
HOUSE BILL 2752

State of Washington 52nd Legislature 1992 Regular Session

By Representatives Appelwick, R. Meyers and Paris

Read first time 01/27/92. Referred to Committee on Judiciary.

1 AN ACT Relating to the uniform simultaneous death act; amending RCW
2 11.05.010, 11.05.030, and 11.05.050; adding new sections to chapter
3 11.05 RCW; creating new sections; and repealing RCW 11.05.020 and
4 11.05.040.

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

6 NEW SECTION. **Sec. 1.** DEFINITIONS. In this chapter:

7 (1) "Co-owners with right of survivorship" includes joint tenants,
8 tenants by the entireties, and other co-owners of property or accounts
9 held under circumstances that entitles one or more to the whole of the
10 property or account on the death of the other or others.

11 (2) "Governing instrument" means a deed, will, trust, insurance or
12 annuity policy, account with POD designation, pension, profit-sharing,
13 retirement, or similar benefit plan, instrument creating or exercising

1 a power of appointment or a power of attorney, or a donative,
2 appointive, or nominative instrument of any other type.

3 (3) "Payor" means a trustee, insurer, business entity, employer,
4 government, governmental agency, subdivision, or instrumentality, or
5 any other person authorized or obligated by law or a governing
6 instrument to make payments.

7 **Sec. 2.** RCW 11.05.010 and 1965 c 145 s 11.05.010 are each amended
8 to read as follows:

9 (~~Where~~) Except as provided in RCW 11.05.050, if the title to
10 property (~~or~~), the devolution (~~thereof~~) of property, the right to
11 elect an interest in property, or the right to exempt property,
12 homestead, or family allowance depends upon (~~priority of death and~~
13 there is no sufficient evidence that the persons have died otherwise
14 than simultaneously, the property of each person shall be disposed of
15 as if he had survived, except as provided otherwise in this chapter)
16 an individual's survivorship of the death of another individual, an
17 individual who is not established by clear and convincing evidence to
18 have survived the other individual by one hundred twenty hours is
19 deemed to have predeceased the other individual. This section does not
20 apply if its application would result in a taking of intestate estate
21 by the state.

22 NEW SECTION. **Sec. 3.** REQUIREMENT OF SURVIVAL BY ONE HUNDRED
23 TWENTY HOURS UNDER DONATIVE DISPOSITIONS IN GOVERNING INSTRUMENTS.
24 Except as provided in RCW 11.05.050, for purposes of a donative
25 provision of a governing instrument, an individual who is not
26 established by clear and convincing evidence to have survived an event,
27 including the death of another individual, by one hundred twenty hours
28 is deemed to have predeceased the event.

1 **Sec. 4.** RCW 11.05.030 and 1965 c 145 s 11.05.030 are each amended
2 to read as follows:

3 (~~Where there is no sufficient~~) Except as provided in RCW
4 11.05.050, if (1) it is not established by clear and convincing
5 evidence that one of two ((joint tenants have died otherwise than
6 simultaneously)) co-owners with right of survivorship survived the
7 other co-owner by one hundred twenty hours, one-half of the property
8 ((so held shall be distributed one half as if one had survived,))
9 passes as if one had survived by one hundred twenty hours and one-half
10 as if the other had survived((. If)) by one hundred twenty hours, and
11 (2) there are more than two ((joint tenants)) co-owners and ((all of
12 them have so died)) it is not established by clear and convincing
13 evidence that at least one of them survived the others by one hundred
14 twenty hours, the property ((thus distributed shall be)) passes in the
15 proportion that one bears to the whole number of ((joint tenants)) co-
16 owners.

17 NEW SECTION. **Sec. 5.** EVIDENCE OF DEATH OR STATUS. In addition to
18 the rules of evidence in courts of general jurisdiction, the following
19 rules relating to a determination of death and status apply:

20 (1) Death occurs when an individual has sustained either (a)
21 irreversible cessation of circulatory and respiratory functions or (b)
22 irreversible cessation of all functions of the entire brain, including
23 the brain stem. A determination of death must be made in accordance
24 with accepted medical standards.

25 (2) A certified or authenticated copy of a death certificate
26 purporting to be issued by an official or agency of the place where the
27 death purportedly occurred is prima facie evidence of the fact, place,
28 date, and time of death and the identity of the decedent.

1 (3) A certified or authenticated copy of any record or report of a
2 governmental agency, domestic or foreign, that an individual is
3 missing, detained, dead, or alive is prima facie evidence of the status
4 and of the dates, circumstances, and places disclosed by the record or
5 report.

6 (4) In the absence of prima facie evidence of death under
7 subsection (2) or (3) of this section, the fact of death may be
8 established by clear and convincing evidence, including circumstantial
9 evidence.

10 (5) An individual whose death is not established under subsections
11 (1) through (4) of this section who is absent for a continuous period
12 of five years, during which he or she has not been heard from, and
13 whose absence is not satisfactorily explained after diligent search or
14 inquiry, is presumed to be dead. His or her death is presumed to have
15 occurred at the end of the period unless there is sufficient evidence
16 for determining that death occurred earlier.

17 (6) In the absence of evidence disputing the time of death
18 stipulated on a document described in subsection (2) or (3) of this
19 section, a document described in subsection (2) or (3) of this section
20 that stipulates a time of death one hundred twenty hours or more after
21 the time of death of another individual, however the time of death of
22 the other individual is determined, establishes by clear and convincing
23 evidence that the individual survived the other individual by one
24 hundred twenty hours.

25 NEW SECTION. **Sec. 6.** PROTECTION OF PAYORS, BONA FIDE PURCHASERS,
26 AND OTHER THIRD PARTIES PERSONAL LIABILITY OF RECIPIENT. (1)
27 Protection of payors and other third parties.

28 (a) A payor or other third party is not liable for having made a
29 payment or transferred an item of property or any other benefit to a

1 beneficiary designated in a governing instrument who, under this
2 chapter, is not entitled to the payment or item of property, or for
3 having taken any other action in good faith reliance on the
4 beneficiary's apparent entitlement under the terms of the governing
5 instrument, before the payor or other third party received written
6 notice of a claimed lack of entitlement under this chapter. A payor or
7 other third party is liable for a payment made or other action taken
8 after the payor or other third party received written notice of a
9 claimed lack of entitlement under this chapter.

10 (b) Written notice of a claimed lack of entitlement under (a) of
11 this subsection must be mailed to the payor's or other third party's
12 main office or home by registered or certified mail, return receipt
13 requested, or served upon the payor or other third party in the same
14 manner as a summons in a civil action. Upon receipt of written notice
15 of a claimed lack of entitlement under this chapter, a payor or other
16 third party may pay any amount owed or transfer or deposit any item of
17 property held by it to or with the court having jurisdiction of the
18 probate proceedings relating to the decedent's estate, or if no
19 proceedings have been commenced, to or with the court having
20 jurisdiction of probate proceedings relating to decedents' estates
21 located in the county of the decedent's residence. The court shall
22 hold the funds or item of property and, upon its determination under
23 this chapter, shall order disbursement in accordance with the
24 determination. Payments, transfers, or deposits made to or with the
25 court discharge the payor or other third party from all claims for the
26 value of amounts paid to or items of property transferred to or
27 deposited with the court.

28 (2) Protection of bona fide purchasers personal liability of
29 recipient.

1 (a) A person who purchases property for value and without notice,
2 or who receives a payment or other item of property in partial or full
3 satisfaction of a legally enforceable obligation, is neither obligated
4 under this chapter to return the payment, item of property, or benefit
5 nor liable under this chapter for the amount of the payment or the
6 value of the item of property or benefit. But a person who, not for
7 value, receives a payment, item of property, or any other benefit to
8 which the person is not entitled under this chapter is obligated to
9 return the payment, item of property, or benefit, or is personally
10 liable for the amount of the payment or the value of the item of
11 property or benefit, to the person who is entitled to it under this
12 chapter.

13 (b) If this chapter or any part of this chapter is preempted by
14 federal law with respect to a payment, an item of property, or any
15 other benefit covered by this chapter, a person who, not for value,
16 receives the payment, item of property, or any other benefit to which
17 the person is not entitled under this chapter is obligated to return
18 the payment, item of property, or benefit, or is personally liable for
19 the amount of the payment or the value of the item of property or
20 benefit, to the person who would have been entitled to it were this
21 chapter or part of this chapter not preempted.

22 **Sec. 7.** RCW 11.05.050 and 1965 c 145 s 11.05.050 are each amended
23 to read as follows:

24 This chapter shall not apply (~~in the case of wills, living trusts,~~
25 ~~deeds, or contracts of insurance wherein provision has been made for~~
26 ~~distribution of property different from the provisions of this~~
27 ~~chapter~~)) if:

1 (1) The governing instrument contains language dealing explicitly
2 with simultaneous deaths or deaths in a common disaster and that
3 language is operable under the facts of the case;

4 (2) The governing instrument expressly indicates that an individual
5 is not required to survive an event, including the death of another
6 individual, by any specified period or expressly requires the
7 individual to survive the event for a stated period;

8 (3) The imposition of a one hundred twenty hour requirement of
9 survival would cause a nonvested property interest or a power of
10 appointment to be invalid under the rule against perpetuities; or

11 (4) The application of this section to multiple governing
12 instruments would result in an unintended failure or duplication of a
13 disposition.

14 NEW SECTION. Sec. 8. The following acts or parts of acts are
15 each repealed:

16 (1) RCW 11.05.020 and 1965 c 145 s 11.05.020; and

17 (2) RCW 11.05.040 and 1965 c 145 s 11.05.040.

18 NEW SECTION. Sec. 9. On the effective date of this act:

19 (1) An act done before the effective date in any proceeding and any
20 accrued right is not impaired by this act. If a right is acquired,
21 extinguished, or barred upon the expiration of a prescribed period of
22 time that has commenced to run by the provisions of any statute before
23 the effective date of this act, the provisions remain in force with
24 respect to that right; and

25 (2) Any rule of construction or presumption provided in this act
26 applies to instruments executed and multiple-party accounts opened
27 before the effective date of this act unless there is a clear
28 indication of a contrary intent.

1 NEW SECTION. **Sec. 10.** Section captions as used in this act
2 constitute no part of the law.

3 NEW SECTION. **Sec. 11.** Sections 1, 3, 5, and 6 of this act are
4 added to chapter 11.05 RCW.