

HOUSE BILL No. 5195

July 14, 2009, Introduced by Reps. McDowell, Meadows, Byrnes, Scripps, Liss, Roberts, Haase, Womack, Kennedy, Slavens, Haugh, Kandreas, Constan, Durhal, Polidori, Terry Brown, Leland, Valentine, Segal, Spade, Miller, Geiss, Roy Schmidt, Bauer, Tlaib, Gonzales, Dean, Ebli, Gregory, Robert Jones, Donigan, Mayes, Sheltroun, Neumann, Lahti, Lisa Brown and Jackson and referred to the Committee on Senior Health, Security, and Retirement.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 2802, 2803, and 2804 (MCL 700.2802, 700.2803,
and 700.2804).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2802. As used in this section and sections 2803 and 2804:

2 (A) "ABUSE, NEGLECT, OR EXPLOITATION" MEANS ANY OF THE
3 FOLLOWING:

4 (i) AN INTENTIONAL ACT, THE COMMISSION OF WHICH IS A FELONY,
5 PROHIBITED UNDER CHAPTER XXA OF THE MICHIGAN PENAL CODE, 1931 PA
6 328, MCL 750.145M TO 750.145R.

7 (ii) A VIOLATION OF SECTION 174A OF THE MICHIGAN PENAL CODE,
8 1931 PA 328, MCL 750.174A.

9 (iii) A CRIMINAL ACT THAT IS AN OFFENSE INVOLVING DOMESTIC

1 VIOLENCE AS THAT TERM IS DEFINED IN SECTION 27B OF THE CODE OF
2 CRIMINAL PROCEDURE, 1927 PA 175, MCL 768.27B.

3 (iv) AN ACT THAT CONSTITUTES CHILD ABUSE UNDER SECTION 136B OF
4 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.136B.

5 (v) A CRIMINAL ACT THAT CONSTITUTES ABUSE AS THAT TERM IS
6 DEFINED IN SECTION 11 OF THE SOCIAL WELFARE ACT, 1939 PA 280, MCL
7 400.11.

8 (B) ~~(a)~~—"Disposition or appointment of property" includes, but
9 is not limited to, a transfer of an item of property or another
10 benefit to a beneficiary designated in a governing instrument.

11 (C) "FELON" MEANS THE INDIVIDUAL WHO WAS CONVICTED OF
12 COMMITTING THE ABUSE, NEGLECT, OR EXPLOITATION.

13 (D) ~~(b)~~—"Governing instrument" means a governing instrument
14 executed by the decedent.

15 (E) ~~(c)~~—"Revocable" means, with respect to a disposition,
16 appointment, provision, or nomination, one under which the
17 decedent, at the time of or immediately before death, was alone
18 empowered, by law or under the governing instrument, to cancel the
19 designation in favor of the killer **OR FELON**, whether or not the
20 decedent was then empowered to designate himself or herself in
21 place of his or her killer **OR FELON** and whether or not the decedent
22 then had the capacity to exercise the power.

23 Sec. 2803. (1) An individual who feloniously and intentionally
24 kills **OR WHO IS CONVICTED OF COMMITTING ABUSE, NEGLECT, OR**
25 **EXPLOITATION WITH RESPECT TO** the decedent forfeits all benefits
26 under this article with respect to the decedent's estate, including
27 an intestate share, an elective share, an omitted spouse's or

1 child's share, a homestead allowance, a family allowance, and
2 exempt property. If the decedent died intestate, the decedent's
3 intestate estate passes as if the killer **OR FELON** disclaimed his or
4 her intestate share.

5 (2) The felonious and intentional killing **OR THE CONVICTION OF**
6 **THE FELON FOR THE ABUSE, NEGLECT, OR EXPLOITATION** of the decedent
7 does all of the following:

8 (a) Revokes all of the following that are revocable:

9 (i) Disposition or appointment of property made by the decedent
10 to the killer **OR FELON** in a governing instrument.

11 (ii) Provision in a governing instrument conferring a general
12 or nongeneral power of appointment on the killer **OR FELON**.

13 (iii) Nomination of the killer **OR FELON** in a governing
14 instrument, nominating or appointing the killer **OR FELON** to serve
15 in a fiduciary or representative capacity, including a personal
16 representative, executor, trustee, or agent.

17 (b) Severs the interests of the decedent and killer **OR FELON**
18 in property held by them at the time of the killing, **ABUSE,**
19 **NEGLECT, OR EXPLOITATION** as joint tenants with the right of
20 survivorship, transforming the interests of the decedent and killer
21 **OR FELON** into tenancies in common.

22 (3) A severance under subsection (2)(b) does not affect a
23 third party interest in property acquired for value and in good
24 faith reliance on an apparent title by survivorship in the killer
25 **OR FELON** unless a writing declaring the severance has been noted,
26 registered, filed, or recorded in records appropriate to the kind
27 and location of the property that are relied upon, in the ordinary

1 course of transactions involving that type of property, as evidence
2 of ownership.

3 (4) A provision of a governing instrument is given effect as
4 if the killer **OR FELON** disclaimed all provisions revoked by this
5 section or, in the case of a revoked nomination in a fiduciary or
6 representative capacity, as if the killer **OR FELON** predeceased the
7 decedent.

8 (5) A killer's **OR FELON'S** wrongful acquisition of property or
9 interest not covered by this section shall be treated in accordance
10 with the principle that a killer **OR FELON** cannot profit from his or
11 her wrong.

12 (6) After all right to appeal has been exhausted, a judgment
13 of conviction establishing criminal accountability for the
14 felonious and intentional killing **OR THE ABUSE, NEGLECT, OR**
15 **EXPLOITATION** of the decedent conclusively establishes the convicted
16 individual as the decedent's killer **OR AS A FELON, AS APPLICABLE,**
17 for purposes of this section. ~~In~~**WITH RESPECT TO A CLAIM OF**
18 **FELONIOUS AND INTENTIONAL KILLING, IN** the absence of a conviction,
19 the court, upon the petition of an interested person, shall
20 determine whether, under the preponderance of evidence standard,
21 the individual would be found criminally accountable for the
22 felonious and intentional killing of the decedent. If the court
23 determines that, under that standard, the individual would be found
24 criminally accountable for the felonious and intentional killing of
25 the decedent, the determination conclusively establishes that
26 individual as the decedent's killer for purposes of this section.

27 (7) **THIS SECTION DOES NOT APPLY IF THE FORFEITURE, REVOCATION,**

1 OR SEVERANCE WOULD OCCUR BECAUSE OF ABUSE, NEGLECT, OR EXPLOITATION
2 AND THE DECEDENT EXECUTED A GOVERNING INSTRUMENT AFTER THE DATE OF
3 THE CONVICTION EXPRESSING A SPECIFIC INTENT TO ALLOW THE FELON TO
4 INHERIT OR OTHERWISE RECEIVE THE ESTATE OR PROPERTY OF THE
5 DECEDENT.

6 Sec. 2804. (1) Except as otherwise provided in this section, a
7 payor or other third party is not liable for having made a payment
8 or transferred an item of property or another benefit to a
9 beneficiary designated in a governing instrument affected by an
10 intentional and felonious killing **OR BY ABUSE, NEGLECT, OR**
11 **EXPLOITATION**, or for having taken another action in reliance on the
12 validity of the governing instrument, upon request and satisfactory
13 proof of the decedent's death. A payor or other third party is
14 liable for a payment made or other action taken ~~3-7~~ or more business
15 days after the payor or other third party actually receives written
16 notice of a claimed forfeiture or revocation under section 2803. A
17 payor or other third party is not obligated to determine whether
18 the decedent was the victim of felonious killing **OR ABUSE, NEGLECT,**
19 **OR EXPLOITATION** or to seek evidence relating to such a killing **OR**
20 **ABUSE, NEGLECT, OR EXPLOITATION** even if the circumstances of the
21 decedent's death are suspicious as to the beneficiary's
22 participation in such a killing **OR IF THERE IS EVIDENCE THAT WOULD**
23 **RAISE SUSPICIONS THAT THE DECEDENT WAS THE VICTIM OF ABUSE,**
24 **NEGLECT, OR EXPLOITATION BY THE BENEFICIARY.** A recipient who
25 incorrectly receives a payment, transfer of property, or other
26 benefit is liable for the payment or transfer received, whether or
27 not written notice of the claim is given.

1 (2) Written notice of a claimed forfeiture or revocation under
2 subsection (1) must be mailed to the payor's or other third party's
3 main office or home by registered or certified mail, return receipt
4 requested, or served upon the payor or other third party in the
5 same manner as a summons in a civil action. Notice to a sales
6 representative of a payor or other third party does not constitute
7 notice to the payor or other third party.

8 (3) The written notice under subsection (1) must include the
9 decedent's name, the name of the person asserting an interest, the
10 nature of the payment, item of property, or other benefit, ~~and a~~
11 statement that a claim of forfeiture or revocation is being made
12 under section 2803, **AND, IF THE CLAIM IS BASED ON A CONVICTION FOR**
13 **ABUSE, NEGLECT, OR EXPLOITATION, A COPY OF THE JUDGMENT OF**
14 **CONVICTION.** Notice in a form or service in a manner other than that
15 described in this section does not impose liability on a payor or
16 other third party for an action taken in accordance with a
17 governing instrument.

18 (4) Upon receipt of written notice of a claimed forfeiture or
19 revocation under this section, a payor or other third party may pay
20 an amount owed to the county treasurer of the county of the court
21 having jurisdiction of the probate proceedings relating to the
22 decedent's estate or, if no proceedings have been commenced, to the
23 county treasurer of the county of the decedent's residence. With a
24 payment under this section, the payor or other third party shall
25 file a copy of the written notice received by the payor or other
26 third party. A payment made to the county treasurer discharges the
27 payor or other third party from a claim for the value of an amount

1 paid to the county treasurer.

2 (5) The county treasurer shall not charge a filing fee for a
3 payment to the county treasurer under this section. The county
4 treasurer shall hold the money in accordance with section 3917 and,
5 upon the court's determination under section 2803, shall disburse
6 the money in accordance with the determination.

7 (6) The provision for payment to the county treasurer under
8 this section does not preclude a payor or other third party from
9 taking another action authorized by law or the governing
10 instrument.