

## HB0314S01 compared with HB0314

~~text~~ shows text that was in HB0314 but was deleted in HB0314S01.

text shows text that was not in HB0314 but was inserted into HB0314S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Andrew Stoddard proposes the following substitute bill:

### 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:

## HB0314S01 compared with HB0314

None

### Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

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

### Utah Code Sections Affected by Coordination Clause:

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

---

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

Section 1. Section **75-2-803** is amended to read:

**75-2-803. Definitions -- Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations -- Petition -- Forfeiture -- Revocation.**

(1) As used in this section:

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

(b) "Decedent" means a deceased individual.

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

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

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

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

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

## HB0314S01 compared with HB0314

decedent.

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

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

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

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

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

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

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

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

(a) revokes any revocable:

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

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

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

(b) severs the interests of the decedent and killer in property held by them at the time of

## HB0314S01 compared with HB0314

the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common.

(4) A severance under Subsection (3)(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 killer 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.

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

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

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

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

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

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

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

## HB0314S01 compared with HB0314

have been exhausted.

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

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

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

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

(iv) take any other action necessary to preserve the property or assets of the killer or the killer's estate:

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

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

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

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

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

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

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

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

~~(i) extended for good cause shown; or~~

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

~~(d) A hearing concerning a petition under this Subsection (8) shall be held as soon as~~

## HB0314S01 compared with HB0314

~~possible and before the expiration of any temporary order.~~

‡ [(8)] (9) (a) (i) 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 disqualifying homicide, 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 decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(ii) 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) (i) Written notice of a claimed forfeiture or revocation under Subsection [(8)] (9)(a) shall be mailed 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 written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by [it] the payor or third party to or with:

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

(B) 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.

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

(iv) 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.

[(9)] (10) (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, is [~~neither~~]:

## HB0314S01 compared with HB0314

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

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

(b) Notwithstanding Subsection (10)(a), 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 is:

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

(ii) 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] the payment, property, or benefit under this section.

[~~(b)~~] (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 covered by this section, 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 is:

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

(ii) 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] the payment, property, or benefit if this section or part were not preempted.

### Section 2. Coordinating H.B. 314 with S.B. 124 and H.B. 29 -- Substantive amendment.

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

"(d)(i) Except as provided in Subsection (1)(d)(ii), "disqualifying homicide" means any felony homicide offense described in Title 76, Chapter 5, Offenses Against the Individual, for

## **HB0314S01 compared with HB0314**

which the elements are established by a preponderance of the evidence and by applying the same principles of culpability and defenses described in Title 76, Utah Criminal Code.

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

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

and

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