

Senator Todd D. Weiler proposes the following substitute bill:

1 **DISINHERITANCE FOLLOWING CRIMES AGAINST**

2 **VULNERABLE ADULTS**

3 2021 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd D. Weiler**

6 House Sponsor: V. Lowry Snow

8 **LONG TITLE**

9 **General Description:**

10 This bill statutorily disinherits an individual who commits certain felony offenses
11 against a vulnerable adult.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ statutorily disinherits an individual who commits certain felony offenses against a
16 vulnerable adult, including any:

- 17 • shares in an estate or intestate shares;
- 18 • revocation of revocable dispositions, appointments, nominations, or conferrals;

19 and

- 20 • property owned jointly;
- 21 ▶ addresses third-party interests in the property in question;
- 22 ▶ addresses certain contingencies in the application of the statute; and
- 23 ▶ makes technical and conforming changes.

24 **Money Appropriated in this Bill:**

25 None



26 **Other Special Clauses:**

27 This bill provides revisor instructions.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **75-2-508**, as repealed and reenacted by Laws of Utah 1998, Chapter 39

31 **75-2-804**, as last amended by Laws of Utah 2013, Chapter 264

32 **75-6-413**, as enacted by Laws of Utah 2018, Chapter 26

33 ENACTS:

34 **75-2-807**, Utah Code Annotated 1953

35 **Utah Code Sections Affected by Revisor Instructions:**

36 **75-2-807**, Utah Code Annotated 1953



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

39 Section 1. Section **75-2-508** is amended to read:

40 **75-2-508. Revocation by change of circumstances.**

41 Except as provided in Sections **75-2-803** ~~[and]~~, **75-2-804**, and **75-2-807**, a change of
42 circumstances does not revoke a will or any part of it.

43 Section 2. Section **75-2-804** is amended to read:

44 **75-2-804. Definitions -- Revocation of probate and nonprobate transfers by**
45 **divorce -- Effect of severance -- Revival -- Protection of payors, third parties, and bona**
46 **vide purchasers -- Personal liability of recipient -- No revocation by other changes of**
47 **circumstances.**

48 (1) As used in this section:

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

51 (b) "Divorce or annulment" means any divorce or annulment, or any dissolution or
52 declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse
53 within the meaning of Section **75-2-802**. A decree of separation that does not terminate the
54 status of husband and wife is not a divorce for purposes of this section.

55 (c) "Divorced individual" includes an individual whose marriage has been annulled.

56 (d) "Governing instrument" means a governing instrument executed by the divorced

57 individual before the divorce or annulment of the individual's marriage to the individual's
58 former spouse.

59 (e) "Relative of the divorced individual's former spouse" means an individual who is
60 related to the divorced individual's former spouse by blood, adoption, or affinity and who, after
61 the divorce or annulment, is not related to the divorced individual by blood, adoption, or
62 affinity.

63 (f) "Revocable," with respect to a disposition, appointment, provision, or nomination,
64 means one under which the divorced individual, at the time of the divorce or annulment, was
65 alone empowered, by law or under the governing instrument, to cancel the designation in favor
66 of the individual's former spouse or former spouse's relative, whether or not the divorced
67 individual was then empowered to designate another in place of the individual's former spouse
68 or in place of the individual's former spouse's relative and whether or not the divorced
69 individual then had the capacity to exercise the power.

70 (2) Except as provided by the express terms of a governing instrument, a court order,
71 or a contract relating to the division of the marital estate made between the divorced
72 individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a
73 marriage:

74 (a) revokes any revocable:

75 (i) disposition or appointment of property made by a divorced individual to the
76 individual's former spouse in a governing instrument and any disposition or appointment
77 created by law or in a governing instrument to a relative of the divorced individual's former
78 spouse;

79 (ii) provision in a governing instrument conferring a general or nongeneral power of
80 appointment on the divorced individual's former spouse or on a relative of the divorced
81 individual's former spouse; and

82 (iii) nomination in a governing instrument, which nominates a divorced individual's
83 former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary
84 or representative capacity, including a personal representative, executor, trustee, conservator,
85 agent, or guardian; and

86 (b) severs the interests of the former spouses in property held by them at the time of the
87 divorce or annulment as joint tenants with the right of survivorship, transforming the interests

88 of the former spouses into tenancies in common.

89 (3) A severance under Subsection (2)(b) does not affect any third-party interest in
90 property acquired for value and in good faith reliance on an apparent title by survivorship in the
91 survivor of the former spouses unless a writing declaring the severance has been noted,
92 registered, filed, or recorded in records appropriate to the kind and location of the property,
93 which are relied upon, in the ordinary course of transactions involving such property, as
94 evidence of ownership.

95 (4) Provisions of a governing instrument are given effect as if the former spouse and
96 relatives of the former spouse disclaimed all provisions revoked by this section or, in the case
97 of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and
98 relatives of the former spouse died immediately before the divorce or annulment.

99 (5) Provisions revoked solely by this section are revived by the divorced individual's
100 remarriage to the former spouse or by a nullification of the divorce or annulment.

101 (6) No change of circumstances other than as described in this section and in ~~[Section]~~
102 Sections 75-2-803 and 75-2-807 effects a revocation.

103 (7) (a) A payor or other third party is not liable for having made a payment or
104 transferred an item of property or any other benefit to a beneficiary designated in a governing
105 instrument affected by a divorce, annulment, or remarriage, or for having taken any other
106 action in good faith reliance on the validity of the governing instrument, before the payor or
107 other third party received written notice of the divorce, annulment, or remarriage. A payor or
108 other third party is liable for a payment made or other action taken after the payor or other third
109 party received written notice of a claimed forfeiture or revocation under this section.

110 (b) Written notice of the divorce, annulment, or remarriage under Subsection (7)(a)
111 shall be mailed to the payor's or other third party's main office or home by registered or
112 certified mail, return receipt requested, or served upon the payor or other third party in the
113 same manner as a summons in a civil action. Upon receipt of written notice of the divorce,
114 annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or
115 deposit any item of property held by it to or with the court having jurisdiction of the probate
116 proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or
117 with the court having jurisdiction of probate proceedings relating to the decedent's estates
118 located in the county of the decedent's residence. The court shall hold the funds or item of

119 property and, upon its determination under this section, shall order disbursement or transfer in
120 accordance with the determination. Payments, transfers, or deposits made to or with the court
121 discharge the payor or other third party from all claims for the value of amounts paid to or
122 items of property transferred to or deposited with the court.

123 (8) (a) A person who purchases property from a former spouse, relative of a former
124 spouse, or any other person for value and without notice, or who receives from a former
125 spouse, relative of a former spouse, or any other person a payment or other item of property in
126 partial or full satisfaction of a legally enforceable obligation, is neither obligated under this
127 section to return the payment, item of property, or benefit, nor is liable under this section for
128 the amount of the payment or the value of the item of property or benefit. But a former spouse,
129 relative of a former spouse, or other person who, not for value, received a payment, item of
130 property, or any other benefit to which that person is not entitled under this section is obligated
131 to return the payment, item of property, or benefit, or is personally liable for the amount of the
132 payment or the value of the item of property or benefit, to the person who is entitled to it under
133 this section.

134 (b) If this section or any part of this section is preempted by federal law with respect to
135 a payment, an item of property, or any other benefit covered by this section, a former spouse,
136 relative of the former spouse, or any other person who, not for value, received a payment, item
137 of property, or any other benefit to which that person is not entitled under this section is
138 obligated to return that payment, item of property, or benefit, or is personally liable for the
139 amount of the payment or the value of the item of property or benefit, to the person who would
140 have been entitled to it were this section or part of this section not preempted.

141 Section 3. Section **75-2-807** is enacted to read:

142 **75-2-807. Effect of disqualifying offense on intestate succession, wills, trusts, joint**
143 **assets, life insurance, beneficiary designations -- Forfeiture -- Revocation.**

144 (1) As used in this section:

145 (a) "Abuser" means a person who is convicted of committing a disqualifying offense
146 against a vulnerable adult.

147 (b) "Dependent adult" means the same as that term is defined in Section [76-5-111](#).

148 (c) "Disposition or apportionment of property" means a transfer of an item of property
149 or any other benefit to a beneficiary designated in a governing instrument.

150 (d) "Disqualifying offense" means a felony offense against a vulnerable adult that
151 meets the elements of:

152 (i) felony financial exploitation of a vulnerable adult, as described in Subsection
153 76-5-111(9);

154 (ii) felony aggravated abuse of a vulnerable adult, as described in Subsection
155 76-5-111(2);

156 (iii) felony abuse of a vulnerable adult based on isolation, as described in Subsection
157 76-5-111(3); or

158 (iv) any felony offense in another state, territory, or district of the United States that, if
159 committed in Utah, would constitute a felony offense described in this Subsection (1)(d).

160 (e) "Elder adult" means the same as that term is defined in Section 76-5-111.

161 (f) "Governing instrument" means a governing instrument executed by a vulnerable
162 adult.

163 (g) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.

164 (2) (a) An abuser who is convicted of a disqualifying felony offense against a
165 vulnerable adult forfeits any benefit under this chapter with respect to the vulnerable adult's
166 estate:

167 (i) that the vulnerable adult made to the abuser in a governing instrument; or

168 (ii) according to intestate succession, as described in Title 75, Chapter 2, Intestate
169 Succession and Wills.

170 (b) The abuser described in Subsection (2)(a):

171 (i) may not inherit, take, enjoy, receive, or otherwise benefit from the estate of the
172 vulnerable adult described in Subsection (2)(a), including by any:

173 (A) intestate share;

174 (B) elective share;

175 (C) omitted spouse's or child's share;

176 (D) homestead allowance;

177 (E) exempt property;

178 (F) family allowance;

179 (G) banknote or other form of physical currency;

180 (H) deposit account;

- 181 (I) interest-bearing account;
- 182 (J) contents of a safe deposit box;
- 183 (K) investment;
- 184 (L) retirement benefit or account;
- 185 (M) pension;
- 186 (N) annuity; or
- 187 (O) insurance proceed; and
- 188 (ii) is considered to have predeceased the vulnerable adult with respect to any intestate
- 189 property or governing instrument belonging to the vulnerable adult.
- 190 (3) Conviction of a disqualifying offense against a vulnerable adult:
- 191 (a) revokes any revocable:
- 192 (i) disposition or apportionment of property that the vulnerable adult made to the
- 193 abuser in a governing instrument;
- 194 (ii) provision in a governing instrument conferring a general or nongeneral power of
- 195 appointment on the abuser; and
- 196 (iii) nomination of the abuser in a governing instrument nominating or appointing the
- 197 abuser to serve in any fiduciary or representative capacity, including a personal representative,
- 198 representative payee, executor, trustee, or agent; and
- 199 (b) (i) severs any interest in property held by the abuser and the vulnerable adult as
- 200 joint tenants with the right of survivorship; and
- 201 (ii) transforms the interests described in Subsection (3)(b)(i) to a tenancy in common.
- 202 (4) A wrongful acquisition of property or interest by an abuser under circumstances not
- 203 covered by this section shall be treated in accordance with the principle that one cannot profit
- 204 from one's own wrongdoing.
- 205 (5) Revocation by the court of an abuser's interest in the property of the vulnerable
- 206 adult and of an abuser's powers and appointments in the estate of the vulnerable adult as
- 207 established by any governing instrument is final.
- 208 (6) Conviction of a disqualifying felony offense against a vulnerable adult:
- 209 (a) prevents any revocable interest or share an abuser has or may have in the estate of
- 210 the vulnerable adult, under Subsection (2), from vesting into a right of property upon the death
- 211 of the vulnerable adult; and

212 (b) is the triggering event for action under this section.

213 (7) As a consequence of bringing an action under this section, a court may not reduce
214 or eliminate the rights, interest, or share in the estate of a vulnerable adult belonging to any
215 interested person who:

216 (a) petitions the court under this section; and

217 (b) retains a property or other interest in the estate of a vulnerable adult, either as an
218 heir, devisee, legatee, beneficiary, survivor, appointee, or claimant, notwithstanding any
219 no-contest provision which appears in any governing instrument of the vulnerable adult.

220 (8) (a) A payor or other third party is not liable for having made a payment or
221 transferred an item of property or any other benefit to a beneficiary designated in a governing
222 instrument that a disqualifying felony offense affects, or for having taken any other action in
223 good faith reliance on the validity of the governing instrument, upon request and satisfactory
224 proof of the decedents death, before the payor or other third party received written notice of a
225 claimed forfeiture or revocation under this section.

226 (b) A payor or other third party is liable for a payment made or other action taken after
227 the payor or other third party received written notice of a claimed forfeiture or revocation under
228 this section.

229 (c) (i) An individual seeking enforcement of this section shall mail a written notice of a
230 claimed forfeiture or revocation to the payor's or other third party's main office or home by
231 registered or certified mail, return receipt requested, or served upon the payor or other third
232 party in the same manner as a summons in a civil action.

233 (ii) Upon receipt of a written notice of a claimed forfeiture or revocation described in
234 Subsection (8)(c)(i), a payor or other third party may pay any amount owed or transfer or
235 deposit any item of property the payor or third party holds to or with:

236 (A) the court having jurisdiction of the probate proceedings relating to the vulnerable
237 adult's estate; or

238 (B) if the individual who gave notice has not brought an action under this section, to or
239 with the court having jurisdiction of probate proceedings relating to the decedent's estate
240 located in the county of the decedent's residence.

241 (d) A court described in Subsection (8)(c)(ii) shall:

242 (i) hold the funds or item of property; and

243 (ii) upon the court's determination under this section, order disbursement in accordance
 244 with the determination.

245 (e) A payor's or third party's payment, transfer, or deposit made to or with the court
 246 discharges the payor or third party from all claims for the value of the paid amounts or
 247 transferred or deposited items of property.

248 (9) (a) A person who purchases property for value and without notice, or who receives
 249 a payment or other item of property in partial or full satisfaction of a legally enforceable
 250 obligation:

251 (i) may retain the payment, item of property, or benefit; and

252 (ii) is not liable under this section for the amount of the payment or the value of the
 253 item of property or benefit.

254 (b) A person who, not for value, receives a payment, item of property, or any other
 255 benefit to which the person is not entitled under this section:

256 (i) shall return the payment, item of property, or benefit to the person who is entitled to
 257 the payment or the item of property or benefit under this section; or

258 (ii) is personally liable for the amount of the payment or the value of the item of
 259 property or benefit, to the person who is entitled to the payment or the item of property or
 260 benefit under this section.

261 (c) If this section, or any part of this section, is preempted by federal law with respect
 262 to a payment, an item of property, or any other benefit that this section addresses, a person
 263 who, not for value, receives the payment, item of property, or any other benefit to which the
 264 person is not entitled under this section:

265 (i) shall return the payment, item of property, or benefit to the person who would have
 266 been entitled to the payment or the item of property or benefit if this section or the relevant part
 267 of this section was not preempted; or

268 (ii) is personally liable for the amount of the payment, or the value of the item of
 269 property or benefit, to the person who would have been entitled to the payment or the item of
 270 property or benefit if this section or the relevant part of this section was not preempted.

270a **H→ (10) Notwithstanding Subsections (2) through (6), and notwithstanding an abuser's**
 270b **conviction for a disqualifying offense, the abuser may inherit, take, enjoy, receive, or otherwise**
 270c **benefit from the estate of the vulnerable adult if:**

270d **(a) (i) after the abuser's conviction, the vulnerable adult executes a new governing**
 270e **instrument or amends or affirms an existing governing instrument under which the abuser**
 270f **receives a benefit; and** ☒

270g ☛ (ii) the vulnerable adult is not incapacitated, as that term is defined in Section 75-1-201,
 270h at the time the vulnerable adult makes the execution, amendment, or affirmation described in
 270i Subsection (7)(a)(i); or
 270j (b) the court reviewing a petition under this section determines that a manifest
 270k injustice would result if the abuser is disinherited by operation of this section. ←Ĥ
 271 Ĥ→ [(10)(a)] (11) ←Ĥ This section:
 272 Ĥ→ [(i)] (a) ←Ĥ does not operate retrospectively;
 273 Ĥ→ [(iii)] (b) ←Ĥ except as provided in Subsection (10) Ĥ→ [(a)(iii)] (c) ←Ĥ , does not
 273a apply to a disqualifying

274 felony offense that occurred prior to the effective date of this bill; and

275 ~~Ĥ→ [(iii)] (c) ←Ĥ~~ applies to a disqualifying felony offense described in Subsection (10)

275a ~~Ĥ→ [(a)(ii)] (b) ←Ĥ~~ if any

276 portion of the offense persists after the effective date of this bill.

277 ~~Ĥ→ [(b) (i) An individual may not bring an action under this section unless the statute of~~
 278 ~~limitations for an alleged disqualifying felony offense has not expired:~~

279 ~~——— (ii) The expiration of a statute of limitation for the relevant alleged disqualifying felony~~
 280 ~~offense is an affirmative defense to action under this section.] ←Ĥ~~

281 Section 4. Section **75-6-413** is amended to read:

282 **75-6-413. Effect of transfer on death deed at transferor's death.**

283 (1) Except as otherwise provided in the transfer on death deed, Sections [75-2-205](#),
 284 [75-2-702](#), [75-2-803](#), [~~and~~] [75-2-804](#), and [75-2-807](#), on the death of the transferor, the following
 285 rules apply to property that is the subject of a transfer on death deed and owned by the
 286 transferor at death.

287 (a) Subject to Subsection (1)(b), the interests in the property are transferred to the
 288 designated beneficiaries in accordance with the deed.

289 (b) The interest of a designated beneficiary is contingent on the designated beneficiary
 290 surviving the transferor. Notwithstanding Section [75-2-706](#), the interest of a designated
 291 beneficiary that fails to survive the transferor lapses.

292 (c) Subject to Subsection (1)(d), concurrent interests are transferred to the beneficiaries
 293 in equal and undivided shares with no right of survivorship, unless otherwise specified in the
 294 transfer on death deed.

295 (d) If the transferor has identified two or more designated beneficiaries to receive
 296 concurrent interests in the property, the share of one that lapses or fails for any reason is
 297 transferred to the other, or to the others in proportion to the interest of each in the remaining
 298 part of the property held concurrently.

299 (2) Subject to Title 57, Chapter 3, Recording of Documents, a beneficiary takes the
 300 property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens,
 301 and other interests to which the property is subject at the transferor's death. For purposes of
 302 this Subsection (2) and Title 57, Chapter 3, Recording of Documents, the recording of the
 303 transfer on death deed is considered to have occurred at the transferor's death.

304 (3) If a transferor is a joint owner and is:

305 (a) survived by one or more other joint owners, the property that is the subject of a
306 transfer on death deed belongs to the surviving joint owner or owners with right of
307 survivorship; or

308 (b) the last surviving joint owner, the transfer on death deed is effective.

309 (4) A transfer on death deed transfers property without covenant or warranty of title
310 even if the deed contains a contrary provision.

311 (5) Following the death of the transferor, an affidavit in substantially the form found in
312 Section 57-1-5.1 shall be recorded in the office of the recorder of the county in which the
313 affected property is located. Each affidavit shall:

314 (a) contain a legal description of the real property that is affected;

315 (b) reference the entry number and the book and page of the previously recorded
316 transfer on death deed; and

317 (c) have attached as an exhibit, a copy of the death certificate or other document issued
318 by a governmental agency as described in Section 75-1-107 certifying the transferor's death.

319 Section 5. **Revisor instructions.**

320 The Legislature intends that the Office of Legislative Research and General Counsel, in
321 preparing the Utah Code database for publication, replace the references in Subsection
322 75-2-807 ~~10~~ (11) from "the effective date of this bill" to the bill's actual effective date.