

SHB 1103 - S COMM AMD
By Committee on Judiciary

ADOPTED 04/17/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 11.84.010 and 1965 c 145 s 11.84.010 are each amended
4 to read as follows:

5 As used in this chapter:

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

9 (2) "Decedent" means:

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

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

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

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

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

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

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

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

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

1 pass to his or her estate upon the death of the slayer or abuser,
2 unless the slayer or abuser obtains a separation or severance of the
3 property or a decree granting partition.

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

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

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

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

18 As to any contingent remainder or executory or other future
19 interest held by the slayer or abuser, subject to become vested in him
20 or her or increased in any way for him or her upon the condition of the
21 death of the decedent:

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

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

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

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

32 (2) Property held either presently or in remainder by the slayer or
33 abuser, subject to be divested by the exercise by the decedent of a
34 power of revocation or a general power of appointment shall pass to the
35 estate of the decedent, and property so held by the slayer or abuser,

1 subject to be divested by the exercise by the decedent of a power of
2 appointment to a particular person or persons or to a class of persons,
3 shall pass to such person or persons, or in equal shares to the members
4 of such class of persons, exclusive of the slayer or abuser.

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

7 (1) Insurance proceeds payable to the slayer or abuser as the
8 beneficiary or assignee of any policy or certificate of insurance on
9 the life of the decedent, or as the survivor of a joint life policy,
10 shall be paid instead to the estate of the decedent, unless the policy
11 or certificate designate some person other than the slayer or abuser or
12 his or her estate as secondary beneficiary to him or her and in which
13 case such proceeds shall be paid to such secondary beneficiary in
14 accordance with the applicable terms of the policy.

15 (2) If the decedent is beneficiary or assignee of any policy or
16 certificate of insurance on the life of the slayer or abuser, the
17 proceeds shall be paid to the estate of the decedent upon the death of
18 the slayer or abuser, unless the policy names some person other than
19 the slayer or abuser or his or her estate as secondary beneficiary, or
20 unless the slayer or abuser by naming a new beneficiary or assigning
21 the policy performs an act which would have deprived the decedent of
22 his or her interest in the policy if he or she had been living.

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

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

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

34 The provisions of this chapter shall not affect the rights of any
35 person who, before the interests of the slayer or abuser have been

1 adjudicated, purchases or has agreed to purchase, from the slayer or
2 abuser for value and without notice property which the slayer or abuser
3 would have acquired except for the terms of this chapter, but all
4 proceeds received by the slayer or abuser from such sale shall be held
5 by him or her in trust for the persons entitled to the property under
6 the provisions of this chapter, and the slayer or abuser shall also be
7 liable both for any portion of such proceeds which he or she may have
8 dissipated and for any difference between the actual value of the
9 property and the amount of such proceeds.

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

12 ((The)) Any record of ((his)) conviction ((of)) for having
13 participated in the ((wilful)) willful and unlawful killing of the
14 decedent or for conduct constituting financial exploitation against the
15 decedent, including but not limited to theft, forgery, fraud, identity
16 theft, robbery, burglary, or extortion, shall be admissible in evidence
17 against a claimant of property in any civil ((action)) proceeding
18 arising under this chapter.

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

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

24 (2) In the absence of a criminal conviction, a superior court
25 finding by a preponderance of the evidence that a person participated
26 in the willful and unlawful killing of the decedent is conclusive for
27 purposes of determining whether a person is a slayer under this
28 section.

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

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

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

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

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

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

13 (b) The conduct constituting financial exploitation was willful
14 action or willful inaction causing injury to the property of the
15 vulnerable adult.

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

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

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

24 Notwithstanding the provisions of this chapter:

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

28 (a) Knew of the financial exploitation; and

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

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

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

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

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

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

7 Nothing contained in any of the provisions of this chapter or in
8 any law of this state, shall prevent both spouses or both domestic
9 partners from jointly entering into any agreement concerning the status
10 or disposition of the whole or any portion of the community property,
11 then owned by them or afterwards to be acquired, to take effect upon
12 the death of either. But such agreement may be made at any time by
13 both spouses or both domestic partners by the execution of an
14 instrument in writing under their hands and seals, and to be witnessed,
15 acknowledged and certified in the same manner as deeds to real estate
16 are required to be, under the laws of the state, and the same may at
17 any time thereafter be altered or amended in the same manner. Such
18 agreement shall not derogate from the right of creditors; nor be
19 construed to curtail the powers of the superior court to set aside or
20 cancel such agreement for fraud or under some other recognized head of
21 equity jurisdiction, at the suit of either party; nor prevent the
22 application of laws governing the community property and inheritance
23 rights of slayers or abusers under chapter 11.84 RCW.

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

26 (1) For purposes of this section, the following definitions shall
27 apply:

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

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

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

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

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

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

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

12 (4)(a) The department of retirement systems has no affirmative duty
13 to determine whether a beneficiary is, or is alleged to be, a slayer or
14 abuser. However, upon receipt of written notice that a beneficiary is
15 a defendant in a civil lawsuit or probate proceeding that alleges the
16 beneficiary is a slayer or abuser, or is charged with a crime that, if
17 committed, means the beneficiary is a slayer or abuser, the department
18 of retirement systems shall determine whether the beneficiary is a
19 defendant in such a civil ((~~suit~~)) proceeding or has been formally
20 charged in court with the crime, or both. If so, the department shall
21 withhold payment of any benefits until:

22 (i) The case or charges, or both if both are pending, are
23 dismissed;

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

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

29 (b) If the case or charges, or both if both are pending, are
30 dismissed or if a beneficiary is found not guilty or prevails in the
31 civil ((~~suit~~)) proceeding, or both if both are pending, the department
32 shall pay the beneficiary the benefits the beneficiary is entitled to
33 receive. If the beneficiary is convicted or found to be a slayer or
34 abuser in a civil ((~~suit~~)) proceeding, the department shall distribute
35 the benefits according to subsection (2) of this section.

36 (5) ((~~The slayer's~~)) Any record of conviction for having
37 participated in the willful and unlawful killing of the decedent or for
38 conduct constituting financial exploitation against the decedent,

1 including but not limited to theft, forgery, fraud, identity theft,
2 robbery, burglary, or extortion, shall be admissible in evidence
3 against a claimant of property in any civil action arising under this
4 section.

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

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

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

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

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

25 The definitions in this section apply throughout this chapter
26 unless the context clearly requires otherwise.

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

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

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

34 (c) The determination of any question arising in the administration
35 of an estate or trust, or with respect to any nonprobate asset, or with
36 respect to any other asset or property interest passing at death, that
37 may include, without limitation, questions relating to: (i) The

1 construction of wills, trusts, community property agreements, and other
2 writings; (ii) a change of personal representative or trustee; (iii) a
3 change of the situs of a trust; (iv) an accounting from a personal
4 representative or trustee; or (v) the determination of fees for a
5 personal representative or trustee;

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

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

10 (f) The amendment, reformation, or conformation of a will or a
11 trust instrument to comply with statutes and regulations of the United
12 States internal revenue service in order to achieve qualification for
13 deductions, elections, and other tax requirements, including the
14 qualification of any gift thereunder for the benefit of a surviving
15 spouse who is not a citizen of the United States for the estate tax
16 marital deduction permitted by federal law, including the addition of
17 mandatory governing instrument requirements for a qualified domestic
18 trust under section 2056A of the internal revenue code, the
19 qualification of any gift thereunder as a qualified conservation
20 easement as permitted by federal law, or the qualification of any gift
21 for the charitable estate tax deduction permitted by federal law,
22 including the addition of mandatory governing instrument requirements
23 for a charitable remainder trust; and

24 ((+f)) (g) With respect to any nonprobate asset, or with respect
25 to any other asset or property interest passing at death, including
26 joint tenancy property, property subject to a community property
27 agreement, or assets subject to a pay on death or transfer on death
28 designation:

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

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

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

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

3 (v) The determination of any questions relating to the abatement,
4 rights of creditors, or other matter relating to the administration,
5 settlement, or final disposition of a nonprobate asset under this
6 title;

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

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

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

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

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

19 (a) The trustor if living;

20 (b) The trustee;

21 (c) The personal representative;

22 (d) An heir;

23 (e) A beneficiary, including devisees, legatees, and trust
24 beneficiaries;

25 (f) The surviving spouse or surviving domestic partner of a
26 decedent with respect to his or her interest in the decedent's
27 property;

28 (g) A guardian ad litem;

29 (h) A creditor;

30 (i) Any other person who has an interest in the subject of the
31 particular proceeding;

32 (j) The attorney general if required under RCW 11.110.120;

33 (k) Any duly appointed and acting legal representative of a party
34 such as a guardian, special representative, or attorney-in-fact;

35 (l) Where applicable, the virtual representative of any person
36 described in this subsection the giving of notice to whom would meet
37 notice requirements as provided in RCW 11.96A.120;

1 (m) Any notice agent, resident agent, or a qualified person, as
2 those terms are defined in chapter 11.42 RCW; and

3 (n) The owner or the personal representative of the estate of the
4 deceased owner of the nonprobate asset that is the subject of the
5 particular proceeding, if the subject of the particular proceeding
6 relates to the beneficiary's liability to a decedent's estate or
7 creditors under RCW 11.18.200.

8 (5) "Persons interested in the estate or trust" means the trustor,
9 if living, all persons beneficially interested in the estate or trust,
10 persons holding powers over the trust or estate assets, the attorney
11 general in the case of any charitable trust where the attorney general
12 would be a necessary party to judicial proceedings concerning the
13 trust, and any personal representative or trustee of the estate or
14 trust.

15 (6) "Principal place of administration of the trust" means the
16 trustee's usual place of business where the day-to-day records
17 pertaining to the trust are kept, or the trustee's residence if the
18 trustee has no such place of business.

19 (7) The "situs" of a trust means the place where the principal
20 place of administration of the trust is located, unless otherwise
21 provided in the instrument creating the trust.

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

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

25 (10) "Citation" or "cite" and other similar terms, when required of
26 a person interested in the estate or trust or a party to a petition,
27 means to give notice as required under RCW 11.96A.100. "Citation" or
28 "cite" and other similar terms, when required of the court, means to
29 order, as authorized under RCW 11.96A.020 and 11.96A.060, and as
30 authorized by law.

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

33 The provisions of this act are supplemental to, and do not derogate
34 from, any other statutory or common law proceedings, theories, or
35 remedies including, but not limited to, the common law allocation of
36 the burden of proof or production among the parties."

ADOPTED 04/17/2009

1 On page 1, line 1 of the title, after "adults;" strike the
2 remainder of the title and insert "amending RCW 11.84.010, 11.84.020,
3 11.84.025, 11.84.030, 11.84.040, 11.84.050, 11.84.070, 11.84.080,
4 11.84.090, 11.84.100, 11.84.110, 11.84.120, 11.84.130, 26.16.120,
5 41.04.273, and 11.96A.030; and adding new sections to chapter 11.84
6 RCW."

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