HOUSE BILL No. 4617

March 18, 2009, Introduced by Reps. Womack, Bledsoe, Geiss, Robert Jones, Scripps, Switalski, Tlaib, Roberts, Slavens, Lisa Brown, Barnett, Bauer and Neumann and referred to the Committee on Senior Health, Security, and Retirement.

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:

Sec. 2802. As used in this section and sections 2803 and 2804:

(A) "ABUSE, NEGLECT, OR EXPLOITATION" MEANS ANY OF THE FOLLOWING:

(*i*) AN INTENTIONAL ACT, THE COMMISSION OF WHICH IS A FELONY, PROHIBITED UNDER CHAPTER XXA OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145M TO 750.145R.

(*ii*) A VIOLATION OF SECTION 174A OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.174A.

(*iii*) A CRIMINAL ACT THAT IS AN OFFENSE INVOLVING DOMESTIC

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VIOLENCE AS THAT TERM IS DEFINED IN SECTION 27B OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 768.27B.

(*iv*) AN ACT THAT CONSTITUTES CHILD ABUSE UNDER SECTION 136B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.136B.

(*v*) A CRIMINAL ACT THAT CONSTITUTES ABUSE, NEGLECT, OR EXPLOITATION AS THOSE TERMS ARE DEFINED IN SECTION 11 OF THE SOCIAL WELFARE ACT, 1939 PA 280, MCL 400.11.

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

(C) "FELON" MEANS THE INDIVIDUAL WHO WAS CONVICTED OF COMMITTING THE ABUSE, NEGLECT, OR EXPLOITATION.

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

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

Sec. 2803. (1) An individual who feloniously and intentionally kills **OR WHO IS CONVICTED OF COMMITTING ABUSE, NEGLECT, OR EXPLOITATION WITH RESPECT TO** the decedent forfeits all benefits under this article with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or

child's share, a homestead allowance, a family allowance, and exempt property. If the decedent died intestate, the decedent's intestate estate passes as if the killer **OR FELON** disclaimed his or her intestate share.

(2) The felonious and intentional killing **OR THE CONVICTION OF THE FELON FOR THE ABUSE, NEGLECT, OR EXPLOITATION** of the decedent does all of the following:

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

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

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

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

(b) Severs the interests of the decedent and killer **OR FELON** in property held by them at the time of the killing**, ABUSE, NEGLECT, OR EXPLOITATION** as joint tenants with the right of survivorship, transforming the interests of the decedent and killer **OR FELON** into tenancies in common.

(3) A severance under subsection (2)(b) does not affect a third party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer **OR FELON** unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary

course of transactions involving that type of property, as evidence of ownership.

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

(5) A killer's **OR FELON'S** wrongful acquisition of property or interest not covered by this section shall be treated in accordance with the principle that a killer **OR FELON** cannot profit from his or her wrong.

(6) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing **OR THE ABUSE, NEGLECT, OR EXPLOITATION** of the decedent conclusively establishes the convicted individual as the decedent's killer **OR AS A FELON, AS APPLICABLE,** for purposes of this section. ~~In~~ **WITH RESPECT TO A CLAIM OF FELONIOUS AND INTENTIONAL KILLING, IN** the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(7) THIS SECTION DOES NOT APPLY IF THE FORFEITURE, REVOCATION,

OR SEVERANCE WOULD OCCUR BECAUSE OF ABUSE, NEGLECT, OR EXPLOITATION AND THE DECEDENT EXECUTED A GOVERNING INSTRUMENT AFTER THE DATE OF THE CONVICTION EXPRESSING A SPECIFIC INTENT TO ALLOW THE FELON TO INHERIT OR OTHERWISE RECEIVE THE ESTATE OR PROPERTY OF THE DECEDENT.

Sec. 2804. (1) Except as otherwise provided in this section, a payor or other third party is not liable for having made a payment or transferred an item of property or another benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing **OR BY ABUSE, NEGLECT, OR EXPLOITATION**, or for having taken another action in reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death. A payor or other third party is liable for a payment made or other action taken ~~3~~ **7** or more business days after the payor or other third party actually receives written notice of a claimed forfeiture or revocation under section 2803. A payor or other third party is not obligated to determine whether the decedent was the victim of felonious killing **OR ABUSE, NEGLECT, OR EXPLOITATION** or to seek evidence relating to such a killing **OR ABUSE, NEGLECT, OR EXPLOITATION** even if the circumstances of the decedent's death are suspicious as to the beneficiary's participation in such a killing **OR IF THERE IS EVIDENCE THAT WOULD RAISE SUSPICIONS THAT THE DECEDENT WAS THE VICTIM OF ABUSE, NEGLECT, OR EXPLOITATION BY THE BENEFICIARY**. A recipient who incorrectly receives a payment, transfer of property, or other benefit is liable for the payment or transfer received, whether or not written notice of the claim is given.

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

(3) The written notice under subsection (1) must include the decedent's name, the name of the person asserting an interest, the nature of the payment, item of property, or other benefit, ~~and~~ a statement that a claim of forfeiture or revocation is being made under section 2803**, AND, IF THE CLAIM IS BASED ON A CONVICTION FOR ABUSE, NEGLECT, OR EXPLOITATION, A COPY OF THE JUDGMENT OF CONVICTION**. Notice in a form or service in a manner other than that described in this section does not impose liability on a payor or other third party for an action taken in accordance with a governing instrument.

(4) Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay an amount owed to the county treasurer of the county of the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the county treasurer of the county of the decedent's residence. With a payment under this section, the payor or other third party shall file a copy of the written notice received by the payor or other third party. A payment made to the county treasurer discharges the payor or other third party from a claim for the value of an amount

paid to the county treasurer.

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

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