

SENATE BILL No. 1293

May 7, 2008, Introduced by Senators CHERRY, PRUSI, ANDERSON, SWITALSKI, BASHAM, CLARK-COLEMAN, SCOTT, THOMAS, JACOBS, SCHAUER, GLEASON, CLARKE, BARCIA, BRATER and HUNTER and referred to the Committee on Government Operations and Reform.

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" MEANS DOING ANY OF THE FOLLOWING:

3 (i) HARMING A VULNERABLE ADULT IN VIOLATION OF SECTION 145N OR
4 1450 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145N AND
5 750.1450.

6 (ii) OBTAINING OR USING OR ATTEMPTING TO OBTAIN OR USE MONEY OR
7 PROPERTY OF A VULNERABLE ADULT IN VIOLATION OF SECTION 174A OF THE
8 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.174A.

1 (B) "ABUSER" MEANS THE INDIVIDUAL WHO COMMITTED THE ABUSE.

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

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

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

15 (F) "VULNERABLE ADULT" MEANS THAT TERM AS DEFINED IN SECTION
16 145M OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145M.

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

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

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

1 (i) Disposition or appointment of property made by the decedent
2 to the killer **OR ABUSER** in a governing instrument.

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

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

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

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

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

27 (5) A killer's **OR ABUSER'S** wrongful acquisition of property or

1 interest not covered by this section shall be treated in accordance
2 with the principle that a killer **OR ABUSER** cannot profit from his
3 or her wrong.

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

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

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

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

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

26 (4) Upon receipt of written notice of a claimed forfeiture or
27 revocation under this section, a payor or other third party may pay

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

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

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