

The RCW 11.54 Basic Award: Past, Present, and Future

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Hans P. Juhl
Ryan Swanson Cleveland, PLLC
Phone: 206.654.2203
Email: juhl@ryanlaw.com

Ryan L. Montgomery
Montgomery Purdue PLLC
Phone: 206.682-7090
Email: rmontgomery@montgomerypurdue.com

HANS P. JUHL is a member of Ryan, Swanson & Cleveland, PLLC where he has a civil litigation and trial practice which emphasizes complex trust and estate disputes, real property litigation, and private and public construction claims. Hans is a 1999 graduate of Washington State University and 2002 graduate of Northeastern University School of Law.

Ryan L. Montgomery is a member of Montgomery Purdue PLLC. Ryan's practice focuses on trust and estate planning, wealth transfer planning, business succession planning, and trust and estate administration. Ryan is a graduate of the University of Washington Law School J.D. and L.L.M. programs.

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I. INTRODUCTION.

Washington statutory law provides for a “basic award” that a surviving spouse, surviving domestic partner, and certain surviving children may claim in a decedent’s estate.¹ The basic award, described in RCW 11.54, is exempt from creditor claims and may be claimed notwithstanding contrary provisions in the decedent’s estate plan.² The primary purpose of the basic award is to provide a means to maintain the financial health of the family after a death has occurred.³ Prior to 2021, the statutory awards available to surviving spouses under RCW 11.54 and its predecessor RCW 11.52 appear, from the dearth of modern case law discussing them, to have been employed, or at least litigated, with some infrequency. However, with the 2021 amendment to the homestead exemption amount,⁴ the potential value of basic awards increased dramatically. To address the ambiguities and potential inconsistencies that could arise in the post-2021 application of RCW 11.54, and with input from members of the WSBA Real Property, Probate, and Trust section (amongst others), the Washington State legislature enacted ESSB 5589. The provisions of ESSB 5589 and its changes to current RCW 11.54 are discussed below.

II. HISTORICAL OVERVIEW.

The codification of the provision for support of a decedent’s family is as old as Washington itself. The first territorial laws of Washington Territory, enacted in 1854, contain a section entitled “Provision for the Support of Family.” Sections 71-77 of the Laws of Washington (1854) provide a framework which has, in large part, been maintained through various amendments and recodifications to the present chapter 11.54 RCW.

In 1950, when the legislature adopted the Revised Code of Washington, section 103, chapter 156, Laws of 1917 was re-enacted as chapter 11.52 RCW. RCW 11.52, entitled “Provisions for Family Support,” would remain law until it was repealed in its entirety and replaced by RCW 11.54 in 1997. Broadly, the drafters’ intent behind replacing RCW 11.52 with RCW 11.54 was to consolidate provisions of RCW 11.52 which recognized a homestead award, an award in lieu of homestead, and a maintenance award, as follows:

“The provisions for family support are restated in their entirety. Existing statutory provisions regarding awards in lieu of homestead and family allowance are consolidated in a new chapter. A court may award support

¹ See RCW 11.54.

² RCW 11.54.070.

³ *In re Estate of Garwood*, 109 Wash. App. 811, 813-814, 38 P.3d 362 (2002).

⁴ Effective May 12, 2021 (see note following RCW 6.13.010).

to a surviving spouse or minor children from either the probate or nonprobate assets of an estate, regardless of whether or not a probate proceeding has been commenced in this state. Courts have discretion to increase the amount of support awarded to a surviving spouse or minor children. A petition for support must be filed within 18 months of death if a personal representative has been appointed, and in any case before the close of probate.”

Washington Senate Bill Report, 1997 Reg. Sess. S.B. 5110.

With respect to RCW 11.54.010, the intent was to consolidate RCW 11.52.010 (award in lieu of homestead), RCW 11.52.020 (homestead award to surviving spouse), and RCW 11.52.022 (award in addition to homestead). RCW 11.54 sought to promote clarity and consistency by combining these concepts into one award for surviving spouses and children of the decedent. Moreover, the new statute codified a Supreme Court ruling that permitted the award to be made from either a decedent’s community or separate property (*Matter of Ratcliff’s Est.*, 95 Wn.2d 62, 63, 621 P.2d 730, 730 (1980)), authorized an award to the surviving spouse or children from nonprobate assets, allowed a claimant to bring their petition whether or not a probate had been commenced, and provided a right to the decedent’s surviving adult children to petition for a discretionary division of the surviving spouse’s award.

In replacing RCW 11.52 with RCW 11.54, the legislature also, for the first time, defined the basic award amount with reference to RCW 6.13.030 (See current RCW 11.52.020), the homestead exemption amount. Current RCW 11.52.010, .022 and .030 articulated the fixed amounts of the award. In 1997, the amount of the homestead exemption was \$30,000. It would not be increased to \$125,000 until 2007.

In 1999, conforming amendments were made to track with RCW 11.96A, the then newly enacted Trust and Estate Dispute Resolution Act. (RCW 11.96A).

In 2008, the legislature amended RCW 11.54 to include a right to relief for registered domestic partners. To date, there is no right to relief for surviving members of committed intimate relationships.

In 2021, the legislature amended RCW 6.13.030, the homestead exemption amount. While this amendment is discussed more fully below, the amount of the homestead exemption amount and, therefore, the basic award under current RCW 11.54 is presumably the greater of \$125,000 and “the county median sale price of a single-family home in the preceding calendar year” as determined by “the Washington center for real estate research.” (RCW 6.13.030(1).)

The history of RCW 11.52 and its successor, RCW 11.54, is important both to understand the intent of the legislature, and also to anticipate interpretation by the Courts. As Division 3 noted in 2021, “[s]ince the provisions of chapter 11.54 RCW

parallel those of prior law, we may look to prior case law for guidance.” *Matter of Est. of Hein*, 17 Wn. 2d 243, 258, 485 P.3d 953, 961 (2021).

III. SUMMARY OF PRE-AUGUST 1, 2024 RCW 11.54.

As discussed in detail below, ESSB 5589 substantially modifies RCW 11.54. Because the new provisions amending RCW 11.54 are not effective until August 1, 2024, these materials refer to pre-August 1, 2024 RCW 11.54 as “current RCW 11.54.”

A. Current RCW 11.54.010 – (who, what, and when...?).

Current RCW 11.54.010 establishes (1) the surviving spouse or surviving domestic partner’s right to petition for the basic support award, (2) the right of the decedent’s adult surviving children to petition for a division of the basic award, and (3) the right of the decedent’s minor children to petition in the absence of a surviving spouse (or domestic partner). The basic award can be made from the decedent’s community or separate property, and the assets of the decedent abate pursuant to RCW 11.10 to satisfy the award.

“Before present RCW 11.54.010 permitted a surviving spouse to petition for a ‘basic award’ from a decedent’s property, former chapter 11.52 RCW permitted the surviving spouse to petition for a similar award, referred to as an award of ‘homestead’ or an award ‘in lieu of homestead’... Like the basic award under present law, the homestead or in lieu of homestead award was absolute, subject to a few statutory circumstances in which the court could exercise discretion...[T]he basic award serves the same purpose as the former homestead or in lieu of homestead award.”

Hein, 17 Wn. App. 2d at 257, 485 P.3d 953 (2021).

“[A] surviving spouse may waive the right to a homestead allowance by express writing or conduct that renounces or abandons the right... implied waiver is enough. The test is whether the parties through their actions have exhibited a decision to renounce the community with no intention of ever resuming the marital relationship.” *Matter of Est. of Lindsay*, 91 Wash. App. 944, 950-951, 957 P.2d 818, 821-822 (1998) (citations omitted).

Under pre-August 2024 law, a decedent’s adult child has no right to independently petition for the award in the absence of a prior petition by the surviving spouse. *In re Est. of Garwood*, 109 Wash. App. 811, 817, 38 P.3d 362, 365 (2002).

Current RCW 11.54.010(3) provides when a petition must be filed, whether or not probate proceedings have been commenced, which is prior to the earliest of: (1) eighteen months from the decedent’s death, if within twelve months (i) a personal representative has been appointed, or (ii) a notice agent has filed a declaration and oath as required in RCW 11.42.010(3)(a)(ii); or (2) the termination of any probate proceeding; or (3) six years from the date of the death of the decedent.

B. RCW 11.54.020 – (how much?).

As stated above, since the repeal of RCW 11.52 and enactment of RCW 11.54, the basic award has been tied to RCW 6.13.030. Current RCW 11.54.020, “Amount of basic award,” provides as follows:

The amount of the basic award **shall be the amount specified in RCW 6.13.030(2) with regard to lands**. If an award is divided between a surviving spouse or surviving domestic partner and the decedent's children who are not the children of the surviving spouse or surviving domestic partner, the aggregate amount awarded to all the claimants under this section shall be **the amount specified in RCW 6.13.030(2)** with respect to lands. The amount of the basic award may be increased or decreased in accordance with RCW 11.54.040 and 11.54.050. (Emphasis added).

Pre-2021 RCW 6.13.030 previously provided (in relevant part) as follows:

[T]he homestead exemption amount shall not exceed the lesser of (1) the total net value of the lands, manufactured homes, mobile home, improvements, and other personal property, as described in RCW 6.13.010, or **(2) the sum of one hundred twenty-five thousand dollars in the case of lands...** (Emphasis added).

However, current RCW 6.13.030 now provides (in relevant part) as follows:

(1) The homestead exemption amount is the greater of:

(a) \$125,000;

(b) The county median sale price of a single-family home in the preceding calendar year; or ...

(2) In determining the county median sale price of a single-family home in the preceding year, a court shall use data from the Washington center for real estate research or, if the Washington center no longer provides the data, a successor entity designated by the office of financial management.

Accordingly, prior to the revision to the homestead exemption statute, RCW 11.54 unambiguously referred to RCW 6.13.030(2)'s “amount” of \$125,000. Following the 2021 change, current RCW 11.54.20's reference to “the amount specified in RCW 6.13.030(2)” now directs us, not to an amount, but instead to part of the method the court uses to determine the homestead exemption if the median sale price for single-

family homes in the applicable county exceeds \$125,000. There is nothing in the legislative record of the 2021 homestead exemption amendments demonstrating an awareness of the interplay between RCW 6.13.030 and RCW 11.54.020. The ambiguities resulting from the 2021 amendments are discussed in more detail below.

The Washington Center for Real Estate Research (“WCRER”) is a state funded body established by the legislature under RCW 18.85.741, which provides:

The purpose of a real estate research center in Washington State is to provide credible research, value-added information, education services and project-oriented research to real estate licensees, real estate consumers, real estate service providers, institutional customers, public agencies, and communities in Washington State and the Pacific Northwest region.

The center was initially housed at Washington State University with the mission to provide a bridge between academic study and research on real estate topics and the professional real estate industry. It served that mission at WSU until moving to the University of Washington in 2012.

In 2023, the range of county median home prices was \$239,300 (Lincoln County) to \$956,800 (San Juan County). Current Washington law is silent on whether the applicable county is (1) where the probate is filed, (2) where the decedent resided upon their death, (3) the county of the claimant(s), or otherwise. The statute is also unclear as to whether the applicable amount is tied to the date of the decedent’s death, the date of filing the probate matter, or the date upon which a petition brought pursuant to RCW 11.54.010 is filed. But see *Cody v. Herberger*, 60 Wash. 2d 48, 51, 371 P.2d 626, 628 (1962), overruling prior cases “which hold that the value of the homestead should be determined as of the date of the filing of the petition for an award in lieu of homestead... [Those cases] are hereby overruled insofar as they are inconsistent with” RCW 11.52.010.

Current RCW 11.54.020 further provides that, if the basic award is divided, its aggregate amount will be the amount prescribed by RCW 6.13.030 and notes that the amount of the basic award can be increased, or decreased, consistent with RCW 11.54.040 and RCW 11.54.050.

C. RCW 11.54.030 – (award conditions).

Current RCW 11.54.030 requires the court to find, before making a spousal support award, “that the funeral expenses, expenses of last sickness, and expenses of administration have been paid or provided for” and specifically prohibits a petition by a slayer (“...a surviving spouse or surviving domestic partner or child who has participated, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.”). However, it appeared unclear how RCW 11.54.030 interacted with RCW 11.76.110 with respect to the order of paying debts from an estate.

D. RCW 11.54.040 – (increase in award).

Only if the court finds, by clear, cogent and convincing evidence, that the claimant's present and reasonably foreseeable future needs "during the pendency of the probate...with respect to basic maintenance and support" will not be provided from other sources, and that the award would not be inconsistent with the decedent's intentions, the court can increase the amount of the award, taking into account the resources available to the claimant or the claimant's dependents "during the pendency of probate" including employment income and benefits from the decedent's estate:

The 'increase' to the basic award authorized by RCW 11.54.040(1) serves the purpose of the former 'family allowance' or 'maintenance';...If a family award is made to a surviving spouse, it may be increased above the homestead exemption amount based on a showing of the surviving spouse's financial needs during pendency of the probate proceedings.

Hein, 17 Wn. App. 2d at 261–62, 485 P.3d 953 (2021).

In determining the decedent's intentions for the purpose of weighing an increase, the court can consider, "without limitation": provisions made for the claimant under the decedent's will, or otherwise; provisions made for third parties under the will that would be affected by the award; the duration and status of the marriage; the effect of the award on other available benefits; the size and nature of the decedent's estate; oral or other statements made by the decedent, if otherwise admissible. But, the "fact that the decedent has named beneficiaries other than the claimant as recipients of the decedent's estate is not of itself adequate to evidence such an intent" as would defeat an increase in the award.

Since the basic award takes priority and causes other claims to abate, it necessarily interferes with the distribution provided by the decedent's will. *Hein*, 17 Wn. App. 2d at 257, 485 P.3d 953 (2021).

The request for an increase in the award can not only be made after, or in conjunction with, the filing of a petition for the basic award, but also at any time during the pendency of the probate and, likewise, any person whose interest in the estate is "directly affected" can request a modification to the increased award, at any time during the probate. RCW 11.54.040(4).

E. RCW 11.54.050 – (decrease in award).

The court can decrease the award under two circumstances. First, the court can decrease the award if the claimant is entitled to receive probate or nonprobate property, including insurance, by reason of the decedent's death, in which case the court can decrease the award by no more than the value of that property, taking into consideration the factors presented in RCW 11.54.040(2) – the claimant's need and available resources. Second, the court can decrease the award if the increased award would decrease amounts otherwise distributable to the decedent's surviving children that are

not the children of the surviving spouse, or any of decedent's minor children, taking into account both the surviving children's need and available resources, and the decedent's intention (RCW 11.54.040(3)).

F. RCW 11.54.060 – (priority of award) and RCW 11.54.070 – (immunity from claims).

The basic award generally has priority over other claims of the estate. However, for the purpose of determining which assets to use to satisfy the award, the claimant is treated as a general creditor. (RCW 11.52 required the house and household goods to be part of the award.) As a result, assets in the estate remain subject to existing security liens.

Current RCW 11.54.070 immunizes any property awarded under RCW 11.54 from the claims of creditors and judgment creditor/lienholders. The enactment of RCW 11.54.070 was intended to resolve an ambiguity under then existing law by explicitly immunizing both the spouse's and the decedent's interest in any community property awarded.

Though no *reported* case appears to be directly on point, it seems unlikely that a support award granted under RCW 11.54 would take priority over a federal tax obligation, or lien. *Williams v. I.R.S.*, No. C05-5371RBL, 2005 WL 2757920, at *2 (W.D. Wash. Oct. 25, 2005); 31 U.S.C. §3713; I.R.C. §6321. See also, Internal Revenue Manual Section 5.5.2.4(3):

Federal law controls in situations in which a federal tax lien competes with any interest under state law or by contract. However, the Service may in its discretion not assert priority of its federal tax lien over reasonable administrative expenses of the estate, to the extent that such expenses are not covered by an insurance policy, trust or other similar benefit that covers the cost of administrative expenses of the estate. State statutes may limit the amount of reasonable administrative expenses permitted to be paid during probate.

G. RCW 11.54.080 – (petition to protect other property).

This section reaffirms the general concept (on which the spousal support award statutes have been based since their inception) that persons entitled to a spousal support award should be entitled to hold property equal to the homestead exemption which is free from creditors so that the surviving families of decedents have some basic security.

Under RCW 11.54.080, if a full award is not made to the surviving spouse/registered domestic partner/claimant, or the decedent's estate was insufficient to fully fund the basic award, the claimant(s) can petition, under the TEDRA procedural

rules, for protection from creditors of other property not subject to probate, up to the aggregate amount of the base award.

IV. ESSB 5408's Homestead Exemption Revision.

As described above, the amount of the basic award has long been determined with reference to the statutory definition of the "homestead exemption" in creditor/debtor matters. ESSB 5408's above-described revisions to the homestead exemption created multiple issues with respect to calculating the basic award, including: (A) ambiguity in the "amount" referenced in RCW 11.54 (because RCW 6.13.030(2) no longer refers to a dollar amount but instead describes part of a method for determining a dollar amount); (B) RCW 6.13.030(1)(b) does not define which county and which date are applicable for determining the median single-family home value for purposes of calculating the basic award under RCW 11.54; and (C) if the basic award in RCW 11.54 is now to be calculated based on the county median home sale prices as described RCW 6.13.030(1)(b), the basic award has the potential to be much larger than \$125,000 in many cases,⁵ which in turn may cause profound disruption to the dispositive powers of testators.

A. What is the new amount for a basic award under Current RCW 11.54.020?

The above-described issues created by the revision to the homestead exemption amount necessitated new legislation to clarify the legislature's intent. In analyzing potential revisions, the following potential changes to current RCW 11.54.020's reference to RCW "6.13.030(2)" were discussed:

- (1) The first potential solution was to change the existing RCW 6.13.030(2) reference to RCW 6.13.030(1)(a) (i.e., \$125,000), and also to strike the "with regard to lands" language. In that case, the basic award would simply be \$125,000 in all cases.
- (2) The second potential solution was to change the existing RCW 6.13.030(2) reference to RCW 6.13.030(1)(b), i.e., to the county median single family home price. In that case, the basic award would be greater than \$125,000, and in many cases, substantially so.

⁵ The annual report of the Washington center for real estate research ("WCRER") on the median single-family home value by county is found on the center's website, located at: <https://wcrer.be.uw.edu>. According to the WCRER website, the highest-priced county median in 2023 was San Juan County, with a median of \$956,800. WCRER, *Median Home Prices: State of Wash. & Counties Annual, 2015-2022*, <https://wcrer.be.uw.edu/wp-content/uploads/sites/60/2023/03/HMR-4Q2022-annual-medians.pdf> (last visited Mar. 18, 2024).

- (3) A third potential solution was to change the existing RCW 6.13.030(2) reference to RCW 6.13.030(1), i.e., to the greater of \$125,000 or the county median single family home price. Because the median single family home price is higher than \$125,000 in all counties, this third option was unlikely to have any meaningful difference from the second option.
- (4) A fourth possible solution was to change the current RCW 6.13.030(2) reference to the greater of \$125,000 or the county median home value, but generally *only* to the extent that the basic award actually consists of homestead property (as defined by RCW 6.12.010) used as a residence by a decedent owner at the time of death.

B. If the new basic award amount is defined (in whole or in part) by the “county” median single-family home price, which county applies?

From a practical standpoint, every single county’s median sale price is significantly in excess of \$125,000.⁶ As a result, the homestead exemption amount will, absent a dramatic drop in real estate values, almost certainly be equal to the “county median sale price of a single-family home in the preceding calendar year.” RCW 6.13.030. If the current RCW 11.54 basic award is to be determined by this value, no portion of the revised RCW 6.13.030 or current RCW 11.54 defines which county’s median home value applies. This lack of definition as to which county applies leads to additional ambiguity in how to calculate the amount of the basic award. One option considered to resolve this ambiguity was to designate by statute that the applicable county for determining the basic award is the county in which the probate is administered. However, this approach could lead to manipulation because a probate need not be commenced in the county of the decedent’s residence at death.⁷ For example, an estate’s personal representative could open probate in Lincoln County (the lowest county median price) or San Juan County (the highest county median price), solely to minimize or maximize the basic award, regardless of whether the decedent, the Personal Representative, or a beneficiary had any ties to such locations.

Alternatively, RCW 11.54 could designate the county of residence of the basic award claimant as the applicable county for calculating the basic award. However, under the current statute, it is possible for the claimant to be an adult child of the decedent who may not even reside in Washington, let alone the same county as the decedent. Moreover, multiple claimants (with multiple home counties) are possible. Unlike in a bankruptcy, where the county of the living person/potential debtor (and

⁶ According to WCRER, the range of county median single-family home prices for 2023 was \$239,300 (Lincoln County) to \$956,800 (San Juan County). *Id.* No county has had a median price below \$125,000 since 2018. *Id.* At the time of publication of these materials, year 2023 is the most recent year for which data is available on the WCRER site. *Id.*

⁷ Venue for probate lies in any county in Washington. RCW 11.96A.050(4).

potentially his or her home therein) sets the value, it is difficult to articulate a sound policy reason for a family support award to vary based on the venue of the probate or the claimant's county of residency.

Absent a specified county for determining the median price, litigation over the correct county could be expected. Because the decedent's county of residence is fixed, and because it avoids the uncertainty of the optional probate location or an out-of-state claimant, the decedent's county of residence seemed the most logical choice.

C. Testator Control and Creditor Protection.

Continuing (or severing) a strict connection between the basic award and the homestead exemption implicated at least two important issues: (1) The ability of a testator to control the disposition of his or her own property at death, and (2) Setting the portion of an estate that is exempt from creditors before death, during administration, and after distribution of the estate assets.

1. Testator Control. Linking the basic award to the homestead exemption and its references to the county median single-family home value has significant potential to frustrate a testator's thoughtfully structured estate plan. A likely scenario in which this may arise is at the death of a spouse in a second (or third, etc.) marriage. It is quite common for persons who marry later in life to keep their finances separate and to provide for their own respective families in their Wills, rather than to each other. Imagine a first spouse to die (as a San Juan County resident, with a San Juan County resident spouse, and a probate in San Juan County) with a \$956,800 estate, and a surviving spouse with a separate estate of many millions. If the decedent spouse's estate plan left his or her estate to his or her own children, the revision to the homestead exemption arguably would enable the surviving spouse to seek 100 percent of the estate (despite no financial need) and completely disinherit the decedent spouse's children.

In cases where an actual home was part of an estate, it appeared logical that the legislature intended the current higher homestead exemption to continue to apply in determining the amount the surviving spouse (or children) may seek as a basic award. However, this assumption arguably did not (or should not) apply in cases where the decedent did not own any interest in homestead property. It thus appeared to be a better approach to limit that higher homestead exemption amount only to cases where the estate actually included homestead property. In that way, the legislature's policy goals of keeping families in the home would be preserved, while not unduly restricting a testator's testamentary powers where no actual homestead property exists.

2. Creditor Protection. Current RCW 6.13.070 provides that the homestead exemption amount is exempt from creditors during life. Current RCW 11.54.070 provides that the basic award amount is exempt from creditors following the death of the surviving spouse. As indicated previously, the basic award amount has been defined with reference to the homestead exemption for decades. Thus, the historic statutory framework provides that the homestead exemption (which protects

those assets during life) sets the value of the basic award, which in turn sets the portion of the estate that is exempt from creditors after death. If the statute were amended to confirm that the basic award remains a \$125,000 maximum, RCW 11.54.070 would then correspondingly provide that the maximum portion of the estate protected from creditors was a maximum of \$125,000. This amount would very likely in fact be lower than an actual exempt homestead value. Thus, for actual homestead property estates, the amount exempt at death would be considerably lower than the portion of the same decedent's exempt assets during life (e.g., immediately prior to death). Moreover, once a residence was distributed to a new beneficiary (and used as a qualifying homestead), the beneficiary would again have the benefit of the higher exemption. As a result, merely amending the reference to 6.13.030(2) to 6.13.030(1)(a)'s \$125,000 for all purposes in RCW 11.54 would create an inconsistent treatment of actual homestead assets during life versus at death with respect to creditors.

Because the primary purpose behind the homestead exemption has been the preservation of the family unit,⁸ it was proposed to simply provide that actual homestead assets up to the applicable county limit passing to a surviving spouse, surviving domestic partner, and/or applicable children of a decedent under RCW 11.54.020 are protected from the claims described in RCW 11.54.070. If the estate contains no actual homestead property, the lesser \$125,000 amount shall set the creditor protected portion of the estate. This continues the public policy of protecting the surviving spouse/family unit from creditors (through homestead protection),⁹ while not excessively expanding the potential imposition of the basic award on a testator's estate plan or more broadly expanding creditor protection in cases where no homestead property exists. This approach would also prevent the inconsistent treatment that would result from (1) the full (new) homestead exemption applying to the decedent prior to death, and (2) applying again in the hands of the beneficiary following the close of the estate administration, but (3) a potentially lesser amount applying during the estate administration.

V. ESSB 5589.

A. General Proposal.

As described above, the 2021 changes to RCW 6.13.030 rendered it impossible to discern, with any level of certainty, the amount of the basic award under current RCW 11.54. As a result, the method for calculating the basic award required clarification through further legislative revision. Any revisions that continued to make reference to

⁸ "Traditionally, the purpose of the homestead statute has been to protect the homesteader and his dependents in the enjoyment of a domicile." *In re Estate of Garwood*, 109 Wash. App. at 813-14. The homestead statute specifically protected and benefited the surviving spouse and/or minor children. *In re Estate of Dillon*, 12 Wn. App. 804, 806, 532 P.2d 1189 (1975). It also provided a means for maintaining the family after a death occurred.

⁹ See, e.g., *In re Estate of Hein*, 17 Wn. App. 2d 243, 258-259, 485 P.3d 953 (2021). ("[C]ase law teaches that the homestead award is strongly favored as a family protection device. It is based on what is perceived to be sound public policy, and thus it is given a high priority and is liberally construed to effectuate that policy, in favor of granting the award wherever possible"). Internal citations omitted.

the “county median single-family residence” value for the preceding calendar year also needed to define which county applies and whether the calendar year is determined in reference to the date of death, the date of the basic award claim, or the date of probate filing. The most logical county seems to be that of the decedent’s domicile, and the most logical year would be the year of death. ESSB 5589 was drafted, presented, and enacted to address these issues.

B. RCW 11.54.020 – (how much?).

For the reasons described above, members of the Washington State Bar Association’s Real Property Probate and Trust Section drafted a revised RCW 11.54. Following input from state legislators (including but not limited to Senator Derek Stanford, the bill sponsor), as well as the elder law and creditor/debtor sections of the bar, the proposed new definition of the basic award contained in SB 5589 is essentially the #4 option discussed in Section IV, A above:

- (1) To the extent that an estate contains actual homestead or other property (e.g., the relatively minor personal property exemptions) that is exempt under RCW Title 6 immediately before the decedent’s death, the amount is generally defined with reference to the value of such exempt property by including the median single-family residence value of (a) the decedent’s county of residence and (b) as of the decedent’s date of death; and
- (2) To the extent the estate does not contain actual homestead or other property that is exempt under RCW Title 6 (or if the actual Title 6 property in the estate is in fact less than \$125,000), the \$125,000 limitation is retained, but for all purposes is tied to an inflationary adjustment factor from October, 2021 based on the Consumer Price Index for the Seattle area. As a result, immediately upon the August 1, 2024 effective date, the \$125,000 figure already adjusts upwards (likely now in excess of \$140,000).

In both cases, the actual homestead property (i.e., the decedent’s home) shall be included as a part of any basic award awarded to the claimant, while in cases where the actual homestead exempt property is less than \$125,000 (as adjusted), additional property shall be awarded so that the total award will equal \$125,000 of value (as adjusted).

C. Amended RCW 11.54.010 – (what? who?).

The new statute modifies the process for petitioning for an award, and also slightly modifies the parties with rights to file a petition. As discussed above, the prior rule provided that no child of the decedent could petition for the award unless the

surviving spouse or surviving domestic partner first did so.¹⁰ Under new RCW 11.54.010, any person entitled to seek a basic award may file the initial petition. If the decedent is survived by one or more dependent children, the court may divide the award between the surviving spouse or surviving registered domestic partner and all or any of the decedent's surviving dependent children as the court deems appropriate.

Additionally, prior law defined the children permitted to seek an award as only those children who were either minors or "children of the decedent who are not also the children of the surviving spouse or surviving domestic partner."¹¹ New RCW 11.54.010 now permits any dependent child of the decedent to seek the (or a portion of the) award.¹² The amended statute thus no longer contains the prior statute's express protections for non-dependent children who are not also the children of a surviving spouse or surviving registered domestic partner (such children who are dependents of the decedent continue to have rights under the revised statute).

Considering the growing value of the basic award, a primary purpose of ESSB 5589 was to provide more flexibility to the court to protect (a) a testator's intentions or, where necessary, (b) the needs of a surviving spouse or registered domestic partner and/or certain persons dependent on the decedent. This authority allows the court broad discretion to grant equitable relief, but that remedy must be initiated by a claimant.

D. RCW 11.54.030 – (award conditions (and when?)).

The necessary conditions to an award are generally carried forward from current law. The time limits set forth in existing RCW 11.54.010 (discussed above) have been retained (i.e., no change) in new RCW 11.54.030(3). The court remains prohibited from making an award to a slayer, but is now also prohibited from making an award to a vulnerable adult abuser, as defined under RCW 11.84.010. Although an award is not conditioned upon the prepayment of or the setting aside of funds to pay the costs of medical expenses recoverable under RCW 43.20B.080 or other liens or encumbrances, an award remains responsible for those obligations.

E. RCW 11.54.040 and .050 – (increases or decreases in award).

The revised RCW 11.54 generally continues the current statute's judicial discretion regarding modifications to the basic amount. RCW 11.54.040 generally continues the prior law that grants discretion to the court to award a claimant additional sums to pay for basic maintenance and support during any proceeding under title 11 RCW relating to the decedent's probate or nonprobate estate. Revised RCW 11.54.050

¹⁰ *In re Est. of Garwood*, 109 Wash. App. 811, 817, 38 P.3d 362, 365 (2002)

¹¹ RCW 11.54.010(1).

¹² "Dependent" is defined as a child who received more than half of that person's support from the decedent during the 12 months preceding the decedent's death.

continues the discretion to decrease the award in certain specified circumstances, and amends the current form of this section to conform with the changes to other sections of this chapter.

F. RCW 11.54.060 – (priority of award) and RCW 11.54.070 – (immunity from claims).

Revised 11.54.060's limitations on the priority of the basic award are consistent with existing statutory and common law. However, ESSB also amended RCW 11.76.110 to clarify any potential ambiguities regarding the priority of paying claims from the estate. Pre-August 2024 RCW 11.76.110 makes no mention of where the basic award falls in terms of priority, and mentioned above, further makes no mention of federal liens. Under the amended statute, the basic award has express priority over creditors' claims that exceed the value of their security, but expressly clarifies that the basic award is subject to certain enumerated higher priority claims, including (1) federal preemption (e.g., tax liens), (2) enforceable encumbrances and liens, and (3) the administrative expenses, funeral expenses, and expenses of last sickness.¹³ The intent of these revisions were to conform to generally understood (but not expressly stated) existing law.

Finally, SB 5589 retains current RCW 11.54.070's creditor protection over the entirety of the basic award as ultimately determined. As a result, estates with actual homestead property will potentially benefit from greater creditor protection than estates where the basic amount (and corresponding creditor protection) is limited to \$125,000, as adjusted by inflation.

G. RCW 11.54.080 – (petition to protect other property).

The provisions in current RCW 11.54.080 have been relocated to other sections of the chapter, including (Post August 2024) RCW 11.54.010.

H. Bill History.

During the 2023 legislative session, Senate Bill 5589 was passed unanimously by the Senate, and passed out of committee in the House for consideration in open session.¹⁴ However, some members of the House indicated surprise that Washington State had *any* existing law that restricted a testator's ability to freely devise his or her assets, and others expressed a desire to move to a lower basic award amount

¹³ Amendments to RCW 11.76.110 incorporate *In re Shoptaw's Estate*, 54 Wn.2d 602, 343 P.2d 740 (1959); 31 U.S.C. § 3713; *In re Offield's Estate*, 7 Wn.App. 897, 503 P.2d 767 (Div. 1, 1972); Wash. Const. art. 1, § 23; *In re Hackett Estates*, 120 Wash. 236, 207 Pac. 11 (1922); *In re Schoenfeld's Estate*, 56 Wn.2d 197, 351 P.2d 935 (1960).

¹⁴ The full text of ESSB 5589 can be found at <https://lawfilesexxt.leg.wa.gov/biennium/2023-24/Pdf/Bills/Senate%20Passed%20Legislature/5589-S.PL.pdf>.

independent of the homestead exemption. As a result, the House postponed further discussion of SB 5589 to the 2024 legislative session. In the interim, members of the RPPT section met with several members of the House in late 2023 and early 2024 to discuss any outstanding concerns. Following these meetings, SB 5589 was reintroduced as Engrossed Senate Substitute Bill 5589, was again passed unanimously in the Senate, subsequently passed the House by a 93-2 vote, and was signed into law by Governor Inslee on March 13, 2024.

VI. Conclusion.

Effective August 1, 2024, ESSB 5589 will provide needed clarity for calculating the amount of the basic award while maintaining the updated protections for families intended by the recently revised RCW 6.13.030. These revisions to RCW 11.54 should serve to reduce the potential for litigation (and its associated costs to estates) by reducing ambiguities, and providing much-needed guidance to personal representatives, claimants, and the courts.

EXHIBIT A

COMMENTS FOR ENGROSSED SUBSTITUTE SENATE BILL (ESSB) 5589 (2024) CHAPTER 20, LAWS OF 2024 68TH LEGISLATURE, 2024 REGULAR SESSION

(Prepared by Watson B. Blair and Ryan L. Montgomery on behalf of the committee that the Real Property, Probate and Trust Section of the Washington State Bar Association tasked with drafting ESSB 5589)

(Section references are to ESSB 5589.)

Sec. 1. (New Section) Purposes.

STATUTE:

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

- (1) The purposes of this chapter are:
 - (a) To clarify the exemptions from attachment, execution, and forced sale that apply after a decedent's death;
 - (b) To establish a procedure for allocating the exempt property among claimants; and
 - (c) To establish a procedure by which the decedent's surviving spouse, surviving registered domestic partner, or surviving dependent children may request basic financial support during the pendency of any proceedings under this title relating to the decedent's probate or nonprobate assets.
- (2) This chapter applies to probate and nonprobate assets.

COMMENT:

ESSB 5589, section 1 (New Section) is added to clarify the purposes of chapter 11.54 RCW and the intent that chapter 11.54 RCW applies to both probate and nonprobate assets. The essential mechanics of ESSB 5589 are: (1) to continue any exemptions under Title 6 RCW (including the homestead exemption and the personal property exemptions) for the benefit of the decedent's estate following the decedent's death, (2) to provide a minimum exemption to the extent that the exemptions under Title 6 RCW do not exhaust that minimum amount, and (3) to provide more flexibility to the court to protect (a) a testator's intentions or, where necessary, (b) the needs of a surviving spouse or registered domestic partner and/or certain persons dependent on

the decedent. Although subject to certain conditions, the exemptions referenced in items (1) and (2) in the preceding sentence are automatic and require no action by a personal representative or a beneficiary. The authority referenced in items (3)(a) and (b) allows the court broad discretion to grant equitable relief, but that remedy must be initiated by a claimant.

Under ESSB 5589, section 3 (New Section), the minimum amount of the exemption is equal to the amount of the basic award under ESSB 5589, section 6 (RCW 11.54.020).

Sec. 2. (New Section) Definitions.

STATUTE:

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

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

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

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

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

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

COMMENT:

ESSB 5589, section 2 (New Section) defines four terms (child, claimant, dependent, and value) that are used throughout chapter 11.54 RCW. Some of the text in subsection (2) was relocated from RCW 11.54.080 as it existed before ESSB 5589, and some of the text in subsection (3) was relocated from RCW 11.54.060 as it existed before ESSB 5589.

Sec. 3. (New Section) Property exempt from creditors' claims.

STATUTE:

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

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

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

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

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

COMMENT:

ESSB 5589, section 3 (New Section) extends the protections of the statutory exemptions of Title 6 RCW past a decedent's death and in addition establishes a minimum protection from the claims of unsecured creditors.

ESSB 5589, section 3 (New Section) is not intended to alter exemptions from claims allowed under statutes not expressly referenced in this section, such as exemptions under chapter 48.18 RCW; nor is ESSB 5589, section 3 (New Section) intended to alter any express limitation on an exemption, see, e.g., RCW 6.13.080, RCW 6.15.020(2), and RCW 6.15.050.

Unlike the awards authorized under ESSB 5589, sections 4 (RCW 11.54.010) and 7 (RCW 11.54.040), the exemptions under ESSB 5589, section 3 (New Section) do not require an award by the court in order to take effect.

See ESSB 5589, sections 10 (RCW 11.54.060) and 12 (RCW 11.76.110) for (1) the requirements that all expenses of administration, funeral expenses, expenses of last sickness, and wages due for labor performed within sixty days immediately preceding the decedent's death be paid or provided for as a condition precedent to the exemption and (2) other limitations and exceptions to the exemptions from creditors' claims, see, e.g., RCW 6.13.080, RCW 6.15.020, and RCW 6.15.050, and the rights under encumbrances and liens, see *In re Hackett Estates*, 120 Wash. 236, 207 Pac. 11 (1922).

Sec. 4. (RCW 11.54.010) Award to surviving spouse, registered domestic partner, or dependent children-Petition.

STATUTE (RED-LINED):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATUTE (CLEAN):

RCW 11.54.010. Award to surviving spouse, registered domestic partner, or dependent children-Petition.

(1) Any one or more of a decedent's surviving spouse, surviving registered domestic partner, and dependent children may commence a judicial proceeding under

chapter 11.96A RCW for an award from the decedent's separate property and from the community property of the decedent and the decedent's spouse or registered domestic partner that are exempt from attachment, execution, and forced sale under section 3 of this act. The petition must:

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

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

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

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

(3) If the decedent is survived by one or more dependent children, the court may divide the award between the surviving spouse or surviving registered domestic partner and all or any of the decedent's surviving dependent children as the court deems appropriate.

(4) The awards under this chapter may be made either from the community property of the decedent and the decedent's spouse or registered domestic partner or from the separate property of the decedent.

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

(6) The basic award may be made whether or not any proceedings have been commenced under this title relating to the decedent's probate or nonprobate assets.

COMMENT:

Subject to other provisions in this chapter, ESSB 5589, section 4 (RCW 11.54.010) maintains the prior law permitting a cause of action under chapter 11.96A RCW through which a claimant (a defined term under ESSB 5589, section 2 [New Section]) may request an order allocating all or a portion of the exempt property to that claimant or to that claimant and other permissible claimants. Any person who qualifies as a claimant under ESSB 5589, section 2 [New Section]) may initiate the proceeding.

ESSB 5589, section 4 (RCW 11.54.010) does not allow a dependent who was not a spouse, registered domestic partner, or a child of the decedent to petition for an award. Also, it offers no special protection for children who are not also the children of a surviving spouse or surviving registered domestic partner, as prior law did.

Subsection (2) of ESSB 5589, section 4 (RCW 11.54.010) grants to the court broad (although limited by the principles of equity and fairness, see ESSB 5589, section 9) discretion to fashion an equitable remedy (such as a court might direct in a marital dissolution) where a testator or the laws of intestacy inequitably fail to provide for a claimant.

The court's discretion to order an award is governed in ESSB 5589, sections 5 (former RCW 11.54.030), 6 (RCW 11.54.020), 7 (RCW 11.54.040), 8 (RCW 11.54.050), 9 (New Section), 10 (RCW 11.54.060) (which applies to both the award and the exemption from creditors' claims), 11 (New Section), and RCW 11.54.090 - .100.

The provisions of ESSB 5589 are not intended to empower a court to alter the terms of any life insurance contract, employee benefit plan, or retirement plan, account, or arrangement; nor does chapter 11.54 RCW create any right, duty, liability, or cause of action with respect to property that is neither subject to probate administration nor defined as a nonprobate asset under RCW 11.02.005(13). See RCW 48.18.410 for exemptions granted with respect to life insurance and RCW 6.13.020 and the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461, for exemptions granted with respect to employee benefit plans and retirement plans, accounts, or arrangements.

Sec. 5. (RCW 11.54.030) Conditions to award. *[This provision will also be renumbered between RCW 11.54.010 and 11.54.020 per ESSB 5589, section 16.]*

STATUTE (RED-LINED):

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

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

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

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

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

(i) A personal representative has been appointed; or

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

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

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

STATUTE (CLEAN):

RCW 11.54.030. Conditions to award.

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

(2) The court may not make an award to or for the benefit of any person who is a slayer or abuser as those terms are defined in RCW 11.84.010 of the decedent.

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

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

(i) A personal representative has been appointed; or

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

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

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

COMMENT:

The conditions precedent in ESSB 5589, section 5 (former RCW 11.54.030) to an award are carried forward from prior law. See, e.g., RCW 11.54.010(3) and

RCW 11.54.060(2) as they existed before ESSB 5589. Although an award is not conditioned upon the prepayment of or the setting aside of funds to pay the costs of medical expenses recoverable under RCW 43.20B.080 or other liens or encumbrances, an award remains responsible for those obligations. See ESSB 5589, sections 3 (New Section), 10 (RCW 11.54.060), 12 (RCW 11.76.110), and 13 (RCW 11.76.120).

Sec. 6. (RCW 11.54.020) Amount of basic award.

STATUTE (RED-LINED):

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

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

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

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

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

(3) For 2024 and each calendar year thereafter, the amount of the basic award shall not be less than an amount that is calculated as follows: \$125,000 multiplied by the inflation factor and then rounded to the nearest \$1,000. The adjustment of the basic amount under this subsection shall be effective annually as of the first calendar day of the calendar year. The inflation factor is a fraction, the numerator of which is the consumer price index figure published for the most recent October preceding the effective date of the adjustment and the denominator of which is the consumer price index figure published for October 2021. No adjustment to the basic award shall be made under this subsection for a calendar year if the adjustment would result in the same or a lesser basic award than the basic award for the immediately preceding calendar year. For purposes of this subsection, "consumer price index" means the consumer price index for all urban consumers, all items in the Seattle area, not seasonally adjusted, as calculated by the bureau of labor statistics of the United States department of labor. For purposes of this subsection (3), "Seattle area" means the geographic area sample that includes Seattle and surrounding areas. In the event

the bureau of labor statistics discontinues the use and publication of applicable averages, then the consumer price index to be used for the computation of the inflation factor shall be the consumer price average that was last published before the event that caused the inflation factor to be applied.

STATUTE (CLEAN):

RCW 11.54.020. Amount of basic award.

(1) The amount of the basic award shall be the greater of the following:

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

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

(2) If an award is divided among a surviving spouse or surviving registered domestic partner and the decedent's dependent children, the aggregate amount awarded to all the claimants under this section shall be the amount specified in subsection (1) of this section.

(3) For 2024 and each calendar year thereafter, the amount of the basic award shall not be less than an amount that is calculated as follows: \$125,000 multiplied by the inflation factor and then rounded to the nearest \$1,000. The adjustment of the basic amount under this subsection shall be effective annually as of the first calendar day of the calendar year. The inflation factor is a fraction, the numerator of which is the consumer price index figure published for the most recent October preceding the effective date of the adjustment and the denominator of which is the consumer price index figure published for October 2021. No adjustment to the basic award shall be made under this subsection for a calendar year if the adjustment would result in the same or a lesser basic award than the basic award for the immediately preceding calendar year. For purposes of this subsection, "consumer price index" means the consumer price index for all urban consumers, all items in the Seattle area, not seasonally adjusted, as calculated by the bureau of labor statistics of the United States department of labor. For purposes of this subsection (3), "Seattle area" means the geographic area sample that includes Seattle and surrounding areas. In the event the bureau of labor statistics discontinues the use and publication of applicable averages, then the consumer price index to be used for the computation of the inflation factor shall be the consumer price average that was last published before the event that caused the inflation factor to be applied.

COMMENT:

Effective May 12, 2021, Washington amended its limits on the homestead exemption under RCW 6.13.030 without updating the reference to that limit in chapter 11.54 RCW. The amendment to RCW 6.13.030 changed the limit on the homestead exemption from a specific dollar amount (\$125,000) to, in essence, the greater of \$125,000 (adjusted for inflation after 2021) or the county median sales price of a single-family home. ESSB 5589, section 6 (RCW 11.54.020) incorporates the 2021 amendments to RCW 6.13.030.

Beginning in 2024, the amount of the basic award is automatically adjusted for inflation.

The amount of the basic award is also the measure of the exemption allowed under ESSB 5589, section 3 (New Section).

Sec. 7. (RCW 11.54.040) Additional award for family support during pendency of proceedings under Title 11 RCW-Factors for consideration.

STATUTE (RED-LINED):

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

(1) If ~~((it is demonstrated))~~ a claimant demonstrates to the satisfaction of the court ~~((with clear, cogent, and convincing evidence))~~ that a claimant's present and reasonably anticipated future needs ~~((during the pendency of any probate proceedings in the state of Washington))~~ during the pendency of any proceedings under this title relating to the decedent's probate or nonprobate assets will not ~~((otherwise))~~ be provided ~~((for))~~ from other resources~~((;))~~ and that ~~((the))~~ an increased award would not be inconsistent with the decedent's intentions or principles of equity and fairness, the amount of the award may be increased above the amount of the basic award in an amount that the court determines to be ~~((appropriate))~~ needed for a claimant's present and reasonably anticipated future needs with respect to basic maintenance and support during the pendency of any proceedings under this title relating to the decedent's probate or nonprobate assets.

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

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

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

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

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

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

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

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

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

(4)

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

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

STATUTE (CLEAN):

RCW 11.54.040. Additional award for family support during pendency of proceedings under Title 11 RCW-Factors for consideration.

(1) If a claimant demonstrates to the satisfaction of the court that a claimant's present and reasonably anticipated future needs with respect to basic maintenance and support during the pendency of any proceedings under this title relating to the decedent's probate or nonprobate assets will not be provided from other resources and

that an increased award would not be inconsistent with the decedent's intentions or principles of equity and fairness, the amount of the award may be increased above the amount of the basic award in an amount that the court determines to be needed for a claimant's present and reasonably anticipated future needs with respect to basic maintenance and support during the pendency of any proceedings under this title relating to the decedent's probate or nonprobate assets.

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

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

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

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

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

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

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

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

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

(4)

(a) The court may only grant an increased award if a petition for a basic award has been granted under RCW 11.54.010. The request for an

increased award may be made in conjunction with the petition for an award under RCW 11.54.010.

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

COMMENT:

ESSB 5589, section 7 (RCW 11.54.040) continues the prior law that grants discretion to the court to award a claimant additional sums to pay for basic maintenance and support during any proceeding under Title 11 RCW relating to the decedent's probate or nonprobate estate.

Sec. 8. (RCW 11.54.050) Decrease in amount of award-Factors for consideration.

STATUTE (RED-LINED):

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

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

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

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

(2) (a) The decedent is survived by one or more dependent children who are not the children of the surviving spouse or surviving registered domestic partner and the award would decrease amounts otherwise distributable to ~~((such))~~ those children; or (b) the award would have the effect of reducing amounts otherwise distributable to any of the decedent's ~~((minor))~~ dependent children. In either ~~((case))~~ of the cases specified in this subsection (2), the court ~~((shall))~~ must consider the factors presented in RCW 11.54.040(2) and (3) and section 9 of this act and whether the needs of the ~~((minor))~~ dependent children with respect to basic maintenance and support are and will be adequately provided for, both during and after ~~((the pendency of))~~ any ~~((probate))~~ proceedings ~~((if such proceedings are pending))~~ under this title relating to the decedent's probate or nonprobate assets, considering support from any source,

including support from the decedent's surviving spouse or surviving registered domestic partner.

STATUTE (CLEAN):

RCW 11.54.050. Decrease in amount of award-Factors for consideration.

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

(1) The recipient is entitled to receive probate or nonprobate property, including insurance, by reason of the death of the decedent. In such a case the award may not be decreased by more than the value of the other property that is received by reason of the death of the decedent. The court shall consider the factors presented in RCW 11.54.040(2) in determining the propriety of the award and the proper amount of the award, if any; or

(2)(a) The decedent is survived by one or more dependent children who are not the children of the surviving spouse or surviving registered domestic partner and the award would decrease amounts otherwise distributable to those children; or (b) the award would have the effect of reducing amounts otherwise distributable to any of the decedent's dependent children. In either of the cases specified in this subsection (2), the court must consider the factors presented in RCW 11.54.040(2) and (3) and section 9 of this act and whether the needs of the dependent children with respect to basic maintenance and support are and will be adequately provided for, both during and after any proceedings under this title relating to the decedent's probate or nonprobate assets, considering support from any source, including support from the decedent's surviving spouse or surviving registered domestic partner.

COMMENT:

ESSB 5589, section 8 (RCW 11.54.050) amends the prior form of RCW 11.54.050 to conform with the changes to other sections of chapter 11.54 RCW. A reduction of an award does not reduce the exemption of property under ESSB 5589, section 3 (New Section).

ESSB 5589, section 8 (RCW 11.54.050) is intended to augment the discretion of the court under RCW 11.54.010(2) (ESSB 5589, section 4), not to limit it.

Sec. 9. (New Section) Exercise of court's discretion.

STATUTE:

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

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

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

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

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

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

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

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

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

COMMENT:

ESSB 5589, section 9 (New Section) provides a non-exclusive list of items that the court must consider before exercising its discretion to grant an award under ESSB 5589, section 4 (RCW 11.54.010) *et seq.*

Sec. 10. (RCW 11.54.060) Priority of awarded property-Scope of immunity from debts and claims of creditors.

STATUTE (RED-LINED):

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

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

~~(2) If the property awarded is being purchased on contract or is subject to any encumbrance, for purposes of the award the property must be valued net of the balance due on the contract and the amount of the encumbrance. The property awarded will continue to be subject to any such contract or encumbrance, and any award in excess of the basic award under RCW 11.54.010, whether of community property or the decedent's separate property, is not immune from any lien for costs of medical expenses recoverable under RCW 43.20B.080.)~~

Notwithstanding any other provision of this chapter:

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

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

STATUTE (CLEAN):

RCW 11.54.060. Priority of awarded property-Scope of immunity from debts and claims of creditors.

Notwithstanding any other provision of this chapter:

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

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

COMMENT:

The limitations contained in ESSB 5589, section 10 (RCW 11.54.060) are consistent with prior statutory and common law. *See, e.g., In re Hackett Estates*, 120 Wash. 236, 207 Pac. 11 (1922).

ESSB 5589, section 10 (RCW 11.54.060) applies to both the exemptions under ESSB 5589, section 3 (New Section) and any awards under ESSB 5589, section 4 (RCW 11.54.010) *et seq.*

ESSB 5589, section 10 (RCW 11.54.060) also preserves the limitations in Title 6 RCW to the homestead and personal property exemptions, *see, e.g.*, RCW 6.13.080, RCW 6.15.020, and RCW 6.15.050, and preserves the rights under encumbrances and liens.

See also ESSB 5589, section 12 (RCW 11.76.110) for the amendments to RCW 11.76.110.

Sec. 11. (New Section) Abatement.

STATUTE:

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

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

COMMENT:

When a decedent's property is awarded to a claimant under this chapter, the principles of abatement may overlap with the doctrines of ademption by satisfaction and ademption by extinction. ESSB 5589, section 11 (New Section) addresses the abatement of gifts, bequests, and devises of probate and nonprobate assets when the court grants an award under ESSB 5589, section 4 (RCW 11.54.010) *et seq.*

The purpose of the reference to RCW 11.10.010(2), which allows deference to the testator's testamentary intent, is to allow flexibility to characterize an award to a claimant (a) as ademption by satisfaction where the award fulfills a bequest or devise intended by the decedent, (b) as ademption by extinction when the testator's intentions are superseded to fulfill the public policy of meeting the basic needs of the decedent's surviving spouse, registered domestic partner, or dependent children, or (c) as common abatement where it is determined that the award is more in the nature of a debt to the claimant.

Example #1: At death, a decedent owned a residence valued at the amount of the basic award specified in ESSB 5589, section 6 (RCW 11.54.020) and a bank account valued at \$200,000; was unmarried with two children, one of whom is dependent; and owed unsecured debts in the amount of \$175,000. The decedent's will specifically devises the house to the dependent child and leaves the remainder of the decedent's estate to be divided equally between both children. Under these facts, if the dependent child petitions for and is granted a basic award of the homestead (the

exemption of ESSB 5589, section 3 [New Section] being automatic), it may be determined that (a) the award (which has priority over the claims of unsecured creditors under ESSB 5589, section 12 [RCW 11.76.110]) should be characterized more in the nature of ademption by satisfaction in that it fulfills the testator's intent and therefore that the specific devise should abate in satisfaction of the family allowance and therefore be protected for the dependent child, and (b) the residuary estate should bear the burden of paying the unsecured creditors. The assets that remain after the payment of the unsecured creditors and the other obligations of the estate will be divided equally between the two children.

Example #2: The facts are the same as in Example #1 except that (a) the decedent made no specific bequests or devises and simply left the residuary estate to be divided equally among the decedent's two children and (b) the decedent owed unsecured debts in the amount of \$25,000. Under these facts, if the court exercises its discretion to grant the dependent child the homestead, there are two possible results: (a) it may be determined that the residue of the estate (after the residence has been awarded to the decedent's dependent child) should be divided evenly between the two children, resulting in the children receiving uneven shares of the decedent's estate; or (b) it may be determined that the decedent's intent for the decedent's children to share equally in the estate should be honored under RCW 11.10.010(2) and therefore that a value equivalent to the basic award (if, as in this fact pattern, sufficient funds remain after the basic award, the obligations with greater priority, and the payment of the creditors have been satisfied) should be set aside for the independent child and that any remainder should then be divided equally between the two children, resulting in the children receiving shares of equal value.

12. Repeal of RCW 11.54.070. Immunity of award from debts and claims of creditors.

STATUTE (RED-LINED):

~~((1) Except as provided in RCW 11.54.060(2), property awarded and cash paid under this chapter is immune from all debts, including judgments and judgment liens, of the decedent and of the surviving spouse or surviving domestic partner existing at the time of death.~~

~~(2) Both the decedent's and the surviving spouse's or surviving domestic partner's interests in any community property awarded to the spouse or domestic partner under this chapter are immune from the claims of creditors.)~~

COMMENT:

ESSB 5589, section 17(1) repeals RCW 11.54.070. The issues addressed in repealed RCW 11.54.070 have been addressed in other sections of ESSB 5589. See, e.g., ESSB 5589, section 3 (New Section).

13. Repeal of RCW 11.54.080. Exemption of additional assets from claims of creditors-Petition-Notice-Court order.

STATUTE (RED-LINED):

~~((1) This section applies if the party entitled to petition for an award holds exempt property that is in an aggregate amount less than that specified in *RCW 6.13.030(2) with respect to lands.~~

~~(2) For purposes of this section, the party entitled to petition for an award is referred to as the "claimant." If multiple parties are entitled to petition for an award, all of them are deemed a "claimant" and may petition for an exemption of additional assets as provided in this section, if the aggregate amount of exempt property to be held by all the claimants after the making of the award does not exceed the amount specified in *RCW 6.13.030(2) with respect to lands.~~

~~(3) A claimant may petition the court for an order exempting other assets from the claims of creditors so that the aggregate amount of exempt property held by the claimants equals the amount specified in *RCW 6.13.030(2) with respect to lands. The petition must:~~

~~(a) Set forth facts to establish that the petitioner is entitled to petition for an award under RCW 11.54.010;~~

~~(b) State the nature and value of those assets then held by all claimants that are exempt from the claims of creditors; and~~

~~(c) Describe the nonexempt assets then held by the claimants, including any interest the claimants may have in any probate or nonprobate property of the decedent.~~

~~(4) Notice of a petition for an order exempting assets from the claims of creditors must be given in accordance with RCW 11.96A.110.~~

~~(5) At the hearing on the petition, the court shall order that certain assets of the claimants are exempt from the claims of creditors so that the aggregate amount of exempt property held by the claimants after the entry of the order is in the amount specified in *RCW 6.13.030(2) with respect to lands. In the order the court shall designate those assets of the claimants that are so exempt.))~~

COMMENT:

ESSB 5589, section 17(2) repeals RCW 11.54.080. The issues addressed in repealed RCW 11.54.080 have been addressed in other sections of ESSB 5589.s

14. RCW 11.54.090. (Existing, Unamended Statute) Venue for petition-Petition and hearing requirements-Notice of hearing.

STATUTE:

RCW 11.54.090. Venue for petition-Petition and hearing requirements-Notice of hearing.

The petition for an award, for an increased or modified award, or for the exemption of assets from the claims of creditors as authorized by this chapter must be made to the court of the county in which the probate is being administered. If probate proceedings have not been commenced in the state of Washington, the petition must be made to the court of a county in which the decedent was domiciled at the time of death. If the decedent was not domiciled in the state of Washington at the time of death, the petition may be made to the court of any county in which the decedent's estate could be administered under RCW 11.96A.050. The petition and the hearing must conform to RCW 11.96A.080 through 11.96A.200. Notice of the hearing on the petition must be given in accordance with RCW 11.96A.110.

COMMENT:

RCW 11.54.090 remains unchanged.

15. RCW 11.54.100. (Existing, Unamended Statute) Exhaustion of estate-Closure of estate-Discharge of personal representative.

STATUTE:

RCW 11.54.100. Exhaustion of estate-Closure of estate-Discharge of personal representative.

If an award provided by this chapter will exhaust the estate, and probate proceedings have been commenced in the state of Washington, the court in the order of award or allowance shall order the estate closed, discharge the personal representative, and exonerate the personal representative's bond, if any.

COMMENT:

RCW 11.54.100 remains unchanged.

16. Sec. 12. (RCW 11.76.110) Order of payment of debts.

STATUTE (RED-LINED):

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

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

(1) Expenses of administration.

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

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

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

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

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

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

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

(6) All other enforceable demands against the estate.

STATUTE (CLEAN):

RCW 11.76.110. Order of payment of debts.

Subject to federal preemption and the privileges and priorities allowed to encumbrances and liens under applicable law, the reasonable expenses of administration and the enforceable debts of the estate shall be paid in the following order:

(1) Expenses of administration.

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

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

(4) Wages due for labor performed within 60 days immediately preceding the death of decedent.

(5) Exemptions and awards under chapter 11.54 RCW.

(6) All other enforceable demands against the estate.

COMMENT:

ESSB 5589, section 12 (RCW 11.76.110) codifies *In re Shoptaw's Estate*, 54 Wn.2d 602, 343 P.2d 740 (1959); 31 U.S.C. § 3713; *In re Offield's Estate*, 7 Wn. App. 897, 503 P.2d 767 (Div. 1, 1972); Wash. Const. art. 1, § 23; *In re Hackett Estates*, 120 Wash. 236, 207 Pac. 11 (1922); *In re Schoenfeld's Estate*, 56 Wn.2d 197, 351 P.2d 935 (1960). See also ESSB 5589, sections 3 (New Section) and 10 (RCW 11.54.060).

ESSB 5589, section 12 (RCW 11.76.110) does not supersede or diminish the provisions of chapters 11.10, 11.40, or 11.42 RCW.

The fundamental concept of ESSB 5589, section 12 (RCW 11.76.110) is that the exemption from creditors' claims and the distributive priorities granted under chapter 11.54 RCW supersede creditors' claims that exceed the value of their security but are subject to (1) federal preemption, (2) enforceable encumbrances and liens, (3) the laws allocating claims, costs, and expenses between separate property and community property, (4) the laws relating to abatement (see, e.g., chapter 11.10 RCW and ESSB 5589, section 11 [Abatement]), and (5) the administrative expenses, funeral expenses, expenses of last sickness, and wages described in subsections (1) – (4) of ESSB 5589, section 12 (RCW 11.76.110).

The references to federal and state taxes in prior law are now addressed in the references to federal and state preemptive laws and to the priority of liens.

The determinations of a court or a personal representative with nonintervention powers under subsections (2) and (3) remain subject to judicial review to the full extent permitted under applicable law.

17. **Sec. 13 (RCW 11.76.120) Limitation on Preference to Encumbrance or Lien**

STATUTE (RED-LINED):

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

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

STATUTE (CLEAN):

RCW 11.76.120. Limitation on preference to encumbrance or lien.

The preference given in RCW 11.76.110 to a mortgage, deed of trust, perfected security interest, judgment lien, or other lien shall only extend to the proceeds of the property subject to the lien.

COMMENT:

ESSB 5589, section 13 (RCW 11.76.120) expands RCW 11.76.120 to clarify that its principles cover all encumbrances and liens, as determined by common law.

18. Sec. 14. Effective date of amendments.

STATUTE:

NEW SECTION. **Sec. 14.** This act takes effect August 1, 2024.

COMMENT:

No comments.

19. Sec. 15. Miscellaneous.

STATUTE:

NEW SECTION. **Sec. 15.** Miscellaneous

(1) No act done in any proceeding commenced before the effective date of this section and no accrued right shall be impaired by any provision of this act.

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

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

COMMENT:

No comments.

20. Sec. 16. Recodification of RCW 11.54.030.

STATUTE:

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

COMMENT:

No comments.

21. Sec. 17. Repeal of RCW 11.54.070 and RCW 11.54.080.

As noted earlier in these comments, the subject matter of RCW 11.54.070 and RCW 11.54.080 (as those sections existed before the effective date of ESSB 5589) has been addressed elsewhere in ESSB 5589.