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SENATE BILL 5403

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State of Washington                      55th Legislature                      1997 Regular Session

By Senators Morton, Roach, Haugen and Winsley

Read first time 01/24/97. Referred to Committee on Law & Justice.

1            AN ACT Relating to distribution of estates; amending RCW 11.04.015,  
2 11.12.051, 11.36.010, and 11.36.021; and creating a new section.

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

4            **Sec. 1.** RCW 11.04.015 and 1974 ex.s. c 117 s 6 are each amended to  
5 read as follows:

6            The net estate of a person dying intestate, or that portion thereof  
7 with respect to which the person shall have died intestate, shall  
8 descend subject to the provisions of RCW 11.04.250 and 11.02.070, and  
9 shall be distributed as follows:

10            (1) Share of surviving spouse. Unless subsection (2) or (3) of  
11 this section applies, the surviving spouse shall receive the following  
12 share:

13            (a) All of the decedent's share of the net community estate; and

14            (b) One-half of the net separate estate if the intestate is  
15 survived by issue; or

16            (c) Three-quarters of the net separate estate if there is no  
17 surviving issue, but the intestate is survived by one or more of his  
18 parents, or by one or more of the issue of one or more of his parents;  
19 or

1 (d) All of the net separate estate, if there is no surviving issue  
2 nor parent nor issue of parent.

3 (2) Effect of pending petition for dissolution, separation, or  
4 declaration of invalidity. If at the time of the decedent's death  
5 there was pending before any court in the United States having proper  
6 jurisdiction a petition for legal separation, dissolution of marriage,  
7 or declaration of invalidity relating to the decedent and the  
8 decedent's spouse, then:

9 (a) Unless the separation contract specifically provides otherwise,  
10 if the decedent and the decedent's spouse entered into a separation  
11 contract as contemplated by RCW 26.09.070 before the decedent's death,  
12 the surviving spouse shall receive that share of the decedent's estate  
13 that he or she would have been entitled to under the terms of the  
14 separation contract had the decedent not died; or

15 (b) If the decedent and the decedent's spouse have not entered into  
16 a separation contract as contemplated by RCW 26.09.070 before the  
17 decedent's death, then the share of the surviving spouse shall be as  
18 determined under subsection (1) of this section. However, the share  
19 may be reduced or eliminated by the court at a hearing on a petition  
20 for the relief filed by any entity or person having an interest in the  
21 estate of the decedent that will be increased by the reduction. Notice  
22 of the petition must be given in accordance with RCW 11.96.100. The  
23 petition must be filed with the court having jurisdiction over the  
24 decedent's estate no later than six months after the date of the  
25 decedent's death. In determining whether to reduce or eliminate the  
26 share of the surviving spouse, the court shall consider the factors set  
27 forth in RCW 26.09.080 and shall further consider the actual intentions  
28 of the decedent as demonstrated by clear and convincing evidence. In  
29 determining the actual intentions of the decedent, the court shall  
30 consider, without limitation, oral or written statements made by the  
31 decedent that are otherwise admissible as evidence.

32 (3) Shares of others than surviving spouse. The share of the net  
33 estate not distributable to the surviving spouse, or the entire net  
34 estate if there is no surviving spouse, shall descend and be  
35 distributed as follows:

36 (a) To the issue of the intestate; if they are all in the same  
37 degree of kinship to the intestate, they shall take equally, or if of  
38 unequal degree, then those of more remote degree shall take by  
39 representation.

1 (b) If the intestate not be survived by issue, then to the parent  
2 or parents who survive the intestate.

3 (c) If the intestate not be survived by issue or by either parent,  
4 then to those issue of the parent or parents who survive the intestate;  
5 if they are all in the same degree of kinship to the intestate, they  
6 shall take equally, or, if of unequal degree, then those of more remote  
7 degree shall take by representation.

8 (d) If the intestate not be survived by issue or by either parent,  
9 or by any issue of the parent or parents who survive the intestate,  
10 then to the grandparent or grandparents who survive the intestate; if  
11 both maternal and paternal grandparents survive the intestate, the  
12 maternal grandparent or grandparents shall take one-half and the  
13 paternal grandparent or grandparents shall take one-half.

14 (e) If the intestate not be survived by issue or by either parent,  
15 or by any issue of the parent or parents or by any grandparent or  
16 grandparents, then to those issue of any grandparent or grandparents  
17 who survive the intestate; taken as a group, the issue of the maternal  
18 grandparent or grandparents shall share equally with the issue of the  
19 paternal grandparent or grandparents, also taken as a group; within  
20 each such group, all members share equally if they are all in the same  
21 degree of kinship to the intestate, or, if some be of unequal degree,  
22 then those of more remote degree shall take by representation.

23 **Sec. 2.** RCW 11.12.051 and 1994 c 221 s 11 are each amended to read  
24 as follows:

25 (1) If, after making a will, the testator's marriage is dissolved  
26 or invalidated, all provisions in the will in favor of or granting any  
27 interest or power to the testator's former spouse are revoked, unless  
28 the will expressly provides otherwise.

29 (2) If, after making a will, the testator or the testator's spouse  
30 files with any court in the United States having proper jurisdiction a  
31 petition for legal separation, dissolution of marriage, or declaration  
32 of invalidity relating to the decedent and the decedent's spouse, and  
33 the petition is still pending at the time of the testator's death,  
34 then:

35 (a) Unless the will or separation contract expressly provides  
36 otherwise, if the testator and the testator's spouse entered into a  
37 separation contract as contemplated by RCW 26.09.070 before the  
38 decedent's death, the surviving spouse shall receive that share of the

1 decendent's estate that he or she would have been entitled to under the  
2 terms of the separation contract had the decedent not died, and all  
3 provisions in the will in favor of or granting any interest or power to  
4 the testator's former spouse are revoked; or

5 (b) Unless the will expressly provides otherwise, if the testator  
6 and the testator's spouse have not entered into a separation contract  
7 as contemplated by RCW 26.09.070 before the testator's death, then all  
8 provisions in the testator's will for the surviving spouse shall remain  
9 unchanged unless an entity or person having an interest in the estate  
10 of the testator that will be increased by reducing or eliminating the  
11 interests of the surviving spouse petitions the court for an order  
12 reducing or eliminating the interests of the surviving spouse. Notice  
13 of the petition must be given in accordance with RCW 11.96.100. The  
14 petition must be filed with the court having jurisdiction over the  
15 testator's estate no later than six months after the date of the  
16 testator's death. In determining whether to reduce or eliminate the  
17 interest of the surviving spouse under the terms of the testator's  
18 will, the court shall consider the factors set forth in RCW 26.09.080,  
19 and shall further consider the actual intentions of the testator as  
20 demonstrated by clear and convincing evidence. In determining the  
21 actual intentions of the testator, the court shall consider without  
22 limitation, express provisions in the will and oral or written  
23 statements made by the testator that are otherwise admissible as  
24 evidence.

25 (3) Provisions affected by this section must be interpreted, and  
26 property affected passes, as if the former spouse failed to survive the  
27 testator, having died at the time of entry of the decree of dissolution  
28 or declaration of invalidity. Provisions revoked by this section are  
29 revived by the testator's remarriage to the former spouse. Revocation  
30 of certain nonprobate transfers is provided under RCW 11.07.010.

31 ((+2)) (4) This section is remedial in nature and applies to  
32 decrees of dissolution and declarations of invalidity entered before,  
33 on, or after January 1, 1995.

34 **Sec. 3.** RCW 11.36.010 and 1983 c 51 s 1 are each amended to read  
35 as follows:

36 The following persons are not qualified to act as personal  
37 representatives: Corporations, minors, persons of unsound mind, or  
38 persons who have been convicted of any felony or of a misdemeanor

1 involving moral turpitude: PROVIDED, That trust companies regularly  
2 organized under the laws of this state and national banks when  
3 authorized so to do may act as the personal representative of  
4 decedents' or incompetents' estates upon petition of any person having  
5 a right to such appointment and may act as executors or guardians when  
6 so appointed by will: PROVIDED FURTHER, That professional service  
7 corporations regularly organized under the laws of this state whose  
8 shareholder or shareholders are exclusively attorneys may act as  
9 personal representatives: PROVIDED FURTHER, That a surviving spouse of  
10 a decedent may not act as personal representative of the decedent's  
11 estate if at the time of the decedent's death there is pending before  
12 any court of the United States having proper jurisdiction a petition  
13 for legal separation, dissolution of marriage, or declaration of  
14 invalidity relating to the decedent and the decedent's spouse unless:

15 (1) The surviving spouse is expressly nominated so to serve in a  
16 will executed by the decedent either: (a) After the date the petition  
17 was filed, if the petition was filed by the decedent; or (b) after the  
18 date the decedent was notified of its filing, if the petition was filed  
19 by someone other than the decedent; or

20 (2) The decedent's will clearly expresses an intention that the  
21 surviving spouse serve as personal representative without regard to the  
22 pendency of any such proceedings.

23 No trust company or national bank may qualify as such executor or  
24 guardian under any will hereafter drawn by it or its agents or  
25 employees, and no salaried attorney of any such company may be allowed  
26 any attorney fee for probating any such will or in relation to the  
27 administration or settlement of any such estate, and no part of any  
28 attorney fee may inure, directly or indirectly, to the benefit of any  
29 trust company or national bank. When any person to whom letters  
30 testamentary or of administration have been issued becomes disqualified  
31 to act because of becoming of unsound mind or being convicted of any  
32 crime or misdemeanor involving moral turpitude, the court having  
33 jurisdiction shall revoke his or her letters. A nonresident may be  
34 appointed to act as personal representative if the nonresident appoints  
35 an agent who is a resident of the county where such estate is being  
36 probated or who is an attorney of record of the estate, upon whom  
37 service of all papers may be made; such appointment to be made in  
38 writing and filed by the clerk with other papers of such estate; and,  
39 unless bond has been waived as provided by RCW 11.28.185, such

1 nonresident personal representative shall file a bond to be approved by  
2 the court.

3 **Sec. 4.** RCW 11.36.021 and 1991 c 72 s 1 are each amended to read  
4 as follows:

5 (1) The following may serve as trustees:

6 (a) Any suitable persons over the age of eighteen years, if not  
7 otherwise disqualified;

8 (b) Any trust company regularly organized under the laws of this  
9 state and national banks when authorized to do so;

10 (c) Any nonprofit corporation, if the articles of incorporation or  
11 bylaws of that corporation permit the action and the corporation is in  
12 compliance with all applicable provisions of Title 24 RCW;

13 (d) Any professional service corporations regularly organized under  
14 the laws of this state whose shareholder or shareholders are  
15 exclusively attorneys; and

16 (e) Any other entity so authorized under the laws of the state of  
17 Washington.

18 (2) The following are disqualified to serve as trustees:

19 (a) Minors, persons of unsound mind, or persons who have been  
20 convicted of any felony or a misdemeanor involving moral turpitude;  
21 (~~and~~)

22 (b) A corporation organized under Title 23B RCW that is not  
23 authorized under the laws of the state of Washington to act as a  
24 fiduciary; and

25 (c) A surviving spouse of a decedent for a trust that becomes  
26 irrevocable on the death of the decedent if the trust was established  
27 by the decedent during the decedent's lifetime and at the time of the  
28 decedent's death there is pending before any court of the United States  
29 having proper jurisdiction a petition for legal separation dissolution  
30 of marriage, or declaration of invalidity relating to the decedent and  
31 the decedent's spouse, unless:

32 (i) The surviving spouse is expressly nominated to so serve in a  
33 written instrument executed by the decedent either: (A) After the date  
34 the petition was filed, if the petition was filed by the decedent; or  
35 (B) after the date the decedent was notified of its filing, if the  
36 petition was filed by someone other than the decedent; or

1        (ii) The decedent clearly expresses in the trust document the  
2 decedent's intention that the surviving spouse serve as trustee without  
3 regard to the pendency of any such proceedings.

4        NEW SECTION. Sec. 5. Section 2 of this act is remedial in nature  
5 and applies to decrees of dissolution and declarations of invalidity  
6 entered before, on, or after January 1, 1997.

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