

1 **INTESTATE SUCCESSION REVISIONS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Patrice M. Arent**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of intestate succession to allow a court to establish a
10 constructive trust on the property or estate of an individual who killed a decedent to
11 provide a mechanism to secure payment of damages or judgments caused or stemming
12 from the actions of the killer.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ amends provisions of intestate succession to allow a court to establish a constructive
16 trust on the property or estate of an individual who killed a decedent to provide a
17 mechanism to secure payment of damages or judgments caused or stemming from
18 the actions of the killer; and

19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **75-2-803**, as last amended by Laws of Utah 2006, Chapter 270



28 *Be it enacted by the Legislature of the state of Utah:*

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

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

32 (1) As used in this section:

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

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

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

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

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

47 (2) (a) An individual who commits a disqualifying homicide of the decedent forfeits all
48 benefits under this chapter with respect to the decedent's estate, including an intestate share, an
49 elective share, an omitted spouse's or child's share, a homestead allowance, exempt property,
50 and a family allowance.

51 (b) If the decedent died intestate, the decedent's intestate estate passes as if the killer
52 disclaimed his intestate share.

53 (3) The killing of the decedent by means of a disqualifying 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 one who kills another under
74 circumstances not covered by this section shall be treated in accordance with the principle that
75 one who kills cannot profit from his wrong.

76 (7) (a) The court, upon the petition of an interested person, shall determine whether,
77 under the preponderance of evidence standard, the individual has committed a disqualifying
78 homicide of the decedent.

79 (b) If the court determines that, under that standard, the individual has committed a
80 disqualifying homicide of the decedent, the determination conclusively establishes that
81 individual as having committed a disqualifying homicide for purposes of this section, unless
82 the court finds that the act of disinheritance would create a manifest injustice.

83 (c) A judgment of criminal conviction for a disqualifying homicide of the decedent,
84 after all direct appeals have been exhausted, conclusively establishes that the convicted
85 individual has committed the disqualifying homicide for purposes of this section.

86 (8) (a) (i) A payor or other third party is not liable for having made a payment or
87 transferred an item of property or any other benefit to a beneficiary designated in a governing
88 instrument affected by a disqualifying homicide, or for having taken any other action in good
89 faith reliance on the validity of the governing instrument, upon request and satisfactory proof of

90 the decedent's death, before the payor or other third party received written notice of a claimed
91 forfeiture or revocation under this section.

92 (ii) A payor or other third party is liable for a payment made or other action taken after
93 the payor or other third party received written notice of a claimed forfeiture or revocation under
94 this section.

95 (b) (i) Written notice of a claimed forfeiture or revocation under Subsection (8)(a) shall
96 be mailed to the payor's or other third party's main office or home by registered or certified
97 mail, return receipt requested, or served upon the payor or other third party in the same manner
98 as a summons in a civil action.

99 (ii) Upon receipt of written notice of a claimed forfeiture or revocation under this
100 section, a payor or other third party may pay any amount owed or transfer or deposit any item
101 of property held by it to or with the court having jurisdiction of the probate proceedings
102 relating to the decedent's estate, or if no proceedings have been commenced, to or with the
103 court having jurisdiction of probate proceedings relating to the decedent's estates located in the
104 county of the decedent's residence.

105 (iii) The court shall hold the funds or item of property and, upon its determination
106 under this section, shall order disbursement in accordance with the determination.

107 (iv) Payments, transfers, or deposits made to or with the court discharge the payor or
108 other third party from all claims for the value of amounts paid to or items of property
109 transferred to or deposited with the court.

110 (9) (a) (i) A person who purchases property for value and without notice, or who
111 receives a payment or other item of property in partial or full satisfaction of a legally
112 enforceable obligation, is neither obligated under this section to return the payment, item of
113 property, or benefit nor is liable under this section for the amount of the payment or the value
114 of the item of property or benefit.

115 (ii) But a person who, not for value, receives a payment, item of property, or any other
116 benefit to which the person is not entitled under this section is obligated to return the payment,
117 item of property, or benefit, or is personally liable for the amount of the payment or the value
118 of the item of property or benefit, to the person who is entitled to it under this section.

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

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

126 (10) A decedent's estate may petition the court to establish a constructive trust on the
127 property or the estate of the killer, effective from the time of the killer's act that caused the
128 death, in order to secure the payment of all damages and judgments from conduct that:

129 (a) upon the preponderance of the evidence standard finds the killer accountable for the
130 death of the decedent pursuant to Subsection (7); or

131 (b) resulted in criminal conviction of the killer.