

Legislative Analysis



EXEMPT PROPERTY: ALLOW TO EXCLUDE CHILD IN WILL

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House Bill 4410 (H-1) as reported from committee
Sponsor: Rep. Peter J. Lucido
Committee: Judiciary
Complete to 10-13-17

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

(Enacted as Public Act 143 of 2018)

BRIEF SUMMARY: The bill would allow a person to exclude, in a will or written instrument, 1 or more of his or her children from making a claim to receive property from the person's estate after death under the "exempt allowance" provision.

FISCAL IMPACT: The bill would have no fiscal impact on state or local units of government.

THE APPARENT PROBLEM:

The bill would address 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 as described above, people or businesses to which the person owed money can make a claim against the estate. However, 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)

Some feel that a parent has the right to exclude a child from *any* inheritance and would like to see the law clarified to have that right protected.

THE CONTENT OF THE BILL:

House Bill 4410 would amend 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, 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 would allow a decedent to exclude 1 or more of his or her children from receiving exempt property or assets to make up a deficiency of exempt property under Section 2404 by either of the following means:

- The decedent by will expressly states either of the following:
 - The child takes nothing.
 - The child takes an amount of \$10 or less from the estate.
- The decedent by will expressly states that the child is not to receive exempt property under Section 2404.

The bill takes effect 90 days after enactment.

MCL 700.2404

BACKGROUND INFORMATION:

The bill is similar to House Bill 5638 of the 2015-2016 Legislative session. The bill was reported from the Judiciary Committee in the closing days of session but failed to see action on the House floor.

ARGUMENTS:

For:

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. For example, if the child were disabled, receiving even a small inheritance under the exempt property allowance could render the child ineligible to receive public assistance such as Medicaid or food assistance. Or perhaps the parent feels the child would not benefit from an inheritance; for instance, if the child has an untreated substance use or gambling addiction and the parent fears the inheritance will be squandered or used to further the addiction.

Thus, the bill would fix a problem highlighted by the Court of Appeals case. The amendment would ensure that not only could a parent disinherit a child in a will, but would

clarify that by including the language specified in the bill in a will, the parent could also make sure the child would not be able to make a claim for a share of the exempt property allowance. Enactment of the bill would provide clarity to the courts, and reassurance to the parent, that the parent's true wishes would be carried out after death.

Against:

No arguments were raised in opposition to the bill.

POSITIONS:

The Probate Section of the State Bar of Michigan indicated support for the bill. (10-3-17)

The Elder Law & Disability Section of the Michigan State Bar indicated support for the bill. (9-26-17)

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