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**SUBSTITUTE SENATE BILL 5318**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Human Services (originally sponsored by Senators Nobles, Kuderer, Nguyen, and C. Wilson)

READ FIRST TIME 02/03/23.

1 AN ACT Relating to limiting estate recovery; and amending RCW  
2 41.05A.090, 43.20B.080, and 70.129.040.

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

4 **Sec. 1.** RCW 41.05A.090 and 2011 1st sp.s. c 15 s 96 are each  
5 amended to read as follows:

6 (1) The authority shall file liens, seek adjustment, or otherwise  
7 effect recovery for assistance correctly paid on behalf of an  
8 individual consistent with 42 U.S.C. Sec. 1396p. The authority shall  
9 adopt a rule providing for prior notice and hearing rights to the  
10 record title holder or purchaser under a land sale contract.

11 (2) Liens may be adjusted by foreclosure in accordance with  
12 chapter 61.12 RCW.

13 (3) In the case of an individual who was fifty-five years of age  
14 or older when the individual received assistance, the authority shall  
15 seek adjustment or recovery from the individual's estate, and from  
16 nonprobate assets of the individual as defined by RCW 11.02.005, but  
17 only for assistance consisting of services that the authority  
18 determines to be appropriate, and related hospital and prescription  
19 drug services. Recovery from the individual's estate, including  
20 foreclosure of liens imposed under this section, must be undertaken  
21 as soon as practicable, consistent with 42 U.S.C. Sec. 1396p.

1 (4) The authority shall apply the assistance estate recovery law  
2 as it existed on the date that benefits were received when  
3 calculating an estate's liability to reimburse the authority for  
4 those benefits.

5 (5) (a) The authority shall establish procedures consistent with  
6 standards established by the federal department of health and human  
7 services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when  
8 such recovery would work an undue hardship. The authority shall  
9 recognize an undue hardship for a surviving domestic partner whenever  
10 recovery would not have been permitted if he or she had been a  
11 surviving spouse. The authority is not authorized to pursue recovery  
12 under such circumstances.

13 (b) Recovery of assistance from a recipient's estate may not  
14 include property made exempt from claims by federal law or treaty,  
15 including exemption for tribal artifacts that may be held by  
16 individual Native Americans.

17 (6) A lien authorized under this section relates back to attach  
18 to any real property that the decedent had an ownership interest in  
19 immediately before death and is effective as of that date or date of  
20 recording, whichever is earlier.

21 (7) The authority may enforce a lien authorized under this  
22 section against a decedent's life estate or joint tenancy interest in  
23 real property held by the decedent immediately prior to his or her  
24 death. Such a lien enforced under this subsection may not end and  
25 must continue as provided in this subsection until the authority's  
26 lien has been satisfied.

27 (a) The value of the life estate subject to the lien is the value  
28 of the decedent's interest in the property subject to the life estate  
29 immediately prior to the decedent's death.

30 (b) The value of the joint tenancy interest subject to the lien  
31 is the value of the decedent's fractional interest the recipient  
32 would have owned in the jointly held interest in the property had the  
33 recipient and the surviving joint tenants held title to the property  
34 as tenants in common on the date of the recipient's death.

35 (c) The authority may not enforce the lien provided by this  
36 subsection against a bona fide purchaser or encumbrancer that obtains  
37 an interest in the property after the death of the recipient and  
38 before the authority records either its lien or the request for  
39 notice of transfer or encumbrance as provided by RCW 41.05A.280.

1 (d) The authority may not enforce a lien provided by this  
2 subsection against any property right that vested prior to July 1,  
3 2005.

4 ~~(8) ((a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a)~~  
5 ~~and the conditions of this subsection (8), the authority is~~  
6 ~~authorized to file a lien against the property of an individual prior~~  
7 ~~to his or her death, and to seek adjustment and recovery from the~~  
8 ~~individual's estate or sale of the property subject to the lien, if:~~

9 ~~(i) The individual is an inpatient in a nursing facility,~~  
10 ~~intermediate care facility for persons with intellectual~~  
11 ~~disabilities, or other medical institution; and~~

12 ~~(ii) The authority has determined after notice and opportunity~~  
13 ~~for a hearing that the individual cannot reasonably be expected to be~~  
14 ~~discharged from the medical institution and to return home.~~

15 ~~(b) If the individual is discharged from the medical facility and~~  
16 ~~returns home, the authority shall dissolve the lien.~~

17 ~~(9))~~ The authority is authorized to adopt rules to effect  
18 recovery under this section. The authority may adopt by rule later  
19 enactments of the federal laws referenced in this section.

20 ~~((10))~~ (9) It is the responsibility of the authority to fully  
21 disclose in advance verbally and in writing, in easy to understand  
22 language, the terms and conditions of estate recovery to all persons  
23 offered care subject to recovery of payments.

24 ~~((11))~~ (10) In disclosing estate recovery costs to potential  
25 clients, and to family members at the consent of the client, the  
26 authority shall provide a written description of the community  
27 service options.

28 **Sec. 2.** RCW 43.20B.080 and 2010 c 94 s 12 are each amended to  
29 read as follows:

30 (1) The department shall file liens, seek adjustment, or  
31 otherwise effect recovery for medical assistance correctly paid on  
32 behalf of an individual consistent with 42 U.S.C. Sec. 1396p. The  
33 department shall adopt a rule providing for prior notice and hearing  
34 rights to the record title holder or purchaser under a land sale  
35 contract.

36 (2) Liens may be adjusted by foreclosure in accordance with  
37 chapter 61.12 RCW.

38 (3) In the case of an individual who was fifty-five years of age  
39 or older when the individual received medical assistance, the

1 department shall seek adjustment or recovery from the individual's  
2 estate, and from nonprobate assets of the individual as defined by  
3 RCW 11.02.005, but only for medical assistance consisting of nursing  
4 facility services, home and community-based services, other services  
5 that the department determines to be appropriate, and related  
6 hospital and prescription drug services. Recovery from the  
7 individual's estate, including foreclosure of liens imposed under  
8 this section, shall be undertaken as soon as practicable, consistent  
9 with 42 U.S.C. Sec. 1396p.

10 (4) The department shall apply the medical assistance estate  
11 recovery law as it existed on the date that benefits were received  
12 when calculating an estate's liability to reimburse the department  
13 for those benefits.

14 (5) (a) The department shall establish procedures consistent with  
15 standards established by the federal department of health and human  
16 services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when  
17 such recovery would work an undue hardship. The department shall  
18 recognize an undue hardship for a surviving domestic partner whenever  
19 recovery would not have been permitted if he or she had been a  
20 surviving spouse. The department is not authorized to pursue recovery  
21 under such circumstances.

22 (b) Recovery of medical assistance from a recipient's estate  
23 shall not include property made exempt from claims by federal law or  
24 treaty, including exemption for tribal artifacts that may be held by  
25 individual Native Americans.

26 (6) A lien authorized under this section relates back to attach  
27 to any real property that the decedent had an ownership interest in  
28 immediately before death and is effective as of that date or date of  
29 recording, whichever is earlier.

30 (7) The department may enforce a lien authorized under this  
31 section against a decedent's life estate or joint tenancy interest in  
32 real property held by the decedent immediately prior to his or her  
33 death. Such a lien enforced under this subsection shall not end and  
34 shall continue as provided in this subsection until the department's  
35 lien has been satisfied.

36 (a) The value of the life estate subject to the lien shall be the  
37 value of the decedent's interest in the property subject to the life  
38 estate immediately prior to the decedent's death.

39 (b) The value of the joint tenancy interest subject to the lien  
40 shall be the value of the decedent's fractional interest the

1 recipient would have owned in the jointly held interest in the  
2 property had the recipient and the surviving joint tenants held title  
3 to the property as tenants in common on the date of the recipient's  
4 death.

5 (c) The department may not enforce the lien provided by this  
6 subsection against a bona fide purchaser or encumbrancer that obtains  
7 an interest in the property after the death of the recipient and  
8 before the department records either its lien or the request for  
9 notice of transfer or encumbrance as provided by RCW 43.20B.750.

10 (d) The department may not enforce a lien provided by this  
11 subsection against any property right that vested prior to July 1,  
12 2005.

13 ~~((a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a)~~  
14 ~~and the conditions of this subsection (8), the department is~~  
15 ~~authorized to file a lien against the property of an individual prior~~  
16 ~~to his or her death, and to seek adjustment and recovery from the~~  
17 ~~individual's estate or sale of the property subject to the lien, if:~~

18 ~~(i) The individual is an inpatient in a nursing facility,~~  
19 ~~intermediate care facility for persons with intellectual~~  
20 ~~disabilities, or other medical institution; and~~

21 ~~(ii) The department has determined after notice and opportunity~~  
22 ~~for a hearing that the individual cannot reasonably be expected to be~~  
23 ~~discharged from the medical institution and to return home.~~

24 ~~(b) If the individual is discharged from the medical facility and~~  
25 ~~returns home, the department shall dissolve the lien.~~

26 ~~(9))~~ The department is authorized to adopt rules to effect  
27 recovery under this section. The department may adopt by rule later  
28 enactments of the federal laws referenced in this section.

29 ~~((10))~~ (9) It is the responsibility of the department to fully  
30 disclose in advance verbally and in writing, in easy to understand  
31 language, the terms and conditions of estate recovery to all persons  
32 offered long-term care services subject to recovery of payments.

33 ~~((11))~~ (10) In disclosing estate recovery costs to potential  
34 clients, and to family members at the consent of the client, the  
35 department shall provide a written description of the community  
36 service options.

37 **Sec. 3.** RCW 70.129.040 and 2021 c 159 s 24 are each amended to  
38 read as follows:

1 (1) The resident has the right to manage his or her financial  
2 affairs, and the facility may not require residents to deposit their  
3 personal funds with the facility.

4 (2) Upon written authorization of a resident, if the facility  
5 agrees to manage the resident's personal funds, the facility must  
6 hold, safeguard, manage, and account for the personal funds of the  
7 resident deposited with the facility as specified in this section.

8 (a) The facility must deposit a resident's personal funds in  
9 excess of one hundred dollars in an interest-bearing account or  
10 accounts that is separate from any of the facility's operating  
11 accounts, and that credits all interest earned on residents' funds to  
12 that account. In pooled accounts, there must be a separate accounting  
13 for each resident's share.

14 (b) The facility must maintain a resident's personal funds that  
15 do not exceed one hundred dollars in a noninterest-bearing account,  
16 interest-bearing account, or petty cash fund.

17 (3) The facility must establish and maintain a system that  
18 assures a full and complete and separate accounting of each  
19 resident's personal funds entrusted to the facility on the resident's  
20 behalf.

21 (a) The system must preclude any commingling of resident funds  
22 with facility funds or with the funds of any person other than  
23 another resident.

24 (b) The individual financial record must be available on request  
25 to the resident, or resident representative to the extent provided by  
26 law.

27 (4) Upon the death of a resident with personal funds deposited  
28 with the facility, the facility must convey within thirty days the  
29 resident's funds, and a final accounting of those funds, to the  
30 individual or probate jurisdiction administering the resident's  
31 estate(~~(; but in the case of a resident who received long-term care~~  
32 ~~services paid for by the state, the funds and accounting shall be~~  
33 ~~sent to the state of Washington, department of social and health~~  
34 ~~services, office of financial recovery. The department shall~~  
35 ~~establish a release procedure for use for burial expenses)).~~

36 (5) If any funds in excess of one hundred dollars are paid to an  
37 adult family home by the resident or resident representative, as a  
38 security deposit for performance of the resident's obligations, or as  
39 prepayment of charges beyond the first month's residency, the funds  
40 shall be deposited by the adult family home in an interest-bearing

1 account that is separate from any of the home's operating accounts,  
2 and that credits all interest earned on the resident's funds to that  
3 account. In pooled accounts, there must be a separate accounting for  
4 each resident's share. The account or accounts shall be in a  
5 financial institution as defined by RCW 30A.22.041, and the resident  
6 shall be notified in writing of the name, address, and location of  
7 the depository. The adult family home may not commingle resident  
8 funds from these accounts with the adult family home's funds or with  
9 the funds of any person other than another resident. The individual  
10 resident's account record shall be available upon request by the  
11 resident or resident representative to the extent provided by law.

12 (6) The adult family home shall provide the resident or resident  
13 representative full disclosure in writing, prior to the receipt of  
14 any funds for a deposit, security, prepaid charges, or any other fees  
15 or charges, specifying what the funds are paid for and the basis for  
16 retaining any portion of the funds if the resident dies, is  
17 hospitalized, or is transferred or discharged from the adult family  
18 home. The disclosure must be in a language that the resident or  
19 resident representative understands, and be acknowledged in writing  
20 by the resident or resident representative. The adult family home  
21 shall retain a copy of the disclosure and the acknowledgment. The  
22 adult family home may not retain funds for reasonable wear and tear  
23 by the resident or for any basis that would violate RCW 70.129.150.

24 (7) Funds paid by the resident or resident representative to the  
25 adult family home, which the adult family home in turn pays to a  
26 placement agency or person, shall be governed by the disclosure  
27 requirements of this section. If the resident then dies, is  
28 hospitalized, or is transferred or discharged from the adult family  
29 home, and is entitled to any refund of funds under this section or  
30 RCW 70.129.150, the adult family home shall refund the funds to the  
31 resident or resident representative to the extent provided by law,  
32 within thirty days of the resident leaving the adult family home, and  
33 may not require the resident to obtain the refund from the placement  
34 agency or person.

35 (8) If, during the stay of the resident, the status of the adult  
36 family home licensee or ownership is changed or transferred to  
37 another, any funds in the resident's accounts affected by the change  
38 or transfer shall simultaneously be deposited in an equivalent  
39 account or accounts by the successor or new licensee or owner, who  
40 shall promptly notify the resident or resident representative to the

1 extent provided by law, in writing of the name, address, and location  
2 of the new depository.

3 (9) Because it is a matter of great public importance to protect  
4 residents who need long-term care from deceptive disclosures and  
5 unfair retention of deposits, fees, or prepaid charges by adult  
6 family homes, a violation of this section or RCW 70.129.150 shall be  
7 construed for purposes of the consumer protection act, chapter 19.86  
8 RCW, to constitute an unfair or deceptive act or practice or an  
9 unfair method of competition in the conduct of trade or commerce. The  
10 resident's claim to any funds paid under this section shall be prior  
11 to that of any creditor of the adult family home, its owner, or  
12 licensee, even if such funds are commingled.

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