
SUBSTITUTE HOUSE BILL 1103

State of Washington 61st Legislature 2009 Regular Session

By House Judiciary (originally sponsored by Representatives Moeller, Green, Morrell, and Kenney)

READ FIRST TIME 02/03/09.

1 AN ACT Relating to the estates of vulnerable adults; amending RCW
2 11.84.010, 11.84.020, 11.84.025, 11.84.030, 11.84.040, 11.84.050,
3 11.84.060, 11.84.070, 11.84.080, 11.84.090, 11.84.100, 11.84.110,
4 11.84.120, 11.84.130, 26.16.120, 41.04.273, and 11.96A.030; and adding
5 new sections to chapter 11.84 RCW.

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

7 **Sec. 1.** RCW 11.84.010 and 1965 c 145 s 11.84.010 are each amended
8 to read as follows:

9 As used in this chapter:

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

13 (2) "Decedent" means:

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

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

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

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

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

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

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

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

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

15 **Sec. 3.** RCW 11.84.025 and 1998 c 292 s 502 are each amended to
16 read as follows:

17 Proceeds payable to a slayer or abuser as the beneficiary of any
18 benefits flowing from one of the retirement systems listed in RCW
19 41.50.030, by virtue of the decedent's membership in the department of
20 retirement systems or by virtue of the death of decedent, shall be paid
21 instead as designated in RCW 41.04.273.

22 **Sec. 4.** RCW 11.84.030 and 2008 c 6 s 624 are each amended to read
23 as follows:

24 The slayer or abuser shall be deemed to have predeceased the
25 decedent as to property which would have passed from the decedent or
26 his or her estate to the slayer or abuser under the statutes of descent
27 and distribution or have been acquired by statutory right as surviving
28 spouse or surviving domestic partner or under any agreement made with
29 the decedent under the provisions of RCW 26.16.120 as it now exists or
30 is hereafter amended.

31 **Sec. 5.** RCW 11.84.040 and 1965 c 145 s 11.84.040 are each amended
32 to read as follows:

33 Property which would have passed to or for the benefit of the

1 slayer or abuser by devise or legacy from the decedent shall be
2 distributed as if he or she had predeceased the decedent.

3 **Sec. 6.** RCW 11.84.050 and 1965 c 145 s 11.84.050 are each amended
4 to read as follows:

5 (1) One-half of any property held by the slayer or abuser and the
6 decedent as joint tenants, joint owners or joint obligees shall pass
7 upon the death of the decedent to his or her estate, and the other half
8 shall pass to his or her estate upon the death of the slayer or abuser,
9 unless the slayer or abuser obtains a separation or severance of the
10 property or a decree granting partition.

11 (2) As to property held jointly by three or more persons, including
12 the slayer or abuser and the decedent, any enrichment which would have
13 accrued to the slayer or abuser as a result of the death of the
14 decedent shall pass to the estate of the decedent. If the slayer or
15 abuser becomes the final survivor, one-half of the property shall
16 immediately pass to the estate of the decedent and the other half shall
17 pass to his or her estate upon the death of the slayer or abuser,
18 unless the slayer or abuser obtains a separation or severance of the
19 property or a decree granting partition.

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

24 **Sec. 7.** RCW 11.84.060 and 1965 c 145 s 11.84.060 are each amended
25 to read as follows:

26 Provided the property interest was not obtained through an act of
27 financial exploitation:

28 (1) Property in which the slayer or abuser holds a reversion or
29 vested remainder and would have obtained the right of present
30 possession upon the death of the decedent shall pass to the estate of
31 the decedent during the period of the life expectancy of the
32 decedent~~((; if he))~~.

33 (2) If the slayer or abuser held the particular estate or if the
34 particular estate is held by a third person it shall remain in his or
35 her hands for such period.

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

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

9 **Sec. 9.** RCW 11.84.080 and 1965 c 145 s 11.84.080 are each amended
10 to read as follows:

11 As to any contingent remainder or executory or other future
12 interest held by the slayer or abuser, subject to become vested in him
13 or her or increased in any way for him or her upon the condition of the
14 death of the decedent:

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

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

20 **Sec. 10.** RCW 11.84.090 and 1965 c 145 s 11.84.090 are each amended
21 to read as follows:

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

25 (2) Property held either presently or in remainder by the slayer or
26 abuser, subject to be divested by the exercise by the decedent of a
27 power of revocation or a general power of appointment shall pass to the
28 estate of the decedent, and property so held by the slayer or abuser,
29 subject to be divested by the exercise by the decedent of a power of
30 appointment to a particular person or persons or to a class of persons,
31 shall pass to such person or persons, or in equal shares to the members
32 of such class of persons, exclusive of the slayer or abuser.

33 **Sec. 11.** RCW 11.84.100 and 1965 c 145 s 11.84.100 are each amended
34 to read as follows:

35 (1) Insurance proceeds payable to the slayer or abuser as the

1 beneficiary or assignee of any policy or certificate of insurance on
2 the life of the decedent, or as the survivor of a joint life policy,
3 shall be paid instead to the estate of the decedent, unless the policy
4 or certificate designate some person other than the slayer or abuser or
5 his or her estate as secondary beneficiary to him or her and in which
6 case such proceeds shall be paid to such secondary beneficiary in
7 accordance with the applicable terms of the policy.

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

16 **Sec. 12.** RCW 11.84.110 and 1965 c 145 s 11.84.110 are each amended
17 to read as follows:

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

25 **Sec. 13.** RCW 11.84.120 and 1965 c 145 s 11.84.120 are each amended
26 to read as follows:

27 The provisions of this chapter shall not affect the rights of any
28 person who, before the interests of the slayer or abuser have been
29 adjudicated, purchases or has agreed to purchase, from the slayer or
30 abuser for value and without notice property which the slayer or abuser
31 would have acquired except for the terms of this chapter, but all
32 proceeds received by the slayer or abuser from such sale shall be held
33 by him or her in trust for the persons entitled to the property under
34 the provisions of this chapter, and the slayer or abuser shall also be
35 liable both for any portion of such proceeds which he or she may have

1 dissipated and for any difference between the actual value of the
2 property and the amount of such proceeds.

3 **Sec. 14.** RCW 11.84.130 and 1965 c 145 s 11.84.130 are each amended
4 to read as follows:

5 ((The)) Any record of ((his)) conviction ((of)) for having
6 participated in the ((wilful)) willful and unlawful killing of the
7 decedent or for conduct constituting financial exploitation against the
8 decedent, including but not limited to theft, forgery, fraud, identity
9 theft, robbery, burglary, or extortion, shall be admissible in evidence
10 against a claimant of property in any civil ((action)) proceeding
11 arising under this chapter.

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

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

17 (2) In the absence of a criminal conviction, a superior court
18 finding by a preponderance of the evidence that a person participated
19 in the willful and unlawful killing of the decedent is conclusive for
20 purposes of determining whether a person is a slayer under this
21 section.

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

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

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

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

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

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

8 (b) The conduct constituting financial exploitation was willful
9 action or willful inaction causing injury to the property of the
10 vulnerable adult.

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

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

17 NEW SECTION. **Sec. 18.** A new section is added to chapter 11.84 RCW
18 to read as follows:

19 Notwithstanding the provisions of this chapter:

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

23 (a) Knew of the financial exploitation; and

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

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

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

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

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

1 **Sec. 19.** RCW 26.16.120 and 2008 c 6 s 612 are each amended to read
2 as follows:

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

20 **Sec. 20.** RCW 41.04.273 and 1998 c 292 s 501 are each amended to
21 read as follows:

22 (1) For purposes of this section, the following definitions shall
23 apply:

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

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

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

30 (ii) Who is deceased and who, at any time during life in which he
31 or she was a vulnerable adult, was the victim of financial exploitation
32 by an abuser, except as provided in section 18 of this act.

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

34 (2) Property that would have passed to or for the benefit of a
35 beneficiary under one of the retirement systems listed in RCW 41.50.030
36 shall not pass to that beneficiary if the beneficiary was a slayer or

1 abuser of the decedent and the property shall be distributed as if the
2 slayer or abuser had predeceased the decedent.

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

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

18 (i) The case or charges, or both if both are pending, are
19 dismissed;

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

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

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

32 (5) ((~~The slayer's~~)) Any record of conviction for having
33 participated in the willful and unlawful killing of the decedent or for
34 conduct constituting financial exploitation against the decedent,
35 including but not limited to theft, forgery, fraud, identity theft,
36 robbery, burglary, or extortion, shall be admissible in evidence
37 against a claimant of property in any civil action arising under this
38 section.

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

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

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

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

19 **Sec. 21.** RCW 11.96A.030 and 2008 c 6 s 927 are each amended to
20 read as follows:

21 The definitions in this section apply throughout this chapter
22 unless the context clearly requires otherwise.

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

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

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

30 (c) The determination of any question arising in the administration
31 of an estate or trust, or with respect to any nonprobate asset, or with
32 respect to any other asset or property interest passing at death, that
33 may include, without limitation, questions relating to: (i) The
34 construction of wills, trusts, community property agreements, and other
35 writings; (ii) a change of personal representative or trustee; (iii) a
36 change of the situs of a trust; (iv) an accounting from a personal

1 representative or trustee; or (v) the determination of fees for a
2 personal representative or trustee;

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

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

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

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

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

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

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

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

37 (v) The determination of any questions relating to the abatement,

1 rights of creditors, or other matter relating to the administration,
2 settlement, or final disposition of a nonprobate asset under this
3 title;

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

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

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

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

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

16 (a) The trustor if living;

17 (b) The trustee;

18 (c) The personal representative;

19 (d) An heir;

20 (e) A beneficiary, including devisees, legatees, and trust
21 beneficiaries;

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

25 (g) A guardian ad litem;

26 (h) A creditor;

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

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

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

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

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

37 (n) The owner or the personal representative of the estate of the
38 deceased owner of the nonprobate asset that is the subject of the

1 particular proceeding, if the subject of the particular proceeding
2 relates to the beneficiary's liability to a decedent's estate or
3 creditors under RCW 11.18.200.

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

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

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

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

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

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

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

29 The provisions of this act are supplemental to, and do not derogate
30 from, any other statutory or common law proceedings, theories, or
31 remedies including, but not limited to, the common law allocation of
32 the burden of proof or production among the parties.

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