

of such fuel. No refund shall be made for motor vehicle fuel consumed in any motor vehicle as herein defined licensed to be operated over and along any public highway except that a refund shall be allowed for motor vehicle fuel consumed in a motor vehicle owned by the United States and operated off the public highways for the official use thereof.

Same: United States vehicle operated off the public highways.

[R.C.W. 82.36.280 was derived from Rem. Supp. 1945, § 8327-18, part (second para. through first proviso).]

Passed the Senate March 8, 1951.

Passed the House March 8, 1951.

Approved by the Governor March 20, 1951.

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CHAPTER 264.

[ S. B. 100. ]

PROBATE—AWARD IN LIEU OF HOMESTEAD.

AN ACT relating to probate law and procedure; providing for the rewarding and setting aside of property of decedent to surviving spouse in lieu of homestead; and amending sections 11.52.010 and 11.52.020, R.C.W.

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

SECTION 1. Section 11.52.010, R.C.W., as derived from section 103, chapter 156, Laws of 1917, as last amended by section 1, chapter 102, Laws of 1949, is divided into sections 2 to 5, inclusive herein, and is amended to read as follows:

Amendment.

Award to surviving spouse in lieu of homestead.

SEC. 2. If it is made to appear to the satisfaction of the court that no homestead has been claimed in the manner provided by law, either prior or subsequent to the death of the person whose estate is being administered, then the court, after hearing and upon being satisfied that the funeral expenses, expenses of last sickness and of administration have been paid or provided for, and upon petition for that purpose, shall award and set off to the surviving spouse, if any, property of the estate, either com-

munity or separate, not exceeding the value of six thousand dollars exclusive of general taxes and special assessments which were liens at the time of the death of the deceased spouse, and exclusive of any mortgage or mechanic's, laborer's or materialmen's or vendor's liens upon the property so set off, and exclusive of funeral expenses, expenses of last sickness and administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse. Amount.

SEC. 3. The property so set off shall include the home and household goods, if any, and such award shall be made by an order or judgment of the court and shall vest the absolute title, and thereafter there shall be no further administration upon such portion of the estate so set off, but the remainder of the estate shall be settled as other estates: *Provided*, That no property of the estate shall be awarded or set off, as in this act provided, to a surviving spouse who has feloniously killed the deceased spouse: *Provided further*, That if it shall appear to the court, either (1) that there are minor or incompetent children of the deceased by a former marriage or by adoption prior to decedent's marriage to petitioner, or (2) that the petitioning surviving spouse has abandoned his or her minor children or wilfully and wrongfully failed to provide for them, or (3) if such surviving spouse is entitled to receive insurance on the life of the deceased spouse in the sum of five thousand dollars, or more, then the award in lieu of homestead and exemptions shall lie in the discretion of the court, and that whether there shall be an award and the amount thereof shall be determined by the court, who shall enter such decree as shall be just and equitable but not in excess of the award provided herein. Home and household goods.  
Order vests title.  
No further administration.  
Limitation.  
When award is within court's discretion.

SEC. 4. Notice of such hearing shall be given by posting a notice in three public places in the county Notice of hearing.

Posting. in which the hearing is to be held. Said notice may be posted by the clerk of the superior court of the county in which the hearing is to be held, or may be posted by any person qualified to serve a summons in a civil action. Said notices shall be posted at least ten days prior to the date fixed for the hearing. If there be any minor child or incompetent heir of the decedent, the court shall appoint a guardian *ad litem* for such minor child or incompetent heir, who shall appear at the hearing and represent the interest of such minor child or incompetent heir.

Judgment final save right to appeal. SEC. 5. The order of judgment of the court making the award or awards provided for in this act shall be conclusive and final, except on appeal and except for fraud. The awards in this act provided shall be in lieu of all homestead provisions of the law and of exemptions. The said property, when set aside as herein provided, shall be exempt from all claims for the payment of any debt of the deceased or of the surviving spouse existing at the time of death, whether such debt be individual or community. Under this act, the court shall not award more property than could be awarded under the law in effect at the time of the death of the deceased spouse.

Property awarded; exempt from claims. The awards provided for in this act shall not be taken from separate property of the deceased which is otherwise disposed of by will.

[Am. Rem. Supp. 1949, § 1473.]

Limitation on amount of award. SEC. 6. Section 11.52.020, R.C.W., as derived from section 104, chapter 156, Laws of 1917, as last amended by section 2, chapter 102, Laws of 1949, is divided into sections 7 to 9, inclusive herein, and is amended to read as follows:

Amendment. SEC. 7. In event a homestead has been, or shall be selected in the manner provided by law, whether the selection of such homestead results in vesting the complete or partial title in the survivor, it shall be the duty of the court, upon petition of any person

Where homestead selected; decree of set off for surviving spouse.

interested, and upon being satisfied that the value thereof does not exceed six thousand dollars, exclusive of general taxes and special assessments which were liens at the time of the death of the deceased and exclusive of mortgages, mechanic's, laborer's, materialmen's or vendor's liens thereon, and exclusive of funeral expenses, expenses of last sickness and of administration, which expenses may be deducted from the gross value in determining the value to be set off to the surviving spouse, to enter a decree, upon such notice as the court may determine, setting off and awarding such homestead to the survivor, thereby vesting the title thereto in fee simple in the survivor.

SEC. 8. If the value of the homestead, exclusive of all such liens, be less than six thousand dollars, the court, upon being satisfied that the funeral expenses, expenses of last sickness and of administration, have been paid or provided for, shall set off and award additional property, either separate or community, in lieu of such deficiency, so that the value of the homestead, exclusive of all such liens and expenses when added to the value of the other property awarded, exclusive of all such liens and expenses shall equal six thousand dollars: *Provided*, That if it shall appear to the court, either (1) there are minor or incompetent children of the deceased by a former marriage or by adoption prior to decedent's marriage to petitioner, or (2) that the petitioning surviving spouse has abandoned his or her minor children or wilfully and wrongfully failed to provide for them, or (3) if such surviving spouse is entitled to receive insurance on the life of the deceased spouse in the sum of five thousand dollars, or more, then the award of property in addition to the homestead, where the homestead is of less than six thousand dollars in value, shall lie in the discretion of the court, and that whether there shall be an award

Where value of homestead less than \$6,000; award of additional property.

When additional award is within court's discretion.

in addition to the homestead and the amount thereof shall be determined by the court, who shall enter such decree as shall be just and equitable, but not in excess of the award provided herein.

Decree.

SEC. 9. Said decree shall particularly describe the said homestead and other property so awarded, and such homestead and other property so awarded shall not be subject to further administration, and such decree shall be conclusive and final, except on appeal, and except for fraud, and such awards shall be in lieu of all further homestead rights and of all exemptions. The property in addition to the homestead, when set aside as herein provided, shall be exempt from all claims for the payment of any debt of deceased or of the surviving spouse existing at the time of death, whether such debt be individual or community. Under this act, the court shall not award more property than could be awarded under the law in effect at the time of the death of the deceased spouse.

Additional property exempt from claims.

Limitation on amount of award.

Separate property otherwise disposed of by will.

The awards provided for in this act shall not be taken from separate property of the deceased which is otherwise disposed of by will.

[Am. Rem. Supp. 1949, § 1474.]

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