

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1103

61st Legislature
2009 Regular Session

Passed by the House April 22, 2009
Yeas 94 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 17, 2009
Yeas 45 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1103** 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**

SUBSTITUTE HOUSE BILL 1103

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House Judiciary (originally sponsored by Representatives Moeller, Green, Morrell, and Kenney)

READ FIRST TIME 02/03/09.

1 AN ACT Relating to the estates of vulnerable adults; amending RCW
2 11.84.010, 11.84.020, 11.84.025, 11.84.030, 11.84.040, 11.84.050,
3 11.84.070, 11.84.080, 11.84.090, 11.84.100, 11.84.110, 11.84.120,
4 11.84.130, 26.16.120, 41.04.273, and 11.96A.030; and adding new
5 sections to chapter 11.84 RCW.

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

7 **Sec. 1.** RCW 11.84.010 and 1965 c 145 s 11.84.010 are each amended
8 to read as follows:

9 As used in this chapter:

10 (1) "Abuser" means any person who participates, either as a
11 principal or an accessory before the fact, in the willful and unlawful
12 financial exploitation of a vulnerable adult.

13 (2) "Decedent" means:

14 (a) Any person whose life is taken by a slayer; or

15 (b) Any deceased person who, at any time during life in which he or
16 she was a vulnerable adult, was the victim of financial exploitation by
17 an abuser.

18 (3) "Financial exploitation" has the same meaning as provided in
19 RCW 74.34.020, as enacted or hereafter amended.

1 (4) "Property" includes any real and personal property and any
2 right or interest therein.

3 (5) "Slayer" (~~shall~~) means any person who participates, either as
4 a principal or an accessory before the fact, in the willful and
5 unlawful killing of any other person.

6 ~~((2) "Decedent" shall mean any person whose life is so taken.~~

7 ~~(3) "Property" shall include any real and personal property and any~~
8 ~~right or interest therein.))~~ (6) "Vulnerable adult" has the same
9 meaning as provided in RCW 74.34.020.

10 **Sec. 2.** RCW 11.84.020 and 1965 c 145 s 11.84.020 are each amended
11 to read as follows:

12 No slayer or abuser shall in any way acquire any property or
13 receive any benefit as the result of the death of the decedent, but
14 such property shall pass as provided in the sections following.

15 **Sec. 3.** RCW 11.84.025 and 1998 c 292 s 502 are each amended to
16 read as follows:

17 Proceeds payable to a slayer or abuser as the beneficiary of any
18 benefits flowing from one of the retirement systems listed in RCW
19 41.50.030, by virtue of the decedent's membership in the department of
20 retirement systems or by virtue of the death of decedent, shall be paid
21 instead as designated in RCW 41.04.273.

22 **Sec. 4.** RCW 11.84.030 and 2008 c 6 s 624 are each amended to read
23 as follows:

24 The slayer or abuser shall be deemed to have predeceased the
25 decedent as to property which would have passed from the decedent or
26 his or her estate to the slayer or abuser under the statutes of descent
27 and distribution or have been acquired by statutory right as surviving
28 spouse or surviving domestic partner or under any agreement made with
29 the decedent under the provisions of RCW 26.16.120 as it now exists or
30 is hereafter amended.

31 **Sec. 5.** RCW 11.84.040 and 1965 c 145 s 11.84.040 are each amended
32 to read as follows:

33 Property which would have passed to or for the benefit of the

1 slayer or abuser by devise or legacy from the decedent shall be
2 distributed as if he or she had predeceased the decedent.

3 **Sec. 6.** RCW 11.84.050 and 1965 c 145 s 11.84.050 are each amended
4 to read as follows:

5 (1) One-half of any property held by the slayer or abuser and the
6 decedent as joint tenants, joint owners or joint obligees shall pass
7 upon the death of the decedent to his or her estate, and the other half
8 shall pass to his or her estate upon the death of the slayer or abuser,
9 unless the slayer or abuser obtains a separation or severance of the
10 property or a decree granting partition.

11 (2) As to property held jointly by three or more persons, including
12 the slayer or abuser and the decedent, any enrichment which would have
13 accrued to the slayer or abuser as a result of the death of the
14 decedent shall pass to the estate of the decedent. If the slayer or
15 abuser becomes the final survivor, one-half of the property shall
16 immediately pass to the estate of the decedent and the other half shall
17 pass to his or her estate upon the death of the slayer or abuser,
18 unless the slayer or abuser obtains a separation or severance of the
19 property or a decree granting partition.

20 (3) The provisions of this section shall not affect any enforceable
21 agreement between the parties or any trust arising because a greater
22 proportion of the property has been contributed by one party than by
23 the other.

24 **Sec. 7.** RCW 11.84.070 and 1965 c 145 s 11.84.070 are each amended
25 to read as follows:

26 Any interest in property whether vested or not, held by the slayer
27 or abuser, subject to be divested, diminished in any way or
28 extinguished, if the decedent survives him or her or lives to a certain
29 age, shall be held by the slayer or abuser during his or her lifetime
30 or until the decedent would have reached such age, but shall then pass
31 as if the decedent had died immediately thereafter.

32 **Sec. 8.** RCW 11.84.080 and 1965 c 145 s 11.84.080 are each amended
33 to read as follows:

34 As to any contingent remainder or executory or other future

1 interest held by the slayer or abuser, subject to become vested in him
2 or her or increased in any way for him or her upon the condition of the
3 death of the decedent:

4 (1) If the interest would not have become vested or increased if he
5 or she had predeceased the decedent, he or she shall be deemed to have
6 so predeceased the decedent;

7 (2) In any case the interest shall not be vested or increased
8 during the period of the life expectancy of the decedent.

9 **Sec. 9.** RCW 11.84.090 and 1965 c 145 s 11.84.090 are each amended
10 to read as follows:

11 (1) Property appointed by the will of the decedent to or for the
12 benefit of the slayer or abuser shall be distributed as if the slayer
13 or abuser had predeceased the decedent.

14 (2) Property held either presently or in remainder by the slayer or
15 abuser, subject to be divested by the exercise by the decedent of a
16 power of revocation or a general power of appointment shall pass to the
17 estate of the decedent, and property so held by the slayer or abuser,
18 subject to be divested by the exercise by the decedent of a power of
19 appointment to a particular person or persons or to a class of persons,
20 shall pass to such person or persons, or in equal shares to the members
21 of such class of persons, exclusive of the slayer or abuser.

22 **Sec. 10.** RCW 11.84.100 and 1965 c 145 s 11.84.100 are each amended
23 to read as follows:

24 (1) Insurance proceeds payable to the slayer or abuser as the
25 beneficiary or assignee of any policy or certificate of insurance on
26 the life of the decedent, or as the survivor of a joint life policy,
27 shall be paid instead to the estate of the decedent, unless the policy
28 or certificate designate some person other than the slayer or abuser or
29 his or her estate as secondary beneficiary to him or her and in which
30 case such proceeds shall be paid to such secondary beneficiary in
31 accordance with the applicable terms of the policy.

32 (2) If the decedent is beneficiary or assignee of any policy or
33 certificate of insurance on the life of the slayer or abuser, the
34 proceeds shall be paid to the estate of the decedent upon the death of
35 the slayer or abuser, unless the policy names some person other than
36 the slayer or abuser or his or her estate as secondary beneficiary, or

1 unless the slayer or abuser by naming a new beneficiary or assigning
2 the policy performs an act which would have deprived the decedent of
3 his or her interest in the policy if he or she had been living.

4 **Sec. 11.** RCW 11.84.110 and 1965 c 145 s 11.84.110 are each amended
5 to read as follows:

6 Any insurance company making payment according to the terms of its
7 policy or any bank or other person performing an obligation for the
8 slayer or abuser as one of several joint obligees shall not be
9 subjected to additional liability by the terms of this chapter if such
10 payment or performance is made without written notice, at its home
11 office or at an individual's home or business address, of the killing
12 by a slayer or financial exploitation by an abuser.

13 **Sec. 12.** RCW 11.84.120 and 1965 c 145 s 11.84.120 are each amended
14 to read as follows:

15 The provisions of this chapter shall not affect the rights of any
16 person who, before the interests of the slayer or abuser have been
17 adjudicated, purchases or has agreed to purchase, from the slayer or
18 abuser for value and without notice property which the slayer or abuser
19 would have acquired except for the terms of this chapter, but all
20 proceeds received by the slayer or abuser from such sale shall be held
21 by him or her in trust for the persons entitled to the property under
22 the provisions of this chapter, and the slayer or abuser shall also be
23 liable both for any portion of such proceeds which he or she may have
24 dissipated and for any difference between the actual value of the
25 property and the amount of such proceeds.

26 **Sec. 13.** RCW 11.84.130 and 1965 c 145 s 11.84.130 are each amended
27 to read as follows:

28 ((The)) Any record of ((his)) conviction ((of)) for having
29 participated in the ((wilful)) willful and unlawful killing of the
30 decedent or for conduct constituting financial exploitation against the
31 decedent, including but not limited to theft, forgery, fraud, identity
32 theft, robbery, burglary, or extortion, shall be admissible in evidence
33 against a claimant of property in any civil ((action)) proceeding
34 arising under this chapter.

1 NEW SECTION. **Sec. 14.** A new section is added to chapter 11.84 RCW
2 to read as follows:

3 (1) A final judgment of conviction for the willful and unlawful
4 killing of the decedent is conclusive for purposes of determining
5 whether a person is a slayer under this section.

6 (2) In the absence of a criminal conviction, a superior court
7 finding by a preponderance of the evidence that a person participated
8 in the willful and unlawful killing of the decedent is conclusive for
9 purposes of determining whether a person is a slayer under this
10 section.

11 NEW SECTION. **Sec. 15.** A new section is added to chapter 11.84 RCW
12 to read as follows:

13 (1) A final judgment of conviction for conduct constituting
14 financial exploitation against the decedent, including but not limited
15 to theft, forgery, fraud, identity theft, robbery, burglary, or
16 extortion, is conclusive for purposes of determining whether a person
17 is an abuser under this section.

18 (2) In the absence of a criminal conviction, a superior court
19 finding by clear, cogent, and convincing evidence that a person
20 participated in conduct constituting financial exploitation against the
21 decedent is conclusive for purposes of determining whether a person is
22 an abuser under this section.

23 NEW SECTION. **Sec. 16.** A new section is added to chapter 11.84 RCW
24 to read as follows:

25 (1) In determining whether a person is an abuser for purposes of
26 this chapter, the court must find by clear, cogent, and convincing
27 evidence that:

28 (a) The decedent was a vulnerable adult at the time the alleged
29 financial exploitation took place; and

30 (b) The conduct constituting financial exploitation was willful
31 action or willful inaction causing injury to the property of the
32 vulnerable adult.

33 (2) A finding of abuse by the department of social and health
34 services is not admissible for any purpose in any claim or proceeding
35 under this chapter.

1 (3) Except as provided in subsection (2) of this section, evidence
2 of financial exploitation is admissible if it is not inadmissible
3 pursuant to the rules of evidence.

4 NEW SECTION. **Sec. 17.** A new section is added to chapter 11.84 RCW
5 to read as follows:

6 Notwithstanding the provisions of this chapter:

7 (1) An abuser is entitled to acquire or receive an interest in
8 property or any other benefit described in this chapter if the court
9 determines by clear, cogent, and convincing evidence that the decedent:

10 (a) Knew of the financial exploitation; and

11 (b) Subsequently ratified his or her intent to transfer the
12 property interest or benefit to that person.

13 (2) The court may consider the record of proceedings and in its
14 discretion allow an abuser to acquire or receive an interest in
15 property or any other benefit described in this chapter in any manner
16 the court deems equitable. In determining what is equitable, the court
17 may consider, among other things:

18 (a) The various elements of the decedent's dispositive scheme;

19 (b) The decedent's likely intent given the totality of the
20 circumstances; and

21 (c) The degree of harm resulting from the abuser's financial
22 exploitation of the decedent.

23 **Sec. 18.** RCW 26.16.120 and 2008 c 6 s 612 are each amended to read
24 as follows:

25 Nothing contained in any of the provisions of this chapter or in
26 any law of this state, shall prevent both spouses or both domestic
27 partners from jointly entering into any agreement concerning the status
28 or disposition of the whole or any portion of the community property,
29 then owned by them or afterwards to be acquired, to take effect upon
30 the death of either. But such agreement may be made at any time by
31 both spouses or both domestic partners by the execution of an
32 instrument in writing under their hands and seals, and to be witnessed,
33 acknowledged and certified in the same manner as deeds to real estate
34 are required to be, under the laws of the state, and the same may at
35 any time thereafter be altered or amended in the same manner. Such
36 agreement shall not derogate from the right of creditors; nor be

1 construed to curtail the powers of the superior court to set aside or
2 cancel such agreement for fraud or under some other recognized head of
3 equity jurisdiction, at the suit of either party; nor prevent the
4 application of laws governing the community property and inheritance
5 rights of slayers or abusers under chapter 11.84 RCW.

6 **Sec. 19.** RCW 41.04.273 and 1998 c 292 s 501 are each amended to
7 read as follows:

8 (1) For purposes of this section, the following definitions shall
9 apply:

10 (a) (~~("Slayer" means a slayer as defined)~~) "Abuser" has the same
11 meaning as provided in RCW 11.84.010.

12 (b) "Decedent" means any person (~~(whose life is taken by a slayer,~~
13 ~~and)~~) who is entitled to benefits from the Washington state department
14 of retirement systems by written designation or by operation of law:

15 (i) Whose life is taken by a slayer; or

16 (ii) Who is deceased and who, at any time during life in which he
17 or she was a vulnerable adult, was the victim of financial exploitation
18 by an abuser, except as provided in section 17 of this act.

19 (c) "Slayer" means a slayer as defined in RCW 11.84.010.

20 (2) Property that would have passed to or for the benefit of a
21 beneficiary under one of the retirement systems listed in RCW 41.50.030
22 shall not pass to that beneficiary if the beneficiary was a slayer or
23 abuser of the decedent and the property shall be distributed as if the
24 slayer or abuser had predeceased the decedent.

25 (3) A slayer or abuser is deemed to have predeceased the decedent
26 as to property which, by designation or by operation of law, would have
27 passed from the decedent to the slayer or abuser because of the
28 decedent's entitlement to benefits under one of the retirement systems
29 listed in RCW 41.50.030.

30 (4)(a) The department of retirement systems has no affirmative duty
31 to determine whether a beneficiary is, or is alleged to be, a slayer or
32 abuser. However, upon receipt of written notice that a beneficiary is
33 a defendant in a civil lawsuit or probate proceeding that alleges the
34 beneficiary is a slayer or abuser, or is charged with a crime that, if
35 committed, means the beneficiary is a slayer or abuser, the department
36 of retirement systems shall determine whether the beneficiary is a

1 defendant in such a civil (~~suit~~) proceeding or has been formally
2 charged in court with the crime, or both. If so, the department shall
3 withhold payment of any benefits until:

4 (i) The case or charges, or both if both are pending, are
5 dismissed;

6 (ii) The beneficiary is found not guilty in the criminal case or
7 prevails in the civil (~~suit~~) proceeding, or both if both are pending;
8 or

9 (iii) The beneficiary is convicted or is found to be a slayer or
10 abuser in the civil (~~suit~~) proceeding.

11 (b) If the case or charges, or both if both are pending, are
12 dismissed or if a beneficiary is found not guilty or prevails in the
13 civil (~~suit~~) proceeding, or both if both are pending, the department
14 shall pay the beneficiary the benefits the beneficiary is entitled to
15 receive. If the beneficiary is convicted or found to be a slayer or
16 abuser in a civil (~~suit~~) proceeding, the department shall distribute
17 the benefits according to subsection (2) of this section.

18 (5) (~~The slayer's~~) Any record of conviction for having
19 participated in the willful and unlawful killing of the decedent or for
20 conduct constituting financial exploitation against the decedent,
21 including but not limited to theft, forgery, fraud, identity theft,
22 robbery, burglary, or extortion, shall be admissible in evidence
23 against a claimant of property in any civil action arising under this
24 section.

25 (6) In the absence of a criminal conviction, a superior court may
26 determine:

27 (a) By a preponderance of the evidence whether a person
28 participated in the willful and unlawful killing of the decedent;

29 (b) By clear, cogent, and convincing evidence whether a person
30 participated in conduct constituting financial exploitation against the
31 decedent, as provided in chapter 11.84 RCW.

32 (7) This section shall not subject the department of retirement
33 systems to liability for payment made to a slayer or abuser or alleged
34 slayer or abuser, prior to the department's receipt of written notice
35 that the slayer or abuser has been convicted of, or the alleged slayer
36 or abuser has been formally criminally or civilly charged in court
37 with, the death or financial exploitation of the decedent. If the
38 conviction or civil judgment of a slayer or abuser is reversed on

1 appeal, the department of retirement systems shall not be liable for
2 payment made prior to the receipt of written notice of the reversal to
3 a beneficiary other than the person whose conviction or civil judgment
4 is reversed.

5 **Sec. 20.** RCW 11.96A.030 and 2008 c 6 s 927 are each amended to
6 read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Matter" includes any issue, question, or dispute involving:

10 (a) The determination of any class of creditors, devisees,
11 legatees, heirs, next of kin, or other persons interested in an estate,
12 trust, nonprobate asset, or with respect to any other asset or property
13 interest passing at death;

14 (b) The direction of a personal representative or trustee to do or
15 to abstain from doing any act in a fiduciary capacity;

16 (c) The determination of any question arising in the administration
17 of an estate or trust, or with respect to any nonprobate asset, or with
18 respect to any other asset or property interest passing at death, that
19 may include, without limitation, questions relating to: (i) The
20 construction of wills, trusts, community property agreements, and other
21 writings; (ii) a change of personal representative or trustee; (iii) a
22 change of the situs of a trust; (iv) an accounting from a personal
23 representative or trustee; or (v) the determination of fees for a
24 personal representative or trustee;

25 (d) The grant to a personal representative or trustee of any
26 necessary or desirable power not otherwise granted in the governing
27 instrument or given by law;

28 (e) An action or proceeding under chapter 11.84 RCW;

29 (f) The amendment, reformation, or conformation of a will or a
30 trust instrument to comply with statutes and regulations of the United
31 States internal revenue service in order to achieve qualification for
32 deductions, elections, and other tax requirements, including the
33 qualification of any gift thereunder for the benefit of a surviving
34 spouse who is not a citizen of the United States for the estate tax
35 marital deduction permitted by federal law, including the addition of
36 mandatory governing instrument requirements for a qualified domestic
37 trust under section 2056A of the internal revenue code, the

1 qualification of any gift thereunder as a qualified conservation
2 easement as permitted by federal law, or the qualification of any gift
3 for the charitable estate tax deduction permitted by federal law,
4 including the addition of mandatory governing instrument requirements
5 for a charitable remainder trust; and

6 ((+f+)) (g) With respect to any nonprobate asset, or with respect
7 to any other asset or property interest passing at death, including
8 joint tenancy property, property subject to a community property
9 agreement, or assets subject to a pay on death or transfer on death
10 designation:

11 (i) The ascertaining of any class of creditors or others for
12 purposes of chapter 11.18 or 11.42 RCW;

13 (ii) The ordering of a qualified person, the notice agent, or
14 resident agent, as those terms are defined in chapter 11.42 RCW, or any
15 combination of them, to do or abstain from doing any particular act
16 with respect to a nonprobate asset;

17 (iii) The ordering of a custodian of any of the decedent's records
18 relating to a nonprobate asset to do or abstain from doing any
19 particular act with respect to those records;

20 (iv) The determination of any question arising in the
21 administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

22 (v) The determination of any questions relating to the abatement,
23 rights of creditors, or other matter relating to the administration,
24 settlement, or final disposition of a nonprobate asset under this
25 title;

26 (vi) The resolution of any matter referencing this chapter,
27 including a determination of any questions relating to the ownership or
28 distribution of an individual retirement account on the death of the
29 spouse of the account holder as contemplated by RCW 6.15.020(6);

30 (vii) The resolution of any other matter that could affect the
31 nonprobate asset.

32 (2) "Notice agent" has the meanings given in RCW 11.42.010.

33 (3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

34 (4) "Party" or "parties" means each of the following persons who
35 has an interest in the subject of the particular proceeding and whose
36 name and address are known to, or are reasonably ascertainable by, the
37 petitioner:

38 (a) The trustor if living;

- 1 (b) The trustee;
- 2 (c) The personal representative;
- 3 (d) An heir;
- 4 (e) A beneficiary, including devisees, legatees, and trust
5 beneficiaries;
- 6 (f) The surviving spouse or surviving domestic partner of a
7 decedent with respect to his or her interest in the decedent's
8 property;
- 9 (g) A guardian ad litem;
- 10 (h) A creditor;
- 11 (i) Any other person who has an interest in the subject of the
12 particular proceeding;
- 13 (j) The attorney general if required under RCW 11.110.120;
- 14 (k) Any duly appointed and acting legal representative of a party
15 such as a guardian, special representative, or attorney-in-fact;
- 16 (l) Where applicable, the virtual representative of any person
17 described in this subsection the giving of notice to whom would meet
18 notice requirements as provided in RCW 11.96A.120;
- 19 (m) Any notice agent, resident agent, or a qualified person, as
20 those terms are defined in chapter 11.42 RCW; and
- 21 (n) The owner or the personal representative of the estate of the
22 deceased owner of the nonprobate asset that is the subject of the
23 particular proceeding, if the subject of the particular proceeding
24 relates to the beneficiary's liability to a decedent's estate or
25 creditors under RCW 11.18.200.
- 26 (5) "Persons interested in the estate or trust" means the trustor,
27 if living, all persons beneficially interested in the estate or trust,
28 persons holding powers over the trust or estate assets, the attorney
29 general in the case of any charitable trust where the attorney general
30 would be a necessary party to judicial proceedings concerning the
31 trust, and any personal representative or trustee of the estate or
32 trust.
- 33 (6) "Principal place of administration of the trust" means the
34 trustee's usual place of business where the day-to-day records
35 pertaining to the trust are kept, or the trustee's residence if the
36 trustee has no such place of business.
- 37 (7) The "situs" of a trust means the place where the principal

1 place of administration of the trust is located, unless otherwise
2 provided in the instrument creating the trust.

3 (8) "Trustee" means any acting and qualified trustee of the trust.

4 (9) "Representative" and other similar terms refer to a person who
5 virtually represents another under RCW 11.96A.120.

6 (10) "Citation" or "cite" and other similar terms, when required of
7 a person interested in the estate or trust or a party to a petition,
8 means to give notice as required under RCW 11.96A.100. "Citation" or
9 "cite" and other similar terms, when required of the court, means to
10 order, as authorized under RCW 11.96A.020 and 11.96A.060, and as
11 authorized by law.

12 NEW SECTION. **Sec. 21.** A new section is added to chapter 11.84 RCW
13 to read as follows:

14 The provisions of this act are supplemental to, and do not derogate
15 from, any other statutory or common law proceedings, theories, or
16 remedies including, but not limited to, the common law allocation of
17 the burden of proof or production among the parties.

--- END ---