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**Civil Rights & Judiciary Committee**

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**SSB 5589**

**Brief Description:** Concerning probate.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senator Stanford).

**Brief Summary of Substitute Bill**

- Modifies the family award available to a decedent's surviving spouse or domestic partner and dependent children.
- Revises the process for increasing or decreasing the amount of the award.
- Clarifies the priority of awarded property over other claims against the estate and the exemptions from attachment, execution, and forced sale that apply after a decedent's death.
- Establishes the process for allocating the exempt property among claimants.

**Hearing Date:** 3/22/23

**Staff:** Yelena Baker (786-7301).

**Background:**

Generally, individuals in Washington can direct the distribution of their estates on their deaths and have no obligation to provide for surviving family members. However, under state probate law, a surviving spouse, domestic partner, or children of the decedent may petition to receive a portion of the estate as a family award, despite other provisions made by the decedent for distribution of the estate and pending creditor claims.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

### Persons Eligible for a Family Award.

The surviving spouse or domestic partner of a decedent may petition the court for an award from the property of the decedent. If there is no surviving spouse or domestic partner, the minor children of the decedent may petition for an award.

Courts have held that a decedent's adult surviving children who are not also children of the surviving spouse or domestic partner may not petition the court for an award. Under the family award statute, once the surviving spouse or domestic partner petitions for an award, adult children of the decedent may petition the court for the division of the award between the surviving spouse or domestic partner and the adult children of the decedent. The court may divide the award as it deems appropriate.

The court may not make an award to a surviving spouse, domestic partner, or a child who has participated, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.

### Petition Requirements.

Eligible family members may petition for an award whether or not probate proceedings have been commenced, but the petition must be filed before the earliest of:

- 18 months from the decedent's date of death, if a personal representative or a notice agent has been appointed within 12 months of decedent's death;
- termination of any probate proceeding for the decedent in Washington; or
- six years from the decedent's date of death.

### Basic Award.

The amount of the basic award is equal to the amount of the homestead exemption with respect to lands, as specified in the homestead statute, which was amended in 2021. Prior to the 2021 amendments, the homestead exemption with respect to lands was \$125,000. The current homestead exemption is the greater of \$125,000 or the county median sale price of a single-family home in the preceding calendar year.

If the award is divided between the surviving spouse or domestic partner and the decedent's children who are not children of the surviving spouse or domestic partner, the aggregate amount awarded to all claimants is the amount of the homestead exemption with respect to lands.

The award may be made from the community or separate property of the decedent. The court may not make an award unless the court finds that the funeral expenses, expenses of the last sickness, and expenses of administration have been provided for or paid.

### Increasing Basic Award.

An award may be increased in an amount the court deems appropriate if the court finds clear, cogent, and convincing evidence that:

- the needs of the claimant during the pendency of the probate with respect to basic maintenance and support will not otherwise be provided for from other resources; and

- the award would not be inconsistent with the decedent's intentions.

In considering the claimant's needs, the court must consider:

- the resources available to the claimant and the claimant's dependents; and
- the resources reasonably expected to be available to the claimant and the claimant's dependents during the pendency of the probate, including employment income and benefits from the decedent's probate and nonprobate estate.

To determine the intentions of the decedent, the court must consider:

- provisions made for the claimant and for the third parties that would be affected by an increased award;
- the duration and status of the marriage or domestic partnership of the decedent to the claimant at the time of the decedent's death;
- the effect of the award on the claimant's other resources;
- the size and nature of the decedent's estate; and
- decedent's statements that are otherwise admissible as evidence.

#### Decreasing Basic Award.

In its discretion, the court may decrease the amount of the basic award if the claimant is entitled to receive probate or nonprobate property, such as life insurance or retirement benefits, as a result of the decedent's death. In this case, the award must be decreased by no more than the value of such other property, and the court must consider the needs of the claimant using the same factors as when considering whether to increase the basic award.

An award to the surviving spouse or domestic partner is discretionary and may be reduced if the award would decrease amounts distributable to the decedent's minor children or children who are not the survivor's children. In this circumstance, the court must consider the claimant's needs, the decedent's intent, and the needs of the minor children both during and after the probate proceedings.

#### Priority of Awarded Property.

In determining which assets must be made available to satisfy the award, the claimant is treated as a general creditor of the estate, with priority over all other claims against the estate.

Unless otherwise ordered by the court, the probate and nonprobate assets of the decedent abate as provided in state law relating to abatement of a decedent's property, generally in the following order: intestate property; residuary gifts; general gifts; and specific gifts.

#### Immunity of the Award from Debts and Creditor Claims.

Except for property purchased on contract or subject to an encumbrance, the award is immune from all debts, including judgments and judgment liens, of the decedent and the surviving spouse or domestic partner as of the date of death. Both the decedent's and the surviving spouse's or domestic partner's interests in the community property included in the award are immune from creditor claims.

If the property awarded is being purchased on contract or is subject to any encumbrance, for the purpose of the award the property must be valued net of the balance due on the contract or the amount of the encumbrance. The property awarded continues to be subject to any such contract or encumbrance. An award in excess of the basic award, whether from community property or the decedent's separate property, is not immune from any lien for the costs of medical expenses recoverable under state law related to the Department of Social and Human Services revenue recovery.

#### Exemption of Additional Assets from Creditor Claims.

If the award amount is less than the basic award, a claimant or claimants may petition the court for an exemption of additional assets from creditor claims so that the aggregate amount of exempt property held by the claimants equals the basic award amount.

The petition requesting additional exemptions must state:

- the facts making the claimant eligible for an award;
- the value and nature of the assets held by all claimants that are exempt from creditor claims; and
- the nonexempt assets held by the claimants, including any interest in any probate or nonprobate property of the decedent.

At the hearing, the court must order that certain claimants' assets are exempt from creditor claims so that the aggregate amount of exempt property held by the claimants is the amount of the basic award.

#### **Summary of Bill:**

##### Persons Eligible for a Family Award.

Any one or more or a decedent's surviving spouse, domestic partner, or dependent children may petition for an award. "Child" means a person who had a parent-child relationship as a child with the decedent, regardless of the person's age. "Dependent," when used with reference to a decedent's child, means a person who received more than half of that person's support from the decedent during the 12 months before the decedent's death. The court may divide the award between the surviving spouse or domestic partner and the surviving dependent children as the court deems appropriate.

In addition to being prohibited from making an award to a slayer of the decedent, the court may not make an award to an abuser of the decedent. "Abuser" means any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful financial exploitation of a vulnerable adult.

##### Petition Requirements.

In addition to current statutory time limits for filing a petition for an award, several requirements are added as to the contents of the petition. Specifically, the petition must:

- set forth facts to establish that the claimant is entitled to an award;
- state the nature and value of assets that are held by all potential claimants, are exempt from creditor claims, and that are known to the claimant or could be known with reasonable diligence; and
- describe all other assets held by the claimant, including any interests in the decedent's probate or nonprobate property.

Additionally, the standard for granting an award is specified: if a claimant proves by a preponderance of the evidence that an award of property exempt from creditor claims to the claimant would fulfill one or more of the specified statutory purposes, the court may grant the claimant an award that the court determines to be equitable.

#### Basic Award.

The method for determining the amount of the basic award is modified and the reference to the homestead exemption in lands is removed.

The amount of the basic award is the greater of the following:

- the value, as of the date of the decedent's death, of the decedent's separate or community property that immediately before the decedent's death was exempt from attachment, execution, or forced sale under state law relating to homestead exemption and personal property exemptions; or
- either \$125,000, or \$125,000 multiplied by the inflation factor, whichever is greater.

The inflation factor is based on the Consumer Price Index for all urban consumers, all items in the Seattle area, as calculated by the United States Department of Labor.

The award may be divided among the surviving spouse or domestic partner and the decedent's dependent children. If the award is divided, the aggregate amount awarded to all claimants is the amount of the basic award.

As a condition before the court may make an award, a requirement to pay wages due for labor performed within 60 days immediately preceding the decedent's death is added to the existing requirements to pay funeral expenses, expenses of the last sickness, and administration expenses.

The basic award must include any and all homestead or other property exempt from attachment, execution, or forced sale under state law relating to homestead exemption and personal property exemptions immediately before the decedent's death.

The decedent's separate and community property abates for awards of family allowance in accordance with state law relating to abatement of a decedent's property. However, gifts that contain a homestead or other nonfungible property that is exempt from attachment, execution, or forced sale abate to the extent that the property is awarded to a claimant, regardless of whether the gift would be classified as intestate, residuary, general, or specific, except as otherwise

provided in state law.

#### Increasing the Basic Award.

The standard of proof by clear, cogent, and convincing evidence is removed from the provisions related to increasing the basic award. Instead, a claimant must demonstrate to the satisfaction of the court that a claimant's present and reasonable anticipated future needs with respect to basic maintenance and support during the pendency of any proceeding under state probate and trust law will not be provided from other resources. Additionally, instead of demonstrating that an increased award would be consistent with the decedent's intentions, the claimant may choose to demonstrate that an increased award would be consistent with principles of equity and fairness.

Award may be increased in an amount that the court determines to be needed for claimant's needs with respect to basic maintenance and support during the pendency of any proceedings under state probate and trust law.

#### Decreasing the Basic Award.

Provisions specifying that an award to the surviving spouse or domestic partner is discretionary are removed. When deciding whether to reduce the award to the surviving spouse or domestic partner, the court must consider a newly added list of specified factors, including principles of equity and fairness, in addition to considering the claimant's needs, the decedent's intent, and the needs of dependent children.

#### Priority of Awarded Property.

Provisions stating that the award has priority over all other claims against the estate are removed and instead a clarification is added to provide that:

- none of the decedent's separate or community property is exempt from the requirement to pay administration expenses, funeral expenses, expenses of last sickness, and wages due for labor performed within 60 days immediately preceding the decedent's death; and
- nothing in the statute relating to family awards abrogates or diminishes the rights associated with a valid lien.

#### Immunity of Award from Debts and Creditor Claims.

Any homestead or other property exempt from attachment, execution, and forced sale immediately before the decedent's death remains exempt for the debts of the decedent and the community composed of the decedent and the surviving spouse or domestic partner up to the amount of the basic award.

#### Exemption of Additional Assets from Creditor Claims.

The process for petitioning the court for additional exemptions is repealed. Instead, the court must designate additional property of the estate if the decedent resided in Washington at the time of death and either:

- no homestead or other property was exempt; or
- the total value of exempt property, including property exempt under another state's laws and separate property of the surviving spouse or domestic partner that is exempt for the

debts of the spouse or partner, is less than \$125,000 or \$125,000 multiplied by the inflation factor, whichever is greater.

The court must designate additional property of the estate—either community or separate—so that the aggregate value amounts to \$125,000 or \$125,000 multiplied by the inflation factor, whichever is greater. Additional designated property, together with any additional award the court may grant, is also exempt from attachment, execution, and forced sale for the debts of the decedent and the debts of the community composed of the decedent and the surviving spouse or domestic partner.

Other Provisions.

A clarification is added that the statute relating to family support and postdeath creditor claims applies to probate and nonprobate assets. The purposes of the statute are specified.

In exercising its discretion under the statute, the court is required to consider a number of specified factors, including how principles of equity and fairness would allocate the statutory exemptions from attachment, execution, and forced sale among a decedent's surviving spouse or domestic partner and the decedent's dependent children.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect on August 1, 2023.