## CERTIFICATION OF ENROLLMENT

## ENGROSSED SUBSTITUTE SENATE BILL 5589

Chapter 20, Laws of 2024

68th Legislature 2024 Regular Session

PROBATE—VARIOUS PROVISIONS

EFFECTIVE DATE: August 1, 2024

Passed by the Senate January 17, 2024 Yeas 48 Nays 0

DENNY HECK

President of the Senate

Passed by the House February 28, 2024 Yeas 93 Nays 2

LAURIE JINKINS

Speaker of the House of Representatives Approved March 13, 2024 11:07 AM

## CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5589** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

March 14, 2024

JAY INSLEE

Secretary of State State of Washington

Governor of the State of Washington

## ENGROSSED SUBSTITUTE SENATE BILL 5589

Passed Legislature - 2024 Regular Session

State of Washington68th Legislature2023 Regular SessionBy Senate Law & Justice (originally sponsored by Senator Stanford)READ FIRST TIME 02/17/23.

AN ACT Relating to probate; amending RCW 11.54.010, 11.54.030, 11.54.020, 11.54.040, 11.54.050, 11.54.060, 11.76.110, and 11.76.120; adding new sections to chapter 11.54 RCW; creating a new section; recodifying RCW 11.54.030; repealing RCW 11.54.070 and 11.54.080; and providing an effective date.

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

7 <u>NEW SECTION.</u> Sec. 1. A new section is added to chapter 11.54 8 RCW to read as follows:

9 (1) The purposes of this chapter are:

(a) To clarify the exemptions from attachment, execution, andforced sale that apply after a decedent's death;

12 (b) To establish a procedure for allocating the exempt property 13 among claimants; and

(c) To establish a procedure by which the decedent's surviving spouse, surviving registered domestic partner, or surviving dependent children may request basic financial support during the pendency of any proceedings under this title relating to the decedent's probate or nonprobate assets.

19 (2) This chapter applies to probate and nonprobate assets.

<u>NEW SECTION.</u> Sec. 2. A new section is added to chapter 11.54
 RCW to read as follows:

3 The definitions in this section apply throughout this chapter 4 unless the context clearly requires otherwise.

5 (1) "Child" and "children," when used with reference to a 6 decedent, means all persons who have a parent-child relationship, as 7 defined in RCW 26.26A.100, as a child with the decedent, regardless 8 of a person's age.

9 (2) "Claimant" means a person entitled to petition for an award 10 under this chapter. If multiple parties are entitled to petition for 11 an award, all of them are a "claimant."

12 (3) "Dependent," when used with reference to a decedent's child, 13 means a person who received more than half of that person's support 14 from the decedent during the 12 months preceding the decedent's 15 death. For the purposes of this subsection, the term "support" does 16 not include any public or governmental support.

17 (4) "Value," when used with reference to any property that may be exempt from the claims of creditors under this chapter or under the 18 laws of another state and that is being purchased on contract or is 19 20 subject to any encumbrance, means the value of the property net of 21 the balance due on the contract and the amount of the encumbrance. Any property exempted from creditor's claims under section 3 of this 22 act or awarded under RCW 11.54.010 will continue to be subject to any 23 such contract or encumbrance. 24

25 <u>NEW SECTION.</u> Sec. 3. A new section is added to chapter 11.54
26 RCW to read as follows:

27 (1) Any homestead or other property exempt from attachment, 28 execution, and forced sale under Title 6 RCW immediately before a decedent's death remains exempt from attachment, execution, and 29 30 forced sale for the debts of the decedent and the debts of the community composed of the decedent and the decedent's spouse or 31 registered domestic partner that arose before the decedent's death, 32 up to the amount specified in RCW 11.54.020(1), except as otherwise 33 provided in Title 6 RCW or in this chapter. 34

35 (2) If the decedent resided or was domiciled in the state of36 Washington when the decedent died, and either:

37 (a) No homestead or other property was exempt from attachment,
 38 execution, and forced sale under Title 6 RCW immediately before the
 39 decedent's death; or

1 (b) The total value of the property exempted from the claims of creditors under subsection (1) of this section or under the laws of 2 3 another state (together with the value of any separate property of the decedent's surviving spouse or surviving registered domestic 4 partner that is exempt from attachment, execution, and forced sale 5 6 for the debts of the decedent's surviving spouse or surviving 7 registered domestic partner) is less than the amount specified in RCW 11.54.020(1)(b); 8

then the court shall designate other property of the estate, either 9 community or separate, that, when added to the value of: (i) The 10 11 property exempted under subsection (1) of this section; (ii) the 12 property exempted from attachment, execution, and forced sale under the laws of another state; and (iii) the separate property of the 13 decedent's surviving spouse or surviving registered domestic partner 14 that is exempt from attachment, execution, and forced sale for the 15 16 debts of the decedent's surviving spouse or surviving registered 17 domestic partner, has an aggregate value that does not exceed the amount specified in RCW 11.54.020(1)(b). This additional designated 18 19 property, together with any additional award that a court may grant for family support under RCW 11.54.040, shall also be exempt from 20 21 attachment, execution, and forced sale for the debts of the decedent and the debts of the community composed of the decedent and the 22 23 decedent's spouse or registered domestic partner that arose before 24 the decedent's death, except as otherwise provided in this chapter.

25 Sec. 4. RCW 11.54.010 and 2008 c 6 s 916 are each amended to 26 read as follows:

27 (1) ((Subject to RCW 11.54.030, the surviving spouse or surviving 28 domestic partner of a decedent may petition the court for an award 29 from the property of the decedent.)) Any one or more of a decedent's 30 surviving spouse, surviving registered domestic partner, and dependent children may commence a judicial proceeding under chapter 31 11.96A RCW for an award from the decedent's separate property and 32 from the community property of the decedent and the decedent's spouse 33 or registered domestic partner that are exempt from attachment, 34 execution, and forced sale under section 3 of this act. The petition 35 36 must:

37 <u>(a) Set forth facts to establish that the claimant is entitled to</u> 38 <u>an award under this chapter;</u>

1 (b) State the nature and value of those assets held by all 2 potential claimants that are exempt from the claims of creditors and 3 that are known to the claimant or could be known to the claimant with 4 reasonable diligence; and

5 <u>(c) Describe all other assets then held by the claimants,</u> 6 <u>including any interest the claimants may have in any of the</u> 7 <u>decedent's probate or nonprobate property.</u>

8 (2) If a claimant proves by a preponderance of the evidence that 9 an award of property exempt from the claims of creditors to the 10 claimant would fulfill one or more of the purposes of this chapter, 11 the court may grant the claimant an award that the court determines 12 to be equitable.

(3) If the decedent is survived by <u>one or more dependent</u> children 13 ((of the decedent who are not also the children of the surviving 14 15 spouse or surviving domestic partner, on petition of such a child)), 16 the court may divide the award between the surviving spouse or 17 surviving registered domestic partner and all or any of ((such)) the <u>decedent's surviving dependent</u> children as ((it)) <u>the court</u> deems 18 appropriate. ((If there is not a surviving spouse or surviving 19 domestic partner, the minor children of the decedent may petition for 20 21 an award.

(4) The ((award)) awards under this chapter may be made ((from)) either from the community property of the decedent and the decedent's spouse or registered domestic partner or from the separate property of the decedent. ((Unless otherwise ordered by the court, the probate and nonprobate assets of the decedent abate in accordance with chapter 11.10 RCW in satisfaction of the award.

(3)) (5) Any and all homestead or other property exempt from
 attachment, execution, and forced sale under Title 6 RCW immediately
 before the decedent's death shall be included in the basic award.

31 <u>(6)</u> The <u>basic</u> award may be made whether or not ((<del>probate</del>)) <u>any</u> 32 proceedings have been commenced ((<del>in the state of Washington. The</del> 33 <del>court may not make this award unless the petition for the award is</del> 34 <del>filed before the earliest of:</del>

35 (a) Eighteen months from the date of the decedent's death if 36 within twelve months of the decedent's death either:

37 (i) A personal representative has been appointed; or

38 (ii) A notice agent has filed a declaration and oath as required 39 in RCW 11.42.010(3)(a)(ii); or

- 1 (b) The termination of any probate proceeding for the decedent's
- 2 estate that has been commenced in the state of Washington; or
- 3 (c) Six years from the date of the death of the decedent)) under
  4 this title relating to the decedent's probate or nonprobate assets.

5 **Sec. 5.** RCW 11.54.030 and 2008 c 6 s 918 are each amended to 6 read as follows:

(1) The court may not make an award ((unless the court finds that the funeral expenses, expenses of last sickness, and expenses of administration)) to a claimant under this chapter until the expenses of administration, funeral expenses, expenses of last sickness, and wages due for labor performed within 60 days immediately preceding the decedent's death have been paid or provided for.

(2) The court may not make an award to ((a surviving spouse or surviving domestic partner or child)) or for the benefit of any person who ((has participated, either as a principal or as an accessory before the fact, in the willful and unlawful killing)) is a slayer or abuser as those terms are defined in RCW 11.84.010 of the decedent.

19 (3) The court may not make any award under this chapter unless 20 the petition for the award is filed before the earliest of:

21 (a) Eighteen months from the date of the decedent's death if
22 within 12 months of the decedent's death either:

23 (i) A personal representative has been appointed; or

24 (ii) A notice agent has filed a declaration and oath as required 25 in RCW 11.42.010(3)(a)(ii); or

- 26 (b) The termination of all proceedings under this title relating 27 to the decedent's probate or nonprobate assets; or
- 28 (c) Six years from the date of the death of the decedent.

29 Sec. 6. RCW 11.54.020 and 2008 c 6 s 917 are each amended to 30 read as follows: 31 (1) The amount of the basic award shall be the ((amount specified 32 in RCW 6.13.030(2) with regard to lands.)) greater of the following: (a) The value, as of the date of the decedent's death, of the 33 decedent's property, or if the decedent is married or has a 34 registered domestic partner, the value of the community property of 35 the decedent and the decedent's spouse or registered domestic 36 37 partner, that was exempt from attachment, execution, or forced sale 38 under Title 6 RCW immediately before the decedent's death; or

(b) The amount specified in RCW 6.13.030(1)(a) or, if greater,
 the amount specified in subsection (3) of this section, on the date
 of the decedent's death.

(2) If an award is divided ((between)) among a surviving spouse 4 5 or surviving registered domestic partner and the decedent's dependent 6 children ((who are not the children of the surviving spouse or 7 surviving domestic partner)), the aggregate amount awarded to all the claimants under this section shall be the amount specified in ((RCW 8 6.13.030(2) with respect to lands. The amount of the basic award may 9 be increased or decreased in accordance with RCW 11.54.040 and 10 11.54.050) subsection (1) of this section. 11

12 (3) For 2024 and each calendar year thereafter, the amount of the basic award shall not be less than an amount that is calculated as 13 follows: \$125,000 multiplied by the inflation factor and then rounded 14 15 to the nearest \$1,000. The adjustment of the basic amount under this 16 subsection shall be effective annually as of the first calendar day 17 of the calendar year. The inflation factor is a fraction, the numerator of which is the consumer price index figure published for 18 the most recent October preceding the effective date of the 19 adjustment and the denominator of which is the consumer price index 20 figure published for October 2021. No adjustment to the basic award 21 shall be made under this subsection for a calendar year if the 22 23 adjustment would result in the same or a lesser basic award than the basic award for the immediately preceding calendar year. For purposes 24 25 of this subsection, "consumer price index" means the consumer price index for all urban consumers, all items in the Seattle area, not 26 27 seasonally adjusted, as calculated by the bureau of labor statistics 28 of the United States department of labor. For purposes of this subsection (3), "Seattle area" means the geographic area sample that 29 30 includes Seattle and surrounding areas. In the event the bureau of 31 labor statistics discontinues the use and publication of applicable 32 averages, then the consumer price index to be used for the computation of the inflation factor shall be the consumer price 33 34 average that was last published before the event that caused the inflation factor to be applied. 35

36 Sec. 7. RCW 11.54.040 and 2008 c 6 s 919 are each amended to 37 read as follows:

38 (1) If ((it is demonstrated)) <u>a claimant demonstrates</u> to the 39 satisfaction of the court ((with clear, cogent, and convincing)

1 evidence)) that a claimant's present and reasonably anticipated future needs ((during the pendency of any probate proceedings in the 2 3 state of Washington)) with respect to basic maintenance and support during the pendency of any proceedings under this title relating to 4 the decedent's probate or nonprobate assets will not ((otherwise)) be 5 6 provided ((for)) from other resources $((\tau))$  and that ((the)) <u>an</u> 7 increased award would not be inconsistent with the decedent's intentions or principles of equity and fairness, the amount of the 8 award may be increased above the amount of the basic award in an 9 amount that the court determines to be ((appropriate)) needed for a 10 claimant's present and reasonably anticipated future needs with 11 12 respect to basic maintenance and support during the pendency of any proceedings under this title relating to the decedent's probate or 13 14 nonprobate assets.

(2) In determining the needs of the claimant, the court shall 15 16 consider, without limitation, the resources available to the claimant 17 the claimant's ((dependents)) dependent children, and the and resources reasonably expected to be available to the claimant and the 18 claimant's ((dependents)) dependent children during the pendency of 19 ((the probate)) any proceedings under this title relating to the 20 decedent's probate or nonprobate assets, including income related to 21 present or future employment and benefits flowing from the decedent's 22 probate and nonprobate estate. 23

24 (3) In determining the intentions of the decedent, the court 25 shall consider, without limitation:

(a) Provisions made for the claimant by the decedent under theterms of the decedent's will or otherwise;

(b) Provisions made for third parties or other entities under the decedent's will or otherwise that would be affected by an increased award;

31 (c) If the claimant is the surviving spouse or surviving 32 <u>registered</u> domestic partner, the duration and status of the marriage 33 or the state registered domestic partnership of the decedent to the 34 claimant at the time of the decedent's death;

35 (d) The effect of any award on the availability of any other 36 resources or benefits to the claimant;

37 (e) The size and nature of the decedent's probate and nonprobate38 estate; and

39 (f) Oral or written statements made by the decedent that are 40 otherwise admissible as evidence.

The fact that the decedent has named beneficiaries other than the claimant as recipients of the decedent's estate is not of itself adequate to evidence such an intent as would prevent the award of an amount in excess of <u>the basic award</u> that <u>is</u> provided ((<del>for</del>)) in RCW ((<del>6.13.030(2)</del> with respect to lands)) <u>11.54.020(1)</u>.

6 (4)(a) ((A petition for)) The court may only grant an increased 7 award ((may only be made)) if a petition for ((an)) <u>a basic</u> award has 8 been granted under RCW 11.54.010. The request for an increased award 9 may be made in conjunction with the petition for an award under RCW 10 11.54.010.

(b) Subject to (a) of this subsection (4), a request for an increased award may be made at any time during the pendency of ((the probate)) any proceedings under this title relating to the decedent's probate or nonprobate assets. A request to modify an increased award may also be made at any time during the pendency of the probate proceedings by a person having an interest in the decedent's estate that will be directly affected by the requested modification.

18 Sec. 8. RCW 11.54.050 and 2008 c 6 s 920 are each amended to 19 read as follows:

20 (((+))) The court may decrease the amount of the award below the 21 amount provided in RCW 11.54.020(1) in the exercise of its discretion 22 if ((the)):

23 (1) The recipient is entitled to receive probate or nonprobate 24 property, including insurance, by reason of the death of the 25 decedent. In such a case the award ((must)) <u>may not</u> be decreased by 26 ((no)) more than the value of ((such)) <u>the</u> other property ((as)) <u>that</u> 27 is received by reason of the death of the decedent. The court shall 28 consider the factors presented in RCW 11.54.040(2) in determining the 29 propriety of the award and the proper amount of the award, if any((-

30 (2) An award to a surviving spouse or surviving domestic partner 31 is also discretionary and the amount otherwise allowable may be 32 reduced if: (a) The); or

33 (2) (a) The decedent is survived by <u>one or more dependent</u> children 34 who are not the children of the surviving spouse or surviving 35 <u>registered</u> domestic partner and the award would decrease amounts 36 otherwise distributable to ((such)) <u>those</u> children; or (b) the award 37 would have the effect of reducing amounts otherwise distributable to 38 any of the decedent's ((minor)) <u>dependent</u> children. In either 39 ((case)) of the cases specified in this subsection (2), the court 1 ((shall)) must consider the factors presented in RCW 11.54.040 (2) and (3) and section 9 of this act and whether the needs of the 2 ((minor)) dependent children with respect to basic maintenance and 3 support are and will be adequately provided for, both during and 4 after ((the pendency of)) any ((probate)) proceedings ((if such 5 6 proceedings are pending)) under this title relating to the decedent's 7 probate or nonprobate assets, considering support from any source, including support from the <u>decedent's</u> surviving spouse or surviving 8 9 registered domestic partner.

10 <u>NEW SECTION.</u> Sec. 9. A new section is added to chapter 11.54 11 RCW to read as follows:

12 In exercising the discretion granted to the court under this 13 chapter, the court shall consider without limitation:

14 (1) The exemptions from attachment, execution, or forced sale 15 under Title 6 RCW and other applicable laws;

16 (2) Whether or not any separate property of the decedent's 17 surviving spouse or surviving domestic partner is exempted from 18 attachment, execution, or forced sale under Title 6 RCW or other 19 applicable laws before and after the decedent's death;

20 (3) Whether or not exemptions from attachment, execution, or 21 forced sale have been granted to the decedent or the decedent's 22 surviving spouse or surviving domestic partner in another 23 jurisdiction;

(4) How principles of equity and fairness would allocate the statutory exemptions from attachment, execution, and forced sale under Title 6 RCW and other applicable laws among the decedent's surviving spouse or surviving domestic partner and the decedent's surviving dependent children;

(5) How the laws of intestacy, if the decedent died intestate and without nonprobate assets, or the decedent's dispositive intent, if the decedent died testate or with nonprobate assets, would direct the decedent's property;

33 (6) The extent to which the claimant has other property that will 34 satisfy the claimant's reasonable needs; and

35 (7) If the claimant is a child of the decedent, the child's 36 ability or inability to meet the child's basic needs.

37 Sec. 10. RCW 11.54.060 and 1997 c 252 s 53 are each amended to 38 read as follows:

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1 (((1) The award has priority over all other claims made in the 2 estate. In determining which assets must be made available to satisfy 3 the award, the claimant is to be treated as a general creditor of the 4 estate, and unless otherwise ordered by the court the assets shall 5 abate in satisfaction of the award in accordance with chapter 11.10 6 RCW.

7 (2) If the property awarded is being purchased on contract or is subject to any encumbrance, for purposes of the award the property 8 must be valued net of the balance due on the contract and the amount 9 of the encumbrance. The property awarded will continue to be subject 10 to any such contract or encumbrance, and any award in excess of the 11 basic award under RCW 11.54.010, whether of community property or the 12 decedent's separate property, is not immune from any lien for costs 13 of medical expenses recoverable under RCW 43.20B.080.)) 14 15 Notwithstanding any other provision of this chapter:

16 <u>(1) None of the decedent's separate property and none of the</u> 17 property of the community composed of the decedent and the decedent's 18 spouse or registered domestic partner is exempt from the duty to pay 19 the costs of administration, funeral expenses, expenses of the last 20 sickness, and wages due for labor performed within 60 days 21 immediately preceding the decedent's death, as those terms are used 22 in RCW 11.76.110.

23 (2) No provision of this chapter shall abrogate or diminish the 24 rights associated with a valid lien.

25 <u>NEW SECTION.</u> Sec. 11. A new section is added to chapter 11.54 26 RCW to read as follows:

27 The decedent's separate property and the property of the 28 community composed of the decedent and the decedent's spouse or registered domestic partner abates for awards of family allowance 29 30 under this chapter in accordance with chapter 11.10 RCW; provided 31 however, that gifts containing a homestead or other nonfungible property that is exempt from attachment, execution, and forced sale 32 shall abate to the extent that the property is awarded to a claimant 33 under this chapter, regardless of whether the gift would be 34 35 classified as intestate, residuary, general, demonstrative, or specific, except as otherwise provided in RCW 11.10.010(2). 36

37 Sec. 12. RCW 11.76.110 and 2010 c 8 s 2068 are each amended to 38 read as follows:

1 ((After payment of costs of administration)) Subject to federal preemption and the privileges and priorities allowed to encumbrances 2 and liens under applicable law, the reasonable expenses of 3 administration and the enforceable debts of the estate shall be paid 4 in the following order: 5 6 (1) Expenses of administration. 7 (2) Funeral expenses in such amount as the court shall order or a personal representative with nonintervention powers shall determine 8 9 to be reasonable. ((<del>(2)</del>)) <u>(3)</u> Expenses of the last sickness, in such amount as the 10 court shall order or a personal representative with nonintervention 11 12 powers shall determine to be reasonable. ((<del>(3)</del>)) (4) Wages due for labor performed within ((sixty)) 60 13 14 days immediately preceding the death of decedent. 15 (((4) Debts having preference by the laws of the United States. 16 (5) Taxes, or any debts or dues owing to the state. 17 (6) Judgments rendered against the deceased in his or her lifetime which are liens upon real estate on which executions might 18 have been issued at the time of his or her death, and debts secured 19 by mortgages in the order of their priority. 20 21 (7)) (5) Exemptions and awards under chapter 11.54 RCW. 22 (6) All other enforceable demands against the estate.

23 Sec. 13. RCW 11.76.120 and 1965 c 145 s 11.76.120 are each 24 amended to read as follows:

The preference given in RCW 11.76.110 to a mortgage ((<del>or</del> judgment)), deed of trust, perfected security interest, judgment <u>lien, or other lien</u> shall only extend to the proceeds of the property subject to the lien ((<del>of such mortgage or judgment</del>)).

29 <u>NEW SECTION.</u> Sec. 14. This act takes effect August 1, 2024.

30 <u>NEW SECTION.</u> Sec. 15. (1) No act done in any proceeding 31 commenced before the effective date of this section and no accrued 32 right shall be impaired by any provision of this act.

33 (2) When a right is acquired, extinguished, or barred upon the 34 expiration of a prescribed period of time which has commenced to run 35 by the provisions of any statute in force before the effective date 36 of this section, those provisions shall remain in force and be deemed 37 a part of this act with respect to that right. 1 (3) The procedures in effect before the effective date of this 2 section shall apply to any proceeding to the extent that in the 3 opinion of the court the application of the procedures under this act 4 would not be feasible or would work injustice.

5 <u>NEW SECTION.</u> Sec. 16. RCW 11.54.030 is recodified as a section 6 in chapter 11.54 RCW, to be codified between RCW 11.54.010 and 7 11.54.020.

8 <u>NEW SECTION.</u> Sec. 17. The following acts or parts of acts are 9 each repealed:

10 (1) RCW 11.54.070 (Immunity of award from debts and claims of 11 creditors) and 2008 c 6 s 921, 1998 c 292 s 201, & 1997 c 252 s 54; 12 and

13 (2) RCW 11.54.080 (Exemption of additional assets from claims of 14 creditors—Petition—Notice—Court order) and 1999 c 42 s 612 & 1997 c 15 252 s 55.

> Passed by the Senate January 17, 2024. Passed by the House February 28, 2024. Approved by the Governor March 13, 2024. Filed in Office of Secretary of State March 14, 2024.

> > --- END ---