

1 **PROBATE CODE AMENDMENTS REGARDING**
2 **HOMICIDE**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Karen W. Morgan**

6 Senate Sponsor: Patrice M. Arent

7
8 **LONG TITLE**

9 **General Description:**

10 This bill provides for the disinheritance of a person who kills someone they would
11 inherit from.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines "disqualifying homicide";
- 15 ▶ defines "killer";
- 16 ▶ provides that a person who kills another from whom they might inherit is not
17 eligible to inherit from the decedent; and
- 18 ▶ provides for the court to take action if there has been no criminal conviction.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **75-2-803**, as repealed and reenacted by Chapter 39, Laws of Utah 1998

26
27 *Be it enacted by the Legislature of the state of Utah:*



28 Section 1. Section **75-2-803** is amended to read:

29 **75-2-803. Definitions -- Effect of homicide on intestate succession, wills, trusts,**
30 **joint assets, life insurance, and beneficiary designations -- Forfeiture -- Revocation.**

31 (1) As used in this section:

32 (a) "Disposition or appointment of property" includes a transfer of an item of property
33 or any other benefit to a beneficiary designated in a governing instrument.

34 (b) "Disqualifying homicide" means a homicide established by a preponderance of the
35 evidence that meets the elements of any felony homicide offense in Title 76, Chapter 5,
36 Offenses Against the Person, except automobile homicide, applying the same principles of
37 culpability and defenses as in Title 76, including but not limited to Chapter 2, Principles of
38 Criminal Responsibility.

39 ~~(b)~~ (c) "Governing instrument" means a governing instrument executed by the
40 decedent.

41 (d) "Killer" means a person who commits a disqualifying homicide.

42 ~~(c)~~ (e) "Revocable," with respect to a disposition, appointment, provision, or
43 nomination, means one under which the decedent, at the time of or immediately before death,
44 was alone empowered, by law or under the governing instrument, to cancel the designation, in
45 favor of the killer, whether or not the decedent was then empowered to designate himself in
46 place of his killer and whether or not the decedent then had capacity to exercise the power.

47 (2) An individual who ~~[feloniously and intentionally kills]~~ commits a disqualifying
48 homicide of the decedent forfeits all benefits under this chapter with respect to the decedent's
49 estate, including an intestate share, an elective share, an omitted spouse's or child's share, a
50 homestead allowance, exempt property, and a family allowance. If the decedent died intestate,
51 the decedent's intestate estate passes as if the killer disclaimed his intestate share.

52 (3) The ~~[felonious and intentional]~~ killing of the decedent by means of a disqualifying
53 homicide:

54 (a) revokes any revocable:

55 (i) disposition or appointment of property made by the decedent to the killer in a
56 governing instrument;

57 (ii) provision in a governing instrument conferring a general or nongeneral power of
58 appointment on the killer; and

59 (iii) nomination of the killer in a governing instrument, nominating or appointing the
 60 killer to serve in any fiduciary or representative capacity, including a personal representative,
 61 executor, trustee, or agent; and

62 (b) severs the interests of the decedent and killer in property held by them at the time of
 63 the killing as joint tenants with the right of survivorship, transforming the interests of the
 64 decedent and killer into tenancies in common.

65 (4) A severance under Subsection (3)(b) does not affect any third-party interest in
 66 property acquired for value and in good faith reliance on an apparent title by survivorship in the
 67 killer unless a writing declaring the severance has been noted, registered, filed, or recorded in
 68 records appropriate to the kind and location of the property which are relied upon, in the
 69 ordinary course of transactions involving such property, as evidence of ownership.

70 (5) Provisions of a governing instrument are given effect as if the killer disclaimed all
 71 provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or
 72 representative capacity, as if the killer predeceased the decedent.

73 (6) A wrongful acquisition of property or interest by ~~[a killer]~~ one who kills another
 74 under circumstances not covered by this section shall be treated in accordance with the
 75 principle that ~~[a killer]~~ one who kills cannot profit from his wrong.

76 (7) ~~[After all right to appeal has been exhausted, a judgment of conviction establishing~~
 77 ~~criminal accountability for the felonious and intentional killing of the decedent conclusively~~
 78 ~~establishes the convicted individual as the decedent's killer for purposes of this section. In the~~
 79 ~~absence of a conviction, the]~~ The court, upon the petition of an interested person, shall
 80 determine whether, under the preponderance of evidence standard, the individual ~~[would be~~
 81 ~~found criminally accountable for the felonious and intentional killing]~~ has committed a
 82 disqualifying homicide of the decedent. If the court determines that, under that standard, the
 83 individual ~~[would be found criminally accountable for the felonious and intentional killing]~~ has
 84 committed a disqualifying homicide of the decedent, the determination conclusively establishes
 85 that individual as ~~[the decedent's killer]~~ having committed a disqualifying homicide for
 86 purposes of this section **§→ , unless the court finds that the act of disinheritance would create a**
 86a **manifest injustice ←§** . A judgment of criminal conviction for a disqualifying homicide of the
 87 decedent, after all direct appeals have been exhausted, conclusively establishes that the
 88 convicted individual has committed the disqualifying homicide for purposes of this section.

89 (8) (a) A payor or other third party is not liable for having made a payment or

90 transferred an item of property or any other benefit to a beneficiary designated in a governing
91 instrument affected by [~~an intentional and felonious killing~~] a disqualifying homicide, or for
92 having taken any other action in good faith reliance on the validity of the governing instrument,
93 upon request and satisfactory proof of the decedent's death, before the payor or other third party
94 received written notice of a claimed forfeiture or revocation under this section. A payor or
95 other third party is liable for a payment made or other action taken after the payor or other third
96 party received written notice of a claimed forfeiture or revocation under this section.

97 (b) Written notice of a claimed forfeiture or revocation under Subsection (8)(a) shall be
98 mailed to the payor's or other third party's main office or home by registered or certified mail,
99 return receipt requested, or served upon the payor or other third party in the same manner as a
100 summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation
101 under this section, a payor or other third party may pay any amount owed or transfer or deposit
102 any item of property held by it to or with the court having jurisdiction of the probate
103 proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or
104 with the court having jurisdiction of probate proceedings relating to the decedent's estates
105 located in the county of the decedent's residence. The court shall hold the funds or item of
106 property and, upon its determination under this section, shall order disbursement in accordance
107 with the determination. Payments, transfers, or deposits made to or with the court discharge
108 the payor or other third party from all claims for the value of amounts paid to or items of
109 property transferred to or deposited with the court.

110 (9) (a) A person who purchases property for value and without notice, or who receives
111 a payment or other item of property in partial or full satisfaction of a legally enforceable
112 obligation, is neither obligated under this section to return the payment, item of property, or
113 benefit nor is liable under this section for the amount of the payment or the value of the item of
114 property or benefit. But a person who, not for value, receives a payment, item of property, or
115 any other benefit to which the person is not entitled under this section is obligated to return the
116 payment, item of property, or benefit, or is personally liable for the amount of the payment or
117 the value of the item of property or benefit, to the person who is entitled to it under this section.

118 (b) If this section or any part of this section is preempted by federal law with respect to
119 a payment, an item of property, or any other benefit covered by this section, a person who, not
120 for value, receives the payment, item of property, or any other benefit to which the person is

121 not entitled under this section is obligated to return the payment, item of property, or benefit, or
122 is personally liable for the amount of the payment or the value of the item of property or
123 benefit, to the person who would have been entitled to it were this section or part of this section
124 not preempted.

Legislative Review Note
as of 10-17-05 11:00 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel