

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2236

60th Legislature
2007 Regular Session

Passed by the House March 10, 2007
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 13, 2007
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2236** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2236

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Representatives Goodman and Lantz

Read first time 02/14/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to the disposition of certain assets; amending RCW
2 11.02.005, 11.07.010, 11.12.260, 11.24.010, and 11.96A.150; adding a
3 new chapter to Title 11 RCW; and repealing RCW 11.05.010, 11.05.020,
4 11.05.030, 11.05.040, 11.05.050, 11.05.900, and 11.05.910.

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

6 **Sec. 1.** RCW 11.02.005 and 2005 c 97 s 1 are each amended to read
7 as follows:

8 When used in this title, unless otherwise required from the
9 context:

10 (1) "Personal representative" includes executor, administrator,
11 special administrator, and guardian or limited guardian and special
12 representative.

13 (2) "Net estate" refers to the real and personal property of a
14 decedent exclusive of homestead rights, exempt property, the family
15 allowance and enforceable claims against, and debts of, the deceased or
16 the estate.

17 (3) "Representation" refers to a method of determining distribution
18 in which the takers are in unequal degrees of kinship with respect to
19 (~~the intestate~~) a decedent, and is accomplished as follows: After

1 first determining who, of those entitled to share in the estate, are in
2 the nearest degree of kinship, the estate is divided into equal shares,
3 the number of shares being the sum of the number of persons who survive
4 the ((intestate)) decedent who are in the nearest degree of kinship and
5 the number of persons in the same degree of kinship who died before the
6 ((intestate)) decedent but who left issue surviving the ((intestate))
7 decedent; each share of a deceased person in the nearest degree shall
8 be divided among those of the deceased person's issue who survive the
9 ((intestate)) decedent and have no ancestor then living who is in the
10 line of relationship between them and the ((intestate)) decedent, those
11 more remote in degree taking together the share which their ancestor
12 would have taken had he or she survived the ((intestate)) decedent.
13 ~~((Posthumous children are considered as living at the death of their
14 parent.))~~

15 (4) "Issue" means all the lineal descendants of an individual. An
16 adopted individual is a lineal descendant of each of his or her
17 adoptive parents and of all individuals with regard to which each
18 adoptive parent is a lineal descendant. A child conceived prior to the
19 death of a parent but born after the death of the deceased parent is
20 considered to be the surviving issue of the deceased parent for
21 purposes of this title.

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

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

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

33 (8) "Will" means an instrument validly executed as required by RCW
34 11.12.020.

35 (9) "Codicil" means a will that modifies or partially revokes an
36 existing earlier will. A codicil need not refer to or be attached to
37 the earlier will.

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

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

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

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

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

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

1 provision for a former spouse upon dissolution of marriage or
2 declaration of invalidity of marriage, RCW 11.07.010(5) applies. For
3 the definition of "nonprobate asset" relating to revocation of a
4 provision for a former spouse upon dissolution of marriage or
5 declaration of invalidity of marriage, see RCW 11.07.010(5). For the
6 definition of "nonprobate asset" relating to testamentary disposition
7 of nonprobate assets, see RCW 11.11.010(7).

8 (16) "Internal Revenue Code" means the United States Internal
9 Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

10 (17) References to "section 2033A" of the Internal Revenue Code in
11 wills, trust agreements, powers of appointment, beneficiary
12 designations, and other instruments governed by or subject to this
13 title shall be deemed to refer to the comparable or corresponding
14 provisions of section 2057 of the Internal Revenue Code, as added by
15 section 6006(b) of the Internal Revenue Service Restructuring Act of
16 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A
17 "exclusion" shall be deemed to mean the section 2057 deduction.

18 (18) "Surviving spouse" does not include an individual whose
19 marriage to the decedent has been dissolved or invalidated unless, by
20 virtue of a subsequent marriage, he or she is married to the decedent
21 at the time of death. A decree of separation that does not terminate
22 the status of husband and wife is not a dissolution or invalidation for
23 purposes of this subsection.

24 Words that import the singular number may also be applied to the
25 plural of persons and things.

26 Words importing the masculine gender only may be extended to
27 females also.

28 **Sec. 2.** RCW 11.07.010 and 2002 c 18 s 1 are each amended to read
29 as follows:

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

34 (2)(a) If a marriage is dissolved or invalidated, a provision made
35 prior to that event that relates to the payment or transfer at death of
36 the decedent's interest in a nonprobate asset in favor of or granting
37 an interest or power to the decedent's former spouse is revoked. A

1 provision affected by this section must be interpreted, and the
2 nonprobate asset affected passes, as if the former spouse failed to
3 survive the decedent, having died at the time of entry of the decree of
4 dissolution or declaration of invalidity.

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

6 (i) The instrument governing disposition of the nonprobate asset
7 expressly provides otherwise;

8 (ii) The decree of dissolution or declaration of invalidity
9 requires that the decedent maintain a nonprobate asset for the benefit
10 of a former spouse or children of the marriage, payable on the
11 decedent's death either outright or in trust, and other nonprobate
12 assets of the decedent fulfilling such a requirement for the benefit of
13 the former spouse or children of the marriage do not exist at the
14 decedent's death; or

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

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

30 (b) This section does not require a payor or other third party to
31 pay or transfer a nonprobate asset to a beneficiary designated in a
32 governing instrument affected by the dissolution or other invalidation
33 of marriage, or to another person claiming an interest in the
34 nonprobate asset, if the payor or third party has actual knowledge of
35 the existence of a dispute between the former spouse and the
36 beneficiaries or other persons concerning rights of ownership of the
37 nonprobate asset as a result of the application of this section among
38 the former spouse and the beneficiaries or among other persons, or if

1 the payor or third party is otherwise uncertain as to who is entitled
2 to the nonprobate asset under this section. In such a case, the payor
3 or third party may, without liability, notify in writing all
4 beneficiaries or other persons claiming an interest in the nonprobate
5 asset of either the existence of the dispute or its uncertainty as to
6 who is entitled to payment or transfer of the nonprobate asset. The
7 payor or third party may also, without liability, refuse to pay or
8 transfer a nonprobate asset in such a circumstance to a beneficiary or
9 other person claiming an interest until the time that either:

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

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

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

27 (d) As used in this subsection, "actual knowledge" means, for a
28 payor or other third party in possession or control of the nonprobate
29 asset at or following the decedent's death, written notice to the payor
30 or other third party, or to an officer of a payor or third party in the
31 course of his or her employment, received after the decedent's death
32 and within a time that is sufficient to afford the payor or third party
33 a reasonable opportunity to act upon the knowledge. The notice must
34 identify the nonprobate asset with reasonable specificity. The notice
35 also must be sufficient to inform the payor or other third party of the
36 revocation of the provisions in favor of the decedent's spouse by
37 reason of the dissolution or invalidation of marriage, or to inform the
38 payor or third party of a dispute concerning rights to a nonprobate

1 asset as a result of the application of this section. Receipt of the
2 notice for a period of more than thirty days is presumed to be received
3 within a time that is sufficient to afford the payor or third party a
4 reasonable opportunity to act upon the knowledge, but receipt of the
5 notice for a period of less than five business days is presumed not to
6 be a sufficient time for these purposes. These presumptions may be
7 rebutted only by clear and convincing evidence to the contrary.

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

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

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

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

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

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

13 (d) Transfer on death beneficiary designations of a transfer on
14 death or pay on death security, or joint tenancy or joint tenancy with
15 right of survivorship designations of a security, if such designations
16 are authorized under Washington law;

17 (e) A transfer on death, pay on death, joint tenancy, or joint
18 tenancy with right of survivorship brokerage account;

19 (f) Unless otherwise specifically provided therein, a contract
20 wherein payment or performance under that contract is affected by the
21 death of the person; or

22 (g) Unless otherwise specifically provided therein, any other
23 written instrument of transfer, within the meaning of RCW 11.02.091(3),
24 containing a provision for the nonprobate transfer of an asset at
25 death.

26 For the general definition in this title of "nonprobate asset," see
27 RCW 11.02.005(15) and for the definition of "nonprobate asset" relating
28 to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).
29 For the purposes of this chapter, a "bank account" includes an account
30 into or from which cash deposits and withdrawals can be made, and
31 includes demand deposit accounts, time deposit accounts, money market
32 accounts, or certificates of deposit, maintained at a bank, savings and
33 loan association, credit union, brokerage house, or similar financial
34 institution.

35 (6) This section is remedial in nature and applies as of July 25,
36 1993, to decrees of dissolution and declarations of invalidity entered
37 after July 24, 1993, and this section applies as of January 1, 1995, to

1 decrees of dissolution and declarations of invalidity entered before
2 July 25, 1993.

3 **Sec. 3.** RCW 11.12.260 and 1985 c 23 s 4 are each amended to read
4 as follows:

5 (1) A will or a trust of which the decedent is a grantor and which
6 by its terms becomes irrevocable upon or before the grantor's death may
7 refer to a writing that directs disposition of tangible personal
8 property not otherwise specifically disposed of by the will or trust
9 other than property used primarily in trade or business. Such a
10 writing shall not be effective unless: (a) An unrevoked will or trust
11 refers to the writing, (b) the writing is either in the handwriting of,
12 or signed by, the testator or grantor, and (c) the writing describes
13 the items and the recipients of the property with reasonable certainty.

14 (2) The writing may be written or signed before or after the
15 execution of the will or trust and need not have significance apart
16 from its effect upon the dispositions of property made by the will or
17 trust. A writing that meets the requirements of this section shall be
18 given effect as if it were actually contained in the will or trust
19 itself, except that if any person designated to receive property in the
20 writing dies before the testator or grantor, the property shall pass as
21 further directed in the writing and in the absence of any further
22 directions, the disposition shall lapse and, in the case of a will, RCW
23 11.12.110 shall not apply to such lapse.

24 (3) The testator or grantor may make subsequent handwritten or
25 signed changes to any writing. If there is an inconsistent disposition
26 of tangible personal property as between writings, the most recent
27 writing controls.

28 (4) As used in this section "tangible personal property" means
29 articles of personal or household use or ornament, for example,
30 furniture, furnishings, automobiles, boats, airplanes, and jewelry, as
31 well as precious metals in any tangible form, for example, bullion or
32 coins. The term includes articles even if held for investment purposes
33 and encompasses tangible property that is not real property. The term
34 does not include mobile homes or intangible property, for example,
35 money that is normal currency or normal legal tender, evidences of
36 indebtedness, bank accounts or other monetary deposits, documents of
37 title, or securities.

1 **Sec. 4.** RCW 11.24.010 and 1994 c 221 s 21 are each amended to read
2 as follows:

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

14 For the purpose of tolling the four-month limitations period, a
15 contest is deemed commenced when a petition is filed with the court and
16 not when served upon the personal representative. The petitioner shall
17 personally serve the personal representative within ninety days after
18 the date of filing the petition. If, following filing, service is not
19 so made, the action is deemed to not have been commenced for purposes
20 of tolling the statute of limitations.

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

24 **Sec. 5.** RCW 11.96A.150 and 1999 c 42 s 308 are each amended to
25 read as follows:

26 (1) Either the superior court or (~~the~~) any court on an appeal
27 may, in its discretion, order costs, including reasonable attorneys'
28 fees, to be awarded to any party: (a) From any party to the
29 proceedings; (b) from the assets of the estate or trust involved in the
30 proceedings; or (c) from any nonprobate asset that is the subject of
31 the proceedings. The court may order the costs, including reasonable
32 attorneys' fees, to be paid in such amount and in such manner as the
33 court determines to be equitable. In exercising its discretion under
34 this section, the court may consider any and all factors that it deems
35 to be relevant and appropriate, which factors may but need not include
36 whether the litigation benefits the estate or trust involved.

1 (2) This section applies to all proceedings governed by this title,
2 including but not limited to proceedings involving trusts, decedent's
3 estates and properties, and guardianship matters. This section shall
4 not be construed as being limited by any other specific statutory
5 provision providing for the payment of costs, including RCW 11.68.070
6 and 11.24.050, unless such statute specifically provides otherwise.
7 This (~~statute [section]~~) section shall apply to matters involving
8 guardians and guardians ad litem and shall not be limited or controlled
9 by the provisions of RCW 11.88.090(~~(+9)~~) (10).

10 NEW SECTION. Sec. 6. The following acts or parts of acts are each
11 repealed:

12 (1) RCW 11.05.010 (Devolution of property in case of simultaneous
13 death of owners) and 1965 c 145 s 11.05.010;

14 (2) RCW 11.05.020 (Procedure when beneficiaries die simultaneously)
15 and 1965 c 145 s 11.05.020;

16 (3) RCW 11.05.030 (Joint tenants--Simultaneous death) and 1965 c
17 145 s 11.05.030;

18 (4) RCW 11.05.040 (Distribution of insurance policy when insured
19 and beneficiary die simultaneously) and 1965 c 145 s 11.05.040;

20 (5) RCW 11.05.050 (Scope of chapter limited) and 1965 c 145 s
21 11.05.050;

22 (6) RCW 11.05.900 (Application of chapter to prior deaths) and 1965
23 c 145 s 11.05.900; and

24 (7) RCW 11.05.910 (Construction of chapter) and 1965 c 145 s
25 11.05.910.

26 NEW SECTION. Sec. 7. DEFINITIONS. The definitions in this
27 section apply throughout this chapter unless the context clearly
28 requires otherwise.

29 (1) "Co-owners with right of survivorship" includes joint tenants,
30 tenants by the entireties, and other co-owners of property or accounts
31 held under circumstances that entitle one or more to the whole of the
32 property or account on the death of the other or others.

33 (2) "Governing instrument" means a deed, will, trust, insurance or
34 annuity policy, account with pay on death designation, pension,
35 profit-sharing, retirement, or similar benefit plan, instrument

1 creating or exercising a power of appointment or a power of attorney,
2 or a dispositive, appointive, or nominative instrument of any similar
3 type.

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

8 (4) "POD" means pay on death.

9 (5) "TOD" means transfer on death.

10 NEW SECTION. **Sec. 8.** REQUIREMENT OF SURVIVAL BY ONE HUNDRED
11 TWENTY HOURS UNDER PROBATE CODE. Except as provided in section 12 of
12 this act and except for the purposes of the Uniform TOD Security
13 Registration Act, if the title to property, the devolution of property,
14 the right to elect an interest in property, or the right to exempt
15 property, homestead, or family allowance depends upon an individual's
16 survivorship of the death of another individual, an individual who is
17 not established by clear and convincing evidence to have survived the
18 other individual by one hundred twenty hours is deemed to have
19 predeceased the other individual. This section does not apply if its
20 application would result in a taking of intestate estate by the state.

21 NEW SECTION. **Sec. 9.** REQUIREMENT OF SURVIVAL BY ONE HUNDRED
22 TWENTY HOURS UNDER GOVERNING INSTRUMENTS. Except as provided in
23 section 12 of this act and except for a security registered in
24 beneficiary form (TOD) under the Uniform TOD Security Registration Act,
25 for purposes of a provision of a governing instrument that relates to
26 an individual surviving an event, including the death of another
27 individual, an individual who is not established by clear and
28 convincing evidence to have survived the event by one hundred twenty
29 hours is deemed to have predeceased the event.

30 NEW SECTION. **Sec. 10.** CO-OWNERS WITH RIGHT OF SURVIVORSHIP--
31 REQUIREMENT OF SURVIVAL BY ONE HUNDRED TWENTY HOURS. Except as
32 provided in section 12 of this act, if (1) it is not established by
33 clear and convincing evidence that one of two co-owners with right of
34 survivorship survived the other co-owner by one hundred twenty hours,
35 one-half of the property passes as if one had survived by one hundred

1 twenty hours and one-half as if the other had survived by one hundred
2 twenty hours, and (2) there are more than two co-owners and it is not
3 established by clear and convincing evidence that at least one of them
4 survived the others by one hundred twenty hours, the property passes in
5 the proportion that one bears to the whole number of co-owners.

6 NEW SECTION. **Sec. 11.** EVIDENCE OF DEATH OR STATUS. In addition
7 to the rules of evidence in courts of general jurisdiction, the
8 following rules relating to a determination of death and status apply:

9 (1) Death occurs when an individual is determined to be dead by the
10 attending physician, county coroner, or county medical officer.

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

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

20 (4) In the absence of prima facie evidence of death under
21 subsection (2) or (3) of this section, the fact of death may be
22 established by clear and convincing evidence, including circumstantial
23 evidence.

24 (5) An individual whose death is not established under this section
25 who is absent for a continuous period of seven years, during which he
26 or she has not been heard from, and whose absence is not satisfactorily
27 explained after diligent search or inquiry, is presumed to be dead.
28 His or her death is presumed to have occurred at the end of the period
29 unless there is sufficient evidence for determining that death occurred
30 earlier.

31 (6) In the absence of evidence disputing the time of death
32 stipulated on a document described in subsection (2) or (3) of this
33 section, a document described in subsection (2) or (3) of this section
34 that stipulates a time of death one hundred twenty hours or more after
35 the time of death of another individual, however the time of death of
36 the other individual is determined, establishes by clear and convincing

1 evidence that the individual survived the other individual by one
2 hundred twenty hours.

3 NEW SECTION. **Sec. 12.** EXCEPTIONS. This chapter does not apply
4 if:

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

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

12 (3) The imposition of a one hundred twenty-hour requirement of
13 survival would cause a nonvested property interest or a power of
14 appointment to be invalid under RCW 11.98.130 through 11.98.160; or

15 (4) The application of this chapter to multiple governing
16 instruments would result in an unintended failure or duplication of a
17 disposition.

18 NEW SECTION. **Sec. 13.** PROTECTION OF PAYORS, BONA FIDE PURCHASERS,
19 AND OTHER THIRD PARTIES--PERSONAL LIABILITY OF RECIPIENT. (1)
20 Protection of Payors and Other Third Parties.

21 (a) A payor or other third party is not liable for having made a
22 payment or transferred an item of property or any other benefit to a
23 person designated in a governing instrument who, under this chapter, is
24 not entitled to the payment or item of property, or for having taken
25 any other action in good faith reliance on the person's apparent
26 entitlement under the terms of the governing instrument, before the
27 payor or other third party received written notice of a claimed lack of
28 entitlement under this chapter. A payor or other third party is liable
29 for a payment made or other action taken after the payor or other third
30 party received written notice of a claimed lack of entitlement under
31 this chapter.

32 (b) Written notice of a claimed lack of entitlement under (a) of
33 this subsection must be mailed to the payor's or other third party's
34 main office or home by registered or certified mail, return receipt
35 requested, or served upon the payor or other third party in the same
36 manner as a summons in a civil action. Upon receipt of written notice

1 of a claimed lack of entitlement under this chapter, a payor or other
2 third party may pay any amount owed or transfer or deposit any item of
3 property held by it to or with the court having jurisdiction of the
4 probate proceedings relating to the decedent's estate, or if no
5 proceedings have been commenced, to or with the court having
6 jurisdiction of probate proceedings relating to decedents' estates
7 located in the county of the decedent's residence. The court shall
8 hold the funds or item of property and, upon its determination under
9 this chapter, shall order disbursement in accordance with the
10 determination. Payments, transfers, or deposits made to or with the
11 court discharge the payor or other third party from all claims for the
12 value of amounts paid to or items of property transferred to or
13 deposited with the court.

14 (2) Protection of Bona Fide Purchasers--Personal Liability of
15 Recipient.

16 (a) A person who purchases property for value and without notice,
17 or who receives a payment or other item of property in partial or full
18 satisfaction of a legally enforceable obligation, is neither obligated
19 under this chapter to return the payment, item of property, or benefit
20 nor liable under this chapter for the amount of the payment or the
21 value of the item of property or benefit. But a person who, not for
22 value, receives a payment, item of property, or any other benefit to
23 which the person is not entitled under this chapter is obligated to
24 return the payment, item of property, or benefit, or is personally
25 liable for the amount of the payment or the value of the item of
26 property or benefit, to the person who is entitled to it under this
27 chapter.

28 (b) If this chapter or any part of this chapter is preempted by
29 federal law with respect to a payment, an item of property, or any
30 other benefit covered by this chapter, a person who, not for value,
31 receives the payment, item of property, or any other benefit to which
32 the person is not entitled under this chapter is obligated to return
33 the payment, item of property, or benefit, or is personally liable for
34 the amount of the payment or the value of the item of property or
35 benefit, to the person who would have been entitled to it were this
36 chapter or part of this chapter not preempted.

1 NEW SECTION. **Sec. 14.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.
2 This chapter shall be applied and construed to effectuate its general
3 purpose to make uniform the law with respect to the subject of this
4 chapter among states enacting it.

5 NEW SECTION. **Sec. 15.** SHORT TITLE. This chapter may be cited as
6 the Uniform Simultaneous Death Act.

7 NEW SECTION. **Sec. 16.** CAPTIONS. Captions used in sections 7
8 through 18 of this act are not any part of the law.

9 NEW SECTION. **Sec. 17.** SEVERABILITY CLAUSE. If any provision of
10 this act or its application to any person or circumstance is held
11 invalid, the remainder of the act or the application of the provision
12 to other persons or circumstances is not affected.

13 NEW SECTION. **Sec. 18.** APPLICATION. On the effective date of this
14 section:

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

21 (2) Any rule of construction or presumption provided in this
22 chapter applies to instruments executed and multiple-party accounts
23 opened before the effective date of this section unless there is a
24 clear indication of a contrary intent.

25 NEW SECTION. **Sec. 19.** Sections 7 through 18 of this act
26 constitute a new chapter in Title 11 RCW.

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