluding
6 those trusts excluded from the definition of express trusts under RCW
7 11.98.009, but including all express trusts, whenever executed, for any
8 breach of fiduciary duty, must be brought within three years from the
9 earlier of (a) the time the alleged breach was discovered or reasonably
10 should have been discovered, (b) the discharge of a trustee from the
11 trust as provided in RCW (~~11.98.040~~) 11.98.041, or (c) the time of
12 termination of the trust or the trustee's repudiation of the trust.

13 (2) Any action by an heir, legatee, or other interested party, to
14 whom proper notice was given if required, against a personal
15 representative for alleged breach of fiduciary duty must be brought
16 prior to discharge of the personal representative.

17 (3) The tolling provisions of RCW 4.16.190 apply to this chapter
18 except that the running of any statute of limitations stated in
19 subsection (1) or (2) of this section, or any other applicable statute
20 of limitations for any matter that is the subject of dispute under
21 chapter 11.96 RCW, is not tolled if the unascertained or unborn heir,
22 beneficiary, or class of persons, or minor(~~, incompetent, or~~
23 ~~disabled~~) or incapacitated person, or person identified in RCW
24 11.96.170(2) or 11.96.180 whose identity or address is unknown, had a
25 guardian ad litem, limited or general guardian of the estate, or a
26 special representative to represent the person during the probate or
27 dispute resolution proceeding.

28 (~~((4) Notwithstanding subsections (2) and (3) of this section, any~~
29 ~~cause of action against a trustee of an express trust, as provided for~~
30 ~~in subsection (1) of this section is not barred by the statute of~~
31 ~~limitations if it is brought within three years from January 1, 1985.~~
32 ~~In addition, any action as specified in subsection (2) of this section~~
33 ~~against the personal representative is not barred by this statute of~~
34 ~~limitations if it is brought within one year of January 1, 1985.))~~

35 **Sec. 55.** RCW 11.96.070 and 1990 c 179 s 1 are each amended to read
36 as follows:

1 (~~(A trustor, grantor, personal representative, trustee, or other~~
2 ~~fiduciary, creditor, devisee, legatee, heir, or trust beneficiary~~
3 ~~interested in the administration of a trust, or the attorney general in~~
4 ~~the case of a charitable trust under RCW 11.110.120, or of the estate~~
5 ~~of a decedent, incompetent, or disabled person,)) (1) A person with an
6 interest in or right respecting the administration, settlement, or
7 disposition of an interest in a trust or in the estate of an
8 incapacitated, missing, or deceased person may have a judicial
9 proceeding for the declaration of rights or legal relations (~~(in~~
10 ~~respect to the trust or estate)) under this title including but not
11 limited to the following:~~~~

12 (~~((1) To ascertain)) (a) The ascertaining of any class of
13 creditors, devisees, legatees, heirs, next of kin, or others;~~

14 (~~((2) To direct)) (b) The ordering of the personal representatives
15 or trustees to do or abstain from doing any particular act in their
16 fiduciary capacity;~~

17 (~~((3) To determine)) (c) The determination of any question arising
18 in the administration of the estate or trust, including without
19 limitation questions of construction of wills and other writings;~~

20 (~~((4) To confer upon)) (d) The grant to the personal
21 representatives or trustees of any necessary or desirable powers not
22 otherwise granted in the instrument or given by law that the court
23 determines are not inconsistent with the provisions or purposes of the
24 will or trust;~~

25 (~~((5) To amend or conform)) (e) The modification of the will or the
26 trust instrument in the manner required to qualify the gift thereunder
27 for the charitable estate tax deduction permitted by federal law,
28 including the addition of mandatory governing instrument requirements
29 for a charitable remainder trust as required by final regulations and
30 rulings of the United States internal revenue service, in any case in
31 which all parties interested in the trust have submitted written
32 agreements to the proposed changes or written disclaimer of interest;~~

33 (~~or~~

34 ~~((6) To amend or conform)) (f) The modification of the will or the
35 trust instrument in the manner required to qualify any gift thereunder
36 for the benefit of a surviving spouse who is not a citizen of the
37 United States for the estate tax marital deduction permitted by federal
38 law, including the addition of mandatory governing instrument
39 requirements for a qualified domestic trust under section 2056A of the~~

1 internal revenue code as required by final regulations and rulings of
2 the United States treasury department or internal revenue service, in
3 any case in which all parties interested in the trust have submitted
4 written agreements to the proposed changes or written disclaimer of
5 interest; ((or

6 ~~(7) To resolve any other matter in this title referencing this~~
7 ~~judicial proceedings section.)) (g) The determination of the persons
8 entitled to notice under RCW 11.96.100 and 11.96.110 for the purposes
9 of any judicial proceeding under this subsection (1) and for the
10 purposes of an agreement under RCW 11.96.170; or~~

11 (h) The resolution of any other matter that arises under this title
12 and references this section.

13 (2) Any person with an interest in or right respecting the
14 administration of a nonprobate asset under this title may have a
15 judicial proceeding for the declaration of rights or legal relations
16 under this title with respect to the nonprobate asset, including
17 without limitation the following:

18 (a) The ascertaining of any class of creditors or others for
19 purposes of chapter 11.-- (section 19 of this act) or 11.-- RCW
20 (sections 31 through 48 of this act);

21 (b) The ordering of a qualified person, the notice agent, or
22 resident agent, as those terms are defined in chapter 11.-- RCW
23 (sections 31 through 48 of this act), or any combination of them, to do
24 or abstain from doing any particular act with respect to a nonprobate
25 asset;

26 (c) The ordering of a custodian of any of the decedent's records
27 relating to a nonprobate asset to do or abstain from doing any
28 particular act with respect to those records;

29 (d) The determination of any question arising in the administration
30 under chapter 11.-- (section 19 of this act) or 11.-- RCW (sections 31
31 through 48 of this act) of a nonprobate asset;

32 (e) The determination of the persons entitled to notice under RCW
33 11.96.100 and 11.96.110 for the purposes of any judicial proceeding
34 under this subsection (2) and for the purposes of an agreement under
35 RCW 11.96.170; and

36 (f) The determination of any questions relating to the abatement,
37 rights of creditors, or other matter relating to the administration,
38 settlement, or final disposition of a nonprobate asset under this
39 title.

1 (3) The provisions of this chapter apply to disputes arising in
2 connection with estates of (~~incompetents or disabled~~) incapacitated
3 persons unless otherwise covered by chapters 11.88 and 11.92 RCW. The
4 provisions of this chapter shall not supersede the otherwise applicable
5 provisions and procedures of chapter 11.24, 11.28, 11.40, 11.52, 11.56,
6 or 11.60 RCW with respect to any rights or legal obligations that are
7 subject to those chapters.

8 (4) For the purposes of this section, "a person with an interest in
9 or right respecting the administration, settlement, or disposition of
10 an interest in a trust or in the estate of an incapacitated, missing,
11 or deceased person" includes but is not limited to:

12 (a) The trustor if living, trustee, beneficiary, or creditor of a
13 trust and, for a charitable trust, the attorney general if acting
14 within the powers granted under RCW 11.110.120;

15 (b) The personal representative, heir, devisee, legatee, and
16 creditor of an estate;

17 (c) The guardian, guardian ad litem, and ward of a guardianship,
18 and a creditor of an estate subject to a guardianship; and

19 (d) Any other person with standing to sue with respect to any of
20 the matters for which judicial proceedings are authorized in subsection
21 (1) of this section.

22 (5) For the purposes of this section, "any person with an interest
23 in or right respecting the administration of a nonprobate asset under
24 this title" includes but is not limited to:

25 (a) The notice agent, the resident agent, or a qualified person, as
26 those terms are defined in chapter 11.-- RCW (sections 31 through 48 of
27 this act);

28 (b) The recipient of the nonprobate asset with respect to any
29 matter arising under this title;

30 (c) Any other person with standing to sue with respect to any
31 matter for which judicial proceedings are authorized in subsection (2)
32 of this section; and

33 (d) The legal representatives of any of the persons named in this
34 subsection.

35 **Sec. 56.** RCW 11.96.080 and 1985 c 31 s 9 are each amended to read
36 as follows:

37 Unless rules of court or a provision of this title requires
38 otherwise, a judicial proceeding under RCW 11.96.070 may be commenced

1 by petition. The court shall make an order fixing the time and place
2 for hearing the petition. The court shall approve the form and content
3 of the notice. Notice of hearing shall be signed by the clerk of the
4 court.

5 **Sec. 57.** RCW 11.96.090 and 1985 c 31 s 10 are each amended to read
6 as follows:

7 The clerk of each of the superior courts is authorized to fix the
8 time of hearing of all applications, petitions and reports in probate
9 and guardianship proceedings, except the time for hearings upon show
10 cause orders and citations and except for the time of hearings set
11 under RCW 11.96.080. The authority (~~herein~~) granted in this section
12 is in addition to the authority vested in the superior courts and
13 superior court commissioners.

14 **Sec. 58.** RCW 11.96.100 and 1985 c 31 s 11 are each amended to read
15 as follows:

16 (1) Subject to RCW 11.96.110, in all judicial proceedings under
17 Title 11 RCW that require notice, such notice shall be personally
18 served (~~or mailed to each trustee, personal representative, heir,~~
19 ~~beneficiary including devisees, legatees, and heirs, guardian ad litem,~~
20 ~~and person having an interest in the trust or estate whose name and~~
21 ~~address are known to the petitioner)) on or mailed to all parties to
22 the dispute at least twenty days prior to the hearing on the
23 petition(~~(7)~~) unless (~~otherwise~~) a different period is provided by
24 statute or ordered by the court under RCW 11.96.080.~~

25 (2) Proof of (~~such~~) the service or mailing required in this
26 section shall be made by affidavit filed at or before the hearing.

27 (~~In addition, notice shall also be given to~~) (3) For the purposes
28 of this section:

29 (a) When used in connection with a judicial proceeding under RCW
30 11.96.070(1), "parties to the dispute" means each:

31 (i) Trustor if living;

32 (ii) Trustee;

33 (iii) Personal representative;

34 (iv) Heir;

35 (v) Beneficiary including devisees, legatees, and trust
36 beneficiaries;

37 (vi) Guardian ad litem; or

1 (vii) Other person
2 who has an interest in the subject of the particular proceeding and
3 whose name and address are known to, or are reasonably ascertainable
4 by, the petitioner, and also includes the attorney general if required
5 under RCW 11.110.120.

6 (b) When used in connection with a judicial proceeding under RCW
7 11.96.070(2), "parties to the dispute" means each notice agent, if any,
8 or other person, who has an interest in the subject of the particular
9 proceeding and whose name and address are known to, or are reasonably
10 ascertainable by, the petitioner, and also includes the personal
11 representatives of the estate of the owner of the nonprobate asset that
12 is the subject of the particular proceeding, if the subject of the
13 particular proceeding relates to the beneficiary's liability to a
14 decedent's estate or creditors under section 19 of this act.

15 (c) "Notice agent" has the meanings given in section 31 of this
16 act.

17 **Sec. 59.** RCW 11.96.110 and 1985 c 31 s 12 are each amended to read
18 as follows:

19 Notwithstanding provisions of this chapter to the contrary, there
20 is compliance with the ~~((notice))~~ requirements of Title 11 RCW for
21 notice to the beneficiaries of, ~~((or))~~ and other persons interested in,
22 an estate ~~((or))~~, a trust, or ~~((to beneficiaries or remaindermen))~~ a
23 nonprobate asset, including without limitation all living persons who
24 may participate in the corpus or income of the trust or estate, if
25 notice is given as follows:

26 (1) If an interest in an estate ~~((or))~~, trust, or nonprobate asset
27 has been given to persons who compose a certain class upon the
28 happening of a certain event, notice shall be given to the living
29 persons who would constitute the class if the event had happened
30 immediately before the commencement of the proceeding requiring notice.

31 (2) If an interest in an estate ~~((or))~~, trust, or nonprobate asset
32 has been given to a living person, and the same interest, or a share in
33 it, is to pass to the surviving spouse or to persons who are, or may
34 be, the distributees, heirs, issue, or other kindred of that living
35 person upon the happening of a future event, notice shall be given to
36 that living person.

37 (3) Except as otherwise provided in subsection (2) of this section,
38 if an interest in an estate ~~((or))~~, trust, or nonprobate asset has been

1 given to a person, a class of persons, or both upon the happening of
2 any future event, and the same interest or a share of such interest is
3 to pass to another person, class of persons, or both, upon the
4 happening of an additional future event, notice shall be given to the
5 living person or persons who would take the interest upon the happening
6 of the first event.

7 (4) Notice shall be given to persons who would not otherwise be
8 entitled to notice by law if a conflict of interest involving the
9 subject matter of the ~~((trust or estate))~~ proceeding relating to an
10 estate, trust, or nonprobate asset is known to exist between a person
11 to whom notice is given and a person to whom notice need not be given
12 under Title 11 RCW.

13 Any action taken by the court is conclusive and binding upon each
14 person receiving actual or constructive notice in the manner provided
15 in this section.

16 **Sec. 60.** RCW 11.96.130 and 1985 c 31 s 14 are each amended to read
17 as follows:

18 All issues of fact ~~((joined in probate or trust proceedings))~~ in
19 any judicial proceeding under this title shall be tried in conformity
20 with the requirements of the rules of practice in civil actions~~((The~~
21 ~~probate or trust))~~, except as otherwise provided by statute or ordered
22 by the court under RCW 11.96.030 or other applicable law or rules of
23 court. The judicial proceeding may be commenced as a new action or as
24 an action incidental to an existing ~~((probate or trust))~~ judicial
25 proceeding relating to the same trust or estate or nonprobate asset.
26 Once commenced, the action may be consolidated with an existing
27 ~~((probate or trust))~~ proceeding or converted to a separate action upon
28 the motion of any party for good cause shown, or by the court on its
29 own motion. If a party is entitled to a trial by jury and a jury is
30 demanded, and the issues are not sufficiently made up by the written
31 pleadings on file, the court, on due notice, shall settle and frame the
32 issues to be tried. If no jury is demanded, the court shall try the
33 issues ~~((joined))~~, and sign and file its findings and decision in
34 writing, as provided for in civil actions. Judgment on the ~~((issue~~
35 ~~joined))~~ issues, as well as for costs, may be entered and enforced by
36 execution or otherwise by the court as in civil actions.

1 **Sec. 61.** RCW 11.96.140 and 1985 c 31 s 15 are each amended to read
2 as follows:

3 Either the superior court or the court on appeal, may, in its
4 discretion, order costs, including ~~((attorneys))~~ attorneys' fees, to be
5 paid by any party to the proceedings or out of the assets of the estate
6 or trust or nonprobate asset, as justice may require.

7 **Sec. 62.** RCW 11.96.160 and 1988 c 202 s 19 are each amended to
8 read as follows:

9 Any interested party may seek appellate review of any final order,
10 judgment, or decree of the court~~((, and such))~~ respecting any judicial
11 proceedings under this title. The review shall be in the manner and
12 way provided by law for appeals in civil actions.

13 **Sec. 63.** RCW 11.96.170 and 1988 c 29 s 7 are each amended to read
14 as follows:

15 (1) If~~((, as to the))~~ all required parties to the dispute agree as
16 to a matter in dispute, the ~~((trustor, grantor, all parties~~
17 ~~beneficially interested in the estate or trust with respect to such~~
18 ~~matter, and any current fiduciary of such estate or trust, who are also~~
19 ~~included in RCW 11.96.070 and who are entitled to notice under RCW~~
20 ~~11.96.100 and 11.96.110 agree on any matter listed in RCW 11.96.070 or~~
21 ~~any other matter in Title 11 RCW referencing this nonjudicial~~
22 ~~resolution procedure, then the))~~ agreement shall be evidenced by a
23 written agreement executed by all ((necessary persons as provided in
24 this section)) required parties to the dispute. Those persons may
25 reach an agreement concerning a matter in RCW 11.96.070~~((+4))~~ (1)(d)
26 as long as those persons, rather than the court, determine that the
27 powers to be conferred are not inconsistent with the provisions or
28 purposes of the will or trust.

29 (2) If necessary, ~~((the personal representative or trustee))~~ any
30 one or more of the required parties to the dispute may petition the
31 court for the appointment of a special representative to represent a
32 ~~((person interested in the estate or trust who is a minor, incompetent,~~
33 ~~disabled, or))~~ required party to the dispute who is incapacitated by
34 reason of being a minor or otherwise, who is yet unborn or
35 unascertained, or ~~((a person))~~ whose identity or address is unknown.
36 The special representative has authority to enter into a binding
37 agreement under this section on behalf of the person or beneficiary.

1 to the agreement within 30 days of the above specified date the
2 agreement will be deemed approved and will be equivalent to a final
3 order binding on all persons interested in the ~~((estate or trust))~~
4 subject of the agreement.

5 If you file and serve a petition within the period specified, you
6 should ask the court to fix a time and place for the hearing on the
7 petition and provide for at least ~~((a))~~ ten days' notice to all persons
8 interested in the ~~((estate or trust))~~ subject of the agreement.

9 DATED this day of, ~~((19--))~~

10
11 ~~((Party to the agreement))~~ Name of
12 person filing the agreement or memorandum with the court)

13 (5) Unless a ~~((person interested in the estate or trust))~~ required
14 party to the dispute files a petition objecting to the agreement within
15 thirty days ~~((of))~~ after the filing of the agreement or the memorandum,
16 the agreement will be deemed approved and will be equivalent to a final
17 order binding on all ~~((persons interested in the estate or trust. If~~
18 ~~all persons interested in the estate or trust))~~ parties to the dispute.
19 If all required parties to the dispute waive the notice required by
20 this section, the agreement will be deemed approved and will be
21 equivalent to a final order binding on all such persons ~~((interested in~~
22 ~~the estate or trust))~~ effective upon the date of filing.

23 (6) For the purposes of this section:

24 (a) "Matter in dispute" includes without limitation any matter
25 listed in RCW 11.96.070 or any other matter in this title referencing
26 this nonjudicial resolution procedure;

27 (b) "Parties to the dispute" has the meaning given to that term in
28 RCW 11.96.100(3) (a) and (b), as applicable;

29 (c) "Required parties to the dispute" means those parties to the
30 dispute who are entitled to notice under RCW 11.96.100 and 11.96.110,
31 and, when used in the singular, means any one of the required parties
32 to the dispute; and

33 (d) "Estate" includes the estate of a deceased, missing, or
34 incapacitated person.

35 **Sec. 64.** RCW 11.96.180 and 1985 c 31 s 19 are each amended to
36 read as follows:

1 (1) The court, upon its own motion or on request of ~~((a person~~
2 ~~interested in the trust or estate))~~ any one or more of the required
3 parties to the dispute as that term is defined in RCW 11.96.170(6)(c),
4 at any stage of a judicial proceeding or at any time in a nonjudicial
5 resolution procedure, may appoint a guardian ad litem to represent the
6 interests of a minor, incapacitated, unborn, or unascertained person,
7 or person whose identity ~~((and))~~ or address ~~((are))~~ is unknown, or a
8 designated class of persons who are not ascertained or are not in
9 being. When not precluded by a conflict of interest, a guardian ad
10 litem may be appointed to represent several persons or interests.

11 ~~((For the purposes of this section, a trustee is a person~~
12 ~~interested in the trust and a personal representative is a person~~
13 ~~interested in an estate.~~

14 ~~(3))~~ The court-appointed guardian ad litem supersedes the special
15 representative if so provided in the court order.

16 ~~((4))~~ (3) The court may appoint the guardian ad litem at an ex
17 parte hearing, or the court may order a hearing as provided in RCW
18 11.96.070 with notice as provided in RCW 11.96.080, 11.96.100, and
19 11.96.110.

20 **Sec. 65.** RCW 11.98.200 and 1993 c 339 s 2 are each amended to
21 read as follows:

22 Due to the inherent conflict of interest that exists between a
23 trustee and a beneficiary of a trust, unless the terms of a trust refer
24 specifically to RCW 11.98.200 through 11.98.240 and provide expressly
25 to the contrary, the powers conferred upon a trustee who is a
26 beneficiary of the trust, other than the trustor as a trustee, ~~((and~~
27 ~~other than the decedent's spouse or the testator's spouse where the~~
28 ~~spouse is the trustee of a trust for which a marital deduction is or~~
29 ~~was otherwise allowed or allowable, whether or not an appropriate~~
30 ~~marital deduction election was in fact made,))~~ cannot be exercised by
31 the trustee to make:

32 (1) Discretionary distributions of either principal or income to
33 or for the benefit of the trustee, except to provide for the trustee's
34 health, education, maintenance, or support as described under section
35 2041 or 2514 of the Internal Revenue Code and the applicable
36 regulations adopted under that section;

37 (2) Discretionary allocations of receipts or expenses as between
38 principal and income, unless the trustee acts in a fiduciary capacity

1 whereby the trustee has no power to enlarge or shift a beneficial
2 interest except as an incidental consequence of the discharge of the
3 trustee's fiduciary duties; or

4 (3) Discretionary distributions of either principal or income to
5 satisfy a legal ((support)) obligation of the trustee.

6 A proscribed power under this section that is conferred upon two
7 or more trustees may be exercised by the trustees that are not
8 disqualified under this section. If there is no trustee qualified to
9 exercise a power proscribed under this section, a person described in
10 RCW 11.96.070 who is entitled to seek judicial proceedings with respect
11 to a trust may apply to a court of competent jurisdiction to appoint
12 another trustee who would not be disqualified, and the power may be
13 exercised by another trustee appointed by the court. Alternatively,
14 another trustee who would not be disqualified may be appointed in
15 accordance with the provisions of the trust instrument if the
16 procedures are provided, or as set forth in RCW 11.98.039 as if the
17 office of trustee were vacant, or by a nonjudicial dispute resolution
18 agreement under RCW 11.96.170.

19 **Sec. 66.** RCW 11.98.240 and 1993 c 339 s 6 are each amended to
20 read as follows:

21 (1)(a)(i) RCW 11.98.200 and 11.98.210 respectively apply to a
22 trust established under a will, codicil, trust agreement, declaration
23 of trust, deed, or other instrument executed after July 25, 1993,
24 unless the instrument's terms refer specifically to RCW 11.98.200 or
25 11.98.210 respectively and provide expressly to the contrary. However,
26 except for RCW 11.98.200(3), the 1994 c ... (this act) amendments to
27 RCW 11.98.200 apply to a trust established under a will, codicil, trust
28 agreement, declaration of trust, deed, or other instrument executed
29 after the effective date of this section, unless the instrument's terms
30 refer specifically to RCW 11.98.200 and provide expressly to the
31 contrary.

32 (ii) Notwithstanding (a)(i) of this subsection, for the purposes
33 of this subsection a codicil to a will or an amendment to a trust does
34 not cause that instrument to be executed after ((the aforementioned
35 date)) July 25, 1993, unless the codicil or amendment clearly shows an
36 intent to have RCW 11.98.200 or 11.98.210 apply.

37 (b) Notwithstanding (a) of this subsection, RCW 11.98.200 and
38 11.98.210 respectively apply to a trust established under a will or

1 codicil of a decedent dying on or after July 25, 1993, and to an inter
2 vivos trust to which the trustor had on or after July 25, 1993, the
3 power to terminate, revoke, amend, or modify, unless:

4 (i) The terms of the instrument specifically refer to RCW
5 11.98.200 or 11.98.210 respectively and provide expressly to the
6 contrary; or

7 (ii) The decedent or the trustor was not competent, on July 25,
8 1993, to change the disposition of his or her property, or to
9 terminate, revoke, amend, or modify the trust, and did not regain his
10 or her competence to dispose, terminate, revoke, amend, or modify
11 before the date of the decedent's death or before the trust could not
12 otherwise be revoked, terminated, amended, or modified by the decedent
13 or trustor.

14 (2) RCW 11.98.200 neither creates a new cause of action nor
15 impairs an existing cause of action that, in either case, relates to a
16 power proscribed under RCW 11.98.200 that was exercised before July 25,
17 1993. RCW 11.98.210 neither creates a new cause of action nor impairs
18 an existing cause of action that, in either case, relates to a power
19 proscribed, limited, or qualified under RCW 11.98.210.

20 NEW SECTION. **Sec. 67.** A new section is added to chapter 11.94
21 RCW to read as follows:

22 (1) The restrictions in RCW 11.95.100 through 11.95.150 on the
23 power of a person holding a power of appointment apply to attorneys-in-
24 fact holding the power to appoint to or for the benefit of the
25 powerholder.

26 (2) This section applies retroactively to July 25, 1993.

27 **Sec. 68.** RCW 11.100.035 and 1989 c 97 s 1 are each amended to
28 read as follows:

29 (1) Within the standards of judgment and care established by law,
30 and subject to any express provisions or limitations contained in any
31 particular trust instrument, guardians, trustees and other fiduciaries,
32 whether individual or corporate, are authorized to acquire and retain
33 securities of any open-end or closed-end management type investment
34 company or investment trust registered under the federal investment
35 company act of 1940 as now or hereafter amended.

36 (2) Within the limitations of subsection (1) of this section,
37 whenever the trust instrument directs, requires, authorizes, or permits

1 investment in obligations of the United States government, the trustee
2 may invest in and hold such obligations either directly or in the form
3 of securities of, or other interests in, an open-end or closed-end
4 management type investment company or investment trust registered under
5 the federal investment company act of 1940, as now or hereafter
6 amended, if both of the following conditions are met:

7 (a) The portfolio of the investment company or investment trust is
8 limited to obligations of the United States and to repurchase
9 agreements fully collateralized by such obligations; and

10 (b) The investment company or investment trust takes delivery of
11 the collateral for any repurchase agreement either directly or through
12 an authorized custodian.

13 (3) If the fiduciary is a bank or trust company, then the fact
14 that the fiduciary, or an affiliate of the fiduciary, provides services
15 to the investment company or investment trust such as that of an
16 investment advisor, custodian, transfer agent, registrar, sponsor,
17 distributor, manager, or otherwise, and is receiving reasonable
18 compensation for those services does not preclude the bank or trust
19 company from investing or reinvesting in the securities of the open-end
20 or closed-end management investment company or investment trust. The
21 fiduciary shall furnish a copy of the prospectus relating to the
22 securities to each person to whom a regular periodic accounting would
23 ordinarily be rendered under the trust instrument or under RCW
24 11.106.020, upon the request of that person. The restrictions set
25 forth under RCW 11.100.090 may not be construed as prohibiting the
26 fiduciary powers granted under this subsection.

27 **Sec. 69.** RCW 82.32.240 and 1988 c 64 s 21 are each amended to
28 read as follows:

29 Any tax due and unpaid and all increases and penalties thereon,
30 shall constitute a debt to the state and may be collected by court
31 proceedings in the same manner as any other debt in like amount, which
32 remedy shall be in addition to any and all other existing remedies.

33 In all cases of probate, insolvency, assignment for the benefit of
34 creditors, or bankruptcy, involving any taxpayer who is, or decedent
35 who was, engaging in business, the claim of the state for said taxes
36 and all increases and penalties thereon shall be a lien upon all real
37 and personal property of the taxpayer, and the mere existence of such
38 cases or conditions shall be sufficient to create such lien without any

1 prior or subsequent action by the state, and in all such cases it shall
2 be the duty of all administrators, executors, guardians, receivers,
3 trustees in bankruptcy or assignees for the benefit of creditors, to
4 notify the department of revenue of such administration, receivership
5 or assignment within sixty days from the date of their appointment and
6 qualification.

7 The lien provided for by this section shall attach as of the date
8 of the assignment for the benefit of creditors or of the initiation of
9 the probate, insolvency, or bankruptcy proceedings: PROVIDED, That
10 this sentence shall not be construed as affecting the validity or
11 priority of any earlier lien that may have attached previously in favor
12 of the state under any other section of this title.

13 Any administrator, executor, guardian, receiver or assignee for
14 the benefit of creditors not giving the notification as provided for
15 above shall become personally liable for payment of the taxes and all
16 increases and penalties thereon to the extent of the value of the
17 property subject to administration that otherwise would have been
18 available for the payment of such taxes, increases, and penalties by
19 the administrator, executor, guardian, receiver, or assignee.

20 As used in this section, "probate" includes the nonprobate claim
21 settlement procedure under chapter 11.-- RCW (sections 31 through 48 of
22 this act), and "executor" and "administrator" includes any notice agent
23 acting under chapter 11.-- RCW (sections 31 through 48 of this act).

24 **Sec. 70.** RCW 83.100.020 and 1993 c 73 s 9 are each amended to
25 read as follows:

26 As used in this chapter:

27 (1) "Decedent" means a deceased individual;

28 (2) "Department" means the department of revenue, the director of
29 that department, or any employee of the department exercising authority
30 lawfully delegated to him by the director;

31 (3) "Federal credit" means (a) for a transfer, the maximum amount
32 of the credit for state taxes allowed by section 2011 of the Internal
33 Revenue Code; and (b) for a generation-skipping transfer, the maximum
34 amount of the credit for state taxes allowed by section 2604 of the
35 Internal Revenue Code;

36 (4) "Federal return" means any tax return required by chapter 11
37 or 13 of the Internal Revenue Code;

1 (5) "Federal tax" means (a) for a transfer, a tax under chapter 11
2 of the Internal Revenue Code; and (b) for a generation-skipping
3 transfer, the tax under chapter 13 of the Internal Revenue Code;

4 (6) "Generation-skipping transfer" means a "generation-skipping
5 transfer" as defined and used in section 2611 of the Internal Revenue
6 Code;

7 (7) "Gross estate" means "gross estate" as defined and used in
8 section 2031 of the Internal Revenue Code;

9 (8) "Nonresident" means a decedent who was domiciled outside
10 Washington at his death;

11 (9) "Person" means any individual, estate, trust, receiver,
12 cooperative association, club, corporation, company, firm, partnership,
13 joint venture, syndicate, or other entity and, to the extent permitted
14 by law, any federal, state, or other governmental unit or subdivision
15 or agency, department, or instrumentality thereof;

16 (10) "Person required to file the federal return" means any person
17 required to file a return required by chapter 11 or 13 of the Internal
18 Revenue Code, such as the personal representative of an estate; or a
19 transferor, trustee, or beneficiary of a generation-skipping transfer;
20 or a qualified heir with respect to qualified real property, as defined
21 and used in section 2032A(c) of the Internal Revenue Code;

22 (11) "Property" means (a) for a transfer, property included in the
23 gross estate; and (b) for a generation-skipping transfer, all real and
24 personal property subject to the federal tax;

25 (12) "Resident" means a decedent who was domiciled in Washington
26 at time of death;

27 (13) "Transfer" means "transfer" as used in section 2001 of the
28 Internal Revenue Code, or a disposition or cessation of qualified use
29 as defined and used in section 2032A(c) of the Internal Revenue Code;

30 (14) "Trust" means "trust" under Washington law and any
31 arrangement described in section 2652 of the Internal Revenue Code; and

32 (15) "Internal Revenue Code" means the United States Internal
33 Revenue Code of 1986, as amended or renumbered on (~~July 25, 1993~~) the
34 effective date of this section.

35 **Sec. 71.** RCW 83.110.010 and 1993 c 73 s 10 are each amended to
36 read as follows:

37 As used in this chapter, the following terms have the meanings
38 indicated unless the context clearly requires otherwise.

1 (1) "Estate" means the gross estate of a decedent as determined
2 for the purpose of federal estate tax and the estate tax payable to
3 this state;

4 (2) "Excise tax" means the federal excise tax imposed by section
5 4980A(d) of the Internal Revenue Code, and interest and penalties
6 imposed in addition to the excise tax;

7 (3) "Fiduciary" means executor, administrator of any description,
8 and trustee;

9 (4) "Internal Revenue Code" means the United States Internal
10 Revenue Code of 1986, as amended or renumbered on (~~July 25, 1993~~) the
11 effective date of this section;

12 (5) "Person" means any individual, partnership, association, joint
13 stock company, corporation, government, political subdivision,
14 governmental agency, or local governmental agency;

15 (6) "Persons interested in retirement distributions" means any
16 person determined as of the date the excise tax is due, including a
17 personal representative, guardian, trustee, or beneficiary, entitled to
18 receive, or who has received, by reason of or following the death of a
19 decedent, any property or interest therein which constitutes a
20 retirement distribution as defined in section 4980A(e) of the Internal
21 Revenue Code, but this definition excludes any alternate payee under a
22 qualified domestic relations order as such terms are defined in section
23 414(p) of the Internal Revenue Code;

24 (7) "Person interested in the estate" means any person, including
25 a personal representative, guardian, or trustee, entitled to receive,
26 or who has received, from a decedent while alive or by reason of the
27 death of a decedent any property or interest therein included in the
28 decedent's taxable estate;

29 (8) "Qualified heir" means a person interested in the estate who
30 is entitled to receive, or who has received, an interest in qualified
31 real property;

32 (9) "Qualified real property" means real property for which the
33 election described in section 2032A of the Internal Revenue Code has
34 been made;

35 (10) "State" means any state, territory, or possession of the
36 United States, the District of Columbia, or the Commonwealth of Puerto
37 Rico; and

1 (11) "Tax" means the federal estate tax, the excise tax defined in
2 subsection (2) of this section, and the estate tax payable to this
3 state and interest and penalties imposed in addition to the tax.

4 NEW SECTION. **Sec. 72.** The following acts or parts of acts are
5 each repealed:

- 6 (1) RCW 11.12.050 and 1965 c 145 s 11.12.050;
7 (2) RCW 11.12.090 and 1965 c 145 s 11.12.090;
8 (3) RCW 11.12.130 and 1965 c 145 s 11.12.130;
9 (4) RCW 11.12.140 and 1965 c 145 s 11.12.140;
10 (5) RCW 11.12.150 and 1965 c 145 s 11.12.150.
11 (6) RCW 11.12.200 and 1965 c 145 s 11.12.200;
12 (7) RCW 11.12.210 and 1965 c 145 s 11.12.210;
13 (8) RCW 11.56.015 and 1965 c 145 s 11.56.015;
14 (9) RCW 11.56.140 and 1965 c 145 s 11.56.140;
15 (10) RCW 11.56.150 and 1965 c 145 s 11.56.150;
16 (11) RCW 11.56.160 and 1965 c 145 s 11.56.160; and
17 (12) RCW 11.56.170 and 1965 c 145 s 11.56.170.

18 NEW SECTION. **Sec. 73.** (1) Sections 4 through 8 of this act shall
19 constitute a new chapter in Title 11 RCW.

20 (2) Section 19 of this act shall constitute a new chapter in Title
21 11 RCW.

22 (3) Sections 31 through 48 of this act shall constitute a new
23 chapter in Title 11 RCW.

24 NEW SECTION. **Sec. 74.** The 1994 c ... (this act) amendments to
25 RCW 11.98.200(3) are remedial in nature and apply retroactively to July
26 25, 1993.

27 NEW SECTION. **Sec. 75.** (1) Except as provided in section 74 of
28 this act, sections 1 through 72 of this act shall take effect January
29 1, 1995.

30 (2) Section 3 of this act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and shall take
33 effect immediately.

Passed the House March 9, 1994.
Passed the Senate March 9, 1994.
Approved by the Governor April 1, 1994.
Filed in Office of Secretary of State April 1, 1994.