

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

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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30 [75-2-508](#), as repealed and reenacted by Laws of Utah 1998, Chapter 39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

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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 fide 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 felony offense on intestate succession, wills,**  
143 **trusts, joint 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 felony  
146 offense 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 felony offense" means a felony offense against a vulnerable adult  
151 that 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 felony 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 decedent's 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.

271 (10) Notwithstanding Subsections (2) through (6), and notwithstanding an abuser's

272 conviction for a disqualifying felony offense, the abuser may inherit, take, enjoy, receive, or  
273 otherwise benefit from the estate of the vulnerable adult if:

274 (a) (i) after the abuser's conviction, the vulnerable adult executes a new governing  
275 instrument or amends or affirms an existing governing instrument under which the abuser  
276 receives a benefit; and

277 (ii) the vulnerable adult is not incapacitated, as that term is defined in Section  
278 75-1-201, at the time the vulnerable adult makes the execution, amendment, or affirmation  
279 described in Subsection (10)(a)(i); or

280 (b) the court reviewing a petition under this section determines that a manifest injustice  
281 would result if the abuser is disinherited by operation of this section.

282 (11) This section:

283 (a) does not operate retrospectively;

284 (b) except as provided in Subsection (10)(c), does not apply to a disqualifying felony  
285 offense that occurred prior to the effective date of this bill; and

286 (c) applies to a disqualifying felony offense described in Subsection (10)(b) if any  
287 portion of the offense persists after the effective date of this bill.

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

289 **75-6-413. Effect of transfer on death deed at transferor's death.**

290 (1) Except as otherwise provided in the transfer on death deed, Sections 75-2-205,  
291 75-2-702, 75-2-803, [and] 75-2-804, and 75-2-807, on the death of the transferor, the following  
292 rules apply to property that is the subject of a transfer on death deed and owned by the  
293 transferor at death.

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

296 (b) The interest of a designated beneficiary is contingent on the designated beneficiary  
297 surviving the transferor. Notwithstanding Section 75-2-706, the interest of a designated  
298 beneficiary that fails to survive the transferor lapses.

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

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

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

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

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

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

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

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

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

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

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

326           Section 5. **Revisor instructions.**

327           The Legislature intends that the Office of Legislative Research and General Counsel, in  
328 preparing the Utah Code database for publication, replace the references in Subsection  
329 [75-2-807\(11\)](#) from "the effective date of this bill" to the bill's actual effective date.