

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1077

Chapter 236, Laws of 1993

53rd Legislature
1993 Regular Session

NONPROBATE ASSETS--REVOCATION OF PROVISIONS RELATING TO
DECEDENT'S FORMER SPOUSE

EFFECTIVE DATE: 7/25/93

Passed by the House April 19, 1993
Yeas 96 Nays 0

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Passed by the Senate April 12, 1993
Yeas 44 Nays 0

JOEL PRITCHARD
President of the Senate

Approved May 7, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1077** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 7, 1993 - 11:20 a.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1077

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Ludwig, Padden, Appelwick, Orr, Johanson and Karahalios)

Read first time 02/05/93.

1 AN ACT Relating to the revocation of nonprobate asset arrangements
2 for divorce or invalidation of marriage; amending RCW 41.26.510,
3 41.32.805, and 41.40.700; and adding a new chapter to Title 11 RCW.

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

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

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 NEW SECTION. **Sec. 2.** Section 1 of this act shall constitute a new
9 chapter in Title 11 RCW.

10 **Sec. 3.** RCW 41.26.510 and 1991 c 365 s 31 are each amended to read
11 as follows:

12 (1) Except as provided in section 1 of this act, if a member or a
13 vested member who has not completed at least ten years of service dies,
14 the amount of the accumulated contributions standing to such member's
15 credit in the retirement system at the time of such member's death,
16 less any amount identified as owing to an obligee upon withdrawal of
17 accumulated contributions pursuant to a court order filed under RCW
18 41.50.670, shall be paid to such person or persons having an insurable
19 interest in such member's life as the member shall have nominated by
20 written designation duly executed and filed with the department. If
21 there be no such designated person or persons still living at the time
22 of the member's death, such member's accumulated contributions standing
23 to such member's credit in the retirement system, less any amount
24 identified as owing to an obligee upon withdrawal of accumulated
25 contributions pursuant to a court order filed under RCW 41.50.670,
26 shall be paid to the member's surviving spouse as if in fact such
27 spouse had been nominated by written designation, or if there be no
28 such surviving spouse, then to such member's legal representatives.

29 (2) If a member who is eligible for retirement or a member who has
30 completed at least ten years of service dies, the surviving spouse or
31 eligible child or children shall elect to receive either:

32 (a) A retirement allowance computed as provided for in RCW
33 41.26.430(1), actuarially reduced by the amount of any lump sum benefit
34 identified as owing to an obligee upon withdrawal of accumulated
35 contributions pursuant to a court order filed under RCW 41.50.670 and
36 actuarially adjusted to reflect a joint and one hundred percent
37 survivor option under RCW 41.26.460 and if the member was not eligible

1 for normal retirement at the date of death a further reduction as
2 described in RCW 41.26.430(2); if a surviving spouse who is receiving
3 a retirement allowance dies leaving a child or children of the member
4 under the age of majority, then such child or children shall continue
5 to receive an allowance in an amount equal to that which was being
6 received by the surviving spouse, share and share alike, until such
7 child or children reach the age of majority; if there is no surviving
8 spouse eligible to receive an allowance at the time of the member's
9 death, such member's child or children under the age of majority shall
10 receive an allowance share and share alike calculated as herein
11 provided making the assumption that the ages of the spouse and member
12 were equal at the time of the member's death; or

13 (b) The member's accumulated contributions, less any amount
14 identified as owing to an obligee upon withdrawal of accumulated
15 contributions pursuant to a court order filed under RCW 41.50.670.

16 (3) If a member who is eligible for retirement or a member who has
17 completed at least ten years of service dies after October 1, 1977, and
18 is not survived by a spouse or an eligible child, then the accumulated
19 contributions standing to the member's credit, less any amount
20 identified as owing to an obligee upon withdrawal of accumulated
21 contributions pursuant to a court order filed under RCW 41.50.670,
22 shall be paid:

23 (a) To a person or persons, having an insurable interest in the
24 member's life, as the member shall have nominated by written
25 designation duly executed and filed with the department; or

26 (b) If there is no such designated person or persons still living
27 at the time of the member's death, then to the member's legal
28 representatives.

29 **Sec. 4.** RCW 41.32.805 and 1991 c 365 s 30 are each amended to read
30 as follows:

31 (1) Except as provided in section 1 of this act, if a member or a
32 vested member who has not completed at least ten years of service dies,
33 the amount of the accumulated contributions standing to such member's
34 credit in the retirement system, less any amount identified as owing to
35 an obligee upon withdrawal of accumulated contributions pursuant to a
36 court order filed under RCW 41.50.670, at the time of such member's
37 death shall be paid to such person or persons having an insurable
38 interest in such member's life as the member shall have nominated by

1 written designation duly executed and filed with the department. If
2 there be no such designated person or persons still living at the time
3 of the member's death, such member's accumulated contributions standing
4 to such member's credit in the retirement system, less any amount
5 identified as owing to an obligee upon withdrawal of accumulated
6 contributions pursuant to a court order filed under RCW 41.50.670,
7 shall be paid to the member's surviving spouse as if in fact such
8 spouse had been nominated by written designation, or if there be no
9 such surviving spouse, then to such member's legal representatives.

10 (2) If a member who is eligible for retirement or a member who has
11 completed at least ten years of service dies, the surviving spouse or
12 eligible children shall elect to receive either:

13 (a) A retirement allowance computed as provided for in RCW
14 41.32.765(1), actuarially reduced by the amount of any lump sum benefit
15 identified as owing to an obligee upon withdrawal of accumulated
16 contributions pursuant to a court order filed under RCW 41.50.670 and
17 actuarially adjusted to reflect a joint and one hundred percent
18 survivor option under RCW 41.32.785 and if the member was not eligible
19 for normal retirement at the date of death a further reduction as
20 described in RCW 41.32.765(2); if a surviving spouse who is receiving
21 a retirement allowance dies leaving a child or children of the member
22 under the age of majority, then such child or children shall continue
23 to receive an allowance in an amount equal to that which was being
24 received by the surviving spouse, share and share alike, until such
25 child or children reach the age of majority; if there is no surviving
26 spouse eligible to receive an allowance at the time of the member's
27 death, such member's child or children under the age of majority shall
28 receive an allowance share and share alike calculated as herein
29 provided making the assumption that the ages of the spouse and member
30 were equal at the time of the member's death; or

31 (b) The member's accumulated contributions, less any amount
32 identified as owing to an obligee upon withdrawal of accumulated
33 contributions pursuant to a court order filed under RCW 41.50.670.

34 (3) If a member who is eligible for retirement or a member who has
35 completed at least ten years of service dies after October 1, 1977, and
36 is not survived by a spouse or an eligible child, then the accumulated
37 contributions standing to the member's credit, less any amount
38 identified as owing to an obligee upon withdrawal of accumulated

1 contributions pursuant to a court order filed under RCW 41.50.670,
2 shall be paid:

3 (a) To a person or persons, having an insurable interest in the
4 member's life, as the member shall have nominated by written
5 designation duly executed and filed with the department; or

6 (b) If there is no such designated person or persons still living
7 at the time of the member's death, then to the member's legal
8 representatives.

9 **Sec. 5.** RCW 41.40.700 and 1991 c 365 s 28 are each amended to read
10 as follows:

11 (1) Except as provided in section 1 of this act, if a member or a
12 vested member who has not completed at least ten years of service dies,
13 the amount of the accumulated contributions standing to such member's
14 credit in the retirement system at the time of such member's death,
15 less any amount identified as owing to an obligee upon withdrawal of
16 accumulated contributions pursuant to a court order filed under RCW
17 41.50.670, shall be paid to such person or persons having an insurable
18 interest in such member's life as the member shall have nominated by
19 written designation duly executed and filed with the department. If
20 there be no such designated person or persons still living at the time
21 of the member's death, such member's accumulated contributions standing
22 to such member's credit in the retirement system, less any amount
23 identified as owing to an obligee upon withdrawal of accumulated
24 contributions pursuant to a court order filed under RCW 41.50.670,
25 shall be paid to the member's surviving spouse as if in fact such
26 spouse had been nominated by written designation, or if there be no
27 such surviving spouse, then to such member's legal representatives.

28 (2) If a member who is eligible for retirement or a member who has
29 completed at least ten years of service dies, the surviving spouse or
30 eligible child or children shall elect to receive either:

31 (a) A retirement allowance computed as provided for in RCW
32 41.40.630(1), actuarially reduced by the amount of any lump sum benefit
33 identified as owing to an obligee upon withdrawal of accumulated
34 contributions pursuant to a court order filed under RCW 41.50.670 and
35 actuarially adjusted to reflect a joint and one hundred percent
36 survivor option under RCW 41.40.660 and if the member was not eligible
37 for normal retirement at the date of death a further reduction as
38 described in RCW 41.40.630(2); if a surviving spouse who is receiving

1 a retirement allowance dies leaving a child or children of the member
2 under the age of majority, then such child or children shall continue
3 to receive an allowance in an amount equal to that which was being
4 received by the surviving spouse, share and share alike, until such
5 child or children reach the age of majority; if there is no surviving
6 spouse eligible to receive an allowance at the time of the member's
7 death, such member's child or children under the age of majority shall
8 receive an allowance share and share alike calculated as herein
9 provided making the assumption that the ages of the spouse and member
10 were equal at the time of the member's death; or

11 (b) The member's accumulated contributions, less any amount
12 identified as owing to an obligee upon withdrawal of accumulated
13 contributions pursuant to a court order filed under RCW 41.50.670.

14 (3) If a member who is eligible for retirement or a member who has
15 completed at least ten years of service dies after October 1, 1977, and
16 is not survived by a spouse or an eligible child, then the accumulated
17 contributions standing to the member's credit, less any amount
18 identified as owing to an obligee upon withdrawal of accumulated
19 contributions pursuant to a court order filed under RCW 41.50.670,
20 shall be paid:

21 (a) To a person or persons, having an insurable interest in the
22 member's life, as the member shall have nominated by written
23 designation duly executed and filed with the department; or

24 (b) If there is no such designated person or persons still living
25 at the time of the member's death, then to the member's legal
26 representatives.

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