

SENATE BILL NO. 205

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT PREVENTING ABUSERS OF VULNERABLE ADULTS FROM BENEFITING FINANCIALLY; PROVIDING DEFINITIONS; AND AMENDING SECTION 72-2-813, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-2-813, MCA, is amended to read:

"72-2-813. Effect of financial exploitation or homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Abuser" means a person who participates in the willful and unlawful financial exploitation of a vulnerable adult.

(b) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(c) "Financial exploitation" means the act of purposely or knowingly standing in a position of trust and confidence with a vulnerable adult and obtaining, using, or attempting to obtain or use a vulnerable adult's money, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the money, assets, or property or to benefit someone other than the vulnerable adult. Financial exploitation may include but is not limited to:

(i) acting or failing to act, including through the use of a power of attorney, guardianship, or conservatorship of a vulnerable adult, in order to:

(A) obtain control through deception, intimidation, fraud, menace, or undue influence over a vulnerable adult's money, assets, or property to deprive the vulnerable adult of the ownership, use, benefit, or possession of the money, assets, or property; or

(B) convert money, assets, or property of a vulnerable adult to deprive the vulnerable adult of the ownership, use, benefit, or possession of the money, assets, or property;

(ii) misappropriating or misusing money belonging to a vulnerable adult from a personal or joint account;

or



1 (iii) failing to use a vulnerable adult's income and assets to provide the necessities required for the
 2 vulnerable adult's support and maintenance.

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

4 ~~(e)~~(e) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under
 5 which the decedent, at the time of or immediately before death, was alone empowered, by law or under the
 6 governing instrument, to cancel the designation in favor of the abuser or killer, whether or not the decedent was
 7 then empowered to designate the decedent in place of the decedent's abuser or killer and whether or not the
 8 decedent then had capacity to exercise the power.

9 (f) "Vulnerable adult" means a person who is:

10 (i) 60 years of age or older and is functionally, mentally, or physically unable to provide self-care;

11 (ii) deemed incapacitated under 72-5-316;

12 (iii) developmentally disabled;

13 (iv) admitted to a facility licensed by the department of public health and human services;

14 (v) receiving services from a home health agency or hospice provider;

15 (vi) receiving services from an individual provider; or

16 (vii) self-directing care and receiving services from a personal aide for a physical disability.

17 (2) An individual who financially exploits or feloniously and intentionally kills the decedent forfeits all
 18 benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share,
 19 an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the
 20 decedent died intestate, the decedent's intestate estate passes as if the abuser or killer disclaimed the abuser's
 21 or killer's intestate share.

22 (3) The financial exploitation or felonious and intentional killing of the decedent:

23 (a) revokes any revocable:

24 (i) disposition or appointment of property made by the decedent to the abuser or killer in a governing
 25 instrument;

26 (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the
 27 abuser or killer; and

28 (iii) nomination of the abuser or killer in a governing instrument, nominating or appointing the abuser or
 29 killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee,
 30 or agent; and

1 (b) severs the interests of the decedent and the abuser or killer in property held by them at the time of
2 the ~~the killing~~ financial exploitation or killing as joint tenants with the right of survivorship and transforms the interests
3 of the decedent and the abuser or killer into tenancies in common.

4 (4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for
5 value and in good faith reliance on an apparent title by survivorship in the abuser or killer unless a writing
6 declaring the severance has been noted, registered, filed, or recorded in records that are appropriate to the kind
7 and location of the property, ~~which records and that are relied upon, on as evidence of ownership~~ in the ordinary
8 course of transactions involving such property, ~~as evidence of ownership~~.

9 (5) Provisions of a governing instrument are given effect as if the abuser or killer disclaimed all provisions
10 revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the
11 abuser or killer predeceased the decedent.

12 (6) A wrongful acquisition of property or interest by ~~a~~ an abuser or killer not covered by this section must
13 be treated in accordance with the principle that ~~a~~ an abuser or killer cannot profit from the abuser's or killer's
14 wrong.

15 (7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal
16 accountability for the financial exploitation or felonious and intentional killing of the decedent conclusively
17 establishes the convicted individual as the decedent's abuser or killer for purposes of this section. In the absence
18 of a conviction, the court, upon the petition of an interested person, shall determine whether, under the
19 preponderance of evidence standard, the individual would be found criminally accountable for the financial
20 exploitation or felonious and intentional killing of the decedent. If the court determines that under that standard
21 the individual would be found criminally accountable for the financial exploitation or felonious and intentional
22 killing of the decedent, the determination conclusively establishes ~~that the~~ the individual as the decedent's abuser
23 or killer for purposes of this section.

24 (8) (a) A payor or other third party is not liable for having made a payment or transferred an item of
25 property or any other benefit to a beneficiary designated in a governing instrument affected by financial
26 exploitation or an intentional and felonious killing, or for having taken any other action in good faith reliance on
27 the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the
28 payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor
29 or other third party does not have a duty or obligation to make any determination as to whether the decedent was
30 a victim of a homicide or to seek any evidence with respect to a homicide even if the circumstances of the

1 decedent's death are suspicious or questionable as to the beneficiary's participation in a homicide. A payor or
2 other third party does not have a duty or obligation to make any determination as to whether the decedent was
3 a victim of financial exploitation or to seek any evidence with respect to financial exploitation even if the
4 circumstances are suspicious or questionable as to the beneficiary's participation in financial exploitation. A payor
5 or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor
6 or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the
7 governing instrument only if the form of the service is that described in subsection (8)(b).

8 (b) The written notice must indicate the name of the decedent, the name of the person asserting an
9 interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture
10 or revocation is being made under this section. Written notice of a claimed forfeiture or revocation under
11 subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return
12 receipt requested, or served ~~upon~~ on the payor or other third party in the same manner as a summons in a civil
13 action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor
14 or other third party. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor
15 or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the
16 court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have
17 been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates
18 located in the county of the decedent's residence. In addition to the actions available under this section, the payor
19 or other third party may take any action authorized by law or the governing instrument. If probate proceedings
20 have not been commenced, the payor or other third party shall file with the court a copy of the written notice
21 received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court
22 may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or
23 transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property
24 and, upon its determination under this section, shall order disbursement in accordance with the determination.
25 A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on
26 deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court
27 discharge the payor or other third party from all claims for the value of amounts paid to or items of property
28 transferred to or deposited with the court.

29 (9) (a) A bona fide purchaser who purchases property or who receives a payment or other item of
30 property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to

1 return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the
2 value of the item of property or benefit. However, a person who, not for value, receives a payment, item of
3 property, or other benefit to which the person is not entitled under this section is obligated to return the payment,
4 item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of
5 property or benefit, to the person who is entitled to it under this section.

6 (b) If this section or any part of this section is preempted by federal law, other than the federal Employee
7 Retirement Income Security Act of 1974, as amended, with respect to a payment, an item of property, or any
8 other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other
9 benefit to which the person is not entitled under this section is obligated to return the payment, item of property,
10 or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to
11 the person who would have been entitled to it were this section or part of this section not preempted.

12 (10) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide
13 as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."

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