

Legislative Analysis



EXEMPT PROPERTY: ALLOW TO EXCLUDE ADULT CHILD IN WILL

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House Bill 5638 (reported from committee as H-3)
Sponsor: Rep. Peter J. Lucido
Committee: Judiciary
Complete to 12-6-16

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

SUMMARY:

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

House Bill 5638 amends Section 2404 of the Estates and Protected Individuals Code (MCL 700.2404). 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, household furniture, or appliances that is protected from creditors; the amount that may be protected is established in statute and currently is about \$15,000.)

The bill allows a decedent to exclude a child who is not a minor or dependent from receiving exempt property or other assets under Section 2404 by either of the following means:

- ❖ The decedent expressly states, in a will, that the child takes nothing or an amount of \$10 or less from the estate.
- ❖ The decedent expressly states, in a will, that the child is not to receive an allowance under Section 2404.

The bill takes effect 90 days after enactment.

BACKGROUND INFORMATION and BRIEF DISCUSSION OF THE ISSUES:

The bill addresses an issue highlighted by a recent lawsuit in which an adult child who had been specifically excluded from her mother's will sued to recover what is known as the exempt property allowance.

Under Michigan law, if a person (decedent) dies without a will (intestate), the person's estate is divided among heirs as provided in statute. Under Section 2101 of the Estates and Protected Individuals Code, if the decedent made a will, but some of the estate was not specifically disposed of, that which remains is divided among the heirs in the same manner as it would have had there not been a will. Section 2101 also allows a person "to expressly exclude or limit the right of an individual or class to succeed to property of the decedent

that passes by intestate succession" (meaning that the excluded person or persons could not even inherit any assets not specifically provided for in the will).

Before an estate is divided among the heirs, however, people or businesses to which the person owed money can make a claim against the estate. Section 2404 protects a certain amount of the estate from creditors; these protected assets go to the surviving spouse, or if there is no surviving spouse, the protected assets (referred to as "exempt property" or "exempt property allowance") are divided among any surviving children. The amount protected is established in statute and adjusted for inflation; currently, about \$15,000 of the decedent's assets are protected.

In the lawsuit mentioned earlier, the child bringing the action believed that even though her mother had specifically stated in the will that her children were to "inherit nothing" from her estate, that she still had a right to the exempt property allowance. Upon appeal, the state Court of Appeals ruled in the child's favor, stating that under the plain language of the statute, the "disinheriting language" in the will did not include an expression of intent regarding the child's right to exempt property under Section 2404. *In re Estate of Shelby Jean Jajuga, Chelenyak v. Veith*, No. 322522 (October 20, 2015)

There may be reasons why a person chooses not to leave an inheritance to a child. Perhaps the parent provided for the child by other means while still living. Or perhaps the parent feels the child would not benefit from an inheritance; for instance, if the child has an untreated addiction and the parent fears the inheritance will be squandered or used to further the addiction.

Thus, the bill fixes a problem highlighted by the Court of Appeals case. The amendment ensures that not only can a parent disinherit a child in a will, but clarifies that by including the language specified in the bill in a will, the parent can also make sure the child will not be able to make a claim for a share of the exempt property allowance.

FISCAL IMPACT:

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

POSITIONS:

The Probate & Estate Planning Section adopted a position of support with recommended amendments on September 10, 2016. The committee substitute incorporates the Section's recommendations.

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