

INHERITANCE DISQUALIFICATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the disinheritance of an individual who commits a homicide.

Highlighted Provisions:

This bill:

- ▶ defines and amends terms;
- ▶ clarifies provisions related to the disinheritance of an individual who committed the homicide of a decedent;
- ▶ allows a decedent's estate to petition a court to preserve the assets and property of an individual who committed the homicide of the decedent; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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 -- Petition -- Forfeiture --**
31 **Revocation.**

32 (1) As used in this section:

33 (a) "Conviction" means the same as that term is defined in Section 77-38b-102.

34 (b) "Decedent" means a deceased individual.

35 ~~[(a)]~~ (c) "Disposition or appointment of property" includes a transfer of an item of
36 property or any other benefit to a beneficiary designated in a governing instrument.

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

42 (d) (i) Except as provided in Subsection (1)(d)(ii), "disqualifying homicide" means any
43 felony homicide offense described in Title 76, Chapter 5, Offenses Against the Person, for
44 which the elements are established by a preponderance of the evidence and by applying the
45 same principles of culpability and defenses described in Title 76, Utah Criminal Code.

46 (ii) "Disqualifying homicide" does not include an automobile homicide offense
47 described in Title 76, Chapter 5, Offenses Against the Person.

48 ~~[(c)]~~ (e) "Governing instrument" means a governing instrument executed by the
49 decedent.

50 ~~[(d)]~~ (f) "Killer" means ~~[a person]~~ an individual who commits a disqualifying
51 homicide.

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

57 (g) "Revocable" means a disposition, appointment, provision, or nomination under
58 which the decedent, at the time of or immediately before death, was alone empowered, by law

59 or under the governing instrument, to cancel the designation in favor of the killer regardless of
60 whether at the time or immediately before death:

61 (i) the decedent was empowered to designate the decedent in place of the decedent's
62 killer; or

63 (ii) the decedent had the capacity to exercise the power.

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

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

70 (3) The killing of the decedent by means of a disqualifying homicide:

71 (a) revokes any revocable:

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

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

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

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

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

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

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

93 ~~[(7) The court, upon the petition of an interested person, shall determine whether,~~
94 ~~under the preponderance of evidence standard, the individual has committed a disqualifying~~
95 ~~homicide of the decedent. If the court determines that, under that standard, the individual has~~
96 ~~committed a disqualifying homicide of the decedent, the determination conclusively establishes~~
97 ~~that individual as having committed a disqualifying homicide for purposes of this section,~~
98 ~~unless the court finds that the act of disinheritance would create a manifest injustice. A~~
99 ~~judgment of criminal conviction for a disqualifying homicide of the decedent, after all direct~~
100 ~~appeals have been exhausted, conclusively establishes that the convicted individual has~~
101 ~~committed the disqualifying homicide for purposes of this section.]~~

102 (7) (a) An interested person may petition the court to determine whether an individual
103 has committed a disqualifying homicide of the decedent.

104 (b) An individual has committed a disqualifying homicide of the decedent for purposes
105 of this section if:

106 (i) unless the court finds that disinheritance would create a manifest injustice, the court
107 finds that, by a preponderance of the evidence, the individual has committed a disqualifying
108 homicide of the decedent; or

109 (ii) the court finds that a judgment of conviction has been entered against the
110 individual for a disqualifying homicide of the decedent and all direct appeals for the judgment
111 have been exhausted.

112 (8) (a) Before a court determines whether an individual committed a disqualifying
113 homicide of the decedent under Subsection (7), the decedent's estate may petition the court to:

114 (i) enter a temporary restraining order, an injunction, or a temporary restraining order
115 and an injunction, to preserve the property or assets of the killer or the killer's estate;

116 (ii) require the execution of a trustee's bond under Section [75-7-702](#) for the killer's
117 estate;

118 (iii) establish a constructive trust on any property or assets of the killer or the killer's
119 estate that is effective from the time the killer's act caused the death of the decedent; or

120 (iv) take any other action necessary to preserve the property or assets of the killer or the

121 killer's estate:

122 (A) until a court makes a determination under Subsection (7); or

123 (B) for the payment of all damages and judgments for conduct resulting in the
124 disqualifying homicide of the decedent.

125 (b) Upon a petition for a temporary restraining order or an injunction under Subsection
126 (8)(a)(i), a court may enter a temporary restraining order or injunction against an owner's
127 property, without notice or opportunity of a hearing, if the court determines that:

128 (i) there is a substantial likelihood that the property is, or will be, necessary to satisfy a
129 judgment or damages owed by the killer for conduct resulting in the disqualifying homicide of
130 the decedent; and

131 (ii) notice of the hearing would likely result in the property being:

132 (A) sold, distributed, destroyed, or removed; and

133 (B) unavailable to satisfy a judgment or damages owed by the killer for conduct
134 resulting in the disqualifying homicide of the decedent.

135 (c) A temporary restraining order or injunction under this Subsection (8) expires no
136 later than 10 days from the day on which the order or injunction is entered unless:

137 (i) extended for good cause shown; or

138 (ii) the party against whom the temporary restraining order or injunction is entered
139 consents to the extension.

140 (d) A hearing concerning a petition under this Subsection (8) shall be held as soon as
141 possible and before the expiration of any temporary order.

142 ~~[(8)]~~ (9) (a) (i) A payor or other third party is not liable for having made a payment or
143 transferred an item of property or any other benefit to a beneficiary designated in a governing
144 instrument affected by a disqualifying homicide, or for having taken any other action in good
145 faith reliance on the validity of the governing instrument, upon request and satisfactory proof of
146 the decedent's death, before the payor or other third party received written notice of a claimed
147 forfeiture or revocation under this section.

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

151 (b) (i) Written notice of a claimed forfeiture or revocation under Subsection ~~[(8)]~~ (9)(a)

152 shall be mailed to the payor's or other third party's main office or home by registered or
153 certified mail, return receipt requested, or served upon the payor or other third party in the
154 same manner as a summons in a civil action.

155 (ii) Upon receipt of written notice of a claimed forfeiture or revocation under this
156 section, a payor or other third party may pay any amount owed or transfer or deposit any item
157 of property held by ~~[it]~~ the payor or third party to or with:

158 (A) the court having jurisdiction of the probate proceedings relating to the decedent's
159 estate~~[-or];~~ or

160 (B) if no proceedings have been commenced, ~~[to or with]~~ the court having jurisdiction
161 of probate proceedings relating to the decedent's estates located in the county of the decedent's
162 residence.

163 (iii) The court shall hold the funds or item of property and, upon ~~[its]~~ the court's
164 determination under this section, shall order disbursement in accordance with the
165 determination.

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

169 ~~[(9)]~~ (10) (a) A person who purchases property for value and without notice, or who
170 receives a payment or other item of property in partial or full satisfaction of a legally
171 enforceable obligation, is ~~[neither]:~~

172 (i) not obligated under this section to return the payment, item of property, or benefit
173 ~~[nor is];~~ and

174 (ii) not liable under this section for the amount of the payment or the value of the item
175 of property or benefit. ~~[But]~~

176 (b) Notwithstanding Subsection (10)(a), a person who, not for value, receives a
177 payment, item of property, or any other benefit to which the person is not entitled under this
178 section is:

179 (i) obligated to return the payment, item of property, or benefit~~[-or is]~~ to the person
180 who is entitled to the payment, property, or benefit under this section; and

181 (ii) personally liable for the amount of the payment or the value of the item of property
182 or benefit~~[-];~~ to the person who is entitled to [it] the payment, property, or benefit under this

183 section.

184 ~~[(b)]~~ (c) If this section or any part of this section is preempted by federal law with
185 respect to a payment, an item of property, or any other benefit covered by this section, a person
186 who, not for value, receives the payment, item of property, or any other benefit to which the
187 person is not entitled under this section is:

188 (i) obligated to return the payment, item of property, or benefit~~[, or is]~~ to the person
189 who would have been entitled to the payment, property, or benefit if this section or part were
190 not preempted; and

191 (ii) personally liable for the amount of the payment or the value of the item of property
192 or benefit, to the person who would have been entitled to ~~[it were this section or part of this~~
193 ~~section not preempted]~~ the payment, property, or benefit if this section or part were not
194 preempted.