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**SUBSTITUTE SENATE BILL 5589**

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**State of Washington**                      **68th Legislature**                      **2023 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senator Stanford)

READ FIRST TIME 02/17/23.

1            AN ACT Relating to probate; amending RCW 11.54.010, 11.54.030,  
2 11.54.020, 11.54.040, 11.54.050, 11.54.060, 11.76.110, and 11.76.120;  
3 adding new sections to chapter 11.54 RCW; creating a new section;  
4 recodifying RCW 11.54.030; repealing RCW 11.54.070 and 11.54.080; and  
5 providing an effective date.

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

7            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 11.54  
8 RCW to read as follows:

9            (1) The purposes of this chapter are:

10            (a) To clarify the exemptions from attachment, execution, and  
11 forced sale that apply after a decedent's death;

12            (b) To establish a procedure for allocating the exempt property  
13 among claimants; and

14            (c) To establish a procedure by which the decedent's surviving  
15 spouse, surviving registered domestic partner, or surviving dependent  
16 children may request basic financial support during the pendency of  
17 any proceedings under this title relating to the decedent's probate  
18 or nonprobate assets.

19            (2) This chapter applies to probate and nonprobate assets.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 11.54  
2 RCW to read as follows:

3        The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise.

5        (1) "Child" and "children," when used with reference to a  
6 decedent, means all persons who have a parent-child relationship, as  
7 defined in RCW 26.26A.100, as a child with the decedent, regardless  
8 of a person's age.

9        (2) "Claimant" means a person entitled to petition for an award  
10 under this chapter. If multiple parties are entitled to petition for  
11 an award, all of them are a "claimant."

12        (3) "Dependent," when used with reference to a decedent's child,  
13 means a person who received more than half of that person's support  
14 from the decedent during the 12 months preceding the decedent's  
15 death. For the purposes of this subsection, the term "support" does  
16 not include any public or governmental support.

17        (4) "Value," when used with reference to any property that may be  
18 exempt from the claims of creditors under this chapter or under the  
19 laws of another state and that is being purchased on contract or is  
20 subject to any encumbrance, means the value of the property net of  
21 the balance due on the contract and the amount of the encumbrance.  
22 Any property exempted from creditor's claims under section 3 of this  
23 act or awarded under RCW 11.54.010 will continue to be subject to any  
24 such contract or encumbrance.

25        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 11.54  
26 RCW to read as follows:

27        (1) Any homestead or other property exempt from attachment,  
28 execution, and forced sale under Title 6 RCW immediately before a  
29 decedent's death remains exempt from attachment, execution, and  
30 forced sale for the debts of the decedent and the debts of the  
31 community composed of the decedent and the decedent's spouse or  
32 registered domestic partner that arose before the decedent's death,  
33 up to the amount specified in RCW 11.54.020(1), except as otherwise  
34 provided in Title 6 RCW or in this chapter.

35        (2) If the decedent resided or was domiciled in the state of  
36 Washington when the decedent died, and either:

37        (a) No homestead or other property was exempt from attachment,  
38 execution, and forced sale under Title 6 RCW immediately before the  
39 decedent's death; or

1 (b) The total value of the property exempted from the claims of  
2 creditors under subsection (1) of this section or under the laws of  
3 another state (together with the value of any separate property of  
4 the decedent's surviving spouse or surviving registered domestic  
5 partner that is exempt from attachment, execution, and forced sale  
6 for the debts of the decedent's surviving spouse or surviving  
7 registered domestic partner) is less than the amount specified in RCW  
8 11.54.020(1)(b);

9 then the court shall designate other property of the estate, either  
10 community or separate, that, when added to the value of: (i) The  
11 property exempted under subsection (1) of this section; (ii) the  
12 property exempted from attachment, execution, and forced sale under  
13 the laws of another state; and (iii) the separate property of the  
14 decedent's surviving spouse or surviving registered domestic partner  
15 that is exempt from attachment, execution, and forced sale for the  
16 debts of the decedent's surviving spouse or surviving registered  
17 domestic partner, has an aggregate value that does not exceed the  
18 amount specified in RCW 11.54.020(1)(b). This additional designated  
19 property, together with any additional award that a court may grant  
20 for family support under RCW 11.54.040, shall also be exempt from  
21 attachment, execution, and forced sale for the debts of the decedent  
22 and the debts of the community composed of the decedent and the  
23 decedent's spouse or registered domestic partner that arose before  
24 the decedent's death, except as otherwise provided in this chapter.

25 **Sec. 4.** RCW 11.54.010 and 2008 c 6 s 916 are each amended to  
26 read as follows:

27 ~~(1) ((Subject to RCW 11.54.030, the surviving spouse or surviving~~  
28 ~~domestic partner of a decedent may petition the court for an award~~  
29 ~~from the property of the decedent.))~~ Any one or more of a decedent's  
30 surviving spouse, surviving registered domestic partner, and  
31 dependent children may commence a judicial proceeding under chapter  
32 11.96A RCW for an award from the decedent's separate property and  
33 from the community property of the decedent and the decedent's spouse  
34 or registered domestic partner that are exempt from attachment,  
35 execution, and forced sale under section 3 of this act. The petition  
36 must:

37 (a) Set forth facts to establish that the claimant is entitled to  
38 an award under this chapter;

1 (b) State the nature and value of those assets held by all  
2 potential claimants that are exempt from the claims of creditors and  
3 that are known to the claimant or could be known to the claimant with  
4 reasonable diligence; and

5 (c) Describe all other assets then held by the claimants,  
6 including any interest the claimants may have in any of the  
7 decedent's probate or nonprobate property.

8 (2) If a claimant proves by a preponderance of the evidence that  
9 an award of property exempt from the claims of creditors to the  
10 claimant would fulfill one or more of the purposes of this chapter,  
11 the court may grant the claimant an award that the court determines  
12 to be equitable.

13 (3) If the decedent is survived by one or more dependent children  
14 (~~of the decedent who are not also the children of the surviving~~  
15 ~~spouse or surviving domestic partner, on petition of such a child),~~  
16 the court may divide the award between the surviving spouse or  
17 surviving registered domestic partner and all or any of (~~such~~)  
18 the decedent's surviving dependent children as (~~it~~)  
19 the court deems appropriate. (~~If there is not a surviving spouse or surviving~~  
20 ~~domestic partner, the minor children of the decedent may petition for~~  
21 ~~an award.~~

22 ~~(2))~~ (4) The (~~award~~) awards under this chapter may be made  
23 (~~from~~) either from the community property of the decedent and the  
24 decedent's spouse or registered domestic partner or from the separate  
25 property of the decedent. (~~Unless otherwise ordered by the court,~~  
26 ~~the probate and nonprobate assets of the decedent abate in accordance~~  
27 ~~with chapter 11.10 RCW in satisfaction of the award.~~

28 ~~(3))~~ (5) Any and all homestead or other property exempt from  
29 attachment, execution, and forced sale under Title 6 RCW immediately  
30 before the decedent's death shall be included in the basic award.

31 (6) The basic award may be made whether or not (~~probate~~) any  
32 proceedings have been commenced (~~in the state of Washington. The~~  
33 ~~court may not make this award unless the petition for the award is~~  
34 ~~filed before the earliest of:~~

35 ~~(a) Eighteen months from the date of the decedent's death if~~  
36 ~~within twelve months of the decedent's death either:~~

- 37 ~~(i) A personal representative has been appointed; or~~  
38 ~~(ii) A notice agent has filed a declaration and oath as required~~  
39 ~~in RCW 11.42.010(3) (a) (ii); or~~

1 ~~(b) The termination of any probate proceeding for the decedent's~~  
2 ~~estate that has been commenced in the state of Washington; or~~

3 ~~(c) Six years from the date of the death of the decedent))~~ under  
4 this title relating to the decedent's probate or nonprobate assets.

5 **Sec. 5.** RCW 11.54.030 and 2008 c 6 s 918 are each amended to  
6 read as follows:

7 (1) The court may not make an award (~~((unless the court finds that~~  
8 ~~the funeral expenses, expenses of last sickness, and expenses of~~  
9 ~~administration))~~ to a claimant under this chapter until the expenses  
10 of administration, funeral expenses, expenses of last sickness, and  
11 wages due for labor performed within 60 days immediately preceding  
12 the decedent's death have been paid or provided for.

13 (2) The court may not make an award to (~~(a surviving spouse or~~  
14 ~~surviving domestic partner or child))~~ or for the benefit of any  
15 person who (~~(has participated, either as a principal or as an~~  
16 ~~accessory before the fact, in the willful and unlawful killing))~~ is a  
17 slayer or abuser as those terms are defined in RCW 11.84.010 of the  
18 decedent.

19 (3) The court may not make any award under this chapter unless  
20 the petition for the award is filed before the earliest of:

21 (a) Eighteen months from the date of the decedent's death if  
22 within 12 months of the decedent's death either:

23 (i) A personal representative has been appointed; or

24 (ii) A notice agent has filed a declaration and oath as required  
25 in RCW 11.42.010(3) (a) (ii); or

26 (b) The termination of all proceedings under this title relating  
27 to the decedent's probate or nonprobate assets; or

28 (c) Six years from the date of the death of the decedent.

29 **Sec. 6.** RCW 11.54.020 and 2008 c 6 s 917 are each amended to  
30 read as follows:

31 (1) The amount of the basic award shall be the ((amount specified  
32 in RCW 6.13.030(2) with regard to lands.)) greater of the following:

33 (a) The value, as of the date of the decedent's death, of the  
34 decedent's property, or if the decedent is married or has a  
35 registered domestic partner, the value of the community property of  
36 the decedent and the decedent's spouse or registered domestic  
37 partner, that was exempt from attachment, execution, or forced sale  
38 under Title 6 RCW immediately before the decedent's death; or

1 (b) The amount specified in RCW 6.13.030(1)(a) or, if greater,  
2 the amount specified in subsection (3) of this section, on the date  
3 of the decedent's death.

4 (2) If an award is divided (~~(between)~~) among a surviving spouse  
5 or surviving registered domestic partner and the decedent's dependent  
6 children (~~(who are not the children of the surviving spouse or~~  
7 surviving domestic partner)), the aggregate amount awarded to all the  
8 claimants under this section shall be the amount specified in (~~(RCW~~  
9 6.13.030(2) with respect to lands. The amount of the basic award may  
10 be increased or decreased in accordance with RCW 11.54.040 and  
11 11.54.050)) subsection (1) of this section.

12 (3) For 2023 and each calendar year thereafter, the amount of the  
13 basic award shall not be less than an amount that is calculated as  
14 follows: \$125,000 multiplied by the inflation factor and then rounded  
15 to the nearest \$1,000. The adjustment of the basic amount under this  
16 subsection shall be effective annually as of the first calendar day  
17 of the calendar year. The inflation factor is a fraction, the  
18 numerator of which is the consumer price index figure published for  
19 the most recent October preceding the effective date of the  
20 adjustment and the denominator of which is the consumer price index  
21 figure published for October 2021. No adjustment to the basic award  
22 shall be made under this subsection for a calendar year if the  
23 adjustment would result in the same or a lesser basic award than the  
24 basic award for the immediately preceding calendar year. For purposes  
25 of this subsection, "consumer price index" means the consumer price  
26 index for all urban consumers, all items in the Seattle area, not  
27 seasonally adjusted, as calculated by the bureau of labor statistics  
28 of the United States department of labor. For purposes of this  
29 subsection (3), "Seattle area" means the geographic area sample that  
30 includes Seattle and surrounding areas. In the event the bureau of  
31 labor statistics discontinues the use and publication of applicable  
32 averages, then the consumer price index to be used for the  
33 computation of the inflation factor shall be the consumer price  
34 average that was last published before the event that caused the  
35 inflation factor to be applied.

36 **Sec. 7.** RCW 11.54.040 and 2008 c 6 s 919 are each amended to  
37 read as follows:

38 (1) If (~~(it is demonstrated)~~) a claimant demonstrates to the  
39 satisfaction of the court (~~(with clear, cogent, and convincing~~

1 evidence)) that a claimant's present and reasonably anticipated  
2 future needs (~~(during the pendency of any probate proceedings in the~~  
3 ~~state of Washington)~~) with respect to basic maintenance and support  
4 during the pendency of any proceedings under this title relating to  
5 the decedent's probate or nonprobate assets will not (~~(otherwise)~~) be  
6 provided (~~(for)~~) from other resources(~~(r)~~) and that (~~(the)~~) an  
7 increased award would not be inconsistent with the decedent's  
8 intentions or principles of equity and fairness, the amount of the  
9 award may be increased above the amount of the basic award in an  
10 amount that the court determines to be (~~(appropriate)~~) needed for a  
11 claimant's present and reasonably anticipated future needs with  
12 respect to basic maintenance and support during the pendency of any  
13 proceedings under this title relating to the decedent's probate or  
14 nonprobate assets.

15 (2) In determining the needs of the claimant, the court shall  
16 consider, without limitation, the resources available to the claimant  
17 and the claimant's (~~(dependents)~~) dependent children, and the  
18 resources reasonably expected to be available to the claimant and the  
19 claimant's (~~(dependents)~~) dependent children during the pendency of  
20 (~~(the probate)~~) any proceedings under this title relating to the  
21 decedent's probate or nonprobate assets, including income related to  
22 present or future employment and benefits flowing from the decedent's  
23 probate and nonprobate estate.

24 (3) In determining the intentions of the decedent, the court  
25 shall consider, without limitation:

26 (a) Provisions made for the claimant by the decedent under the  
27 terms of the decedent's will or otherwise;

28 (b) Provisions made for third parties or other entities under the  
29 decedent's will or otherwise that would be affected by an increased  
30 award;

31 (c) If the claimant is the surviving spouse or surviving  
32 registered domestic partner, the duration and status of the marriage  
33 or the state registered domestic partnership of the decedent to the  
34 claimant at the time of the decedent's death;

35 (d) The effect of any award on the availability of any other  
36 resources or benefits to the claimant;

37 (e) The size and nature of the decedent's probate and nonprobate  
38 estate; and

39 (f) Oral or written statements made by the decedent that are  
40 otherwise admissible as evidence.

1 The fact that the decedent has named beneficiaries other than the  
2 claimant as recipients of the decedent's estate is not of itself  
3 adequate to evidence such an intent as would prevent the award of an  
4 amount in excess of the basic award that is provided (~~((for))~~) in RCW  
5 (~~((6.13.030(2) with respect to lands))~~) 11.54.020(1).

6 (4) (a) (~~((A petition for))~~) The court may only grant an increased  
7 award (~~((may only be made))~~) if a petition for (~~((an))~~) a basic award has  
8 been granted under RCW 11.54.010. The request for an increased award  
9 may be made in conjunction with the petition for an award under RCW  
10 11.54.010.

11 (b) Subject to (a) of this subsection (4), a request for an  
12 increased award may be made at any time during the pendency of (~~((the~~  
13 ~~probate))~~) any proceedings under this title relating to the decedent's  
14 probate or nonprobate assets. A request to modify an increased award  
15 may also be made at any time during the pendency of the probate  
16 proceedings by a person having an interest in the decedent's estate  
17 that will be directly affected by the requested modification.

18 **Sec. 8.** RCW 11.54.050 and 2008 c 6 s 920 are each amended to  
19 read as follows:

20 (~~((1))~~) The court may decrease the amount of the award below the  
21 amount provided in RCW 11.54.020(1) in the exercise of its discretion  
22 if (~~((the))~~):

23 (1) The recipient is entitled to receive probate or nonprobate  
24 property, including insurance, by reason of the death of the  
25 decedent. In such a case the award (~~((must))~~) may not be decreased by  
26 (~~((no))~~) more than the value of (~~((such))~~) the other property (~~((as))~~) that  
27 is received by reason of the death of the decedent. The court shall  
28 consider the factors presented in RCW 11.54.040(2) in determining the  
29 propriety of the award and the proper amount of the award, if any(~~((-~~

30 ~~((2) An award to a surviving spouse or surviving domestic partner~~  
31 ~~is also discretionary and the amount otherwise allowable may be~~  
32 ~~reduced if: (a) The)); or~~

33 (2) (a) The decedent is survived by one or more dependent children  
34 who are not the children of the surviving spouse or surviving  
35 registered domestic partner and the award would decrease amounts  
36 otherwise distributable to (~~((such))~~) those children; or (b) the award  
37 would have the effect of reducing amounts otherwise distributable to  
38 any of the decedent's (~~((minor))~~) dependent children. In either  
39 (~~((case))~~) of the cases specified in this subsection (2), the court

1 (~~shall~~) must consider the factors presented in RCW 11.54.040 (2)  
2 and (3) and section 9 of this act and whether the needs of the  
3 (~~minor~~) dependent children with respect to basic maintenance and  
4 support are and will be adequately provided for, both during and  
5 after (~~the pendency of~~) any (~~probate~~) proceedings (~~if such~~  
6 ~~proceedings are pending~~) under this title relating to the decedent's  
7 probate or nonprobate assets, considering support from any source,  
8 including support from the decedent's surviving spouse or surviving  
9 registered domestic partner.

10 NEW SECTION. **Sec. 9.** A new section is added to chapter 11.54  
11 RCW to read as follows:

12 In exercising the discretion granted to the court under this  
13 chapter, the court shall consider without limitation:

14 (1) The exemptions from attachment, execution, or forced sale  
15 under Title 6 RCW and other applicable laws;

16 (2) Whether or not any separate property of the decedent's  
17 surviving spouse or surviving domestic partner is exempted from  
18 attachment, execution, or forced sale under Title 6 RCW or other  
19 applicable laws before and after the decedent's death;

20 (3) Whether or not exemptions from attachment, execution, or  
21 forced sale have been granted to the decedent or the decedent's  
22 surviving spouse or surviving domestic partner in another  
23 jurisdiction;

24 (4) How principles of equity and fairness would allocate the  
25 statutory exemptions from attachment, execution, and forced sale  
26 under Title 6 RCW and other applicable laws among the decedent's  
27 surviving spouse or surviving domestic partner and the decedent's  
28 surviving dependent children;

29 (5) How the laws of intestacy, if the decedent died intestate and  
30 without nonprobate assets, or the decedent's dispositive intent, if  
31 the decedent died testate or with nonprobate assets, would direct the  
32 decedent's property;

33 (6) The extent to which the claimant has other property that will  
34 satisfy the claimant's reasonable needs; and

35 (7) If the claimant is a child of the decedent, the child's  
36 ability or inability to meet the child's basic needs.

37 **Sec. 10.** RCW 11.54.060 and 1997 c 252 s 53 are each amended to  
38 read as follows:

1       ~~((1) The award has priority over all other claims made in the~~  
2 ~~estate. In determining which assets must be made available to satisfy~~  
3 ~~the award, the claimant is to be treated as a general creditor of the~~  
4 ~~estate, and unless otherwise ordered by the court the assets shall~~  
5 ~~abate in satisfaction of the award in accordance with chapter 11.10~~  
6 ~~RCW.~~

7       ~~(2) If the property awarded is being purchased on contract or is~~  
8 ~~subject to any encumbrance, for purposes of the award the property~~  
9 ~~must be valued net of the balance due on the contract and the amount~~  
10 ~~of the encumbrance. The property awarded will continue to be subject~~  
11 ~~to any such contract or encumbrance, and any award in excess of the~~  
12 ~~basic award under RCW 11.54.010, whether of community property or the~~  
13 ~~decedent's separate property, is not immune from any lien for costs~~  
14 ~~of medical expenses recoverable under RCW 43.20B.080.))~~  
15 Notwithstanding any other provision of this chapter:

16       (1) None of the decedent's separate property and none of the  
17 property of the community composed of the decedent and the decedent's  
18 spouse or registered domestic partner is exempt from the duty to pay  
19 the costs of administration, funeral expenses, expenses of the last  
20 sickness, and wages due for labor performed within 60 days  
21 immediately preceding the decedent's death, as those terms are used  
22 in RCW 11.76.110.

23       (2) No provision of this chapter shall abrogate or diminish the  
24 rights associated with a valid lien.

25       NEW SECTION. Sec. 11. A new section is added to chapter 11.54  
26 RCW to read as follows:

27       The decedent's separate property and the property of the  
28 community composed of the decedent and the decedent's spouse or  
29 registered domestic partner abates for awards of family allowance  
30 under this chapter in accordance with chapter 11.10 RCW; provided  
31 however, that gifts containing a homestead or other nonfungible  
32 property that is exempt from attachment, execution, and forced sale  
33 shall abate to the extent that the property is awarded to a claimant  
34 under this chapter, regardless of whether the gift would be  
35 classified as intestate, residuary, general, demonstrative, or  
36 specific, except as otherwise provided in RCW 11.10.010(2).

37       **Sec. 12.** RCW 11.76.110 and 2010 c 8 s 2068 are each amended to  
38 read as follows:

1       ~~((After payment of costs of administration))~~ Subject to federal  
2 preemption and the privileges and priorities allowed to encumbrances  
3 and liens under applicable law, the reasonable expenses of  
4 administration and the enforceable debts of the estate shall be paid  
5 in the following order:

6       (1) Expenses of administration.

7       ~~(2)~~ Funeral expenses in such amount as the court shall order or a  
8 personal representative with nonintervention powers shall determine  
9 to be reasonable.

10       ~~((2))~~ (3) Expenses of the last sickness, in such amount as the  
11 court shall order or a personal representative with nonintervention  
12 powers shall determine to be reasonable.

13       ~~((3))~~ (4) Wages due for labor performed within ((sixty)) 60  
14 days immediately preceding the death of decedent.

15       ~~((4) Debts having preference by the laws of the United States.~~

16       ~~(5) Taxes, or any debts or dues owing to the state.~~

17       ~~(6) Judgments rendered against the deceased in his or her~~  
18 ~~lifetime which are liens upon real estate on which executions might~~  
19 ~~have been issued at the time of his or her death, and debts secured~~  
20 ~~by mortgages in the order of their priority.~~

21       ~~(7))~~ (5) Exemptions and awards under chapter 11.54 RCW.

22       (6) All other enforceable demands against the estate.

23       **Sec. 13.** RCW 11.76.120 and 1965 c 145 s 11.76.120 are each  
24 amended to read as follows:

25       The preference given in RCW 11.76.110 to a mortgage ~~((or~~  
26 ~~judgment))~~, deed of trust, perfected security interest, judgment  
27 lien, or other lien shall only extend to the proceeds of the property  
28 subject to the lien ~~((of such mortgage or judgment)).~~

29       NEW SECTION. **Sec. 14.** This act takes effect August 1, 2023.

30       NEW SECTION. **Sec. 15.** (1) No act done in any proceeding  
31 commenced before the effective date of this section and no accrued  
32 right shall be impaired by any provision of this act.

33       (2) When a right is acquired, extinguished, or barred upon the  
34 expiration of a prescribed period of time which has commenced to run  
35 by the provisions of any statute in force before the effective date  
36 of this section, those provisions shall remain in force and be deemed  
37 a part of this act with respect to that right.

1 (3) The procedures in effect before the effective date of this  
2 section shall apply to any proceeding to the extent that in the  
3 opinion of the court the application of the procedures under this act  
4 would not be feasible or would work injustice.

5 NEW SECTION. **Sec. 16.** RCW 11.54.030 is recodified as a section  
6 in chapter 11.54 RCW, to be codified between RCW 11.54.010 and  
7 11.54.020.

8 NEW SECTION. **Sec. 17.** The following acts or parts of acts are  
9 each repealed:

10 (1) RCW 11.54.070 (Immunity of award from debts and claims of  
11 creditors) and 2008 c 6 s 921, 1998 c 292 s 201, & 1997 c 252 s 54;  
12 and

13 (2) RCW 11.54.080 (Exemption of additional assets from claims of  
14 creditors—Petition—Notice—Court order) and 1999 c 42 s 612 & 1997 c  
15 252 s 55.

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