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SENATE BILL 6242

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State of Washington 57th Legislature

2002 Regular Session

By Senators Johnson and Kline

Read first time 01/14/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to nonprobate asset beneficiary designation; and  
2 amending RCW 11.07.010.

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

4 **Sec. 1.** RCW 11.07.010 and 1998 c 292 s 118 are each amended to  
5 read as follows:

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

9 (2)(a) If a marriage is dissolved or invalidated, a provision made  
10 prior to that event that relates to the payment or transfer at death of  
11 the decedent's interest in a nonprobate asset in favor of or granting  
12 an interest or power to the decedent's former spouse is revoked. A  
13 provision affected by this section must be interpreted, and the  
14 nonprobate asset affected passes, as if the former spouse failed to  
15 survive the decedent, having died at the time of entry of the decree of  
16 dissolution or declaration of invalidity.

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

18 (i) The instrument governing disposition of the nonprobate asset  
19 expressly provides otherwise;

1 (ii) The decree of dissolution or declaration of invalidity  
2 requires that the decedent maintain a nonprobate asset for the benefit  
3 of a former spouse or children of the marriage, payable on the  
4 decedent's death either outright or in trust, and other nonprobate  
5 assets of the decedent fulfilling such a requirement for the benefit of  
6 the former spouse or children of the marriage do not exist at the  
7 decedent's death; or

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

12 (3)(a) A payor or other third party in possession or control of a  
13 nonprobate asset at the time of the decedent's death is not liable for  
14 making a payment or transferring an interest in a nonprobate asset to  
15 a decedent's former spouse whose interest in the nonprobate asset is  
16 revoked under this section, or for taking another action in reliance on  
17 the validity of the instrument governing disposition of the nonprobate  
18 asset, before the payor or other third party has actual knowledge of  
19 the dissolution or other invalidation of marriage. A payor or other  
20 third party is liable for a payment or transfer made or other action  
21 taken after the payor or other third party has actual knowledge of a  
22 revocation under this section.

23 (b) This section does not require a payor or other third party to  
24 pay or transfer a nonprobate asset to a beneficiary designated in a  
25 governing instrument affected by the dissolution or other invalidation  
26 of marriage, or to another person claiming an interest in the  
27 nonprobate asset, if the payor or third party has actual knowledge of  
28 the existence of a dispute between the former spouse and the  
29 beneficiaries or other persons concerning rights of ownership of the  
30 nonprobate asset as a result of the application of this section among  
31 the former spouse and the beneficiaries or among other persons, or if  
32 the payor or third party is otherwise uncertain as to who is entitled  
33 to the nonprobate asset under this section. In such a case, the payor  
34 or third party may, without liability, notify in writing all  
35 beneficiaries or other persons claiming an interest in the nonprobate  
36 asset of either the existence of the dispute or its uncertainty as to  
37 who is entitled to payment or transfer of the nonprobate asset. The  
38 payor or third party may also, without liability, refuse to pay or

1 transfer a nonprobate asset in such a circumstance to a beneficiary or  
2 other person claiming an interest until the time that either:

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

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

7 (c) Notwithstanding subsections (1) and (2) of this section and (a)  
8 and (b) of this subsection, a payor or other third party having actual  
9 knowledge of the existence of a dispute between beneficiaries or other  
10 persons concerning rights to a nonprobate asset as a result of the  
11 application of this section may condition the payment or transfer of  
12 the nonprobate asset on execution, in a form and with security  
13 acceptable to the payor or other third party, of a bond in an amount  
14 that is double the fair market value of the nonprobate asset at the  
15 time of the decedent's death or the amount of an adverse claim,  
16 whichever is the lesser, or of a similar instrument to provide security  
17 to the payor or other third party, indemnifying the payor or other  
18 third party for any liability, loss, damage, costs, and expenses for  
19 and on account of payment or transfer of the nonprobate asset.

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

1 (4)(a) A person who purchases a nonprobate asset from a former  
2 spouse or other person, for value and without actual knowledge, or who  
3 receives from a former spouse or other person payment or transfer of a  
4 nonprobate asset without actual knowledge and in partial or full  
5 satisfaction of a legally enforceable obligation, is neither obligated  
6 under this section to return the payment, property, or benefit nor is  
7 liable under this section for the amount of the payment or the value of  
8 the nonprobate asset. However, a former spouse or other person who,  
9 with actual knowledge, not for value, or not in satisfaction of a  
10 legally enforceable obligation, receives payment or transfer of a  
11 nonprobate asset to which that person is not entitled under this  
12 section is obligated to return the payment or nonprobate asset, or is  
13 personally liable for the amount of the payment or value of the  
14 nonprobate asset, to the person who is entitled to it under this  
15 section.

16 (b) As used in this subsection, "actual knowledge" means, for a  
17 person described in (a) of this subsection who purchases or receives a  
18 nonprobate asset from a former spouse or other person, personal  
19 knowledge or possession of documents relating to the revocation upon  
20 dissolution or invalidation of marriage of provisions relating to the  
21 payment or transfer at the decedent's death of the nonprobate asset,  
22 received within a time after the decedent's death and before the  
23 purchase or receipt that is sufficient to afford the person purchasing  
24 or receiving the nonprobate asset reasonable opportunity to act upon  
25 the knowledge. Receipt of the personal knowledge or possession of the  
26 documents for a period of more than thirty days is presumed to be  
27 received within a time that is sufficient to afford the payor or third  
28 party a reasonable opportunity to act upon the knowledge, but receipt  
29 of the notice for a period of less than five business days is presumed  
30 not to be a sufficient time for these purposes. These presumptions may  
31 be rebutted only by clear and convincing evidence to the contrary.

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

36 (a) A payable-on-death provision of a life insurance policy,  
37 employee benefit plan, annuity or similar contract, or individual  
38 retirement account, unless provided otherwise by controlling federal  
39 law;

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

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

5 (d) Transfer on death beneficiary designations of a transfer on  
6 death or pay on death security, if such designations are authorized  
7 under Washington law.

8 For the general definition in this title of "nonprobate asset," see  
9 RCW 11.02.005(15) and for the definition of "nonprobate asset" relating  
10 to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

11 (6) This section is remedial in nature and applies as of July 25,  
12 1993, to decrees of dissolution and declarations of invalidity entered  
13 after July 24, 1993, and this section applies as of January 1, 1995, to  
14 decrees of dissolution and declarations of invalidity entered before  
15 July 25, 1993.

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