

SB0085S01 compared with SB0085

~~deleted text~~ shows text that was in SB0085 but was deleted in SB0085S01.

inserted text shows text that was not in SB0085 but was inserted into SB0085S01.

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Senator Todd D. Weiler proposes the following substitute bill:

DISINHERITANCE FOLLOWING CRIMES AGAINST VULNERABLE ADULTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ statutorily disinherits an individual who commits certain felony offenses against a vulnerable adult, including any:
 - shares in an estate or intestate shares;
 - revocation of revocable dispositions, appointments, nominations, or conferrals;

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and

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

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

75-2-508, as repealed and reenacted by Laws of Utah 1998, Chapter 39

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

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

ENACTS:

75-2-807, Utah Code Annotated 1953

Utah Code Sections Affected by Revisor Instructions:

75-2-807, Utah Code Annotated 1953

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

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

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

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

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

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

(1) As used in this section:

(a) "Disposition or appointment of property" includes a transfer of an item of property

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or any other benefit to a beneficiary designated in a governing instrument.

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

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

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

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

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

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

(a) revokes any revocable:

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

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

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individual's former spouse; and

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

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

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

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

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

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

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

(b) Written notice of the divorce, annulment, or remarriage under Subsection (7)(a) shall be mailed to the payor's or other third party's main office or home by registered or

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certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to the decedent's estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

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

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

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

75-2-807. Effect of disqualifying offense on intestate succession, wills, trusts, joint

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assets, life insurance, beneficiary designations -- Forfeiture -- Revocation.

(1) As used in this section:

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

(b) "Dependent adult" means:

~~(i) the same as that term is defined in Section 76-5-111; or~~

~~(ii) an individual who has physical or developmental disabilities or whose physical or mental capacity has substantially diminished because of age.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) intestate share;

(B) elective share;

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

(D) homestead allowance;

(E) exempt property;

(F) family allowance;

(G) banknote or other form of physical currency;

(H) deposit account;

(I) interest-bearing account;

(J) contents of a safe deposit box;

(K) investment;

(L) retirement benefit or account;

(M) pension;

(N) annuity; or

(O) insurance proceed; and

(ii) is considered to have predeceased the vulnerable adult with respect to any intestate property or governing instrument belonging to the vulnerable adult.

(3) Conviction of a disqualifying offense against a vulnerable adult:

(a) revokes any revocable:

(i) disposition or apportionment of property that the vulnerable adult made to the abuser in a governing instrument;

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

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

(b) (i) severs any interest in property held by the abuser and the vulnerable adult as joint tenants with the right of survivorship; and

(ii) transforms the interests described in Subsection (3)(b)(i) to a tenancy in common.

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(4) A wrongful acquisition of property or interest by an abuser under circumstances not covered by this section shall be treated in accordance with the principle that one cannot profit from one's own wrongdoing.

(5) ~~†(a)†~~ Revocation by the court of an abuser's interest in the property of the vulnerable adult and of an abuser's powers and appointments in the estate of the vulnerable adult as established by any governing instrument is final.

~~{ (b) The court shall sustain the revocation described in Subsection (5)(a), regardless of whether the vulnerable adult is aware of the abuser's conviction of a disqualifying felony offense and thereafter reaffirms the abusers interests, powers, or appointments in the vulnerable adult's estate by executing a new or modified written instrument, including a will, insurance policy, deed, or other governing document recognized by the court.~~

† (6) ~~†Commission†~~ **Conviction** of a disqualifying felony offense against a vulnerable adult:

(a) prevents any revocable interest or share an abuser has or may have in the estate of the vulnerable adult, under Subsection (2), from vesting into a right of property upon the death of the vulnerable adult; and

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

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

(a) petitions the court under this section; and

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

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

(b) A payor or other third party is liable for a payment made or other action taken after

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the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) (a) This section:

(i) does not operate retrospectively;

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

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

(b) (i) An individual may not bring an action under this section unless the statute of limitations for an alleged disqualifying felony offense has not expired.

(ii) The expiration of a statute of limitation for the relevant alleged disqualifying felony offense is an affirmative defense to action under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. **Revisor instructions.**

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