

SENATE BILL No. 79

January 27, 2011, Introduced by Senators WHITMER, HUNTER, BIEDA, GLEASON, HOPGOOD and ANDERSON and referred to the Committee on Judiciary.

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
10 VIOLENCE AS THAT TERM IS DEFINED IN SECTION 27B OF CHAPTER VIII OF

1 THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 768.27B.

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

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

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

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

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

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

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

1 exempt property. If the decedent died intestate, the decedent's
2 intestate estate passes as if the killer **OR FELON** disclaimed his or
3 her intestate share.

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

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

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

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

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

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

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

1 of ownership.

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

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

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

26 (7) **THIS SECTION DOES NOT APPLY IF THE FORFEITURE, REVOCATION,**
27 **OR SEVERANCE WOULD OCCUR BECAUSE OF ABUSE, NEGLECT, OR EXPLOITATION**

1 AND THE DECEDENT EXECUTED A GOVERNING INSTRUMENT AFTER THE DATE OF
2 THE CONVICTION EXPRESSING A SPECIFIC INTENT TO ALLOW THE FELON TO
3 INHERIT OR OTHERWISE RECEIVE THE ESTATE OR PROPERTY OF THE
4 DECEDENT.

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

27 (2) Written notice of a claimed forfeiture or revocation under

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

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

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

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

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