

Legislative Analysis



EXEMPT PROPERTY: ALLOW TO EXCLUDE ADULT CHILD IN WILL

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House Bill 5638 as introduced
Sponsor: Rep. Peter J. Lucido
Committee: Judiciary
Complete to 12-5-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill will allow a person to exclude, in a will or written instrument, an adult child who is not a dependent from making a claim to receive property from the person's estate after death under the "exempt allowance" provision.

House Bill 5638 amends Section 2404 of the Estates and Protected Individuals Code. Currently, a surviving spouse, or if no surviving spouse, the decedent's children, have a statutory right to exempt property. This is in addition to any property bequeathed in a will or that the heirs are entitled to under the state's intestate laws if the person did not leave a will. (Exempt property refers to property such as jewelry, cars, or cash that is protected from creditors; the amount that may be protected is established in statute and currently is about \$15,000.)

The bill amends Section 2404 to allow a decedent (either in a will or by other signed writing) to expressly exclude or limit the right of a child who is not a minor or the decedent's dependent from making a claim to any of the exempted property for which the child would have a right under Section 2404.

The exclusion or limitation described above must be expressly stated by the decedent, and must specifically refer to the allowance described in Section 2404 in a manner sufficient to express the decedent's intent. An exclusion or limitation stated by a decedent by will under Section 2101 of the code, without additional language specifically stating an intent to exclude or limit a right to make a claim against excluded property, will not be considered sufficient language to exclude or limit a right under Section 2404. (Section 2101 allows a decedent to expressly exclude in a will an individual from receiving any part of the decedent's estate that was not disposed of in the will and so will now pass by intestate succession to the decedent's heirs as prescribed in the act.)

The bill takes effect 90 days after enactment.

MCL 700.2404

BACKGROUND INFORMATION:

Currently, a person may expressly disinherit a child (other than a minor child or child who is a dependent) in a will. Recently, however, a Michigan Court of Appeals case ruled that

disinheriting a child in a will does not limit that child's right to make a claim to exempt property under MCL 700.2404. Thus, a disinherited child may make a claim against certain personal property up to the amount protected in statute from creditors. *In re Estate of Shelby Jean Jajuga, Chelenyak v. Veith*, No. 322522 (October 20, 2015)

FISCAL IMPACT:

The bill will have no fiscal impact on state or local units of government.

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