
SUBSTITUTE SENATE BILL 5589

State of Washington

68th Legislature

2023 Regular Session

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

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~~) the
18 decedent's surviving dependent children as (~~it~~) the court deems
19 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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