

Legislative Analysis



EPIC: DISINHERITING ABUSERS

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House Bill 5195

Sponsor: Rep. Gary McDowell

Committee: Senior, Health, Security, and Retirement

Complete to 2-23-10

A SUMMARY OF HOUSE BILL 5195 AS REPORTED FROM COMMITTEE 2-17-2010

The bill would amend Section 2803 of the Estates and Protected Individuals Code (EPIC) to specify that an individual ***who is convicted of committing abuse, neglect, or exploitation*** with respect to the decedent (a person who has died) would forfeit all benefits with respect to the victim's estate. In general, a conviction for these offenses under the bill would be treated the way a conviction for feloniously and intentionally killing the decedent is currently treated under the act.

A definition of the term ***abuse, neglect, or exploitation*** and a definition of the term ***felon*** would be added to the relevant subsections that require the revocation of the convicted person's powers of appointment under a governing instrument; the revocation of the nomination of a convicted person as a personal representative, executor, trustee, or agent; and the severing of interest in property held by the convicted person with the decedent as joint tenants with the right of survivorship, among other things.

Section 2803 currently only applies to an individual who feloniously and intentionally kills the decedent. The bill would extend the section to also apply to the conviction for the abuse, neglect, or exploitation of the decedent.

The bill would add new language saying Section 2803 would not apply if the decedent executed a governing instrument after the date of the conviction for abuse, neglect, or exploitation expressing a specific intent to allow the felon to inherit or otherwise receive the estate or property of the decedent.

Section 2802 would be amended to include in the code's definitions the term ***abuse, neglect, or exploitation***. These terms, together with ***domestic abuse and child abuse***, would be imported from the Penal Code and the Social Welfare Act. The bill would also define ***felon*** to mean the individual who committed the abuse, neglect, or exploitation.

The bill would also make complementary amendments to Section 2804 which deals with the liability of a payor and other third parties who make payments or transfer property to a beneficiary who has forfeited benefits under Section 2803.

MCL 700.2802, et al.

BACKGROUND INFORMATION:

The Final Report of the Governor's Task Force on Elder Abuse recommended that the Probate Code should be revised "to prohibit a person convicted of a felony crime from inheriting from his or her crime victim, unless the victim executes a will . . . indicating a specific intent to allow the person to inherit from the victim, and the will or codicil is executed after the person's conviction."

The report notes that, "Today in Michigan, a person can torture, abuse, neglect, or steal from a vulnerable adult and still inherit from that person, as long as the physical harm he or she perpetrated did not lead to death." The report says, "The ability to inherit from one you have abused puts vulnerable elders at risk for abuse."

FISCAL IMPACT:

House Bill 5195 would have an indeterminate, but likely negligible, fiscal impact on state and local government. Any fiscal impact would be the result of increased probate litigation regarding a decedent's estate. However, much of the cost would be offset by the parties to the litigation covering the court costs. The portion of the estate forfeited by a person falling under the provisions of the bill would be inherited by other descendants of the decedent.

POSITIONS:

Office of Services to the Aging testified in support of the bill. (2-17-10)

Elder Law of Michigan testified in support of the bill. (2-17-10)

AARP supports the bill. (2-17-10)

Legislative Analyst: E. Best
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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.