

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 6181**

Chapter 292, Laws of 1998

55th Legislature  
1998 Regular Session

PROBATE, TRUST, AND ESTATE LAW--REVISIONS

EFFECTIVE DATE: 6/11/98 - Except sections 117, 201 through 205, 301, 401, 501 through 507, and 604 which become effective on 4/2/98; and sections 101 through 116, and 118 which become effective on 7/1/99.

Passed by the Senate March 12, 1998  
YEAS 46 NAYS 0

BRAD OWEN

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**President of the Senate**

Passed by the House March 11, 1998  
YEAS 98 NAYS 0

CLYDE BALLARD

\_\_\_\_\_  
**Speaker of the  
House of Representatives**

Approved April 2, 1998

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6181** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

\_\_\_\_\_  
**Secretary**

FILED

April 2, 1998 - 2:32 p.m.

GARY LOCKE

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**Governor of the State of Washington**

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 6181**

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AS RECOMMENDED BY CONFERENCE COMMITTEE

Passed Legislature - 1998 Regular Session

**State of Washington                      55th Legislature                      1998 Regular Session**

**By Senate Committee on Law & Justice (originally sponsored by Senators Johnson and Roach)**

Read first time 01/29/98.

1            AN ACT Relating to probate, trust, and estate law; amending RCW  
2 11.02.005, 11.07.010, 11.54.070, 11.68.110, 11.68.114, 11.114.030,  
3 83.100.020, 83.110.010, 11.84.900, 11.02.070, and 26.16.120; amending  
4 1997 c 252 s 87 (uncodified); amending 1997 c 252 s 89 (uncodified);  
5 adding a new section to chapter 41.04 RCW; adding a new section to  
6 chapter 11.84 RCW; adding a new chapter to Title 11 RCW; creating new  
7 sections; providing an effective date; and declaring an emergency.

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

9                            **PART I--TESTAMENTARY DISPOSITION OF NONPROBATE ASSETS**

10            NEW SECTION.    **Sec. 101.**    SHORT TITLE.    This chapter may be known  
11 and cited as the testamentary disposition of nonprobate assets act.

12            NEW SECTION.    **Sec. 102.**    PURPOSES.    The purposes of this chapter  
13 are to:

14            (1) Enhance and facilitate the power of testators to control the  
15 disposition of assets that pass outside their wills;

16            (2) Provide simple procedures for resolution of disputes regarding  
17 entitlement to such assets; and

1 (3) Protect any financial institution or other third party having  
2 possession of or control over such an asset and transferring it to a  
3 beneficiary duly designated by the testator, unless that third party  
4 has been provided notice of a testamentary disposition as required in  
5 this chapter.

6 NEW SECTION. **Sec. 103.** CONSTRUCTION--JURISDICTION. (1) When  
7 construing sections and provisions of this chapter, the sections and  
8 provisions must:

9 (a) Be liberally construed and applied to promote the purposes of  
10 this chapter;

11 (b) Be considered part of a general act that is intended as unified  
12 coverage of the subject matter, and no part of this chapter may be  
13 deemed impliedly repealed by subsequent legislation if the construction  
14 can be reasonably avoided;

15 (c) Not be held invalid because of the invalidity of other sections  
16 or provisions of this chapter as long as the section or provision in  
17 question can be given effect without regard to the invalid section or  
18 provision, and to this end the sections or provisions of this chapter  
19 are severable;

20 (d) Not be construed by reference to section or subsection headings  
21 as used in this chapter, since these do not constitute any part of the  
22 law;

23 (e) Not be deemed to alter the community or separate property  
24 nature of any asset passing outside a testator's will or any  
25 individual's community or separate rights to the asset, and a  
26 testator's community or separate property rights to the asset are not  
27 affected by whether it passes outside the will or, under this chapter,  
28 by disposition under the will; and

29 (f) Not be construed as authorizing or extending the authority of  
30 any financial institution or other third party to sell or otherwise  
31 create assets that would pass outside a testator's will upon such terms  
32 as would contravene any other applicable federal or state law.

33 (2) The sections and provisions of this chapter apply to an owner  
34 who dies while a resident of this state on or after the effective date  
35 of this section and to a nonprobate asset the disposition of which on  
36 the death of the owner would otherwise be governed by the law of this  
37 state.

1        NEW SECTION.    **Sec. 104.**    DEFINITIONS.    The definitions in this  
2 section apply throughout this chapter unless the context clearly  
3 requires otherwise.

4        (1)(a) "Actual knowledge" means:

5        (i) For a financial institution, whether acting as personal  
6 representative or otherwise, or other third party in possession or  
7 control of a nonprobate asset, receipt of written notice that: (A)  
8 Complies with section 109 of this act; (B) pertains to the testamentary  
9 disposition or ownership of a nonprobate asset in its possession or  
10 control; and (C) is received by the financial institution or third  
11 party after the death of the owner in a time sufficient to afford the  
12 financial institution or third party a reasonable opportunity to act  
13 upon the knowledge; and

14        (ii) For a personal representative that is not a financial  
15 institution, personal knowledge or possession of documents relating to  
16 the testamentary disposition or ownership of a nonprobate asset of the  
17 owner sufficient to afford the personal representative reasonable  
18 opportunity to act upon the knowledge, including reasonable opportunity  
19 for the personal representative to provide the written notice under  
20 section 109 of this act.

21        (b) For the purposes of (a) of this subsection, notice of more than  
22 thirty days is presumed to be notice that is sufficient to afford the  
23 party a reasonable opportunity to act upon the knowledge, but notice of  
24 less than five business days is presumed not to be a sufficient notice  
25 for these purposes. These presumptions may be rebutted only by clear  
26 and convincing evidence to the contrary.

27        (2) "Beneficiary" means the person designated to receive a  
28 nonprobate asset upon the death of the owner by means other than the  
29 owner's will.

30        (3) "Broker" means a person defined as a broker or dealer under the  
31 federal securities laws.

32        (4) "Date of will" means, as to any nonprobate asset, the date of  
33 signature of the will or codicil that refers to the asset and disposes  
34 of it.

35        (5) "Designate" means a written means by which the owner selects a  
36 beneficiary, including but not limited to instruments under contractual  
37 arrangements and registration of accounts, and "designation" means the  
38 selection.

1 (6) "Financial institution" means: A bank, trust company, mutual  
2 savings bank, savings and loan association, credit union, broker, or  
3 issuer of stock or its transfer agent.

4 (7)(a) "Nonprobate asset" means a nonprobate asset within the  
5 meaning of RCW 11.02.005, but excluding the following:

6 (i) A right or interest in real property passing under a joint  
7 tenancy with right of survivorship;

8 (ii) A deed or conveyance for which possession has been postponed  
9 until the death of the owner;

10 (iii) A right or interest passing under a community property  
11 agreement; and

12 (iv) An individual retirement account or bond.

13 (b) For the definition of "nonprobate asset" relating to revocation  
14 of a provision for a former spouse upon dissolution of marriage or  
15 declaration of invalidity of marriage, see RCW 11.07.010(5).

16 (8) "Owner" means a person who, during life, has beneficial  
17 ownership of the nonprobate asset.

18 (9) "Request" means a request by the beneficiary for transfer of a  
19 nonprobate asset after the death of the owner, if it complies with all  
20 conditions of the arrangement, including reasonable special  
21 requirements concerning necessary signatures and regulations of the  
22 financial institution or other third party, or by the personal  
23 representative of the owner's estate or the testamentary beneficiary,  
24 if it complies with the owner's will and any additional conditions of  
25 the financial institution or third party for such transfer.

26 (10) "Testamentary beneficiary" means a person named under the  
27 owner's will to receive a nonprobate asset under this chapter,  
28 including but not limited to the trustee of a testamentary trust.

29 (11) "Third party" means a person, including a financial  
30 institution, having possession of or control over a nonprobate asset at  
31 the death of the owner, including the trustee of a revocable living  
32 trust and surviving joint tenant or tenants.

33 NEW SECTION. **Sec. 105.** DISPOSITION OF NONPROBATE ASSETS UNDER  
34 WILL. (1) Subject to community property rights, upon the death of an  
35 owner the owner's interest in any nonprobate asset specifically  
36 referred to in the owner's will belongs to the testamentary beneficiary  
37 named to receive the nonprobate asset, notwithstanding the rights of  
38 any beneficiary designated before the date of the will.

1 (2) A general residuary gift in an owner's will, or a will making  
2 general disposition of all of the owner's property, does not entitle  
3 the devisees or legatees to receive nonprobate assets of the owner.

4 (3) A disposition in a will of the owner's interest in "all  
5 nonprobate assets" or of all of a category of nonprobate asset under  
6 section 104(7) of this act, such as "all of my payable on death bank  
7 accounts" or similar language, is deemed to be a disposition of all the  
8 nonprobate assets the beneficiaries of which are designated before the  
9 date of the will.

10 (4) If the owner designates a beneficiary for a nonprobate asset  
11 after the date of the will, the will does not govern the disposition of  
12 that nonprobate asset. If the owner revokes the later beneficiary  
13 designation, the prior will does not govern the disposition of the  
14 nonprobate asset. A beneficiary designation with respect to an asset  
15 that renews without the signature of the owner is deemed to have been  
16 made on the date on which the account was first opened.

17 NEW SECTION. **Sec. 106.** WAIVER OF RIGHT TO DISPOSE OF A NONPROBATE  
18 ASSET UNDER WILL. An owner may waive the right to dispose of a  
19 specific nonprobate asset by will under this chapter, with or without  
20 consideration, by a written instrument signed by the owner and  
21 delivered to the financial institution or other third party, including  
22 but not limited to signature cards or deposit agreements. The waiver  
23 is revocable by written instrument delivered to the financial  
24 institution or other third party unless the owner has stated that the  
25 waiver is to be irrevocable.

26 NEW SECTION. **Sec. 107.** CONTROVERSIES BETWEEN BENEFICIARIES AND  
27 TESTAMENTARY BENEFICIARIES. This chapter is intended to establish  
28 ownership rights to nonprobate assets upon the death of the owner, as  
29 between beneficiaries and testamentary beneficiaries. This chapter is  
30 relevant only as to controversies between these persons, and has no  
31 bearing on the right of a person to transfer a nonprobate asset under  
32 its terms in the absence of a testamentary provision under this  
33 chapter.

34 NEW SECTION. **Sec. 108.** RIGHT TO RELY ON FORM OF NONPROBATE  
35 ASSET--DISCHARGE OF FINANCIAL INSTITUTION OR OTHER THIRD PARTY. In  
36 transferring nonprobate assets, a financial institution or other third

1 party may rely conclusively and entirely upon the form of the  
2 nonprobate asset and the terms of the nonprobate asset arrangement in  
3 effect on the date of death of the owner, unless the financial  
4 institution or other third party has actual knowledge of the existence  
5 of a claim by a testamentary beneficiary. A financial institution or  
6 other third party is not required to inquire as to either the source or  
7 ownership of any nonprobate asset in its possession or under its  
8 control, or as to the proposed application of an asset so transferred.  
9 A transfer of a nonprobate asset in accordance with this section  
10 constitutes a complete release and discharge of the financial  
11 institution or other third party from all claims relating to the  
12 nonprobate asset, regardless of whether or not the transfer is  
13 consistent with the actual ownership of the nonprobate asset.

14 NEW SECTION. **Sec. 109.** NOTICE--FORM--LIMITATION ON LIABILITY FOR  
15 FAILURE TO PROVIDE NOTICE. (1) Written notice under this chapter must  
16 be served personally or by certified mail, return receipt requested and  
17 postage prepaid, on the financial institution or other third party  
18 having the nonprobate asset in its possession or control, on the  
19 beneficiary, on the testamentary beneficiary, and on the personal  
20 representative, and proof of the mailing or service must be made by  
21 affidavit and filed under the cause number assigned to the owner's  
22 estate. Notice to a financial institution must include notice  
23 delivered as follows:

24 (a) If the nonprobate asset was maintained at a specific office of  
25 the financial institution, notice must be delivered to the office at  
26 which the nonprobate asset was maintained, which notice must be  
27 directed to the manager of the office;

28 (b) If the nonprobate asset was held in a trust administered by a  
29 financial institution, notice must be delivered to the office at which  
30 the trust was administered, which notice must be directed to a named  
31 officer responsible for the administration of the trust; and

32 (c) In all cases, notice must be delivered to any other location  
33 and in any other manner specifically designated in a written agreement  
34 signed by the owner and the financial institution, including but not  
35 limited to a signature card or deposit agreement.

36 (2) Written notice to a financial institution or other third party  
37 of the testamentary disposition of a nonprobate asset under this  
38 chapter must be in a form substantially similar to the following:

1 NOTICE OF TESTAMENTARY  
2 DISPOSITION OF NONPROBATE ASSET

3 The undersigned personal representative, petitioner for  
4 appointment as personal representative, attorney for the  
5 personal representative or petitioner, or testamentary  
6 beneficiary under the will of the decedent named above (as that  
7 term is defined in section 104 of this act) hereby notifies you  
8 that the decedent named above died on (DATE MUST BE SUPPLIED)  
9 and left a will dated (DATE OF WILL MUST BE SUPPLIED) disposing  
10 of the following nonprobate asset or assets in your possession  
11 or control:

12 (EACH SUCH ASSET MUST BE DESCRIBED WITH REASONABLE SPECIFICITY.  
13 FOR ACCOUNTS AT FINANCIAL INSTITUTIONS, THE WRITTEN NOTICE MUST  
14 SPECIFY THE OFFICE AT WHICH THE ACCOUNT WAS MAINTAINED, THE  
15 NAME OR NAMES IN WHICH THE ACCOUNT WAS HELD, AND THE FULL  
16 ACCOUNT NUMBER. FOR ASSETS HELD IN TRUST, THE WRITTEN NOTICE  
17 MUST SPECIFY THE NAME OR NAMES OF THE GRANTOR, THE NAME OF THE  
18 TRUST, IF ANY, AND THE DATE OF THE TRUST INSTRUMENT.)

19 Under chapter 11.-- RCW (sections 101 through 116 of this act),  
20 you may not transfer, deliver, or otherwise dispose of the  
21 asset or assets listed above in accordance with the beneficiary  
22 designation, account registration, or other arrangement made  
23 with you by the decedent. You may transfer, deliver, or  
24 otherwise dispose of the asset or assets listed above only upon  
25 receipt of the written direction of the personal representative  
26 or of the testamentary beneficiary, if the personal  
27 representative consents.

28 . . . . .  
29 . . . . .  
30 (CAPACITY OF SIGNER)

31 (3) The personal representative of the estate of the owner, a  
32 petitioner for appointment as personal representative, or the  
33 testamentary beneficiary may provide written notice under this section.  
34 The personal representative has no duty to provide written notice under  
35 this section and has no liability for failing or refusing to give the  
36 notice.

1 (4) Written notice under this section may be provided at any time  
2 after the death of the owner and before discharge of the personal  
3 representative on closing of the estate, and may be provided before  
4 admission to probate of the will.

5 NEW SECTION. **Sec. 110.** VESTING OF RIGHTS AND POWERS UNDER  
6 CHAPTER. The right to provide notice under section 109 of this act and  
7 the entitlement of the testamentary beneficiary to the nonprobate asset  
8 vest immediately upon death of the owner. The power of the personal  
9 representative to direct the financial institution or other third party  
10 having the nonprobate asset in its possession or under its control to  
11 transfer or otherwise dispose of the asset arises upon the later of  
12 appointment of the personal representative or admission of the will to  
13 probate.

14 NEW SECTION. **Sec. 111.** OWNERSHIP RIGHTS AS BETWEEN INDIVIDUALS  
15 PRESERVED--TESTAMENTARY BENEFICIARY MAY RECOVER NONPROBATE ASSET FROM  
16 BENEFICIARY--LIMITATION ON ACTION TO RECOVER. (1) The protection  
17 accorded to financial institutions and other third parties under  
18 section 108 of this act has no bearing on the actual rights of  
19 ownership to nonprobate assets as between beneficiaries and  
20 testamentary beneficiaries, and their heirs, successors, personal  
21 representatives, and assigns.

22 (2) A testamentary beneficiary entitled to a nonprobate asset  
23 otherwise transferred to a beneficiary not so entitled, and a personal  
24 representative of the owner's estate on behalf of the testamentary  
25 beneficiary, may petition the superior court having jurisdiction over  
26 the owner's estate for an order declaring that the testamentary  
27 beneficiary is so entitled, the hearing of the petition to be held in  
28 accordance with chapter 11.96 RCW.

29 (3) A testamentary beneficiary claiming a nonprobate asset who has  
30 not filed such a petition within the earlier of: (a) Six months from  
31 the date of admission of the will to probate; and (b) one year from the  
32 date of the owner's death, shall be forever barred from making such a  
33 claim or commencing such an action.

34 NEW SECTION. **Sec. 112.** NONPROBATE ASSETS NOT PROPERTY OF ESTATE.  
35 (1) Notwithstanding any provision of this chapter, a nonprobate asset

1 disposed of under the owner's will may not be treated as a part of the  
2 owner's probate estate for any other purpose under this title, unless:

3 (a) The nonprobate asset is subject to liabilities and claims,  
4 estate taxes, and expenses of administration under RCW 11.18.200; or

5 (b) Any section of this title directs otherwise, by specifically  
6 referring to this section.

7 (2) Provision of notice under this chapter has no effect on the  
8 administration of other assets of the estate of the owner. The  
9 personal representative has no duty to administer upon a nonprobate  
10 asset because of providing the notice, unless specifically required by  
11 this chapter or under RCW 11.18.200.

12 (3) RCW 11.12.110, regarding death of a devisee or legatee before  
13 the testator, does not apply to disposition of a nonprobate asset under  
14 a will.

15 NEW SECTION. **Sec. 113.** TRANSFER OF NONPROBATE ASSET TO  
16 TESTAMENTARY BENEFICIARY. (1) A financial institution's or third  
17 party's obligation to transfer a nonprobate asset to a testamentary  
18 beneficiary arises only after it has actual knowledge of the claim of  
19 the testamentary beneficiary, and after receiving written direction  
20 from the personal representative of the owner's estate, or if the  
21 personal representative consents in writing, from the testamentary  
22 beneficiary, to make the transfer. The financial institution may also  
23 require that its customary procedures be followed in effectuating a  
24 transfer of the nonprobate asset.

25 (2) Subject to subsection (1) of this section, financial  
26 institutions and other third parties may transfer a nonprobate asset  
27 that has not already been distributed to the testamentary beneficiary  
28 entitled to the nonprobate asset under the owner's will, subject to  
29 liabilities and claims, estate taxes, and expenses of administration  
30 under RCW 11.18.200.

31 NEW SECTION. **Sec. 114.** AUTHORITY TO WITHHOLD TRANSFER. (1) This  
32 chapter does not require any financial institution or other third party  
33 to transfer a nonprobate asset to a beneficiary, testamentary  
34 beneficiary, or other person claiming an interest in the nonprobate  
35 asset if the financial institution or third party has actual knowledge  
36 of the existence of a dispute between beneficiaries, testamentary  
37 beneficiaries, or other persons concerning rights or ownership to the

1 nonprobate asset under this chapter, or if the financial institution or  
2 third party is otherwise uncertain as to who is entitled to receive the  
3 nonprobate asset under this chapter. In any such case, the financial  
4 institution or third party may, without liability, notify in writing  
5 all beneficiaries, testamentary beneficiaries, or other persons  
6 claiming an interest in the nonprobate asset of either its uncertainty  
7 as to who is entitled to transfer of the nonprobate asset or the  
8 existence of any dispute, and it may also, without liability, refuse to  
9 transfer a nonprobate asset to a beneficiary or a testamentary  
10 beneficiary until such time as either:

11 (a) All the beneficiaries, testamentary beneficiaries, and other  
12 interested persons have consented in writing to the transfer; or

13 (b) The transfer is authorized or directed by a court of proper  
14 jurisdiction.

15 (2) The expense of obtaining the written consent or court  
16 authorization or direction may, by order of the court, be paid by the  
17 personal representative as an expense of administration.

18 NEW SECTION. **Sec. 115.** ADVERSE CLAIM BOND. Notwithstanding  
19 section 114 of this act, a financial institution or other third party  
20 having actual knowledge of the existence of a dispute between  
21 beneficiaries, a testamentary beneficiary, or other persons concerning  
22 rights to a nonprobate asset under this chapter may condition transfer  
23 of the nonprobate asset on execution, in form and with security  
24 acceptable to the financial institution or other third party, of a bond  
25 in an amount that is double the fair market value of the nonprobate  
26 asset on the date of the owner's death or the amount of any adverse  
27 claim, whichever is the lesser, indemnifying the financial institution  
28 or other third party from any and all liability, loss, damage, costs,  
29 and expenses, for and on account of transfer of the nonprobate asset.

30 NEW SECTION. **Sec. 116.** APPLICATION OF CHAPTER. This chapter  
31 applies to any will of an owner who dies while a resident of this state  
32 on or after the effective date of this section, regardless of whether  
33 the will was executed or republished before or after the effective date  
34 of this section and regardless of whether the beneficiary of the  
35 nonprobate asset was designated before or after the effective date of  
36 this section.

1       **Sec. 117.** RCW 11.02.005 and 1997 c 252 s 1 are each amended to  
2 read as follows:

3       When used in this title, unless otherwise required from the  
4 context:

5       (1) "Personal representative" includes executor, administrator,  
6 special administrator, and guardian or limited guardian and special  
7 representative.

8       (2) "Net estate" refers to the real and personal property of a  
9 decedent exclusive of homestead rights, exempt property, the family  
10 allowance and enforceable claims against, and debts of, the deceased or  
11 the estate.

12       (3) "Representation" refers to a method of determining distribution  
13 in which the takers are in unequal degrees of kinship with respect to  
14 the intestate, and is accomplished as follows: After first determining  
15 who, of those entitled to share in the estate, are in the nearest  
16 degree of kinship, the estate is divided into equal shares, the number  
17 of shares being the sum of the number of persons who survive the  
18 intestate who are in the nearest degree of kinship and the number of  
19 persons in the same degree of kinship who died before the intestate but  
20 who left issue surviving the intestate; each share of a deceased person  
21 in the nearest degree shall be divided among those of the deceased  
22 person's issue who survive the intestate and have no ancestor then  
23 living who is in the line of relationship between them and the  
24 intestate, those more remote in degree taking together the share which  
25 their ancestor would have taken had he or she survived the intestate.  
26 Posthumous children are considered as living at the death of their  
27 parent.

28       (4) "Issue" includes all the lawful lineal descendants of the  
29 ancestor and all lawfully adopted children.

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

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

37       (7) "Real estate" includes, except as otherwise specifically  
38 provided herein, all lands, tenements, and hereditaments, and all

1 rights thereto, and all interest therein possessed and claimed in fee  
2 simple, or for the life of a third person.

3 (8) "Will" means an instrument validly executed as required by RCW  
4 11.12.020.

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

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

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

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

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

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

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

1 a right or interest if, before death, the person has irrevocably  
2 transferred the right or interest, the person has waived the power to  
3 transfer it or, in the case of contractual arrangement, the person has  
4 waived the unilateral right to rescind or modify the arrangement; or a  
5 right or interest held by the person solely in a fiduciary capacity.  
6 For the definition of "nonprobate asset" relating to revocation of a  
7 provision for a former spouse upon dissolution of marriage or  
8 declaration of invalidity of marriage, RCW 11.07.010(5) applies. For  
9 the definition of "nonprobate asset" relating to revocation of a  
10 provision for a former spouse upon dissolution of marriage or  
11 declaration of invalidity of marriage, see RCW 11.07.010(5). For the  
12 definition of "nonprobate asset" relating to testamentary disposition  
13 of nonprobate assets, see section 104(7) of this act.

14 (16) "Internal Revenue Code" means the United States Internal  
15 Revenue Code of 1986, as amended or renumbered on January 1, (~~1997~~)  
16 1998.

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

19 Words importing the masculine gender only may be extended to  
20 females also.

21 **Sec. 118.** RCW 11.07.010 and 1997 c 252 s 2 are each amended to  
22 read as follows:

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

26 (2)(a) If a marriage is dissolved or invalidated, a provision made  
27 prior to that event that relates to the payment or transfer at death of  
28 the decedent's interest in a nonprobate asset in favor of or granting  
29 an interest or power to the decedent's former spouse is revoked. A  
30 provision affected by this section must be interpreted, and the  
31 nonprobate asset affected passes, as if the former spouse failed to  
32 survive the decedent, having died at the time of entry of the decree of  
33 dissolution or declaration of invalidity.

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

35 (i) The instrument governing disposition of the nonprobate asset  
36 expressly provides otherwise;

37 (ii) The decree of dissolution or declaration of invalidity  
38 requires that the decedent maintain a nonprobate asset for the benefit

1 of a former spouse or children of the marriage, payable on the  
2 decedent's death either outright or in trust, and other nonprobate  
3 assets of the decedent fulfilling such a requirement for the benefit of  
4 the former spouse or children of the marriage do not exist at the  
5 decedent's death; or

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

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

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

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

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

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

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

37 (4)(a) A person who purchases a nonprobate asset from a former  
38 spouse or other person, for value and without actual knowledge, or who  
39 receives from a former spouse or other person payment or transfer of a

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

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

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

33 (a) A payable-on-death provision of a life insurance policy,  
34 employee benefit plan, annuity or similar contract, or individual  
35 retirement account;

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

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

1 (d) Transfer on death beneficiary designations of a transfer on  
2 death or pay on death security, if such designations are authorized  
3 under Washington law.

4 (~~However, for the general definition of "nonprobate asset" in this~~  
5 ~~title, RCW 11.02.005 applies.~~) For the general definition in this  
6 title of "nonprobate asset," see RCW 11.02.005(15) and for the  
7 definition of "nonprobate asset" relating to testamentary disposition  
8 of nonprobate assets, see section 104(7) of this act.

9 (6) This section is remedial in nature and applies as of July 25,  
10 1993, to decrees of dissolution and declarations of invalidity entered  
11 after July 24, 1993, and this section applies as of January 1, 1995, to  
12 decrees of dissolution and declarations of invalidity entered before  
13 July 25, 1993.

## 14 PART II--PROBATE

15 **Sec. 201.** RCW 11.54.070 and 1997 c 252 s 54 are each amended to  
16 read as follows:

17 (1) Except as provided in (~~subsection~~) RCW 11.54.060(2) (~~of this~~  
18 ~~section~~), property awarded and cash paid under this chapter is immune  
19 from all debts, including judgments and judgment liens, of the decedent  
20 and of the surviving spouse existing at the time of death.

21 (2) Both the decedent's and the surviving spouse's interests in any  
22 community property awarded to the spouse under this chapter are immune  
23 from the claims of creditors.

24 **Sec. 202.** RCW 11.68.110 and 1997 c 252 s 68 are each amended to  
25 read as follows:

26 (1) If a personal representative who has acquired nonintervention  
27 powers does not apply to the court for either of the final decrees  
28 provided for in RCW 11.68.100 as now or hereafter amended, the personal  
29 representative shall, when the administration of the estate has been  
30 completed, file a declaration that must state as follows:

31 (a) The date of the decedent's death and the decedent's residence  
32 at the time of death;

33 (b) Whether or not the decedent died testate or intestate;

34 (c) If the decedent died testate, the date of the decedent's last  
35 will and testament and the date of the order probating the will;

1 (d) That each creditor's claim which was justly due and properly  
2 presented as required by law has been paid or otherwise disposed of by  
3 agreement with the creditor, and that the amount of estate taxes due as  
4 the result of the decedent's death has been determined, settled, and  
5 paid;

6 (e) That the personal representative has completed the  
7 administration of the decedent's estate without court intervention, and  
8 the estate is ready to be closed;

9 (f) If the decedent died intestate, the names, addresses (if  
10 known), and relationship of each heir of the decedent, together with  
11 the distributive share of each heir; and

12 (g) The amount of fees paid or to be paid to each of the following:  
13 (i) Personal representative or representatives; (ii) lawyer or lawyers;  
14 (iii) appraiser or appraisers; and (iv) accountant or accountants; and  
15 that the personal representative believes the fees to be reasonable and  
16 does not intend to obtain court approval of the amount of the fees or  
17 to submit an estate accounting to the court for approval.

18 (2) Subject to the requirement of notice as provided in this  
19 section, unless an heir, devisee, or legatee of a decedent petitions  
20 the court either for an order requiring the personal representative to  
21 obtain court approval of the amount of fees paid or to be paid to the  
22 personal representative, lawyers, appraisers, or accountants, or for an  
23 order requiring an accounting, or both, within thirty days from the  
24 date of filing a declaration of completion of probate, the personal  
25 representative will be automatically discharged without further order  
26 of the court and the representative's powers will cease thirty days  
27 after the filing of the declaration of completion of probate, and the  
28 declaration of completion of probate shall, at that time, be the  
29 equivalent of the entry of a decree of distribution in accordance with  
30 chapter 11.76 RCW for all legal intents and purposes.

31 (3) Within five days of the date of the filing of the declaration  
32 of completion, the personal representative or the personal  
33 representative's lawyer shall mail a copy of the declaration of  
34 completion to each heir, legatee, or devisee of the decedent, who: (a)  
35 Has not waived notice of the filing, in writing, filed in the cause~~((~~  
36 ~~or who, not having waived notice,))~~); and (b) either has not received  
37 the full amount of the distribution to which the heir, legatee, or  
38 devisee is entitled or has a property right that might be affected  
39 adversely by the discharge of the personal representative under this



1       **Sec. 203.** RCW 11.68.114 and 1997 c 252 s 70 are each amended to  
2 read as follows:

3       (1) The personal representative retains the powers to: Deal with  
4 the taxing authority of any federal, state, or local government; hold  
5 a reserve in an amount not to exceed three thousand dollars, for the  
6 determination and payment of any additional taxes, interest, and  
7 penalties, and of all reasonable expenses related directly or  
8 indirectly to such determination or payment; pay from the reserve the  
9 reasonable expenses, including compensation for services rendered or  
10 goods provided by the personal representative or by the personal  
11 representative's employees, independent contractors, and other agents,  
12 in addition to any taxes, interest, or penalties assessed by a taxing  
13 authority; receive and hold any credit, including interest, from any  
14 taxing authority; and distribute the residue of the reserve to the  
15 intended beneficiaries of the reserve; if:

16       (a) In lieu of the statement set forth in RCW 11.68.110(1)(e), the  
17 declaration of completion of probate states that:

18               The personal representative has completed the  
19 administration of the decedent's estate without court  
20 intervention, and the estate is ready to be closed, except for  
21 the determination of taxes and of interest and penalties  
22 thereon as permitted under this section;

23 and

24       (b) The notice of the filing of declaration of completion of  
25 probate must be in substantially the following form:

26                   CAPTION                               NOTICE OF FILING OF  
27                   OF                                       DECLARATION OF COMPLETION  
28                   CASE                                    OF PROBATE

29               NOTICE IS GIVEN that the attached Declaration of  
30 Completion of Probate was filed by the undersigned in the  
31 above-entitled court on the . . . day of . . . . , . . . . ;  
32 unless you file a petition in the above-entitled court  
33 requesting the court to approve the reasonableness of the fees,  
34 or for an accounting, or both, and serve a copy thereof upon  
35 the personal representative or the personal representative's  
36 lawyer, within thirty days after the date of the filing:

1 (i) The schedule of fees set forth in the Declaration of  
2 Completion of Probate will be deemed reasonable;

3 (ii) The Declaration of Completion of Probate will be  
4 final and deemed the equivalent of a Decree of Distribution  
5 entered under chapter 11.76 RCW;

6 (iii) The acts that the personal representative  
7 performed before the Declaration of Completion of Probate was  
8 filed will be deemed approved, and the personal representative  
9 will be automatically discharged without further order of the  
10 court with respect to all such acts; and

11 (iv) The personal representative will retain the power  
12 to deal with the taxing authorities, together with \$. . . . for  
13 the determination and payment of all remaining tax obligations.  
14 Only that portion of the reserve that remains after the  
15 settlement of any tax liability, and the payment of any  
16 expenses associated with such settlement, will be distributed  
17 to the persons legally entitled to the reserve.

18 (2) If the requirements in subsection (1) of this section are met,  
19 the personal representative is discharged from all claims other than  
20 those relating to the settlement of any tax obligations and the actual  
21 distribution of the reserve, at the effective date of the declaration  
22 of completion. The personal representative is discharged from  
23 liability from the settlement of any tax obligations and the  
24 distribution of the reserve, and the personal representative's powers  
25 cease, thirty days after the personal representative((÷

26 ~~(a))~~) has mailed to those persons who would have shared in the  
27 distribution of the reserve had the reserve remained intact((÷)) and

28 ~~((b))~~) has filed with the court copies of checks or receipts  
29 showing how the reserve was in fact distributed, unless a person with  
30 an interest in the reserve petitions the court earlier within the  
31 thirty-day period for an order requiring an accounting of the reserve  
32 or an order determining the reasonableness, or lack of reasonableness,  
33 of distributions made from the reserve. If the personal representative  
34 has been required to furnish a bond, any bond furnished by the personal  
35 representative is automatically discharged upon the final discharge of  
36 the personal representative.

37 **Sec. 204.** 1997 c 252 s 87 (uncodified) is amended to read as  
38 follows:

1       The following acts or parts of acts are each repealed, effective  
2 December 31, 1997, for estates of decedents dying after December 31,  
3 1997:

4       (1) RCW 11.40.011 and 1989 c 333 s 2, 1983 c 201 s 1, & 1967 ex.s.  
5 c 106 s 3;

6       (2) RCW 11.40.012 and 1989 c 333 s 3;

7       (3) RCW 11.40.013 and 1994 c 221 s 26 & 1989 c 333 s 4;

8       (4) RCW 11.40.014 and 1989 c 333 s 5;

9       (5) RCW 11.40.015 and 1994 c 221 s 27 & 1989 c 333 s 6;

10       (6) RCW 11.42.160 and 1994 c 221 s 46;

11       (7) RCW 11.42.170 and 1994 c 221 s 47;

12       (8) RCW 11.42.180 and 1994 c 221 s 48;

13       (9) RCW 11.44.066 and 1990 c 180 s 1 & 1974 ex.s. c 117 s 49;

14       (10) RCW 11.52.010 and 1987 c 442 s 1116, 1984 c 260 s 17, 1974  
15 ex.s. c 117 s 7, 1971 ex.s. c 12 s 2, 1967 c 168 s 12, & 1965 c 145 s  
16 11.52.010;

17       (11) RCW 11.52.012 and 1985 c 194 s 1, 1984 c 260 s 18, 1977 ex.s.  
18 c 234 s 9, 1974 ex.s. c 117 s 8, & 1965 c 145 s 11.52.012;

19       (12) RCW 11.52.014 and 1965 c 145 s 11.52.014;

20       (13) RCW 11.52.016 and 1988 c 202 s 18, 1972 ex.s. c 80 s 1, & 1965  
21 c 145 s 11.52.016;

22       (14) RCW 11.52.020 and 1985 c 194 s 2, 1984 c 260 s 19, 1974 ex.s.  
23 c 117 s 9, 1971 ex.s. c 12 s 3, 1967 c 168 s 13, & 1965 c 145 s  
24 11.52.020;

25       (15) RCW 11.52.022 and 1985 c 194 s 3, 1984 c 260 s 20, 1977 ex.s.  
26 c 234 s 10, 1974 ex.s. c 117 s 10, 1971 ex.s. c 12 s 4, & 1965 c 145 s  
27 11.52.022;

28       (16) RCW 11.52.024 and 1972 ex.s. c 80 s 2 & 1965 c 145 s  
29 11.52.024;

30       (17) RCW 11.52.030 and 1965 c 145 s 11.52.030;

31       (18) RCW 11.52.040 and 1965 c 145 s 11.52.040;

32       (19) RCW 11.52.050 and 1967 c 168 s 14;

33       (20) RCW 11.68.010 and 1994 c 221 s 50, 1977 ex.s. c 234 s 18, 1974  
34 ex.s. c 117 s 13, 1969 c 19 s 1, & 1965 c 145 s 11.68.010;

35       (21) RCW 11.68.020 and 1974 ex.s. c 117 s 14 & 1965 c 145 s  
36 11.68.020;

37       (22) RCW 11.68.030 and 1977 ex.s. c 234 s 19, 1974 ex.s. c 117 s  
38 15, & 1965 c 145 s 11.68.030; and

1 (23) RCW 11.68.040 and 1977 ex.s. c 234 s 20, 1974 ex.s. c 117 s  
2 16, & 1965 c 145 s 11.68.040.

3 **Sec. 205.** 1997 c 252 s 89 (uncodified) is amended to read as  
4 follows:

5 Sections 1 through (~~(73 of this act)~~) 72, chapter 252, Laws of 1997  
6 apply to estates of decedents dying after December 31, 1997. Sections  
7 81 through 86, chapter 252, Laws of 1997 apply to all estates, trusts,  
8 and governing instruments in existence on or at any time after March 7,  
9 1984, and to all proceedings with respect thereto after March 7, 1984,  
10 whether the proceedings commenced before or after March 7, 1984, and  
11 including distributions made after March 7, 1984. Sections 81 through  
12 86, chapter 252, Laws of 1997 do not apply to any governing instrument,  
13 the terms of which expressly or by necessary implication make the  
14 application of sections 81 through 86, chapter 252, Laws of 1997  
15 inapplicable. The judicial and nonjudicial dispute resolution  
16 procedures of chapter 11.96 RCW apply to sections 81 through 86,  
17 chapter 252, Laws of 1997.

18 **PART III--UNIFORM TRANSFERS TO MINORS ACT**

19 **Sec. 301.** RCW 11.114.030 and 1991 c 193 s 3 are each amended to  
20 read as follows:

21 (1) A person having the right to designate the recipient of  
22 property transferable upon the occurrence of a future event may  
23 revocably nominate a custodian to receive the property for a minor  
24 beneficiary upon the occurrence of the event by naming the custodian  
25 followed in substance by the words: ". . . . . as custodian for  
26 . . . . . (name of minor) under the Washington uniform transfers to  
27 minors act." The nomination may name one or more persons as substitute  
28 custodians to whom the property shall be transferred, in the order  
29 named, if the first nominated custodian dies before the transfer or is  
30 unable, declines, or is ineligible to serve. The nomination may be  
31 made in a will, a trust, a deed, an instrument exercising a power of  
32 appointment, or in a writing designating a beneficiary of contractual  
33 rights which is registered with or delivered to the payor, issuer, or  
34 other obligor of the contractual rights.

35 As an alternative to naming a specific person as custodian, the  
36 nomination may provide that the custodian may be designated by the

1 legal representative of, or other person specified by, the person  
2 having the right to designate the recipient of the property described  
3 in this subsection. The person having the right of designation of the  
4 custodian is authorized to designate himself or herself as custodian,  
5 if he or she falls within the class of persons eligible to serve as  
6 custodian under RCW 11.114.090(1).

7 (2) A custodian nominated under this section shall be a person to  
8 whom a transfer of property of that kind may be made under RCW  
9 11.114.090(1).

10 (3) Instead of designating one specific minor, the designation may  
11 specify multiple persons or a class or classes of persons, but when the  
12 custodial property is actually created under subsection (4) of this  
13 section, it must be constituted as a separate custodianship for each  
14 beneficiary, and each beneficiary's interest in it must be determined  
15 in accordance with the governing instrument and applicable law.

16 (4) The nomination of a custodian under this section does not  
17 create custodial property until the nominating instrument becomes  
18 irrevocable or a transfer to the nominated custodian is completed under  
19 RCW 11.114.090. Unless the nomination of a custodian has been revoked,  
20 upon the occurrence of the future event the custodianship becomes  
21 effective and the custodian shall enforce a transfer of the custodial  
22 property pursuant to RCW 11.114.090.

23 **PART IV--INTERNAL REVENUE CODE REFERENCES**

24 **Sec. 401.** RCW 83.100.020 and 1994 c 221 s 70 are each amended to  
25 read as follows:

26 As used in this chapter:

27 (1) "Decedent" means a deceased individual;

28 (2) "Department" means the department of revenue, the director of  
29 that department, or any employee of the department exercising authority  
30 lawfully delegated to him by the director;

31 (3) "Federal credit" means (a) for a transfer, the maximum amount  
32 of the credit for state taxes allowed by section 2011 of the Internal  
33 Revenue Code; and (b) for a generation-skipping transfer, the maximum  
34 amount of the credit for state taxes allowed by section 2604 of the  
35 Internal Revenue Code;

36 (4) "Federal return" means any tax return required by chapter 11 or  
37 13 of the Internal Revenue Code;

1 (5) "Federal tax" means (a) for a transfer, a tax under chapter 11  
2 of the Internal Revenue Code; and (b) for a generation-skipping  
3 transfer, the tax under chapter 13 of the Internal Revenue Code;

4 (6) "Generation-skipping transfer" means a "generation-skipping  
5 transfer" as defined and used in section 2611 of the Internal Revenue  
6 Code;

7 (7) "Gross estate" means "gross estate" as defined and used in  
8 section 2031 of the Internal Revenue Code;

9 (8) "Nonresident" means a decedent who was domiciled outside  
10 Washington at his death;

11 (9) "Person" means any individual, estate, trust, receiver,  
12 cooperative association, club, corporation, company, firm, partnership,  
13 joint venture, syndicate, or other entity and, to the extent permitted  
14 by law, any federal, state, or other governmental unit or subdivision  
15 or agency, department, or instrumentality thereof;

16 (10) "Person required to file the federal return" means any person  
17 required to file a return required by chapter 11 or 13 of the Internal  
18 Revenue Code, such as the personal representative of an estate; or a  
19 transferor, trustee, or beneficiary of a generation-skipping transfer;  
20 or a qualified heir with respect to qualified real property, as defined  
21 and used in section 2032A(c) of the Internal Revenue Code;

22 (11) "Property" means (a) for a transfer, property included in the  
23 gross estate; and (b) for a generation-skipping transfer, all real and  
24 personal property subject to the federal tax;

25 (12) "Resident" means a decedent who was domiciled in Washington at  
26 time of death;

27 (13) "Transfer" means "transfer" as used in section 2001 of the  
28 Internal Revenue Code, or a disposition or cessation of qualified use  
29 as defined and used in section 2032A(c) of the Internal Revenue Code;

30 (14) "Trust" means "trust" under Washington law and any arrangement  
31 described in section 2652 of the Internal Revenue Code; and

32 (15) "Internal Revenue Code" means, for the purposes of this  
33 chapter and RCW 83.110.010, the United States Internal Revenue Code of  
34 1986, as amended or renumbered on January 1, (~~1995~~) 1998.

35 **Sec. 402.** RCW 83.110.010 and 1994 c 221 s 71 are each amended to  
36 read as follows:

37 As used in this chapter, the following terms have the meanings  
38 indicated unless the context clearly requires otherwise.

1 (1) "Estate" means the gross estate of a decedent as determined for  
2 the purpose of federal estate tax and the estate tax payable to this  
3 state;

4 (2) "Excise tax" means the federal excise tax imposed by section  
5 4980A(d) of the Internal Revenue Code, and interest and penalties  
6 imposed in addition to the excise tax;

7 (3) "Fiduciary" means executor, administrator of any description,  
8 and trustee;

9 (4) "Internal Revenue Code" means the United States Internal  
10 Revenue Code of 1986, as (~~amended or renumbered on January 1, 1995~~)  
11 defined in and as of the date specified in RCW 83.100.020;

12 (5) "Person" means any individual, partnership, association, joint  
13 stock company, corporation, government, political subdivision,  
14 governmental agency, or local governmental agency;

15 (6) "Persons interested in retirement distributions" means any  
16 person determined as of the date the excise tax is due, including a  
17 personal representative, guardian, trustee, or beneficiary, entitled to  
18 receive, or who has received, by reason of or following the death of a  
19 decedent, any property or interest therein which constitutes a  
20 retirement distribution as defined in section 4980A(e) of the Internal  
21 Revenue Code, but this definition excludes any alternate payee under a  
22 qualified domestic relations order as such terms are defined in section  
23 414(p) of the Internal Revenue Code;

24 (7) "Person interested in the estate" means any person, including  
25 a personal representative, guardian, or trustee, entitled to receive,  
26 or who has received, from a decedent while alive or by reason of the  
27 death of a decedent any property or interest therein included in the  
28 decedent's taxable estate;

29 (8) "Qualified heir" means a person interested in the estate who is  
30 entitled to receive, or who has received, an interest in qualified real  
31 property;

32 (9) "Qualified real property" means real property for which the  
33 election described in section 2032A of the Internal Revenue Code has  
34 been made;

35 (10) "State" means any state, territory, or possession of the  
36 United States, the District of Columbia, or the Commonwealth of Puerto  
37 Rico; and

1 (11) "Tax" means the federal estate tax, the excise tax defined in  
2 subsection (2) of this section, and the estate tax payable to this  
3 state and interest and penalties imposed in addition to the tax.

4 **PART V--SLAYER'S STATUTE**

5 NEW SECTION. **Sec. 501.** A new section is added to chapter 41.04  
6 RCW to read as follows:

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

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

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

13 (2) Property that would have passed to or for the benefit of a  
14 beneficiary under one of the retirement systems listed in RCW 41.50.030  
15 shall not pass to that beneficiary if the beneficiary was a slayer of  
16 the decedent and the property shall be distributed as if the slayer had  
17 predeceased the decedent.

18 (3) A slayer is deemed to have predeceased the decedent as to  
19 property which, by designation or by operation of law, would have  
20 passed from the decedent to the slayer because of the decedent's  
21 entitlement to benefits under one of the retirement systems listed in  
22 RCW 41.50.030.

23 (4)(a) The department of retirement systems has no affirmative duty  
24 to determine whether a beneficiary is, or is alleged to be, a slayer.  
25 However, upon receipt of written notice that a beneficiary is a  
26 defendant in a civil lawsuit that alleges the beneficiary is a slayer  
27 or is charged with a crime that, if committed, means the beneficiary is  
28 a slayer, the department of retirement systems shall determine whether  
29 the beneficiary is a defendant in such a civil suit or has been  
30 formally charged in court with the crime, or both. If so, the  
31 department shall withhold payment of any benefits until:

32 (i) The case or charges, or both if both are pending, are  
33 dismissed;

34 (ii) The beneficiary is found not guilty in the criminal case or  
35 prevails in the civil suit, or both if both are pending; or

36 (iii) The beneficiary is convicted or is found to be a slayer in  
37 the civil suit.

1 (b) If the case or charges, or both if both are pending, are  
2 dismissed or if a beneficiary is found not guilty or prevails in the  
3 civil suit, or both if both are pending, the department shall pay the  
4 beneficiary the benefits the beneficiary is entitled to receive. If  
5 the beneficiary is convicted or found to be a slayer in a civil suit,  
6 the department shall distribute the benefits according to subsection  
7 (2) of this section.

8 (5) The slayer's conviction for having participated in the willful  
9 and unlawful killing of the decedent shall be admissible in evidence  
10 against a claimant of property in any civil action arising under this  
11 section.

12 (6) This section shall not subject the department of retirement  
13 systems to liability for payment made to a slayer or alleged slayer  
14 prior to the department's receipt of written notice that the slayer has  
15 been convicted of, or the alleged slayer has been formally criminally  
16 or civilly charged in court with, the death of the decedent. If the  
17 conviction or civil judgment of a slayer is reversed on appeal, the  
18 department of retirement systems shall not be liable for payment made  
19 prior to the receipt of written notice of the reversal to a beneficiary  
20 other than the person whose conviction or civil judgment is reversed.

21 NEW SECTION. **Sec. 502.** A new section is added to chapter 11.84  
22 RCW to read as follows:

23 Proceeds payable to a slayer as the beneficiary of any benefits  
24 flowing from one of the retirement systems listed in RCW 41.50.030, by  
25 virtue of the decedent's membership in the department of retirement  
26 systems or by virtue of the death of decedent, shall be paid instead as  
27 designated in section 501 of this act.

28 **Sec. 503.** RCW 11.84.900 and 1965 c 145 s 11.84.900 are each  
29 amended to read as follows:

30 This chapter shall (~~not be considered penal in nature, but shall~~)  
31 be construed broadly (~~in order~~) to effect the policy of this state  
32 that no person shall be allowed to profit by his own wrong, wherever  
33 committed.

34 **Sec. 504.** RCW 11.02.070 and 1967 c 168 s 1 are each amended to  
35 read as follows:

1        Except as provided in sections 501 and 502 of this act, upon the  
2 death of a decedent, a one-half share of the community property shall  
3 be confirmed to the surviving spouse, and the other one-half share  
4 shall be subject to testamentary disposition by the decedent, or shall  
5 descend as provided in chapter 11.04 RCW. The whole of the community  
6 property shall be subject to probate administration for all purposes of  
7 this title, including the payment of obligations and debts of the  
8 community, the award in lieu of homestead, the allowance for family  
9 support, and any other matter for which the community property would be  
10 responsible or liable if the decedent were living.

11        **Sec. 505.** RCW 26.16.120 and Code 1881 s 2416 are each amended to  
12 read as follows:

13        Nothing contained in any of the provisions of this chapter or in  
14 any law of this state, shall prevent the husband and wife from jointly  
15 entering into any agreement concerning the status or disposition of the  
16 whole or any portion of the community property, then owned by them or  
17 afterwards to be acquired, to take effect upon the death of either.  
18 But such agreement may be made at any time by the husband and wife by  
19 the execution of an instrument in writing under their hands and seals,  
20 and to be witnessed, acknowledged and certified in the same manner as  
21 deeds to real estate are required to be, under the laws of the state,  
22 and the same may at any time thereafter be altered or amended in the  
23 same manner(~~(: PROVIDED, HOWEVER, That)~~). Such agreement shall not  
24 derogate from the right of creditors((~~7~~))i nor be construed to curtail  
25 the powers of the superior court to set aside or cancel such agreement  
26 for fraud or under some other recognized head of equity jurisdiction,  
27 at the suit of either partyi nor prevent the application of laws  
28 governing the community property and inheritance rights of slayers  
29 under chapter 11.84 RCW.

30        NEW SECTION. **Sec. 506.** Sections 501 through 505 of this act apply  
31 to acts that result in unlawful killings of decedents by slayers on and  
32 after the effective date of this section.

33        NEW SECTION. **Sec. 507.** If any part of sections 501 through 505 of  
34 this act is found to be in conflict with federal requirements, the  
35 conflicting part of sections 501 through 505 of this act is hereby  
36 declared to be inoperative solely to the extent of the conflict, and

1 such finding or determination does not affect the operation of the  
2 remainder of sections 501 through 505 of this act. Rules adopted under  
3 sections 501 through 505 of this act must meet federal requirements.

4 **PART VI--MISCELLANEOUS--EFFECTIVE DATES**

5 NEW SECTION. **Sec. 601.** Part headings and section captions used in  
6 this act are not any part of the law.

7 NEW SECTION. **Sec. 602.** Sections 101 through 116 of this act  
8 constitute a new chapter in Title 11 RCW.

9 NEW SECTION. **Sec. 603.** (1) Sections 101 through 116 and 118 of  
10 this act take effect July 1, 1999.

11 (2) Sections 117, 201 through 205, 301, 401, 501 through 507, and  
12 604 of this act are necessary for the immediate preservation of the  
13 public peace, health, or safety, or support of the state government and  
14 its existing public institutions, and take effect immediately.

15 NEW SECTION. **Sec. 604.** (1) Sections 201 through 205 of this act  
16 are remedial in nature and apply retroactively to July 27, 1997, and  
17 thereafter.

18 (2) Section 301 of this act is remedial in nature and applies  
19 retroactively to July 1, 1991, and thereafter.

Passed the Senate March 12, 1998.

Passed the House March 11, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.