

SENATE BILL No. 1116

February 14, 2008, Introduced by Senators ALLEN, JELINEK, HARDIMAN and BIRKHOLZ and referred to the Committee on Senior Citizens and Veterans Affairs.

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 EITHER 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.

1 **(B) "ABUSER" MEANS THE INDIVIDUAL WHO COMMITTED THE ABUSE,**
2 **NEGLECT, OR EXPLOITATION.**

3 **(C) ~~(a)~~**"Disposition or appointment of property" includes, but
4 is not limited to, a transfer of an item of property or another
5 benefit to a beneficiary designated in a governing instrument.

6 **(D) ~~(b)~~**"Governing instrument" means a governing instrument
7 executed by the decedent.

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

16 Sec. 2803. (1) An individual who feloniously and intentionally
17 kills **OR WHO COMMITS AN ACT OF ABUSE, NEGLECT, OR EXPLOITATION WITH**
18 **RESPECT TO** the decedent forfeits all benefits under this article
19 with respect to the decedent's estate, including an intestate
20 share, an elective share, an omitted spouse's or child's share, a
21 homestead allowance, a family allowance, and exempt property. If
22 the decedent died intestate, the decedent's intestate estate passes
23 as if the killer **OR ABUSER** disclaimed his or her intestate share.

24 (2) The felonious and intentional killing **OR THE ABUSE,**
25 **NEGLECT, OR EXPLOITATION** of the decedent does all of the following:

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

27 (i) Disposition or appointment of property made by the decedent

1 to the killer **OR ABUSER** in a governing instrument.

2 (ii) Provision in a governing instrument conferring a general
3 or nongeneral power of appointment on the killer **OR ABUSER**.

4 (iii) Nomination of the killer **OR ABUSER** in a governing
5 instrument, nominating or appointing the killer **OR ABUSER** to serve
6 in a fiduciary or representative capacity, including a personal
7 representative, executor, trustee, or agent.

8 (b) Severs the interests of the decedent and killer **OR ABUSER**
9 in property held by them at the time of the killing, **ABUSE,**
10 **NEGLECT, OR EXPLOITATION** as joint tenants with the right of
11 survivorship, transforming the interests of the decedent and killer
12 **OR ABUSER** into tenancies in common.

13 (3) A severance under subsection (2)(b) does not affect a
14 third party interest in property acquired for value and in good
15 faith reliance on an apparent title by survivorship in the killer
16 **OR ABUSER** unless a writing declaring the severance has been noted,
17 registered, filed, or recorded in records appropriate to the kind
18 and location of the property that are relied upon, in the ordinary
19 course of transactions involving that type of property, as evidence
20 of ownership.

21 (4) A provision of a governing instrument is given effect as
22 if the killer **OR ABUSER** disclaimed all provisions revoked by this
23 section or, in the case of a revoked nomination in a fiduciary or
24 representative capacity, as if the killer **OR ABUSER** predeceased the
25 decedent.

26 (5) A killer's **OR ABUSER'S** wrongful acquisition of property or
27 interest not covered by this section shall be treated in accordance

1 with the principle that a killer **OR ABUSER** cannot profit from his
2 or her wrong.

3 (6) After all right to appeal has been exhausted, a judgment
4 of conviction establishing criminal accountability for the
5 felonious and intentional killing **OR THE ABUSE, NEGLECT, OR**
6 **EXPLOITATION** of the decedent conclusively establishes the convicted
7 individual as the decedent's killer **OR ABUSER, AS APPLICABLE,** for
8 purposes of this section. In the absence of a conviction, the
9 court, upon the petition of an interested person, shall determine
10 whether, under the preponderance of evidence standard, the
11 individual would be found criminally accountable for the felonious
12 and intentional killing **OR ABUSE, NEGLECT, OR EXPLOITATION** of the
13 decedent. If the court determines that, under that standard, the
14 individual would be found criminally accountable for the felonious
15 and intentional killing **OR ABUSE, NEGLECT, OR EXPLOITATION** of the
16 decedent, the determination conclusively establishes that
17 individual as the decedent's killer **OR ABUSER** for purposes of this
18 section.

19 Sec. 2804. (1) Except as otherwise provided in this section, a
20 payor or other third party is not liable for having made a payment
21 or transferred an item of property or another benefit to a
22 beneficiary designated in a governing instrument affected by an
23 intentional and felonious killing **OR BY ABUSE, NEGLECT, OR**
24 **EXPLOITATION,** or for having taken another action in reliance on the
25 validity of the governing instrument, upon request and satisfactory
26 proof of the decedent's death. A payor or other third party is
27 liable for a payment made or other action taken 3 or more business

1 days after the payor or other third party actually receives written
2 notice of a claimed forfeiture or revocation under section 2803. A
3 payor or other third party is not obligated to determine whether
4 the decedent was the victim of felonious killing **OR ABUSE, NEGLECT,**
5 **OR EXPLOITATION** or to seek evidence relating to such a killing **OR**
6 **ABUSE, NEGLECT, OR EXPLOITATION** even if the circumstances of the
7 decedent's death are suspicious as to the beneficiary's
8 participation in such a killing **OR IF THERE IS EVIDENCE THAT WOULD**
9 **RAISE SUSPICIONS THAT THE DECEDENT WAS THE VICTIM OF ABUSE,**
10 **NEGLECT, OR EXPLOITATION BY THE BENEFICIARY.** A recipient who
11 incorrectly receives a payment, transfer of property, or other
12 benefit is liable for the payment or transfer received, whether or
13 not written notice of the claim is given.

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

21 (3) The written notice under subsection (1) must include the
22 decedent's name, the name of the person asserting an interest, the
23 nature of the payment, item of property, or other benefit, and a
24 statement that a claim of forfeiture or revocation is being made
25 under section 2803. Notice in a form or service in a manner other
26 than that described in this section does not impose liability on a
27 payor or other third party for an action taken in accordance with a

1 governing instrument.

2 (4) Upon receipt of written notice of a claimed forfeiture or
3 revocation under this section, a payor or other third party may pay
4 an amount owed to the county treasurer of the county of the court
5 having jurisdiction of the probate proceedings relating to the
6 decedent's estate or, if no proceedings have been commenced, to the
7 county treasurer of the county of the decedent's residence. With a
8 payment under this section, the payor or other third party shall
9 file a copy of the written notice received by the payor or other
10 third party. A payment made to the county treasurer discharges the
11 payor or other third party from a claim for the value of an amount
12 paid to the county treasurer.

13 (5) The county treasurer shall not charge a filing fee for a
14 payment to the county treasurer under this section. The county
15 treasurer shall hold the money in accordance with section 3917 and,
16 upon the court's determination under section 2803, shall disburse
17 the money in accordance with the determination.

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