

Representative Andrew Stoddard proposes the following substitute bill:

1                   **INHERITANCE DISQUALIFICATION AMENDMENTS**

2                   2022 GENERAL SESSION

3                   STATE OF UTAH

4                   **Chief Sponsor: Andrew Stoddard**

5                   Senate Sponsor: Todd D. Weiler

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6                   **LONG TITLE**

7                   **General Description:**

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

10                  **Highlighted Provisions:**

11                  This bill:

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

18                  **Money Appropriated in this Bill:**

19                  None

20                  **Other Special Clauses:**

21                  This bill provides a coordination clause.

22                  **Utah Code Sections Affected:**

23                  **AMENDS:**

24                  75-2-803, as last amended by Laws of Utah 2006, Chapter 270



26 **Utah Code Sections Affected by Coordination Clause:**27 **75-2-803**, as last amended by Laws of Utah 2006, Chapter 27029 *Be it enacted by the Legislature of the state of Utah:*30 Section 1. Section **75-2-803** is amended to read:31 **75-2-803. Definitions -- Effect of homicide on intestate succession, wills, trusts,**  
32 **joint assets, life insurance, and beneficiary designations -- Petition -- Forfeiture --**  
33 **Revocation.**

34 (1) As used in this section:

35 (a) "Conviction" means the same as that term is defined in Section **77-38b-102**.36 (b) "Decedent" means a deceased individual.37 [ (a) (c) "Disposition or appointment of property" includes a transfer of an item of  
38 property or any other benefit to a beneficiary designated in a governing instrument.39 [ (b) "Disqualifying homicide" means a homicide established by a preponderance of the  
40 evidence that meets the elements of any felony homicide offense in Title 76, Chapter 5,  
41 Offenses Against the Person, except automobile homicide, applying the same principles of  
42 culpability and defenses as in Title 76, Utah Criminal Code, including but not limited to  
43 Chapter 2, Principles of Criminal Responsibility.]44 (d) (i) Except as provided in Subsection (1)(d)(ii), "disqualifying homicide" means any  
45 felony homicide offense described in Title 76, Chapter 5, Offenses Against the Person, for  
46 which the elements are established by a preponderance of the evidence and by applying the  
47 same principles of culpability and defenses described in Title 76, Utah Criminal Code.48 (ii) "Disqualifying homicide" does not include an automobile homicide offense  
49 described in Title 76, Chapter 5, Offenses Against the Person.50 [ (c) (e) "Governing instrument" means a governing instrument executed by the  
51 decedent.52 [ (d) (f) "Killer" means [a person] an individual who commits a disqualifying  
53 homicide.54 [ (e) "Revocable," with respect to a disposition, appointment, provision, or nomination,  
55 means one under which the decedent, at the time of or immediately before death, was alone  
56 empowered, by law or under the governing instrument, to cancel the designation, in favor of

57 the killer, whether or not the decedent was then empowered to designate himself in place of his  
58 killer and whether or not the decedent then had capacity to exercise the power.]

59 (g) "Revocable" means a disposition, appointment, provision, or nomination under  
60 which the decedent, at the time of or immediately before death, was alone empowered, by law  
61 or under the governing instrument, to cancel the designation in favor of the killer regardless of  
62 whether at the time or immediately before death:

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

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

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

70 (b) If the decedent died intestate, the decedent's intestate estate passes as if the killer  
71 disclaimed [his] the killer's intestate share.

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

73 (a) revokes any revocable:

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

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

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

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

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

88 ordinary course of transactions involving such property, as evidence of ownership.

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

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

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

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

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

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

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

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

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

118 (ii) require the execution of a trustee's bond under Section 75-7-702 for the killer's

119 estate;

120       (iii) establish a constructive trust on any property or assets of the killer or the killer's  
121 estate that is effective from the time the killer's act caused the death of the decedent; or  
122       (iv) take any other action necessary to preserve the property or assets of the killer or the  
123 killer's estate:

124       (A) until a court makes a determination under Subsection (7); or  
125       (B) for the payment of all damages and judgments for conduct resulting in the  
126 disqualifying homicide of the decedent.

127       (b) Upon a petition for a temporary restraining order or an injunction under Subsection  
128 (8)(a)(i), a court may enter a temporary restraining order against an owner's property in  
129 accordance with Rule 65A of the Utah Rules of Civil Procedure, without notice or opportunity  
130 of a hearing, if the court determines that:

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

134       (ii) notice of the hearing would likely result in the property being:  
135       (A) sold, distributed, destroyed, or removed; and  
136       (B) unavailable to satisfy a judgment or damages owed by the killer for conduct  
137 resulting in the disqualifying homicide of the decedent.

138       [§8] (9) (a) (i) A payor or other third party is not liable for having made a payment or  
139 transferred an item of property or any other benefit to a beneficiary designated in a governing  
140 instrument affected by a disqualifying homicide, or for having taken any other action in good  
141 faith reliance on the validity of the governing instrument, upon request and satisfactory proof of  
142 the decedent's death, before the payor or other third party received written notice of a claimed  
143 forfeiture or revocation under this section.

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

147       (b) (i) Written notice of a claimed forfeiture or revocation under Subsection [§8] (9)(a)  
148 shall be mailed to the payor's or other third party's main office or home by registered or  
149 certified mail, return receipt requested, or served upon the payor or other third party in the

150 same manner as a summons in a civil action.

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

154 (A) the court having jurisdiction of the probate proceedings relating to the decedent's  
155 estate[~~, or~~]; or

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

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

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

165 [~~(9)~~] (10) (a) A person who purchases property for value and without notice, or who  
166 receives a payment or other item of property in partial or full satisfaction of a legally  
167 enforceable obligation, is [~~neither~~]:

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

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

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

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

177 (ii) personally liable for the amount of the payment or the value of the item of property  
178 or benefit[~~, or is~~] to the person who is entitled to [it] the payment, property, or benefit under this  
179 section.

180 [~~(b)~~] (c) If this section or any part of this section is preempted by federal law with

181 respect to a payment, an item of property, or any other benefit covered by this section, a person  
182 who, not for value, receives the payment, item of property, or any other benefit to which the  
183 person is not entitled under this section is:

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

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

191       Section 2. **Coordinating H.B. 314 with S.B. 124 and H.B. 29 -- Substantive  
192 amendment.**

193       If this H.B. 314, S.B. 124, Criminal Code Recodification Cross References, and H.B.  
194 29, Driving Offenses Amendments, all pass and become law, the Legislature intends that the  
195 Office of Legislative Research and General Counsel prepare the database for publication by  
196 amending Subsection 75-2-803(1)(d) to read:

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

201       (ii) "Disqualifying homicide" does not include an offense for:

202       (A) negligently operating a vehicle resulting in death, as described in Section 76-5-207;  
203 and

204       (B) automobile homicide involving using a handheld wireless communication device  
205 while driving, as described in Section 76-5-207.5."