

86412-8

FILED
AUG 29 2011
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. _____

(Court of Appeals No. 65101-3-1)

In the Matter of the Estate of James W. Haviland.

DONALD HAVILAND, ELIZABETH HAVILAND, and MARTHA
CLAUSER,

Appellants,

v.

MARY HAVILAND,

Respondent.

PETITION FOR DISCRETIONARY REVIEW
OF DECISION TERMINATING REVIEW

Ladd B. Leavens, WSBA #11501
William K. Rasmussen, WSBA #20029
DAVIS WRIGHT TREMAINE LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
(206) 622-3150 Phone
(206) 757-7700 Fax

Attorneys for Respondent Mary Haviland

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 AUG -8 PM 4:57

TABLE OF CONTENTS

I. IDENTITY OF PETITIONER..... 1

II. CITATION TO COURT OF APPEALS DECISION..... 1

III. ISSUES PRESENTED FOR REVIEW 1

IV. STATEMENT OF THE CASE..... 2

 A. Marriage of Jim and Mary. 2

 B. Jim’s Estate Planning for Mary’s Benefit..... 3

 C. Jim’s Death. 4

 D. The Will Contest..... 4

 E. The Legislature’s Enactment of Laws of 2009, ch. 525, the
 Abuser Amendments to the Slayers Statute..... 5

 F. Entry of Findings and Conclusions Invalidating Will in Will
 Contest. 6

 G. Successor Personal Representative’s Petition to Apply Abuser
 Amendments Based on Findings in Will Contest..... 7

 H. Court of Appeals Decision Reversing Trial Court..... 9

 I. Denial of Motion for Reconsideration on July 7, 2011. 10

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED..... 10

 A. The Court Should Accept Review to Correct the Court of
 Appeals’ Determination on Retroactivity, Which Conflicts
 With Existing Supreme Court Precedent. 10

 B. The Court Should Accept Review to Prevent the
 Unconstitutional Application of the Abuser Amendments to
 Mary Haviland. 15

 C. The Court Should Accept Review to Reaffirm Its
 Longstanding Holding That the Disposition of a Decedent’s

Estate Is Governed by the Law in Effect on the Date of Death.... 18

VI. CONCLUSION..... 20

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Adcox v. Children's Orthopedic Hosp. & Med. Ctr.</i> , 123 Wn.2d 15, 864 P.2d 921 (1993).....	10
<i>Densley v. Dep't of Retirement Systems</i> , 162 Wn.2d 210, 173 P.3d 885 (2007).....	11, 12
<i>In re Estate of Burns</i> , 131 Wn.2d 104, 928 P.2d 1094 (1997).....	10, 11, 16
<i>In re Estate of Elmer</i> , 91 Wn.App. 785, 959 P.2d 701 (1998).....	19
<i>In re Estate of Haviland</i> , 161 Wn. App. 851, 251 P.3d 289 (2011).....	1
<i>In re F.D. Processing, Inc.</i> , 119 Wn.2d 452, 832 P.2d 1303 (1992).....	11
<i>In re Martin</i> , 129 Wn. App. 135, 118 P.3d 387.....	16
<i>In re Nielsen's Estate</i> , 198 Wash. 124, 87 P.2d 298 (1939).....	19
<i>In re Verchot's Estate</i> , 4 Wn.2d 574, 104 P.2d 490 (1940).....	16
<i>In re Ziegner's Estate</i> , 146 Wash. 537, 264 P. 12 (1928).....	18, 19
<i>Johnson v. Continental West, Inc.</i> , 99 Wn.2d 555, 663 P.2d 482 (1983).....	11
<i>Johnston v. Beneficial Management Corp.</i> , 85 Wn.2d 637, 538 P.2d 510 (1975).....	12, 17

<i>Landgraf v. USI Film Prods.</i> , 511 U.S. 244, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994).....	11, 13
<i>Marine Power & Equipment Co. v. Washington Human Rights Commission</i> , 39 Wn. App. 609, 694 P.2d 697 (1985).....	11
<i>Miebach v. Colasurdo</i> , 102 Wn.2d 170, 685 P.2d 1074 (1984).....	11
<i>Pape v. Dep't. of Labor & Indus.</i> , 43 Wn.2d 736, 264 P.2d 241 (1953).....	12
<i>State v. Pillatos</i> , 159 Wn.2d 459, 150 P.3d 1130 (2007).....	12, 13, 15
<i>State v. Schmidt</i> , 100 Wn. App. 297, 996 P.2d 1119 (2000).....	17
<i>State v. T.K.</i> , 139 Wn.2d 320, 987 P.2d 63 (1999).....	10, 11
<i>State v. Wilson</i> , 117 Wn. App. 1, 75 P.3d 573 (2003).....	17
<i>Strand v. Stewart</i> , 51 Wash. 685, 99 Pac. 1027 (1909).....	16
<i>Wash. State Farm Bureau Fed'n v. Gregoire</i> , 162 Wn.2d 284, 174 P.3d 1142 (2007).....	16, 17

STATUTES

Laws of 2009, ch. 525	1, 5
RCW 11.04.015	7
RCW 11.04.015(1).....	15
RCW 11.04.250	15
RCW 11.04.290	16

RCW 11.12.095	7
RCW 11.84.010 <i>et seq.</i>	1, 5
RCW 11.84.030	5
RCW 11.84.040	5
RCW 11.84.150	5, 6
RULES	
RAP 13.4.....	1, 20
RAP 13.4(b)(1)	15
RAP 13.4(b)(3)	18
RAP 13.4(b)(4)	20
OTHER AUTHORITIES	
Const., art. I, § 23.....	17

I. IDENTITY OF PETITIONER

Mary Haviland files this petition. She was the Respondent in the Court of Appeals.

II. CITATION TO COURT OF APPEALS DECISION

Pursuant to RAP 13.4, Mary Haviland seeks discretionary review in this Court of the following decision of the Court of Appeals, Division 1, terminating review in the captioned matter: *In re Estate of Haviland*, 161 Wn. App. 851, 251 P.3d 289 (2011). The Court of Appeals filed its decision on May 16, 2011, and filed an order denying Mary Haviland's Motion for Reconsideration on July 7, 2011.

III. ISSUES PRESENTED FOR REVIEW

1. Does the Court of Appeals decision, which determined that the 2009 abuser amendments (Laws of 2009, ch. 525) to the slayer statute (RCW 11.84.010 *et seq.*) could be applied to disinherit an heir and beneficiary of a decedent who died in November 2007, based on alleged conduct of the heir/beneficiary occurring before that date, conflict with existing Supreme Court precedent, under which a court, in determining whether a new statute may be applied to past conduct, must consider (a) whether the affected person had fair warning that the conduct carried specific consequences, (b) whether the application of the statute will

impair vested rights, and (c) whether the application of the statute will impose new disabilities for past conduct?

2. Does the application of a statute, enacted *after* the death of the decedent, to deprive a statutory heir and testamentary beneficiary of vested inheritance rights, based on conduct that occurred *before* the death of the decedent, constitute an unconstitutional retroactive application of the statute and violate the heir/beneficiary's constitutional right to due process of law?

3. Is a statute enacted *after* the death of a decedent that imposes punitive consequences on an heir/beneficiary for conduct that occurred *before* the death of the decedent an unconstitutional ex post facto law?

4. Is there an important public interest in preserving the long-standing rule that the distribution of a decedent's estate will be governed by the law in effect at the date of the decedent's death?

IV. STATEMENT OF THE CASE

A. Marriage of Jim and Mary.

Dr. James H. Haviland was a Seattle physician. CP 10. His first marriage was to Marion Haviland, with whom he had four children.

CP 10-11. Marion died in 1993. CP 11. Three years later, in 1996, Dr. Haviland ("Jim") met Mary Haviland, then known as Mary Burden. Mary

was divorced from her first husband, with whom she had had four children. CP 13.

Jim and Mary became engaged in the spring of 1997. CP 14. They were married in their Bremerton home on August 30, 1997, in a backyard ceremony attended by more than 75 people, including friends and members of both families. CP 15. After their marriage, Jim and Mary lived continuously as husband and wife for more than ten years, until Jim's death on November 14, 2007. CP 15.

B. Jim's Estate Planning for Mary's Benefit.

Before and during his marriage to Mary, Jim executed four wills that benefitted Mary. On August 29, 1997, on the eve of the marriage, Jim executed a will that gave Jim's personal effects to Mary and devised to her both their Bremerton residence and a vacation property that Jim owned on Shaw Island. CP 14-15; Ex. 5. This Will, like all of Jim's subsequent wills and codicils, was prepared by Alan H. Kane, his long time estate planning attorney, who practiced at K&L Gates. CP 15.

Jim executed three subsequent wills, in 1998, 2002, and 2006. CP 15-16, Ex. 4 [1998 Will]; CP 19, Ex. 2 [2002 Will]; Ex. 1 [2006 Will]. In each of the wills, Jim left his personal effects, the Bremerton Residence, and the Shaw Island property to Mary. In the 2006 Will, which Jim executed in the offices of K&L Gates on January 19, 2006, Jim

left the residue of his estate to a living trust, first created in 1997, of which Mary was the remainder beneficiary. Ex. 1. In previous wills, Jim had left the residue to one of two trusts created under his previous estate plan on the death of Marion. His children by Marion were income beneficiaries of these trusts. CP 11-12.

C. Jim's Death.

Jim died on November 14, 2007. CP 36. His 2006 Will was admitted to probate in King County on December 19, 2007. Id.

D. The Will Contest.

In early 2008, Donald Haviland, Elizabeth Haviland, and Martha Clauser (the "Haviland Children"), three of Jim's four children by his marriage to Marion, commenced a will contest. They alleged that the 2006 Will was invalid on the ground that Jim lacked testamentary capacity, and that the Will was the product of undue influence by Mary. CP 62-72. The will contest was tried to the Honorable John Erlick over ten trial days, beginning on April 7, 2009. During the trial, the Haviland Children offered evidence concerning transfers of funds between accounts of Jim and Mary (held jointly or otherwise), and evidence of gifts made to, for example, Mary's children during the marriage. See, e.g., CP 20. The Haviland Children argued that Mary had taken financial advantage of Jim, and that this evidence tended to show that she had unduly influenced Jim

to execute the 2006 Will. On April 22, 2009, the last day of trial, Judge Erlick took the matter under advisement, stating that he expected he would need 60 days to decide the matter. VRP 2343-44.

E. The Legislature's Enactment of Laws of 2009, ch. 525, the Abuser Amendments to the Slayers Statute.

On April 22, 2009 (by coincidence the same day that the will contest trial ended), the House passed Laws of 2009, ch. 525. The new statutory provisions (the "Abuser Amendments"), which were signed into law on May 18 and became effective on July 26, 2009, amended RCW 11.84.010 et seq., which previously had governed inheritance rights only of slayers. In general, the Abuser Amendments prevent a person who financially exploits a vulnerable adult from acquiring property or receiving any benefit as a consequence of a vulnerable adult's death. The amendments provide, *inter alia*, that an abuser may not inherit property from the decedent under a will (*see* RCW 11.84.040) or under the laws of descent and distribution (*see* RCW 11.84.030). As a condition of their application, the Abuser Amendments require that certain specific findings regarding financial exploitation be made, by clear, cogent, and convincing evidence. RCW 11.84.150. The Abuser Amendments impose consequences on a person found to be an abuser that are unrelated to the extent of the injury (if any) to the vulnerable adult from the financial

exploitation. A person may have abused a vulnerable adult by, for example, misusing \$100 of funds from the vulnerable adult's bank account, but could as a consequence lose an inheritance under a will or as a surviving spouse totaling hundreds, or thousands, of times that amount.

F. Entry of Findings and Conclusions Invalidating Will in Will Contest.

Judge Erlick entered Findings of Fact and Conclusions of Law in the will contest on September 14, 2009. He rejected the claim that Dr. Haviland lacked testamentary capacity when he executed his 2006 Will (CP 37-38), but concluded that the execution of the Will was the product of undue influence by Mary (CP 39), and declared the 2006 Will to be invalid. CP 40. The trial court made numerous findings touching on financial transactions that occurred prior to Dr. Haviland's death in November 2007. CP 10-42. The court made no findings, however, that specifically adopted the language required by RCW 11.84.150 for the imposition of the penalty under the Abuser Amendments, and no conclusions of law that referenced the Abuser Amendments, which, having not been law when the will contest was tried, had not been pled (*see* CP 62-72) or litigated.

G. Successor Personal Representative's Petition to Apply Abuser Amendments Based on Findings in Will Contest.

Even following Judge Erlick's decision that Jim's 2006 Will was invalid, Mary remained an heir and a beneficiary of Jim's estate. The Findings and Conclusions entered on September 14, 2009 pertained only to the 2006 Will. Jim had executed three earlier wills that left Mary substantial assets. Any one of these wills might be offered for probate, and would presumably be less susceptible than his later will to a will contest challenge. In addition, Mary was Jim's surviving spouse, with existing rights of inheritance under the laws of descent and distribution (RCW 11.04.015) and, if the Haviland Children were successfully to offer a pre-1997 will for probate, under the omitted spouse statute (RCW 11.12.095).

On November 20, 2009, Richard Furman, whom the trial court had appointed as successor personal representative of Dr. Haviland's estate, filed a Petition for Determination as to Sufficiency of the Record to Apply Slayer's Statute. CP 1-42. He sought authority from the court to apply the Abuser Amendments to prevent Mary from inheriting from Jim under his earlier wills or as surviving spouse. The Haviland Children joined in the motion. CP 43-44, 113-35. Mary filed a memorandum opposing the petition, arguing among other things that the disposition of the decedent's

estate was governed by the law as of the date of death, and that the application of the Abuser Amendments to extinguish Mary's interest in the decedent's estate would violate due process and the prohibition against ex post facto laws. CP 45-58.

Judge Erlick heard argument on the petition on January 15, 2010. There was no trial of factual issues. The trial court issued its letter decision on January 27, 2010. CP 136-39. The decision addressed only the question whether the proposed application of the Abuser Amendments was a retroactive application, and, if so, whether the legislature intended to apply, or the court could apply, the Abuser Amendments retroactively consistent with existing law. The court identified the triggering or precipitating event under the amendments to be the alleged abuse, which necessarily occurred before November 2007, when Jim died, and concluded that the proposed application was retroactive. CP 137. The court found no evidence that the Legislature intended the statute to apply retroactively. CP 138. While recognizing that purely remedial or procedural statutes may be applied retroactively, the court observed that such statutes "should not affect substantive rights, or increase liability for past actions," (CP 138) and observed further that laws that are substantive cannot constitutionally be applied retroactively. CP 139. In response to the Haviland Children's argument that ex post facto concerns pertain

primarily to criminal statutes, the court found that the Abuser Amendments if applied here would have punitive effect and would increase Mary's liability and create a new cause of action for past conduct. CP 139. Finally, the court observed that the application would "be disadvantaging to the defendant to impose new consequences for actions she already committed" and would "affect [Mary's] . . . substantive property interests." CP 139. The court therefore denied the petition.

H. Court of Appeals Decision Reversing Trial Court.

The Haviland Children sought discretionary review, which the Court of Appeals granted. On May 16, 2011, the Court issued its decision reversing Judge Erlick. The Court of Appeals concluded that the triggering or precipitating event for the application of the Abuser Amendments is the filing of the petition to apply the statute, not any earlier event, such as the financial abuse itself, or the death of the decedent. Appendix ("App.") 1. The Court decided that the Abuser Amendments "regulate[] the benefits the wife might receive after probate," and that the proposed application of the Abuser Amendments was therefore prospective, not retroactive. App. 1. The Court did not address whether, so applied, the statute would impose new consequences for past conduct, whether it would deprive the wife of property interests that had already vested as of the date of her husband's death, or whether

either the legislature or the court could constitutionally change the law governing the disposition of a decedent's estate *after* the date of death. The Court did not rule on whether the will contest findings were sufficient under the Abuser Amendments to trigger the application of the statute and to disinherit Mary, leaving that determination to the trial court on remand. App. 8.

I. Denial of Motion for Reconsideration on July 7, 2011.

Mary filed a Motion for Reconsideration. The Court of Appeals filed an order denying the motion on July 7, 2011. App. 9.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

A. The Court Should Accept Review to Correct the Court of Appeals' Determination on Retroactivity, Which Conflicts With Existing Supreme Court Precedent.

The determination of whether a proposed application of a statute is prospective or retroactive, and whether retroactive application is permissible, is a complex one. Generally under Washington law, where the legislature does not expressly provide that new legislation is to be applied retroactively, it is presumed that the legislature intended the new legislation to operate prospectively only. *State v. T.K.*, 139 Wn.2d 320, 329, 987 P.2d 63 (1999) (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 264-66, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994)); *In re Estate of Burns*, 131 Wn.2d 104, 110, 928 P.2d 1094 (1997); *Adcox v. Children's*

Orthopedic Hosp. & Med. Ctr., 123 Wn.2d 15, 30, 864 P.2d 921 (1993); *Miebach v. Colasurdo*, 102 Wn.2d 170, 180-81, 685 P.2d 1074 (1984). Retroactive application is disfavored because it unfairly creates new obligations with respect to past conduct. See *In re: Burns*, 131 Wn.2d at 110 (and cases cited therein). “Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly” *Landgraf v. USI Film Prods. et al.*, 511 U.S. at 265.

The presumption of prospective application can be overcome if the amendment is ‘curative,’ see, e.g., *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 461-62, 832 P.2d 1303 (1992); *Johnson v. Continental West, Inc.*, 99 Wn.2d 555, 559-62, 663 P.2d 482 (1983); *Marine Power & Equipment Co. v. Washington Human Rights Commission*, 39 Wn. App. 609, 615-16, 694 P.2d 697 (1985), or if the statute is ‘remedial,’ see *Densley v. Dep’t of Retirement Systems*, 162 Wn.2d 210, 223, 173 P.3d 885, 891 (2007); *T.K.*, 139 Wn.2d at 332; *Marine Power*, 39 Wn. App. at 617-18.

A remedial statute is one that relates to practice, procedures and remedies. *In re F.D. Processing*, 119 Wn.2d at 462-63; *Miebach v. Colasurdo*, 102 Wn.2d at 180-81; *Marine Power*, 39 Wn. App. 617-18. A statute is not remedial and may not be applied retroactively if it affects a substantive or vested right, creates a new cause of action, or imposes a

penalty. *Densley*, 162 Wn.2d at 223-24; *Johnston v. Beneficial Management Corp.*, 85 Wn.2d 637, 538 P.2d 510 (1975).

This Court recently made clear in *State v. Pillatos*, 159 Wn.2d 459, 150 P.3d 1130 (2007) that the analysis is not wooden or mechanical, but instead requires consideration of all factors, including particularly whether the person to whom the new enactment is being applied received fair notice, and whether applying the new law creates new or additional consequences for conduct predating the effective date of the statute. In considering whether certain amendments to the Sentencing Reform Act were or could be applied retroactively, the Court stated:

Generally, statutes, particularly criminal statutes, operate prospectively *to give fair warning* that a violation carries specific consequences. *See In re Estate of Burns*, 131 Wash.2d 104, 110, 928 P.2d 1094 (1997). But if the changes to the statute do not alter the consequences to the crime then there is likely no relevant lack of notice. *Accord, In re Pers. Restraint of Mota*, 114 Wash.2d 465, 788 P.2d 538 (1990).

State v. Pillatos, at 470 (emphasis added). the Washington Supreme Court hinged its decision on the opportunity of the affected party to conform his conduct to the new statute. The Court then explained what it meant by a law that acted in a retroactive fashion, quoting from its opinion in *Pape v. Dep't. of Labor & Indus.*, 43 Wn.2d 736, 264 P.2d 241 (1953):

“A retrospective law, in the legal sense, is one which takes away or impairs vested rights acquired in the existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.”

Pillatos, at 471, quoting from *Pape*, at 740-41. The Court cited with approval the comments of Justice Stevens in *Landgraf v. USI Film Prods.*:

A statute does not operate “retrospectively” merely because it is applied in a case arising from conduct antedating the statute’s enactment or upsets expectations based in prior law. Rather, the court must ask whether the new provision attaches *new legal consequences to events completed before its enactment*. The conclusion that a particular rule operates “retroactively” comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event.

Pillatos, at 471, quoting *Landgraf v. USI Film Prods.*, 511 U.S. at 269-70 (emphasis added). The Washington Supreme Court then stated, with respect to the 2005 amendments to the Sentencing Reform Act, that “[s]ince there are no new legal consequences attached to these crimes, this statute is not retrospective.” *Pillatos*, at 471.

Here, the Court of Appeals sidestepped entirely the “process of judgment” required by *Pillatos*, and in so doing failed to consider whether

Mary was given “fair warning” that the alleged financial abuse “carrie[d] specific consequences,” and whether the application of the Abuser Amendments to disinherit Mary would “take[] away or impair[] vested rights acquired in the existing laws, or [would] . . . attach[] a new disability, in respect to transactions . . . already past.” The Court of Appeals decision concluded only (1) that the Abuser Amendments regulate the disposition of a decedent’s property to his wife at the conclusion of a probate; (2) that the probate was not concluded when the act was passed, and therefore (3) that the proposed application of the law was prospective. The Court made no effort to address the fact that the statute’s application required a determination that Mary had engaged in conduct defined by the statute long *before* the effective date of the statute, no effort to determine whether Mary had fair warning, and no analysis of whether the act created new disabilities for past conduct or took away rights that vested in Mary under her husband’s estate plan, or under the laws of descent and distribution, on the date of her husband’s death.

The Court of Appeals decision consequently conflicts with existing Supreme Court precedent regarding retroactivity by failing to consider whether (and ensure that) Mary Haviland had notice of and an opportunity to avoid the increased consequences under the new amendments, and that the application of the statute would not deprive Mary of vested rights or

create new disabilities for past conduct. These are fundamental elements of the test for prospectivity/retroactivity under established Washington Supreme Court precedent, including, most recently, *State v. Pillatos*. This Court should therefore accept review pursuant to RAP 13.4(b)(1).

B. The Court Should Accept Review to Prevent the Unconstitutional Application of the Abuser Amendments to Mary Haviland.

The proposed application of the Abuser Amendments both impairs Mary's vested rights, and attaches significant (and random) new legal consequences for past conduct. The Court of Appeals decision therefore violates Mary's constitutional right not to be deprived of property without due process of law. Because the Abuser Amendments also impose punitive consequences, the proposed application of the law violates her constitutional right to be free of punishment under *ex post facto* laws.

Mary is a beneficiary under each of Dr. Haviland's wills executed in 1997 and thereafter. If no will were admitted to probate, Mary would inherit all of the community property and one-half of Dr. Haviland's separate property pursuant to RCW 11.04.015(1). In either case, her rights as a beneficiary vest as of the date of the decedent's death. Specifically, RCW 11.04.250 provides, as to real property:

When real estate vests – Rights of Heirs.
When a person dies seized of lands,
tenements or hereditaments, . . . his title

shall vest immediately in his heirs or devisees, subject to his debts, family allowance, expenses of administration and any other charges for which such real estate is liable *under existing laws*.

RCW 11.04.290 further provides that

RCW 11.04.250 through 11.04.290 shall apply to community real property and also to separate estate; and upon the death of either spouse or either domestic partner, title of all community real property shall vest immediately in the person or persons to whom the same shall go, pass, descend or be devised, as provided in RCW 11.04.015, subject to all the charges mentioned in RCW 11.04.250.

The interest of an heir or beneficiary in personal property of an estate also vests as of the date of death. *See, e.g., In re Burns*, 131 Wn.2d at 118 n.4; *In re Verchot's Estate*, 4 Wn.2d 574, 582, 104 P.2d 490 (1940); *Strand v. Stewart*, 51 Wash. 685, 687-88, 99 Pac. 1027 (1909).

Interference with vested rights is of constitutional dimension. A statute is unconstitutional when “it takes away or impairs vested rights acquired under existing laws. . . .” *In re Martin*, 129 Wn. App. 135, 145, 118 P.3d 387 (quoting *I.N.S. v. St. Cyr*, 533 U.S. 289, 321, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001)); *see also Wash. State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 304-05, 174 P.3d 1142 (2007) (holding that the legislature may not give an amendment retroactive effect where the

effect would be to interfere with vested rights. Vested rights are “entitled to due process protections from subsequently enacted legislation.” *See Gregoire*, 162 Wn.2d at 305.

A law violates the constitutional prohibition against ex post facto laws, *see* Const., art. I, § 23, if it is substantive, retrospective, and disadvantages the person affected by it. *State v. Wilson*, 117 Wn. App. 1, 9, 75 P.3d 573 (2003). The ex post facto clause pertains only to penal (criminal or punitive) statutes, not regulatory or civil statutes. *State v. Schmidt*, 100 Wn. App. 297, 300 & n.7, 996 P.2d 1119 (2000). Two factors determine whether a law is criminal or punitive: (1) the legislature’s intent, and (2) the law’s effect. *Id.* at 300 n.7. A civil label is not dispositive; the statute’s punitive effect may negate the legislature’s intent to deem it civil. *Id.*

The trial court here correctly concluded that the Abuser Amendments are punitive. CP 137-38. The purpose of the amendments is not to grant a remedy that will restore a victim of abuse to the *status quo ante*. Rather, the amendments apply without regard to whether the abuser has fully compensated the vulnerable adult, or his estate, for whatever damages the financial exploitation caused. And the dollar amount of the penalty exacted by the Abuser Amendments is unrelated to the amount of the abuse. The court in *Johnston v. Beneficial Management Corp.*, 85

Wn.2d 637, 640, 538 P.2d 510 (1975), held that the treble damage provisions (even with a cap of \$10,000) under the 1970 amendments to the Consumer Protection Act constituted a penalty, even though they were closely related to the amount of the damages. The Abuser Amendments, with their potential for far larger, randomly imposed penalties, are clearly punitive and violate the constitutional provision against ex post facto laws if applied based on conduct occurring before the effective date of the law.

Because the Court of Appeals decision sanctions the violation of Mary's constitutional rights to due process and to be free of punishment ex post facto, the Court should accept review under RAP 13.4(b)(3).

C. The Court Should Accept Review to Reaffirm Its Longstanding Holding That the Disposition of a Decedent's Estate Is Governed by the Law in Effect on the Date of Death.

The Court of Appeals in its decision in this case has held, in effect, that the legislature may change the law regarding who is to receive the estate of a decedent upon death, even after the decedent has died. This holding not only runs afoul of the vesting provisions in the probate code and related case law, as described above, but also contravenes the long-established corollary principle that the distribution of a decedent's estate is governed by the law and the valid testamentary instruments *as of the date of death*. See, e.g., *In re Ziegner's Estate*, 146 Wash. 537, 264 P. 12 (1928):

The will speaks as of the date of the testator's death, and must conform to the laws in force at that time. These rules are elementary and need no citation of authority in their support. While *the legislature may not interfere with or divest estates which have already become vested through the death of the testator*, its power over wills, the manner of their execution, and the mode of carrying out their provisions, is absolute and supreme until death occurs. *Any triggering event later than the date of death in effect modifies the law governing the distribution of a decedent's estate after he or she dies, and thus its application would be retroactive in effect.*

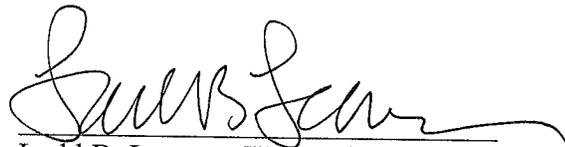
Zeigner's Estate, at 540, quoting from *Strand v. Stewart*, 51 Wash. 685, 687-88, 99 Pac. 1027 (1909) (emphasis added); see also *In re Nielsen's Estate*, 198 Wash. 124, 130, 87 P.2d 298 (1939) ("The will speaks as of the date of the testator's death, and the probate establishes its status as of that date."); *In re Estate of Elmer*, 91 Wn.App. 785, 789, 959 P.2d 701 (1998) ("... a will speaks at the time of death . . ."). These cases articulate a principle in which the public has an important public interest. When testators make their estate plans, they are entitled to know the law governing the disposition of their estates, and to have confidence that the law as it exists will be applied to their estate when they are gone. Likewise, heirs and beneficiaries are entitled, for the reasons set forth earlier in this petition, to be free of post-death legislative actions that

affect previously established and – by virtue of the decedent’s death – now immutable estate plans. Because the Court of Appeals decision does violence to these important public policies, this Court should accept review under RAP 13.4(b)(4).

VI. CONCLUSION

For the foregoing reasons, Mary Haviland requests that the Court accept discretionary review of this case pursuant to RAP 13.4, reverse the decision of the Court of Appeals, and affirm the decision of the trial court that the Abuser Amendments may not be applied to affect the inheritance rights of Mary Haviland in the estate of her husband James W. Haviland.

Respectfully submitted this 8th day of August, 2011.



Ladd B. Leavens WSBA #11501
William K. Rasmussen WSBA #20029
Attorneys for Mary Haviland

PROOF OF SERVICE

The undersigned hereby certifies and declares under penalty of perjury under the laws of the State of Washington that the following statements are true and correct:

On the this day I caused a copy of the document to which this is attached to be served on counsel of record via messenger as follows:

Suzanne C. Howle
Carol Vaughn
Thompson & Howle
601 Union St., Suite 3232
Seattle, WA 98101

Howard M. Goodfriend
Edwards, Sieh, Smith & Goodfriend, P.S.
1109 First Avenue, Suite 500
Seattle, WA 98101-2988

Richard L. Furman
Aiken, St. Louis & Siljeg, P.S.
801 Second Avenue, Suite 1200
Seattle, WA 98104-1571

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 AUG - 8 PM 4: 57

Executed at Seattle, Washington this 8th day of August, 2011.

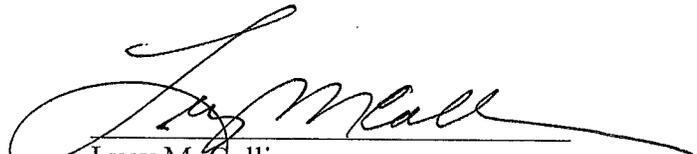

Lucy M. Collins

Table of Contents to Appendix

<u>Document</u>	<u>Page</u>
Court of Appeals Decision (<i>In re Estate of Haviland</i> , 161 Wn. App. 851, 251 P.3d 289 (2011)), filed May 16, 2011	App. 1
Order Denying Motion for Reconsideration, filed July 7, 2011	App. 9
RCW 11.84.010, et seq., as amended	App. 10
Laws of 2009, ch. 525	App. 13
Washington State Constitution, Article I, Section 3 (due process clause)	App. 22
Washington State Constitution, Article I, Section 23 (prohibition against ex post facto laws)	App. 23
United States Constitution, Amendment XIV, § 1 (due process clause)	App. 24
United States Constitution, Article I, Section 9 (prohibition against ex post facto laws)	App. 25

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of)	
JAMES W. HAVILAND.)	No. 65101-3-1
)	DIVISION ONE
DONALD HAVILAND, ELIZABETH)	PUBLISHED OPINION
HAVILAND, and MARTHA CLAUSER,)	
Appellants,)	
v.)	
MARY HAVILAND,)	
Respondent.)	FILED: May 16, 2011

GROSSE, J. — The 2009 amendments to Washington’s slayer statute, chapter 11.84 RCW, which prohibit a person who exploits a vulnerable adult from benefiting from the vulnerable adult’s death, apply prospectively to probate petitions filed after the amendments’ effective date even when the abuse and death occur before that date. The event that triggers application of the statute is the filing of the petition in probate. Here, after the decedent’s 2006 will was declared invalid because of his wife’s undue influence, the estate filed a petition for an adjudication that the wife was an “abuser” to prevent her from benefiting from the will under the amended statute. Because the petition was filed after the effective date of the amendments and because the slayer statute regulates the benefits the wife might receive after probate, the statute applies prospectively here, not retroactively as the trial court ruled. Accordingly, we reverse.

FACTS

In 1996, Mary Haviland,¹ then age 35, met then 85-year-old James Haviland, when he was a patient at Providence Hospital. After his discharge, Haviland transferred \$100,000 to Mary to pay for her education and set up a "nest egg" of \$300,000 to \$350,000. In August 1997, Haviland and Mary married.

Mary spent millions of dollars during her marriage to Haviland. Substantial funds were transferred to Mary and her designees during the marriage. Haviland died at the age of 96 on November 14, 2007.

Haviland's 2006 will was submitted for probate and his children contested it on the basis that it was a product of Mary's undue influence. On September 14, 2009, the trial court found that (1) Mary was the decedent's fiduciary, (2) she participated in the creation of the 2006 will, (3) the will gave her an unnaturally large share of Haviland's estate in comparison to earlier estate plans, (4) Haviland was extremely vulnerable to undue influence due to physical disabilities, some degree of cognitive impairment, and the fact that Mary was his primary caregiver, and (5) Mary engaged in a systematic, persistent, and unexplained pattern of transferring assets from Haviland's estate for her own benefit and that of her designees.

The trial court further concluded that there was clear, cogent, and convincing evidence that the 2006 will was a product of undue influence. The

¹ To avoid confusion, Mary Haviland will be referred to by her first name.

No. 65101-3-1/3

court invalidated the 2006 will for undue influence, removed Mary as personal representative, and appointed Richard Furman as personal representative of the estate.

In November 2009, Furman filed a petition for the court to adjudicate whether Mary was an "abuser" as defined by the amendments to chapter 11.84 RCW, which prohibit financial abusers from inheriting from vulnerable adults. The trial court denied the petition, ruling that applying the statute, which became effective July 26, 2009, would result in an improper retroactive application. The court concluded that the event triggering application of the statute was the abuse itself, which occurred before the statute became effective.

The Haviland children and the estate sought discretionary review of the trial court's ruling. The trial court certified its ruling for discretionary review under RAP 2.3(b)(4). Because this issue is one of first impression, we granted discretionary review.

ANALYSIS

Under chapter 11.84 RCW, the slayer statute, a slayer cannot benefit as the result of the death of the decedent. In July 2009, the legislature amended the statute and expanded the scope of the statute to include abusers as well as slayers. Specifically, RCW 11.84.020 provides:

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

RCW 11.84.900 further provides:

This chapter shall be construed broadly to effect the policy of this state that no person shall be allowed to profit by his or her own wrong, wherever committed.

The statute defines "abuser" as "any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful financial exploitation of a vulnerable adult."² Absent a criminal conviction, a person may be adjudicated as an "abuser" based on "a superior court finding by clear, cogent, and convincing evidence that a person participated in conduct constituting financial exploitation against the decedent."³ To make that determination, the trial court must find by clear and convincing evidence:

- (a) The decedent was a vulnerable adult at the time the alleged financial exploitation took place; and
- (b) The conduct constituting financial exploitation was willful action or willful inaction causing injury to the property of the vulnerable adult.^[4]

Here, the trial court ruled that the statute did not apply retroactively and therefore it need not make this determination. The trial court first concluded that applying the statute here to bar Mary's inheritance would be retroactive because the triggering event was the abuse and financial exploitation, which occurred before the amendments were enacted. The court then went on to determine that retroactive application here was improper, inferred by the lack of express legislative intent in chapter 11.84 RCW and specific instructions in another statute, RCW 41.04.273, that the slayer statute amendments do not apply retroactively in the context of retirement benefits. The court further concluded

² RCW 11.84.010(1).

³ RCW 11.84.150(2).

⁴ RCW 11.84.160.

that the amendments were not remedial because the amendments affect Mary's property interests, thereby impacting her substantive rights, and expand, not simply promote, existing remedies by creating a new cause of action. Finally, the court noted that while not criminal, the statute imposes punitive consequences and therefore cannot be applied retroactively.

The Haviland children and the estate argue that the trial court erred by ruling that the triggering event is the abuse or exploitation. They contend that the triggering event is the filing of the probate petition, which occurred here four months after the effective date of the statute, and therefore the statute applies prospectively, not retroactively. We agree.

"A statute operates prospectively when the precipitating event for the application of the statute occurs after the effective date of the statute, even though the precipitating event had its origin in a situation existing prior to enactment of the statute."⁵ Here, the trial court relied on the statutory language regulating abuse and exploitation to conclude that the triggering event was the abuse and financial exploitation of Haviland, which occurred before the effective date of the statute and therefore made application of the statute retroactive. But while the statute does address abuse and exploitation, the language in the amendments indicates a legislative focus on preventing the abuser from benefitting from any financial exploitation after the exploited person dies, rather than regulating the financial exploitation itself. RCW 11.84.150(2) also provides that a person is adjudicated as an abuser and thereby prohibited from benefitting

⁵ Aetna Life Ins. Co. v. Washington Life & Disability Ins. Guaranty Ass'n, 83 Wn.2d 523, 535, 520 P.2d 162 (1974).

No. 65101-3-1 / 6

from the vulnerable person's will when "a superior court [finds] by clear, cogent, and convincing evidence that a person participated in conduct constituting financial exploitation." Thus, that finding is the triggering event and here, that finding was made after the effective date of the amendment. The statute therefore applies prospectively.

A similar conclusion was reached in Aetna Life Insurance Co. v. Washington Life & Disability Insurance Guaranty Ass'n.⁶ There, a statute required insurers who wanted to do business in Washington to become members of a guaranty association and pay an assessment if a fellow insurer received a liquidation order.⁷ The insurers contended that by collecting an assessment on premiums received before the statute's enactment, the State applied the statute retroactively. The court disagreed, concluding that it was not the receipt of premiums that triggered application of the statute, but the future liquidation order by a fellow insurer, which did not occur until after the effective date of the statute. Accordingly, the court held that application of the statute was prospective. Similarly, here, the event that triggered the application of the statute was any benefit Mary might derive from probate, not the conduct that resulted in making her a potential recipient of that benefit. Accordingly, because that event occurred after the enactment of the amendments, applying the statute here is prospective.⁸

⁶ 83 Wn.2d 523, 520 P.2d 162 (1974).

⁷ Aetna Life, 83 Wn.2d at 534-35.

⁸ See also Heidgerken v. State, Dep't of Natural Resources, 99 Wn. App. 380, 993 P.2d 934 (2000) (statutory amendment increasing penalty from \$500 to \$10,000 was not applied retroactively, notwithstanding that the underlying permit

Mary's reliance on In re Estate of Burns⁹ is misplaced. In Burns, the court addressed the applicability of a statute that authorized the State to recover Medicaid benefits from a Medicaid recipient's estate. The Washington State Department of Social and Health Services (DSHS) attempted to recover the benefits from Burns' estate that DSHS had paid to Burns before the effective date of the statute. The court held that receipt of the Medicaid benefits, rather than creation of recipient's estate, was the precipitating event of the State's right to recover benefits from recipient's estate and, thus, recovery of Medicaid benefits before enactment or amendment of statute was an improper retroactive application of the statute. The court concluded that "although recipients pay off their debts to the State only upon their deaths, the purpose of the challenged provisions is to regulate the collection of debts owed by Medicaid recipients, not the disposition of their estates."¹⁰ Applying debt principles, the court explained:

[T]he statutory provisions at issue regulate the collection of a debt. They do so by characterizing the benefits received as a debt contingent upon existence of assets of a recipient at death, and by authorizing recovery by DSHS of that debt from those assets. The precipitating event is, therefore, the receipt of the benefits giving rise to the contingent indebtedness, and not the creation of the decedent's estate.^[11]

But here, there was no receipt of benefits before the statute's enactment as in Burns; Mary's receipt of any benefit from the estate would not occur until it was

and failure to reforest occurred prior to the enactment of the amendment, because the precipitant event was failure to comply with the correction notice issued after the amendment).

⁹ 131 Wn.2d 104, 928 P.2d 1094 (1997).

¹⁰ 131 Wn.2d at 113.

¹¹ 131 Wn.2d at 115.

No. 65101-3-1 / 8

probated, which was after the statute's enactment. Thus, the precipitating event was the probate petition because it determined the receipt of benefits.

The trial court's 135 findings of fact include findings that Mary participated in conduct constituting financial exploitation. Whether those findings are sufficient to determine that Mary was an abuser is for the trial court to determine. Our ruling here is limited to whether the amendments apply. Because we conclude that the statute applies prospectively, we need not address the trial court's rulings that the retroactive application of the amendments here is improper.

We reverse the trial court and remand for further proceedings.

Grosse, J

WE CONCUR:

Dupre, C. S.

Schiveller, J

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Estate of)
JAMES W. HAVILAND.)
DONALD HAVILAND, ELIZABETH)
HAVILAND, and MARTHA CLAUSER,)
Appellants,)
v.)
MARY HAVILAND,)
Respondent.)

No. 65101-3-1

ORDER DENYING MOTION
FOR RECONSIDERATION

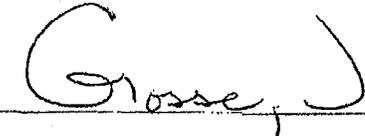
The respondent, Mary Haviland, has filed a motion for reconsideration herein.
The court has taken the matter under consideration and has determined that the motion
for reconsideration should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Done this 7th day of July, 2011.

FOR THE COURT:



Judge

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2011 JUL -7 AM 11:12

Petitioner,, whose residence is, and, Washington, and who is the of the absentee,, states that the absentee has been since, when Petitioner desires to sell/transfer of the value of, because The terms of the sale/transfer are Petitioner requires the consent of the absentee for the purpose of

.....
Petitioner

(Affidavit of Acknowledgment)

(2) The court may, without notice, enter an order on said petition if it deems the relief requested in said petition necessary to protect the best interests of the absentee or his or her dependents.

(3) Such order shall be prima facie evidence of the validity of the proceedings and the authority of the petitioner to make a conveyance or transfer of the property or to give the absentee's consent in any manner described by subsection (1) of this section. [2008 c 6 § 926; 1972 ex.s. c 83 § 3.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Chapter 11.84 RCW

INHERITANCE RIGHTS OF SLAYERS OR ABUSERS

Sections

- 11.84.010 Definitions.
- 11.84.020 Slayer or abuser not to benefit from death.
- 11.84.025 Disposition of retirement system proceeds payable to slayer or abuser.
- 11.84.030 Slayer or abuser deemed to predecease decedent.
- 11.84.040 Distribution of decedent's property.
- 11.84.050 Distribution of property held jointly with slayer or abuser.
- 11.84.060 Reversion and vested remainder.
- 11.84.070 Property subject to divestment, etc.
- 11.84.080 Contingent remainders and future interests.
- 11.84.090 Property appointed—Powers of revocation or appointment.
- 11.84.100 Insurance proceeds.
- 11.84.110 Payment by insurance company, bank, etc.—No additional liability.
- 11.84.120 Rights of persons without notice dealing with slayer or abuser.
- 11.84.130 Record of conviction as evidence against claimant of property.
- 11.84.140 Slayer determination—Conviction—Preponderance of evidence.
- 11.84.150 Abuser determination—Conviction—Clear, cogent, and convincing evidence.
- 11.84.160 Abuser determination—Evidence factors.
- 11.84.170 Abuser—When entitled to property interest.
- 11.84.180 Application—Relation to other laws.
- 11.84.900 Chapter to be construed broadly.

11.84.010 Definitions. As used in this chapter:

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

(2) "Decedent" means:

- (a) Any person whose life is taken by a slayer; or
- (b) Any deceased person who, at any time during life in which he or she was a vulnerable adult, was the victim of financial exploitation by an abuser.

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

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

(2010 Ed.)

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

(6) "Vulnerable adult" has the same meaning as provided in RCW 74.34.020. [2009 c 525 § 1; 1965 c 145 § 11.84.010; Prior: 1955 c 141 § 1.]

11.84.020 Slayer or abuser not to benefit from death.

No slayer or abuser shall in any way acquire any property or receive any benefit as the result of the death of the decedent; but such property shall pass as provided in the sections following. [2009 c 525 § 2; 1965 c 145 § 11.84.020. Prior: 1955 c 141 § 2.]

11.84.025 Disposition of retirement system proceeds payable to slayer or abuser. Proceeds payable to a slayer or abuser as the beneficiary of any benefits flowing from one of the retirement systems listed in RCW 41.50.030, by virtue of the decedent's membership in the department of retirement systems or by virtue of the death of decedent, shall be paid instead as designated in RCW 41.04.273. [2009 c 525 § 3; 1998 c 292 § 502.]

Additional notes found at www.leg.wa.gov

11.84.030 Slayer or abuser deemed to predecease decedent. The slayer or abuser shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his or her estate to the slayer or abuser under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or surviving domestic partner or under any agreement made with the decedent under the provisions of RCW 26.16.120 as it now exists or is hereafter amended. [2009 c 525 § 4; 2008 c 6 § 624; 1965 c 145 § 11.84.030. Prior: 1955 c 141 § 3.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

11.84.040 Distribution of decedent's property. Property which would have passed to or for the benefit of the slayer or abuser by devise or legacy from the decedent shall be distributed as if he or she had predeceased the decedent. [2009 c 525 § 5; 1965 c 145 § 11.84.040. Prior: 1955 c 141 § 4.]

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

(2) As to property held jointly by three or more persons, including the slayer or abuser and the decedent, any enrichment which would have accrued to the slayer or abuser as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer or abuser becomes the final survivor, one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his or her estate upon the death of the slayer or abuser, unless the

slayer or abuser obtains a separation or severance of the property or a decree granting partition.

(3) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other. [2009 c 525 § 6; 1965 c 145 § 11.84.050. Prior: 1955 c 141 § 5.]

11.84.060 Reversion and vested remainder. Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of decedent; if he or she held the particular estate or if the particular estate is held by a third person it shall remain in his or her hands for such period. [2010 c 8 § 2086; 1965 c 145 § 11.84.060. Prior: 1955 c 141 § 6.]

11.84.070 Property subject to divestment, etc. Any interest in property whether vested or not, held by the slayer or abuser, subject to be divested, diminished in any way or extinguished, if the decedent survives him or her or lives to a certain age, shall be held by the slayer or abuser during his or her lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter. [2009 c 525 § 7; 1965 c 145 § 11.84.070. Prior: 1955 c 141 § 7.]

11.84.080 Contingent remainders and future interests. As to any contingent remainder or executory or other future interest held by the slayer or abuser, subject to become vested in him or her or increased in any way for him or her upon the condition of the death of the decedent:

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

(2) In any case the interest shall not be vested or increased during the period of the life expectancy of the decedent. [2009 c 525 § 8; 1965 c 145 § 11.84.080. Prior: 1955 c 141 § 8.]

11.84.090 Property appointed—Powers of revocation or appointment. (1) Property appointed by the will of the decedent to or for the benefit of the slayer or abuser shall be distributed as if the slayer or abuser had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer or abuser, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer or abuser, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer or abuser. [2009 c 525 § 9; 1965 c 145 § 11.84.090. Prior: 1955 c 141 § 9.]

11.84.100 Insurance proceeds. (1) Insurance proceeds payable to the slayer or abuser as the beneficiary or assignee

[Title 11 RCW—page 70]

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

(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer or abuser, the proceeds shall be paid to the estate of the decedent upon the death of the slayer or abuser, unless the policy names some person other than the slayer or abuser or his or her estate as secondary beneficiary, or unless the slayer or abuser by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his or her interest in the policy if he or she had been living. [2009 c 525 § 10; 1965 c 145 § 11.84.100. Prior: 1955 c 141 § 10.]

11.84.110 Payment by insurance company, bank, etc.—No additional liability. Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer or abuser as one of several joint obligees shall not be subjected to additional liability by the terms of this chapter if such payment or performance is made without written notice, at its home office or at an individual's home or business address, of the killing by a slayer or financial exploitation by an abuser. [2009 c 525 § 11; 1965 c 145 § 11.84.110. Prior: 1955 c 141 § 11.]

11.84.120 Rights of persons without notice dealing with slayer or abuser. The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer or abuser have been adjudicated, purchases or has agreed to purchase, from the slayer or abuser for value and without notice property which the slayer or abuser would have acquired except for the terms of this chapter, but all proceeds received by the slayer or abuser from such sale shall be held by him or her in trust for the persons entitled to the property under the provisions of this chapter, and the slayer or abuser shall also be liable both for any portion of such proceeds which he or she may have dissipated and for any difference between the actual value of the property and the amount of such proceeds. [2009 c 525 § 12; 1965 c 145 § 11.84.120. Prior: 1955 c 141 § 12.]

11.84.130 Record of conviction as evidence against claimant of property. Any record of conviction for having participated in the willful and unlawful killing of the decedent or for conduct constituting financial exploitation against the decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, shall be admissible in evidence against a claimant of property in any civil proceeding arising under this chapter. [2009 c 525 § 13; 1965 c 145 § 11.84.130. Prior: 1955 c 141 § 13.]

Evidence, proof of public documents: Chapter 5.44 RCW; Rules of court: CR 44.

(2010 Ed.)

11.84.140 Slayer determination—Conviction—Preponderance of evidence. (1) A final judgment of conviction for the willful and unlawful killing of the decedent is conclusive for purposes of determining whether a person is a slayer under this section.

(2) In the absence of a criminal conviction, a superior court finding by a preponderance of the evidence that a person participated in the willful and unlawful killing of the decedent is conclusive for purposes of determining whether a person is a slayer under this section. [2009 c 525 § 14.]

11.84.150 Abuser determination—Conviction—Clear, cogent, and convincing evidence. (1) A final judgment of conviction for conduct constituting financial exploitation against the decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, is conclusive for purposes of determining whether a person is an abuser under this section.

(2) In the absence of a criminal conviction, a superior court finding by clear, cogent, and convincing evidence that a person participated in conduct constituting financial exploitation against the decedent is conclusive for purposes of determining whether a person is an abuser under this section. [2009 c 525 § 15.]

11.84.160 Abuser determination—Evidence factors. (1) In determining whether a person is an abuser for purposes of this chapter, the court must find by clear, cogent, and convincing evidence that:

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

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

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

(3) Except as provided in subsection (2) of this section, evidence of financial exploitation is admissible if it is not inadmissible pursuant to the rules of evidence. [2009 c 525 § 16.]

11.84.170 Abuser—When entitled to property interest. Notwithstanding the provisions of this chapter:

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

(a) Knew of the financial exploitation; and

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

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

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

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

(2010 Ed.)

(c) The degree of harm resulting from the abuser's financial exploitation of the decedent. [2009 c 525 § 17.]

11.84.180 Application—Relation to other laws. The provisions of this act are supplemental to, and do not derogate from, any other statutory or common law proceedings, theories, or remedies including, but not limited to, the common law allocation of the burden of proof or production among the parties. [2009 c 525 § 21.]

11.84.900 Chapter to be construed broadly. This chapter shall be construed broadly to effect the policy of this state that no person shall be allowed to profit by his or her own wrong, wherever committed. [2010 c 8 § 2087; 1998 c 292 § 503; 1965 c 145 § 11.84.900. Prior: 1955 c 141 § 14.]

Additional notes found at www.leg.wa.gov

Chapter 11.86 RCW

DISCLAIMER OF INTERESTS

Sections

11.86.011	Definitions.
11.86.021	Disclaimer of interest authorized.
11.86.031	Contents of disclaimer—Time and filing requirements—Fee.
11.86.041	Disposition of disclaimed interest.
11.86.051	When disclaimer barred—Exception.
11.86.061	Effect of spendthrift or similar restriction.
11.86.071	Liability for distribution—Effect of disclaimer.
11.86.080	Rights under other statutes or rules not abridged.
11.86.090	Interests existing on June 7, 1973.

11.86.011 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Beneficiary" means the person entitled, but for the person's disclaimer, to take an interest.

(2) "Interest" includes the whole of any property, real or personal, legal or equitable, or any fractional part, share, or particular portion or specific assets thereof, any vested or contingent interest in any such property, any power to appoint, consume, apply, or expend property, or any other right, power, privilege, or immunity relating to property. "Interest" includes, but is not limited to, an interest created in any of the following manners:

(a) By intestate succession;

(b) Under a will;

(c) Under a trust;

(d) By succession to a disclaimed interest;

(e) By virtue of an election to take against a will;

(f) By creation of a power of appointment;

(g) By exercise or nonexercise of a power of appointment;

(h) By an inter vivos gift, whether outright or in trust;

(i) By surviving the death of a depositor of a trust or P.O.D. account within the meaning of RCW 30.22.040;

(j) Under an insurance or annuity contract;

(k) By surviving the death of another joint tenant;

(l) Under an employee benefit plan;

(m) Under an individual retirement account, annuity, or bond;

(n) Under a community property agreement; or

(b) All fifth grade students who were not successful in one or more of the content areas of the fourth grade Washington assessment of student learning shall have a student learning plan.

(i) The parent or guardian of the student shall be notified, preferably through a parent conference, of the student's results on the Washington assessment of student learning, actions the school intends to take to improve the student's skills in any content area in which the student was unsuccessful, and provide strategies to help them improve their student's skills.

(ii) Progress made on the student plan shall be reported to the student's parents or guardian at least annually and adjustments to the plan made as necessary.

Passed by the House April 24, 2009.

Passed by the Senate April 22, 2009.

Approved by the Governor May 18, 2009.

Filed in Office of Secretary of State May 20, 2009.

CHAPTER 525

[Substitute House Bill 1103]

VULNERABLE ADULTS—INHERITANCE—FINANCIAL EXPLOITATION

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

Be it enacted by the Legislature of the State of Washington:

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

As used in this chapter:

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

(2) "Decedent" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Property which would have passed to or for the benefit of the slayer or abuser by devise or legacy from the decedent shall be distributed as if he or she had predeceased the decedent.

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

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

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

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

Sec. 7. RCW 11.84.070 and 1965 c 145 s 11.84.070 are each amended to read as follows:

Any interest in property whether vested or not, held by the slayer or abuser, subject to be divested, diminished in any way or extinguished, if the decedent survives him or her or lives to a certain age, shall be held by the slayer or abuser

during his or her lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter.

Sec. 8. RCW 11.84.080 and 1965 c 145 s 11.84.080 are each amended to read as follows:

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

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

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

Sec. 9. RCW 11.84.090 and 1965 c 145 s 11.84.090 are each amended to read as follows:

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

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

Sec. 10. RCW 11.84.100 and 1965 c 145 s 11.84.100 are each amended to read as follows:

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

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

Sec. 11. RCW 11.84.110 and 1965 c 145 s 11.84.110 are each amended to read as follows:

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

Sec. 12. RCW 11.84.120 and 1965 c.145 s 11.84.120 are each amended to read as follows:

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

Sec. 13. RCW 11.84.130 and 1965 c.145 s 11.84.130 are each amended to read as follows:

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

NEW SECTION. Sec. 14. A new section is added to chapter 11.84 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

Notwithstanding the provisions of this chapter:

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

(a) Knew of the financial exploitation; and

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

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

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

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

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

Sec. 18. RCW 26.16.120 and 2008 c 6 s 612 are each amended to read as follows:

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

Sec. 19. RCW 41.04.273 and 1998 c 292 s 501 are each amended to read as follows:

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

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

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

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

(ii) Who is deceased and who, at any time during life in which he or she was a vulnerable adult, was the victim of financial exploitation by an abuser, except as provided in section 17 of this act.

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

(2) Property that would have passed to or for the benefit of a beneficiary under one of the retirement systems listed in RCW 41.50.030 shall not pass to that beneficiary if the beneficiary was a slayer or abuser of the decedent and the property shall be distributed as if the slayer or abuser had predeceased the decedent.

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

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

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

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

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

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

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

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

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

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

(7) This section shall not subject the department of retirement systems to liability for payment made to a slayer or abuser or alleged slayer or abuser, prior to the department's receipt of written notice that the slayer or abuser has been convicted of, or the alleged slayer or abuser has been formally criminally or

civily charged in court with, the death or financial exploitation of the decedent. If the conviction or civil judgment of a slayer or abuser is reversed on appeal, the department of retirement systems shall not be liable for payment made prior to the receipt of written notice of the reversal to a beneficiary other than the person whose conviction or civil judgment is reversed.

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

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

- (1) "Matter" includes any issue, question, or dispute involving:
 - (a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;
 - (b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;
 - (c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;
 - (d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;
 - (e) An action or proceeding under chapter 11.84 RCW;
 - (f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; and
 - ~~((f))~~ (g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:
 - (i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;
 - (ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

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

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

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

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

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

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

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

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

(a) The trustor if living;

(b) The trustee;

(c) The personal representative;

(d) An heir;

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

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

(g) A guardian ad litem;

(h) A creditor;

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

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

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

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

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

(n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200.

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

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

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

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

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

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

NEW SECTION. Sec. 21. A new section is added to chapter 11.84 RCW to read as follows:

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

Passed by the House April 22, 2009.

Passed by the Senate April 17, 2009.

Approved by the Governor May 18, 2009.

Filed in Office of Secretary of State May 20, 2009.

CHAPTER 526

[Substitute House Bill 1239]

DEPENDENCY PROCEEDINGS—PARENTING PLANS

AN ACT Relating to parenting plans and residential schedules in dependency proceedings; amending RCW 13.34.155; and reenacting and amending RCW 13.04.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 13.04.030 and 2005 c 290 s 1 and 2005 c 238 s 1 are each reenacted and amended to read as follows:

(1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through ~~((13.34.170))~~ 13.34.161;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

PREAMBLE

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

**ARTICLE I
DECLARATION OF RIGHTS**

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

SECTION 6 OATHS - MODE OF ADMINISTERING. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

SECTION 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

SECTION 9 RIGHTS OF ACCUSED PERSONS. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

SECTION 11 RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience

(2010 Ed.)

hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [AMENDMENT 88, 1993 House Joint Resolution No. 4200, p 3062. Approved November 2, 1993.]

Amendment 34 (1957) — Art. 1 Section 11 RELIGIOUS FREEDOM — Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [AMENDMENT 34, 1957 Senate Joint Resolution No. 14, p 1299. Approved November 4, 1958.]

Amendment 4 (1904) — Art. 1 Section 11 RELIGIOUS FREEDOM — Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment. Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for the state penitentiary, and for such of the state reformatories as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [AMENDMENT 4, 1903 p 283 Section 1. Approved November, 1904.]

Original text — Art. 1 Section 11 RELIGIOUS FREEDOM — Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person, or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office, or employment, nor shall any person be incompetent as a witness, or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed

granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

SECTION 13 HABEAS CORPUS. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it.

SECTION 14 EXCESSIVE BAIL, FINES AND PUNISHMENTS. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

SECTION 15 CONVICTIONS, EFFECT OF. No conviction shall work corruption of blood, nor forfeiture of estate.

SECTION 16 EMINENT DOMAIN. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: *Provided*, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use. [AMENDMENT 9, 1919 p 385 Section 1. Approved November, 1920.]

Original text — Art. 1 Section 16 EMINENT DOMAIN — Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes or ditches on or across the lands of others for agricultural, domestic or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having first been made, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into the court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

SECTION 17 IMPRISONMENT FOR DEBT. There shall be no imprisonment for debt, except in cases of absconding debtors.

[Vol. 1—page 30]

SECTION 18 MILITARY POWER, LIMITATION OF. The military shall be in strict subordination to the civil power.

SECTION 19 FREEDOM OF ELECTIONS. All Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

SECTION 20 BAIL, WHEN AUTHORIZED. All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great.

SECTION 21 TRIAL BY JURY. The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

SECTION 22 RIGHTS OF THE ACCUSED. In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: *Provided*, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed. [AMENDMENT 10, 1921 p 79 Section 1. Approved November, 1922.]

Original text — Art. 1 Section 22 RIGHTS OF ACCUSED PERSONS — In criminal prosecution, the accused shall have the right to appear and defend in person, and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed, and the right to appeal in all cases; and, in no instance, shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

SECTION 23 BILL OF ATTAINDER, EX POST FACTO LAW, ETC. No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

(2010 Ed.)

son constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.*

*Note: Proposed by congress on December 9, 1803; declared ratified on September 25, 1804; supplemented by Amendment XX.

AMENDMENT XIII

§ 1 ABOLITION OF SLAVERY. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 2 POWER TO ENFORCE THIS ARTICLE. Congress shall have power to enforce this article by appropriate legislation.*

*Note: Proposed by congress on January 31, 1865; declared ratified on December 18, 1865.

AMENDMENT XIV

§ 1 CITIZENSHIP RIGHTS NOT TO BE ABRIDGED BY STATES. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2 APPORTIONMENT OF REPRESENTATIVES IN CONGRESS. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridges, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

§ 3 PERSONS DISQUALIFIED FROM HOLDING OFFICE. No person shall be a senator or representative in congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house, remove such disability.

[Vol. 1 RCW—page 8]

§ 4 WHAT PUBLIC DEBTS ARE VALID. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5 POWER TO ENFORCE THIS ARTICLE. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.*

*Note: Proposed by congress on June 13, 1866; declared ratified on July 28, 1868.

AMENDMENT XV

§ 1 NEGRO SUFFRAGE. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

§ 2 POWER TO ENFORCE THIS ARTICLE. The congress shall have power to enforce this article by appropriate legislation.*

*Note: Proposed by congress on February 26, 1869; declared ratified on March 30, 1870.

AMENDMENT XVI

AUTHORIZING INCOME TAXES. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.*

*Note: Proposed by congress on July 12, 1909; declared ratified on February 25, 1913.

AMENDMENT XVII

POPULAR ELECTION OF SENATORS. The senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.*

*Note: Proposed by congress on May 13, 1912; declared ratified on May 31, 1913.

(2010 Ed.)

members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6 COMPENSATION, PRIVILEGES, DISABILITIES. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION 7 PROCEDURE IN PASSING BILLS AND RESOLUTIONS. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved

by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8 POWERS OF CONGRESS. The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and of fences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SECTION 9 LIMITATIONS UPON POWERS OF CONGRESS. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may

be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION 10 RESTRICTIONS UPON POWERS OF STATES. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

SECTION 1 EXECUTIVE POWER, ELECTION, QUALIFICATIONS OF THE PRESIDENT. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected, as follows

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[Vol. 1 RCW—page 4]

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.*

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

*Note: Provisions superseded by Amendment XII.

SECTION 2 POWERS OF THE PRESIDENT. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United