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**SUBSTITUTE HOUSE BILL 1011**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Appelwick and Shin)

Read first time 02/05/93.

1 AN ACT Relating to the uniform simultaneous death act; adding new  
2 sections to chapter 11.05 RCW; creating a new section; and repealing  
3 RCW 11.05.010, 11.05.020, 11.05.030, 11.05.040, 11.05.050, 11.05.900,  
4 and 11.05.910.

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  
14 a power of appointment or a power of attorney, or a dispositive,  
15 appointive, or nominative instrument of any similar type.

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

1        NEW SECTION.    **Sec. 2.**    REQUIREMENT OF SURVIVAL BY ONE HUNDRED  
2 TWENTY HOURS UNDER PROBATE CODE.    Except as provided in section 6 of  
3 this act, and except for the purposes of the Uniform TOD Security  
4 Registration Act, chapter ... (House Bill No. 1068), Laws of 1993, if  
5 the title to property, the devolution of property, the right to elect  
6 an interest in property, or the right to exempt property, homestead, or  
7 family allowance depends upon an individual's survivorship of the death  
8 of another individual, an individual who is not established by clear  
9 and convincing evidence to have survived the other individual by one  
10 hundred twenty hours is deemed to have predeceased the other  
11 individual.    This section does not apply if its application would  
12 result in a taking of intestate estate by the state.

13        NEW SECTION.    **Sec. 3.**    REQUIREMENT OF SURVIVAL BY ONE HUNDRED  
14 TWENTY HOURS UNDER GOVERNING INSTRUMENTS.    Except as provided in  
15 section 6 of this act, and except for a security registered in  
16 beneficiary form (TOD) under the Uniform TOD Security Registration Act,  
17 chapter ... (House Bill No. 1068), Laws of 1993, for purposes of a  
18 provision of a governing instrument that relates to an individual  
19 surviving an event, including the death of another individual, an  
20 individual who is not established by clear and convincing evidence to  
21 have survived the event by one hundred twenty hours is deemed to have  
22 predeceased the event.

23        NEW SECTION.    **Sec. 4.**    CO-OWNERS WITH RIGHT OF SURVIVORSHIP--  
24 REQUIREMENT OF SURVIVAL BY ONE HUNDRED TWENTY HOURS.    Except as  
25 provided in section 6 of this act, if (1) it is not established by  
26 clear and convincing evidence that one of two co-owners with right of  
27 survivorship survived the other co-owner by one hundred twenty hours,  
28 one-half of the property passes as if one had survived by one hundred  
29 twenty hours and one-half as if the other had survived by one hundred  
30 twenty hours and (2) there are more than two co-owners and it is not  
31 established by clear and convincing evidence that at least one of them  
32 survived the others by one hundred twenty hours, the property passes in  
33 the proportion that one bears to the whole number of co-owners.

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

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

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

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

15 (4) In the absence of prima facie evidence of death under  
16 subsection (2) or (3) of this section, the fact of death may be  
17 established by clear and convincing evidence, including circumstantial  
18 evidence.

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

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

34 NEW SECTION. **Sec. 6.** EXCEPTIONS. This chapter does not apply if:

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

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

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

8 (4) The application of this chapter to multiple governing  
9 instruments would result in an unintended failure or duplication of a  
10 disposition.

11 NEW SECTION. **Sec. 7.** PROTECTION OF PAYORS, BONA FIDE PURCHASERS,  
12 AND OTHER THIRD PARTIES--PERSONAL LIABILITY OF RECIPIENT. (1)  
13 Protection of payors and other third parties.

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

25 (b) Written notice of a claimed lack of entitlement under (a) of  
26 this subsection must be mailed to the payor's or other third party's  
27 main office or home by registered or certified mail, return receipt  
28 requested, or served upon the payor or other third party in the same  
29 manner as a summons in a civil action. Upon receipt of written notice  
30 of a claimed lack of entitlement under this chapter, a payor or other  
31 third party may pay any amount owed or transfer or deposit any item of  
32 property held by it to or with the court having jurisdiction of the  
33 probate proceedings relating to the decedent's estate, or if no  
34 proceedings have been commenced, to or with the court having  
35 jurisdiction of probate proceedings relating to decedents' estates  
36 located in the county of the decedent's residence. The court shall  
37 hold the funds or item of property and, upon its determination under  
38 this chapter, shall order disbursement in accordance with the

1 determination. Payments, transfers, or deposits made to or with the  
2 court discharge the payor or other third party from all claims for the  
3 value of amounts paid to or items of property transferred to or  
4 deposited with the court.

5 (2) Protection of bona fide purchasers--Personal liability of  
6 recipient.

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

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

28 NEW SECTION. **Sec. 8.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
29 This chapter shall be applied and construed to effectuate its general  
30 purpose to make uniform the law with respect to the subject of this  
31 chapter among states enacting it.

32 NEW SECTION. **Sec. 9.** SHORT TITLE. This chapter may be cited as  
33 the Uniform Simultaneous Death Act.

34 NEW SECTION. **Sec. 10.** REPEALERS. The following acts or parts of  
35 acts are each repealed:

36 (1) RCW 11.05.010 and 1965 c 145 s 11.05.010;

- 1 (2) RCW 11.05.020 and 1965 c 145 s 11.05.020;
- 2 (3) RCW 11.05.030 and 1965 c 145 s 11.05.030;
- 3 (4) RCW 11.05.040 and 1965 c 145 s 11.05.040;
- 4 (5) RCW 11.05.050 and 1965 c 145 s 11.05.050;
- 5 (6) RCW 11.05.900 and 1965 c 145 s 11.05.900; and
- 6 (7) RCW 11.05.910 and 1965 c 145 s 11.05.910.

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

11 NEW SECTION. **Sec. 12.** APPLICATION. On the effective date of this  
12 act:

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

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

23 NEW SECTION. **Sec. 13.** CAPTIONS NOT LAW. Captions as used in this  
24 act constitute no part of the law.

25 NEW SECTION. **Sec. 14.** Sections 1 through 9, 11, and 12 of this  
26 act are each added to chapter 11.05 RCW.

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