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BILL



ANALYSIS

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House Bill 4410 (Substitute H-1 as passed by the House)  
Sponsor: Representative Peter J. Lucido  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 4-17-18

### **CONTENT**

**The bill would amend the Estates and Protected Individuals Code to allow a decedent, in his or her will, to exclude one or more of his or her children from receiving exempt property (property in the estate that is protected from creditors of the decedent, up to a set value) or assets to make up a deficiency of exempt property.**

Under the Code, the estate of a decedent (a deceased individual) is distributed according to the terms of his or her will or as specified by statute for decedents without a valid will (intestate succession). In either case, before property of the estate is distributed, a creditor may make a claim against the estate to satisfy the decedent's outstanding obligation. However, some property, including "exempt property" described in Section 2404, is protected from creditors.

Under Section 2404, a decedent's surviving spouse is entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value that does not exceed \$10,000 more than the amount of any security interests to which the property is subject.<sup>1</sup> If there is not a surviving spouse, the decedent's children are entitled jointly to the same value.

If the spouse or children select encumbered assets and the value in excess of security interests, plus that of other exempt property, is less than \$10,000, or if there is not \$10,000 worth of exempt property in the estate, the spouse or children are entitled to other estate assets, if any, to the extent necessary to make up the \$10,000 value.

Under the bill, each of these provisions would apply to children who were not excluded as described below.

The bill would allow a decedent to exclude one or more of his or her children from receiving exempt property, or assets to make up a deficiency of exempt property, by either of the following means:

- The decedent expressly stated in his or her will that the child would take nothing, or would take an amount of \$10 or less from the estate.

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<sup>1</sup> The \$10,000 figure in Section 2404 applies to individuals who died before January 1, 2001. The Code requires the amount to be adjusted annually by a cost-of-living factor determined by the Department of Treasury. For the past several years, the adjusted amount has been \$15,000.

-- The decedent expressly stated in his or her will that the child was not to receive exempt property under Section 2404.

The bill would take effect 90 days after its enactment.

MCL 700.2404

### **BACKGROUND**

In a 2015 opinion, *In re Estate of Shelby Jean Jajuga* (312 Mich App 706), the Michigan Court of Appeals determined that if a decedent disinherits his or her child by will, the child still has a right to exempt property. In that case, the decedent's will divided her estate equally between several named beneficiaries, but directed that her children were to inherit nothing. After the decedent died, her only surviving child (the petitioner) objected to the final account of the estate on the basis that the personal representative failed to pay to the child the exempt property allowance required under Section 2404. The probate court agreed and granted to the petitioner the exempt property requested.

On appeal, the Court of Appeals affirmed the grant of exempt property, stating that language of Section 2404 "establishes a statutory right to a mandatory transfer to exempt property" that is independent of any benefit received under a will. The Court also noted that this conclusion was consistent with that reached in cases from other jurisdictions with provisions similar to Section 2404.

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.