1982

Session Law 82-071

Florida Senate & House of Representatives

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<th>Year</th>
<th>1982</th>
<th>Session Law No.</th>
<th>82-71</th>
<th>LOF Cite</th>
<th>11, 185-187</th>
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<td>Prime Bill #</td>
<td>5B.78</td>
<td>Sponsor</td>
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<td>JLMC Hist. Leg. Cites</td>
<td>Senate Bills pp. #s 27-8</td>
<td>House Bills pp. #s 53, 233</td>
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<td>Committee of Ref.</td>
<td>Senate Judiciary - Civil</td>
<td>House Judiciary (adj. Prt.)</td>
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**Committee Records**

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<th>Record Series: Folder Title, etc.</th>
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<td>Bill files: HR 167, HB 796</td>
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<td>1982</td>
<td>Bill files: SB 78</td>
<td>18/1296</td>
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<td>Meeting files: Dec. 2, 1981</td>
<td>18/1298</td>
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<td>Jul. 10, 1982</td>
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<td>Meeting tapes</td>
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**Senate/House Journals**

<table>
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<tr>
<th>Page</th>
<th>Date</th>
<th>#pp</th>
<th>Page</th>
<th>Date</th>
<th>#pp</th>
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</table>

**Tape Recordings**

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<th>H/S Floor</th>
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<th>Date</th>
<th># Tapes</th>
<th>Location Cite</th>
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**Other Documentation**

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<th>Record series title, folder title, etc.</th>
<th>Location Cite</th>
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</table>
By Representative M. E. Hawkins

A bill to be entitled

An act relating to intestate succession and
wills; amending s. 732.802, Florida Statutes,
which restricts persons convicted of murder
from inheriting or taking any part of the
estate of the murdered person, to expand such
restriction to include the crime of
manslaughter; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 732.802, Florida Statutes, is
amended to read:

732.802 Persons convicted of murder or manslaughter

Murderer.--A person convicted of the murder or manslaughter of
a decedent shall not be entitled to inherit from the decedent
or to take any part of his estate as a devisee. The part of
the decedent's estate to which the person so convicted
murderer would otherwise be entitled shall pass to the persons
entitled to it as though the person so convicted murderer had
died during the lifetime of the decedent.

Section 2. This act shall take effect upon becoming a
law.

*********************************************************

HOUSE SUMMARY

Amends provisions of law which restrict persons convicted
of murder from inheriting or taking any part of the
estate of the murdered person to expand such restriction
to include the crime of manslaughter.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
A bill to be entitled

An act relating to intestate succession and wills; amending s. 732.802, Florida Statutes, providing that certain persons who unlawfully and intentionally kill, rather than murder, a person are not entitled to receive benefits by reason of the death of the person killed; including within the act any other acquisition of property or interest by the killer; providing that a final judgment of conviction of murder in any degree is conclusive for the purposes of this section and that without regard to any criminal proceedings the court may determine by preponderance of evidence whether the killing was unlawful and intentional; providing for the protection of rights of persons without notice acting before the rights under this section have been adjudicated; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 732.802, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 732.802, F.S., for present text.)

732.802 Unlawful and intentional killing.—

(1) A surviving person who unlawfully and intentionally kills or participates in procuring the death of the decedent is not entitled to any benefits under the will or under the Florida Probate Code, and the estate of the decedent
passes as if the killer had predeceased the decedent.

Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer, including a life estate in homestead property, shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of murder in any degree is conclusive for purposes of this section. In the absence of conviction of murder in any degree the court may determine by a preponderance of evidence whether the killing was unlawful and intentional for purposes of this section.

CODING: Words in square brackets are deletions from existing law; words underlined are additions.
(6) This section does not affect the rights of any
person who, before rights under this section have been
adjudicated, purchases from the killer for value and without
notice property which the killer would have acquired except
for this section, but the killer is liable for the amount of
the proceeds or the value of the property. Any insurance
company, bank, or other obligor making payment according to
the terms of its policy or obligation is not liable by reason
of this section unless prior to payment it has received at its
home office or principal address written notice of a claim
under this section.

Section 2. This act shall take effect upon becoming a
law.

CODING: Words in __ through type are deletions from existing law; words underlined are additions.
By Representative Pajeic

A bill to be entitled
An act relating to the probate of estates;
amending s. 732.802, Florida Statutes,
providing that a person who kills another shall
not benefit by the death of the decedent;
creating s. 732.8025, Florida Statutes,
providing definitions; creating s. 732.8026,
Florida Statutes, providing that a killer shall
not acquire property as a result of killing;
creating s. 732.8027, Florida Statutes,
providing for descent, distribution, dower,
curtesy, and statutory rights as survivor;
creating s. 732.8028, Florida Statutes,
providing for legacies; creating s. 732.8029,
Florida Statutes, providing for tenancies by
the entirety; creating s. 732.8031, Florida
Statutes, providing for the disposition of
property with respect to a person who is killed
by another when the parties are joint tenants,
joint owners, or joint obligees; creating s.
732.8032, Florida Statutes, providing for
reversions and vested remainders; creating s.
732.8033, Florida Statutes, providing for the
disposition of interests dependent upon
survivorship or continuance of life; creating
s. 732.8034, Florida Statutes, providing for
contingent remainders and executory or other
future interests; creating s. 732.8035, Florida
Statutes, providing for powers of appointment;
creating s. 732.8036, Florida Statutes,
providing for proceeds of insurance; creating
s. 732.8037, Florida Statutes, providing for the effect of a bona fide payment by an insurance company or an obligor; creating s. 732.8038, Florida Statutes, providing for the effect of a bona fide purchase of certain property; creating s. 732.8039, Florida Statutes, providing that the record of conviction may be used as evidence in certain civil actions; creating s. 732.8041, Florida Statutes, providing for the construction of the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 732.802, Florida Statutes, is amended to read:

732.802 **Killer Murderer**.--

(1) A person who unlawfully and intentionally kills a decedent shall not be entitled to inherit from the decedent, or to take any part of his estate as a devisee, or to receive any other benefit as a result of the decedent's death. The property part of the decedent's estate to which the killer murderer would otherwise be entitled shall pass to the persons entitled to it as though the killer murderer had died during the lifetime of the decedent.

(2) For purposes of this part, a conviction of murder is conclusive. In the absence of a conviction of murder, the court may determine by a preponderance of evidence whether the killing was unlawful and intentional.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
Section 2. Section 732.8025, Florida Statutes, is created to read:

732.8025 Definitions.--As used in this part:

(1) "Killer" means any person who participates, either as a principal or as an accessory before the fact, in the wilful and unlawful killing of any other person.

(2) "Decedent" includes any person whose life is so taken.

(3) "Property" includes any real and personal property and any right or interest therein.

Section 3. Section 732.8026, Florida Statutes, is created to read:

732.8026 Killer not to acquire property as result of killing.--No killer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in this part.

Section 4. Section 732.8027, Florida Statutes, is created to read:

732.8027 Descent, distribution, dower, curtesy, and statutory rights as survivor.--The killer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the killer under the statutes of descent and distribution or have been acquired by dower, by curtesy or by statutory right as surviving spouse.

Section 5. Section 732.8028, Florida Statutes, is created to read:

732.8028 Legacies.--Property which would have passed to or for the benefit of the killer by devise or legacy from the decedent shall be distributed as if he had predeceased the decedent.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
Section 6. Section 732.8029, Florida Statutes, is created to read:

732.8029 Tenancies by the entirety.—One-half of any property held by the killer and the decedent as tenants by the entirety shall pass upon the death of the decedent to his estate, and the other half shall be held by the killer during his life, subject to pass, upon his death to the estate of the decedent.

Section 7. Section 732.8031, Florida Statutes, is created to read:

732.8031 Joint tenants, joint owners, and joint obligees.—

(1) One-half of any property held by the killer and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his estate, and the other half shall pass to his estate upon the death of the killer, unless the killer obtains a separation or severance of the property or a decree granting partition.

(2) As to property held jointly by three or more persons, including the killer and the decedent, any enrichment which would have accrued to the killer as a result of the death of the decedent shall pass to the estate of the decedent. If the killer becomes the final survivor, one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his estate upon the death of the killer, unless the killer obtains a separation or severance of the property or a decree granting partition.

(3) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other.
Section 8. Section 732.8032, Florida Statutes, is created to read:

732.8032 Reversions and vested remainders.--Property in which the killer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of the decedent; if he held the particular estate or if the particular estate is held by a third person, it shall remain in his hands for such period.

Section 9. Section 832.8033, Florida Statutes, is created to read:

732.8033 Interests dependent upon survivorship or continuance of life.--Any interest in property, whether vested or not, held by the killer, subject to be divested, diminished in any way or extinguished if the decedent survives him or lives to a certain age, shall be held by the killer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter.

Section 10. Section 732.8034, Florida Statutes, is created to read:

732.8034 Contingent remainders and executory or other future interest.--As to any contingent remainder or executory or other future interest held by the killer, subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
(2) In any case the interest shall not be vested or increased during the period of the life expectancy of the decedent.

Section 11. Section 732.8035, Florida Statutes, is created to read:

732.8035 Powers of appointment.--
(1) Property appointed by the will of the decedent to or for the benefit of the killer shall be distributed as if the killer had predeceased the decedent.
(2) Property held either presently or in remainder by the killer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment, shall pass to the estate of the decedent, and property so held by the killer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the killer.

Section 12. Section 732.8036, Florida Statutes, is created to read:

732.8036 Proceeds of insurance.--
(1) Insurance proceeds payable to the killer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid to the estate of the decedent, unless the policy or certificate designates some person not claiming through the killer as alternative beneficiary to him.
(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the killer, the proceeds shall be paid to the estate of the decedent upon
the death of the killer, unless the policy names some person other than the killer or his estate as alternative beneficiary, or unless the killer by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his interest in the policy if he had been living.

Section 13. Section 732.8037, Florida Statutes, is created to read:

732.8037 Bona fide payment by insurance company or obligor. -- Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the killer as one of several joint obligees shall not be subject to additional liability by the terms of this part, if such payment or performance is made without notice of the killing by a killer.

Section 14. Section 732.8038, Florida Statutes, is created to read:

732.8038 Bona fide purchasers. -- The provisions of this part shall not affect the rights of any person who, before the interests of the killer have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for the terms of this part, but all proceeds received by the killer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this code, and the killer shall also be liable both for any portion of such proceeds which he may have dissipated and for any difference between the actual value of the property and the amount of such proceeds.

Section 15. Section 732.8039, Florida Statutes, is created to read:

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
732.8039 Record of conviction as evidence.--The record of his conviction of having participated in the willful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this part.

Section 16. Section 732.8041, Florida Statutes, is created to read:

732.8041 Broad construction; policy of state.--This part shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this state that no person shall be allowed to profit by his own wrong, wherever committed.

Section 17. This act shall take effect July 1, 1982.

***************

HOUSE SUMMARY

Provides that a person who unlawfully and intentionally kills another shall not be entitled to inherit from the decedent, to take any part of his estate as a devisee or to receive any other benefit as a result of the decedent's death. Creates a series of statutory provisions intended to prevent such a killer from benefiting in any monetary way from the death of the decedent. See bill for details.
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<thead>
<tr>
<th>Speaker</th>
<th>Regarding</th>
<th>Tape/Side</th>
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<tbody>
<tr>
<td>John Doe</td>
<td>&quot;unlawful, dangerous, in violation of law by someone of conviction&quot;</td>
<td>IA 007</td>
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<tr>
<td>Jenny</td>
<td>STR 102 by Jenny</td>
<td>FAV 130</td>
</tr>
<tr>
<td>Libby Smith</td>
<td>constitutional change vs resolution by case law</td>
<td>142</td>
</tr>
<tr>
<td>Smith</td>
<td>&quot;nothing in court about ever rule&quot;</td>
<td>220</td>
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<tr>
<td>Children</td>
<td>&quot;and, &quot; and, &quot;                                         &quot; and, &quot; and, &quot;</td>
<td>247</td>
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<tr>
<td>General Population</td>
<td>hypothetical</td>
<td>268</td>
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<tr>
<td>Hill</td>
<td>&quot;airport search and search when speeding&quot;</td>
<td>295</td>
</tr>
<tr>
<td>The Main</td>
<td>&quot;they will give ultimate discretion&quot;</td>
<td>309</td>
</tr>
<tr>
<td>The Main</td>
<td>&quot;not going&quot;</td>
<td>311</td>
</tr>
<tr>
<td>Shadley</td>
<td>&quot;well-established people&quot;</td>
<td>350</td>
</tr>
<tr>
<td>The Main</td>
<td>&quot;will problem present warning on&quot;</td>
<td>410</td>
</tr>
<tr>
<td>Johnson</td>
<td>&quot;move to TP&quot;</td>
<td>456</td>
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<tr>
<td>Stevens</td>
<td>&quot;any difference between this and the one person last year? (Yes)&quot;</td>
<td>466</td>
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**Judiciary-Civil Committee Meeting**

**DATE/LOCATION:** 12-28/Room "B"

**SPEAKER:**

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<tr>
<th>SPEAKER</th>
<th>REGARDING</th>
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<tr>
<td>John Doe</td>
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<td>IA 007</td>
</tr>
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<tr>
<td>Johnson</td>
<td>&quot;move to TP&quot;</td>
<td>456</td>
</tr>
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**Note:** The table above captures key points discussed at the Judiciary-Civil Committee Meeting. Each entry includes the name of the speaker, the point they were discussing, and the tape/side number used for recording.
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<tr>
<th>SPEAKER</th>
<th>REGARDING</th>
<th>TAPE/SIDE</th>
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<tbody>
<tr>
<td>Roll Call</td>
<td>Were constitutional rights to privacy?</td>
<td>IA 000</td>
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<tr>
<td>Thank SB 508 by Frank</td>
<td>McClain set in on judges' deliberation on appellate work?</td>
<td>UF 004</td>
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<tr>
<td>Staff report should be put around</td>
<td>Frank close on the bill: intent</td>
<td>017</td>
</tr>
<tr>
<td>What, purpose despite staff recommendation?</td>
<td>Buddy Jacobs He, I'm Trial Lawyers Section of the Bar are opposed: 2 cases</td>
<td>023</td>
</tr>
<tr>
<td>Talking, what's the problem?</td>
<td>McClain concerned about the exception the court might make by rule of respect to what records might be kept exempt. &quot;To accomplish an overriding governmental purpose.&quot;</td>
<td>029</td>
</tr>
<tr>
<td>Tom, &quot;Protect Privacy, interests,&quot; language &amp; tightening eyes, additions</td>
<td>Frank numerous editorial support throughout the state</td>
<td>044</td>
</tr>
<tr>
<td>Frank, easy to define. Justice Brown supports</td>
<td>Johnston SB 710 by bracelet</td>
<td>049</td>
</tr>
<tr>
<td>Frank supported positive information</td>
<td>William SB 78 to Unit Proposed CS - on the bill</td>
<td>068</td>
</tr>
<tr>
<td>Frank, what was the cure?</td>
<td>Johnston House companion status</td>
<td>077</td>
</tr>
<tr>
<td></td>
<td>What would be cured?</td>
<td>086</td>
</tr>
</tbody>
</table>

**Judiciary-Civil Committee Meeting**

2-10-92 Room "K" (DATE/LLOCATION)

McClain experience on federal level
# Judiciary-Civil Committee Meeting

### 2-10-83/Room "C"

**DATE/LOCATION**

<table>
<thead>
<tr>
<th>SPEAKER</th>
<th>REGARDING</th>
<th>TAPE/SIDE</th>
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</thead>
<tbody>
<tr>
<td>Williams</td>
<td>Conviction &amp; murder to deny;</td>
<td>210</td>
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<tr>
<td></td>
<td>Husband</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wont turn around decision in</td>
<td>219</td>
</tr>
<tr>
<td></td>
<td>Podguy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Suicide, prior to trial</td>
<td>222</td>
</tr>
<tr>
<td></td>
<td>Scenario: murder/suicide of</td>
<td>231</td>
</tr>
<tr>
<td></td>
<td>Husband + wife</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&quot;Intentional&quot;</td>
<td>250</td>
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<tr>
<td></td>
<td>Expensive insurance in favor of</td>
<td>243</td>
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<tr>
<td></td>
<td>Accused Co.? No - first contacted by Judge C on 10/78</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Judge Clark: proposed CS/SC 78</td>
<td>272</td>
</tr>
<tr>
<td></td>
<td>If no problems, don't change</td>
<td></td>
</tr>
<tr>
<td></td>
<td>temporarily pass; Judge Clark</td>
<td>278</td>
</tr>
<tr>
<td></td>
<td>Assistant another judge</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Concern; re-certification re-</td>
<td>285</td>
</tr>
<tr>
<td></td>
<td>qualification</td>
<td></td>
</tr>
<tr>
<td></td>
<td>CS/SC 162 by Cowan + FAV</td>
<td>316</td>
</tr>
</tbody>
</table>

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**REGARDING**

- Something to prohibit lamens from making a profession of representing these people? No
- Apply to employers rather than employees?
- Claimants' views do not have to have "qualified" representation; now discriminate against employers
- Some contract claims, as well
- As employers would have to go through this controversy qualification procedure
- Atkinson-Adkinson v Assoc. Industries; for the Dist
- Have there been arrests, great damage or great harm
- Concern: re-certification re- qualification
- Chirower against Am. #1; unnecessary
<table>
<thead>
<tr>
<th>Speaker</th>
<th>Regarding</th>
<th>Tape/Side</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johnson</td>
<td>Call to order</td>
<td>000</td>
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<td>Goldstein</td>
<td>SB 598/SCR 605 etc.</td>
<td>013</td>
</tr>
<tr>
<td>Wollam</td>
<td>SB 78 by Vogt</td>
<td>162</td>
</tr>
<tr>
<td>Peter Clark</td>
<td>UPC language</td>
<td>169</td>
</tr>
<tr>
<td>Hair</td>
<td>jeg. 2 - &quot;quasi weighty&quot;</td>
<td>199</td>
</tr>
<tr>
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A bill to be entitled
An act relating to probate; amending s. 732.802, Florida Statutes; providing that one who unlawfully and intentionally kills the decedent is prohibited from inheriting from the decedent or taking any part of his estate as a devisee; providing an effective date.

Be it Enacted by the Legislature of the State of Florida:

Section 1. Section 732.802, Florida Statutes, is amended to read:

732.802 Killer Murderer.--A person who unlawfully and intentionally kills the decedent shall not be entitled to inherit from the decedent or to take any part of his estate as a devisee. The part of the decedent's estate to which the killer murderer would otherwise be entitled shall pass to the persons entitled to it as though the murderer had died during the lifetime of the decedent.

Section 2. This act shall take effect October 1, 1979.
Mr. Donald S. Fradley
Administrative Assistant
Senate Judiciary-Civil Committee
The Capitol
Tallahassee, FL 32304

Dear Don:

Thank you very much for sending me the proposal for amendment to Senate Bill 78. It is a great step forward. Enclosed for comparison is the present law of Pennsylvania. Their use of the word "slayer" instead of "killer" appears to me to have merit and I recommend consideration of it.

HB 167, sponsored by Representative Mary Ellen Hawkins, proposes to enlarge present Section 732.80 to include involuntary homicide, that is, all types of manslaughter. This would take in unintentional slayings where culpable negligence is established. Perhaps the legislature is not ready to move that far at this time.

I hope someone on the committee will become interested in your amendment draft and support it at the next hearing on Senate Bill 78.

Sincerely,

Harold R. Clark

HRC:la

Enc.

P. S. I am grateful to Judge Sidwell of Tampa for bringing to my attention the Pennsylvania statutes on this subject.

CHAPTER 88
SLAYERS

Sec. 8801. Definition of terms.

8802. Slayer not to acquire property as result of slaying.

8803. Descent, distribution, dower, curtesy, and statutory right as survival

8804. Legacies

8805. Tenancies by the entirety
§ 8806. Joint tenants, joint owners and joint obligees

(a) One-half of any property held by the slayer and the decedent as joint tenants, joint owners or joint obligees shall pass upon the death of the decedent to his estate, and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(b) As to property held jointly by three or more persons, including the slayer and the decedent, any enrichment which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(c) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other.

§ 8807. Reversions and vested remainders

Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of the decedent; if he held the particular estate or if the particular estate is held by a third person it shall remain in his hands for such period.

§ 8809. Interests dependent on survivorship or continuance of life

Any interest in property, whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had immediately thereafter.

§ 8810. Contingent remainders and executory or other future interests

As to any contingent remainder or executory or other future interest held by the slayer, subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent.

(2) In any case the interest shall not be vested or increased during the period of the life expectancy of the decedent.

§ 8810. Powers of appointment

(a) Property appointed by the will of the decedent to or for the benefit of the slayer shall be distributed as if the slayer had predeceased the decedent.

(b) Property held either presently or in remainder by the slayer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer.
§ 8811. Proceeds of insurance

(a) Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid to the estate of the decedent, unless the policy or certificate designates some person not claiming through the slayer as alternative beneficiary to him.

(b) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as alternative beneficiary, or unless the slayer by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his interest in the policy if he had been living.

§ 8812. Bona fide payment by insurance company or obligor

Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subject to additional liability by the terms of this chapter, if such payment or performance is made without notice of the killing by a slayer.

§ 8813. Bona fide purchasers

The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases from the slayer for value and without notice property which the slayer would have acquired except for the terms of this chapter, but all proceeds received by the slayer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this code, and the slayer shall also be liable both for any portion of such proceeds which he may have dissipated and for any difference between the actual value of the property and the amount of such proceeds.

§ 8814. Record of conviction as evidence

The record of his conviction of having participated in the willful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this chapter.

§ 8815. Broad construction; policy of State

This chapter shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this State that no person shall be allowed to profit by his own wrong, wherever committed.
MEMORANDUM

TO: All Members--Committee on Judiciary-Civil
FROM: Sylvia Alberdi
SUBJECT: Senate Bill 78, relating to estates--repealing s. 732.802, Florida Statutes
DATE: December 9, 1981

As you may recall, the Committee heard Senate Bill 78 at the December 2 meeting and voted to temporarily pass the measure.

Several members expressed a need for additional time to review the effects of the bill and the amendments which were proposed, as well as a Supreme Court and District Court of Appeal opinion on the subject matter.

Enclosed for your review are the following documents:

1. Senate Bill 78
2. Staff analysis
3. Proposed amendments
4. Carter v. Carter, 88 So. 2d 153 (Fla. 1956)
5. Nable v. Estate of Godfrey, 403 So. 2d 1038 (5th DCA 1981)
6. Copy of Section 2-803, Uniform Probate Code (submitted by Judge Harold Clark, 4th Judicial Circuit)

Please do not hesitate to contact the committee staff if you desire any additional information.

SA: bv

Enclosures
Ms. Mary Ellen Hawkins  
Member, House of Representatives  
Room 224, The Capitol  
Tallahassee, FL 32301

Re: House Bill 167; Murderer shall not inherit

Dear Ms. Hawkins:

I am very glad that you will favorably consider amending House Bill 167 to include appropriate provisions of the Uniform Probate Code contained in a preliminary draft I sent you recently. I hope you will be able to find a sponsor in the Senate. Senators Vogt, Dunn and Hair have each received mailings of this proposal as well as Senator Johnston, Chairman of the Senate Judiciary Committee.

Enclosed is a copy of my recent letter to Mr. Donald S. Fradley, Administrative Assistant to the Senate Judiciary Committee. I enclosed to him a copy of the present Pennsylvania law. Although I now prefer "slayer" to "killer", there are several provisions of the Pennsylvania law that may present problems. If any of it is to be used, the following suggestions are made:

8803. References to dower and curtsey would be changed to elective share.

8804. The word "legacies" should be deleted since our Code refers only to devises, by definition to include gifts of personal property and money.

8805. Tenancies by the entirety in Pennsylvania become tenancies in common as Florida case law now provides but the one-half of the property going to the slayer becomes a life estate in Pennsylvania, remainder to the estate of the slain person. I prefer the UPC provision that no part vests in the slayer.
8806. Dealing with joint tenants (with right of survivorship) in Pennsylvania provides the same result as tenancies in the entirety. This is not a very satisfactory solution to joint bank accounts, leaving one-half in the slayer as a life estate.

8807, 8808 and 8809 cover more remote circumstances and might be omitted from presently proposed legislation for consideration at some future time.

8810 through 8815 are satisfactory alternatives to portions of the UPC proposal but should be carefully integrated if any of them are to be used.

If you find support for some of the Pennsylvania provisions, please let me know and I shall be glad to make suggestions regarding specific drafting changes.

Sincerely,

Harold R. Clark

HRC:la

Enc.
December 18, 1981

Mr. Donald S. Fradley
The Florida Senate
Committee on Judiciary-Civil
111 Senate Office Building
Tallahassee, Florida 32301

RE: Senate Bill 78

Dear Mr. Fradley:

I wish to acknowledge receipt of your letter of December 14, 1981, enclosing information relating to the above bill.

I am completely in sympathy with Senator Vogt's obvious intention in offering this bill. The present Florida statute seems to me to be unduly restrictive in that in order to deny a person the right to inherit under the law of descent and distribution, he must be convicted of murder of his ancestor. Obviously, there are many lesser forms of homicide and, of course, there is always the suicide-murder situation in which a murder conviction is obviously impossible.

In that connection, I certainly approve and feel that the proposed amendment is an improvement over the existing law. I am somewhat concerned, however, about the bill as proposed.

There is no common law of probate. In England, prior to 1776, most of what we know in this country as "probate law" was exercised by the ecclesiastical courts. By the 16th century, both the law courts and the chancery courts had determined that they were not able to provide a satisfactory procedure for the administration of decedent's estate. So there is very little precedent in England prior to the creation of this country.

Upon Florida's emergence as a state, it felt called upon to adopt a body of common law. It chose to borrow the common law and statute law of England in general force and effect on July 4, 1776, Florida Statute 2.01. It is obvious that the ecclesiastical precedents were not adopted, and in the general sense, there was no body of probate law at the time of the enactment of the statute. Of course, there were certain statutes in general force and effect pertaining to Wills and devolution of property, and probably the statute adopted them. However, the Florida Probate Act of 1933, Laws of Florida 1933, Chapter 16103, constituted a complete revision
of the procedural and substantive laws pertaining to probate matters, and by its very terms, repealed all laws in conflict therewith.

The Supreme Court of Florida in regard to the Estate of Greenberg, 390 So.2d 40 (1980) held that the probate of a decedent's Will and the administration of a decedent's estate are not predicated upon the common law principles, but are rights created solely by statute. It follows, therefore, that if we repealed the existing 732.802, a person convicted of murder would be entitled to share in the victim's estate because there would be no common law which would be applicable to the law of descent and distribution, which is purely statutory. I agree that Judge Cowart in a special concurring opinion in Nable vs. Estate of Godfrey, 403 So.2d 1038 (5th DCA Florida 1981), used the phrase, "the common law principle that one should not benefit from his own wrongdoing", was applied to prevent one who wrongfully caused another's death from receiving any benefit from such death long before Section 732.802 Florida Statute 1979, or its predecessor statute, ever existed. Of course, that was a concurring opinion. It was dictum not necessary to the decision, and while Judge Cowart assumed that it had reference to the law of descent and distribution, the cases that he cited I believe were ones that would properly permit the use of common law principles, i.e., tenants by the entirety, life insurance policies, U.S. Savings Bonds (of course, this is governed entirely by the Treasury regulations).

Again, let me repeat that I believe your proposal to amend the statute by making it broader than just a murderer, is the proper procedure.

With kindest personal regards to you and Sylvia, I remain,

Very truly yours,

William S. Belcher

WSB:j1
cc: Honorable Harold R. Clark
Mr. Donald S. Fradley  
Senate Committee on Judiciary-Civil  
111 Senate Office Building  
Tallahassee, Florida 32301

Dear Don:

I have your letter of December 14, 1981 on SB 78. I do not agree with the philosophy of the bill. I have no objection to including manslaughter in the bill to obviate one of the problems. However, I do not agree that we should adopt a vague standard for a probate court to use in determining whether or not an heir or beneficiary should inherit from a decedent.

What does unlawfully mean? Does it mean murder? Does it mean manslaughter? Other homicides are excusable.

What does intentionally add? So far as homicide is concerned, intent only affects the degree of the offense.

Why should we retry a homicide case in probate? It seems to me that more problems are being created than are being solved. We now have a precise and easily understood definition. The Probate Study Commission discussed the matter and decided affirmatively that it did not want to make a change. Just because someone is unhappy because a killer has inherited does not justify the change. Either way the line is drawn, there are going to be harsh results. I prefer the known harsh results to the unknown.

I do not agree with Judge Clark that slayer is a good term. It has no legal meaning. Black's says that slay adds nothing to kill. It reminds me of those people who "pass away" or "depart" or "leave us." They are just as dead. Terms that have a well-settled precise meaning should not be exchanged for something that has no legal meaning at all.

I have the same problem with "killer." A killer is not necessarily
culpable. It depends on who is killed and how.

Precisely stated, the question is whether we have a standard by which to judge the question or leave it up to the prejudices of the trier of fact. If this is a decision between certainty and justice, in this instance I prefer certainty.

On the practical level the change will mean that a separate civil trial will have to be held to make a determination with all of the expense, time and trauma that always come with trials. We may need more judges.

I am taking the liberty of sending a copy of this to Judge Clark so he can respond if he cares to do so.

Yours very truly,

Henry P. Trawick, Jr.

HPT/jl
cc: Judge Clark
Hon. Harry A. Johnston II  
Chairman, Senate Civil-Judiciary Committee  
111 Senate Office Building  
Tallahassee, FL 32301

Dear Senator Johnston and Committee Members:

Enclosed is an informal summary or explanation of what the draft of Committee Substitute for Senate Bill 78 will accomplish.

I apologize for not being able to write each of you an original letter or discuss this with you on the telephone. I have been in jury trials this week.

I will do my best to get away to the next meeting of the committee to further discuss this legislation. The Conference of Circuit Judges of Florida feels that Section 732.802 needs revision and that this will be a substantial improvement in our law. At least twenty other states have substantially similar provisions and most states have enacted common law that a wrongdoer should not benefit from his own wrong.

Sincerely,

Harold R. Clark  
Circuit Judge

HRC:la  
Enc.

Copies to: Committee and Probate Section
INFORMAL COMMENTS ON
HOUSE BILL 167 AND SENATE BILL 78
(As amended by Committee Substitutes,
substantial revision of FS 732.802,
Murderer shall not inherit statute.)

These companion bills deal with what rights a killer may have in the estate of his victim and insurance payable by reason of the death of the insured victim. When these bills become law, the result of an intentional and unlawful killing would be as though the killer and the victim were divorced and the victim thereafter died.

Assume, for example, the killer and the victim were husband and wife. The victim had life insurance and the killer was the first named beneficiary. They owned their home and had bank accounts in both names, and the victim had some property and money in the victim's own name.

Under this new law, there would be a determination in a civil trial or a probate proceeding, by a preponderance of evidence, whether the killer INTENTIONALLY (not accidentally, negligently or while insane) and UNLAWFULLY (not in self defense) killed the victim. A criminal conviction of murder (not manslaughter) would settle this.

If it is determined that the killer intentionally and unlawfully killed the victim:

1. The insurance benefits would be paid to the next named beneficiary on the policy as though the killer had died before the insured victim died. This is now the present law by cases.

2. The jointly held property and bank accounts would be divided and the share of the killer would go to the killer and the share of the victim would go to the victim's heirs or beneficiaries under a will. In effect, the killer's right of survivorship would have been terminated, just as in divorce and the parties had become tenants in common just before the victim's death.

3. The victim's probate assets would go to those who would inherit or take under a will just as though the killer had died before the victim.
MEMORANDUM

HB 167

SUBJECT: Intestate Succession and Wills

SUMMARY:

A. Present Situation:

Section 732.802 provides that "a person convicted of the murder of a decedent shall not be entitled to inherit from the decedent or take any part of his estate as a devisee...." This section has been strictly construed and has not been applicable in cases where a conviction for murder is not obtained, such as where the killer pleads to a manslaughter charge or commits suicide prior to a conviction.

The section, as part of the Probate Code, controls and is exclusive with regard to the probate estate; however, where there is no estate upon which the statutes relating to descent and distribution can operate, §732.802 is ineffective and the common law controls. Therefore, when the killer is the beneficiary of a life insurance contract or other contract, where there is involved an estate by the entirety or a joint tenancy, or where an inter vivos trust is established wherein the res does not become part of the estate, the law presently provides for a civil court determination as to whether the killing was unlawful and intentional, based on the greater weight of the evidence standard.

B. Probable Effect of Proposed Changes:

HB 167, as amended, codifies the common law as it exists and extends the principle that "no person should be permitted to benefit from his own wrong" to the probate estate.

Subsection (1) substitutes the concept of "unlawful and intentional killing" in the place of a conviction of murder. Use of the nontechnical term "kill" would include, in addition to murder, other intentional and unlawful procurement of death. Use of the term "unlawful and intentional" would require a showing that not only was the killing unlawful and intentional in nature, but was without the purifying effect of excuse or justification (e.g., self-defense, accident, insanity).

Subsection (2) of the bill addresses joint tenancies and tenancies by the entirety and codifies the present common law. Any such tenancy would be regarded as severed by the unlawful and intentional killing and the parties considered tenants in common.
Subsection (3) codifies the present common law as to contractual arrangements. For example, presently and under HB 167, the beneficiary of a life insurance contract who has unlawfully and intentionally killed the insured is treated as having predeceased the insured.

Subsection (5) provides that a final judgment of conviction of murder is conclusive as to whether the killing was unlawful and intentional. The bill makes no such conclusion as to an acquittal. Different considerations, as well as a different burden of proof enter into the finding of guilty in the criminal prosecution. This is explained by the fact that in a criminal prosecution the possible consequences are much more severe; very stringent safeguards must be accorded where there is a possibility of imprisonment. In denying a killer from inheriting from his victim, it is said that we are not depriving the killer of his property but merely preventing him from acquiring additional property in an unauthorized and unlawful way.

C. Comments:

HB 167 is patterned after a similar provision in the Uniform Probate Code and appears to be the majority view.
A bill to be entitled

An act relating to estates; repealing s.
732.802, Florida Statutes, relating to the
prohibition of a person convicted of murder
from sharing in the victim's estate; providing
an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 732.802, Florida Statutes, is
hereby repealed.

Section 2. This act shall take effect upon becoming a
law.

*****************************************
SENATE SUMMARY
Repeals s. 732.802, F. S., which prohibits a person
convicted of the murder of a decedent from inheriting or
sharing in any part of the decedent's estate.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
A bill to be entitled
An act relating to estates; amending s.
732.802, Florida Statutes; providing that
certain persons who unlawfully and
intentionally kill, rather than murder, a
person are not entitled to receive benefits by
reason of the death of the person killed;
including within the act any other acquisition
of property or interest by the killer;
providing that a final judgment of conviction
of murder in any degree is conclusive for the
purposes of this section and that without
regard to any criminal proceedings the court
may determine by preponderance of evidence
whether the killing was unlawful and
intentional; providing for the protection of
rights of persons without notice acting before
the rights under this section have been
adjudicated; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 732.802, Florida Statutes, is
amended to read:

(1) A surviving person who unlawfully and
intentionally kills or participates in procuring the death of
the decedent is not entitled to any benefits under the will or
under the Florida Probate Code, and the estate of decedent

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
passes as if the killer had predeceased the decedent.

Property appointed by the will of the decedent to or for the
benefit of the killer passes as if the killer had predeceased
the decedent.

(2) Any joint tenant who unlawfully and intentionally
kills another joint tenant thereby effects a severance of the
interest of the decedent so that the share of the decedent
passes as his property and the killer has no rights by
survivorship. This provision applies to joint tenancies with
right of survivorship and tenancies by the entirety in real
and personal property, joint and multiple-party accounts in
banks, savings and loan associations, credit unions and other
institutions, and any other form of co-ownership with
surviviorship incidents.

(3) A named beneficiary of a bond, life insurance
policy, or other contractual arrangement who unlawfully and
intentionally kills the principal obligee or the person upon
whose life the policy is issued is not entitled to any benefit
under the bond, policy or other contractual arrangement, and
it becomes payable as though the killer had predeceased the
decedent.

(4) Any other acquisition of property or interest by
the killer including a life estate in homestead property shall
be treated in accordance with the principles of this section.

(5) A final judgment of conviction of murder in any
degree is conclusive for purposes of this section. In the
absence of conviction of murder in any degree the court may
determine by a preponderance of evidence whether the killing
was unlawful and intentional for purposes of this section.

(6) This section does not affect the rights of any
person who, before rights under this section have been
adjudicated purchases from the killer for value and without
notice property which the killer would have acquired except
for this section, but the killer is liable for the amount of
the proceeds or the value of the property. Any insurance
company, bank, or other obligor making payment according to
the terms of its policy or obligation is not liable by reason
of this section unless prior to payment it has received at its
home office or principal address written notice of a claim
under this section.

Section 2. This act shall take effect upon becoming a
law.
CS/SB 78 provides that a person who unlawfully and intentionally kills, rather than a person convicted of murder, is not entitled to any benefits under the will or under the Florida Probate Code. If the court finds that the person unlawfully and intentionally killed the decedent, the estate of decedent will pass as if the killer had predeceased the decedent.

This bill codifies existing law by providing that any joint tenant who unlawfully and intentionally kills another joint tenant effects a severance of the interest of the decedent so that the killer would have no survivorship rights to the decedent's share. The decedent's share will pass as if the killer predeceased the decedent and the killer will be entitled to his own share.

The bill codifies existing law by providing that the beneficiary of a bond, life insurance policy, or other contract, who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit.

A conviction of murder is conclusive as to whether the killing was unlawful and intentional. In the absence of a conviction, the court may determine by a preponderance of evidence whether the killing was unlawful and intentional.
Senate Staff Analysis and Economic Impact Statement

I. Summary:

A. Present Situation:

Section 732.802, F.S., provides that a person convicted of the murder of a decedent shall not be entitled to inherit from the decedent or to take any part of his estate as a devisee. The part of the decedent's estate to which the murderer would otherwise be entitled would pass to the persons entitled to it as though the murderer had died during the lifetime of the decedent.

The courts have strictly construed this statute to apply only to convicted murderers. The statute will not prevent a person from inheriting from the decedent or from taking any part of the decedent's estate as a devisee in cases where the murderer is acquitted by reason of insanity, pleads guilty to manslaughter, or commits suicide prior to the conviction. In addition, the statute does not apply to insurance proceeds nor to estates by the entirety.

In cases where the statute is inapplicable, the Florida courts have applied an equitable principle that no one shall be permitted to profit by his own wrongdoing. This principle has been applied by the Florida Supreme Court to prevent one tenant of an estate by the entirety, who murders the other, from acquiring a survivor's interest, and to prevent a beneficiary from receiving the proceeds of an insurance policy on the life of one whom he unlawfully and intentionally killed. In these cases, the murderer was precluded from benefiting even though he was not convicted.

B. Effect of Proposed Changes:

This bill would repeal s. 732.802.

II. Economic Impact and Fiscal Note:

A. Public: None.
B. Government: None.

III. Comments:

HB 167 which expands s. 732.802 to include the crime of manslaughter, has been referred to the House Committee on Judiciary.

IV. Amendments: None.
I. SUMMARY:

A. Present Situation:

Section 732.802, F.S., provides that a person convicted of the murder of a decedent shall not be entitled to inherit from the decedent or to take any part of his estate as a devisee. The part of the decedent's estate to which the murderer would otherwise be entitled would pass to the persons entitled to it as though the murderer had died during the lifetime of the decedent.

The courts have strictly construed this statute to apply only to convicted murderers. The statute will not prevent a person from inheriting from the decedent or from taking any part of the decedent's estate as a devisee in cases where the murderer is acquitted by reason of insanity, pleas guilty to manslaughter, or commits suicide prior to the conviction. In addition, the statute does not apply to insurance proceeds nor to estates by the entirety.

In cases where the statute is inapplicable, the Florida courts have applied an equitable principle that no one shall be permitted to profit by his own wrongdoing. This principle has been applied by the Florida Supreme Court to prevent one tenant of an estate by the entirety, who murders the other, from acquiring a survivor's interest, and to prevent a beneficiary from receiving the proceeds of an insurance policy on the life of one whom he unlawfully and intentionally killed. In these cases, the murderer was precluded from benefiting even though he was not convicted.

B. Effect of Proposed Changes:

This bill would repeal s. 732.802.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public: None.

B. Government: None.

III. COMMENTS:

A similar bill, HB 167, has passed the House Judiciary Committee with amendments and now goes to the House Calendar.

IV. AMENDMENTS: None.
SUMMARY:

A. Present Situation:

Section 732.802, F.S., provides that a person convicted of the murder of a decedent shall not be entitled to inherit from the decedent or to take any part of his estate as a devisee. The part of the decedent's estate to which the murderer would otherwise be entitled would pass to the persons entitled to it as though the murderer had died during the lifetime of the decedent.

The courts have strictly construed this statute to apply only to convicted murderers. The statute will not prevent a person from inheriting from the decedent or from taking any part of the decedent's estate as a devisee in cases where the murderer is acquitted, pleads guilty to manslaughter, or commits suicide prior to the conviction.

In cases where the statute is inapplicable, the Florida courts have applied an equitable principle that no one shall be permitted to profit by his own wrongdoing. This principle has been applied by the Florida Supreme Court to prevent one tenant of an estate by the entirety, who murders the other, from acquiring a survivor's interest, and to prevent a beneficiary from receiving the proceeds of an insurance policy on the life of one whom he unlawfully and intentionally killed. In these cases, the murderer was precluded from benefiting even though he was not convicted.

B. Effect of Proposed Changes:

CS for SB 78 extends the common law principle that no person should be permitted to benefit from his own wrong to those persons who would have been entitled to inherit from the decedent or to take any part of his estate as a devisee.

It provides that a person who unlawfully and intentionally kills, rather than a person convicted of murder, is not entitled to any benefits under the will or under the Florida Probate Code, if the court finds that the person unlawfully and intentionally killed the decedent, the estate of the decedent will pass as if the killer had predeceased the decedent.

This bill codifies existing law by providing that a joint tenant who unlawfully and intentionally kills another joint tenant effects a severance of the interest of the decedent so that the killer would have no survivorship rights to the decedent's share. The decedent's share will pass as if the killer predeceased the decedent and the killer will be entitled to his own share.

The bill codifies existing law by providing that the beneficiary of a bond, life insurance policy, or other contract, who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit.

A conviction of murder is conclusive as to whether the killing was unlawful and intentional. In the absence of a conviction, the court
I. B. Effect of Proposed Changes: (continued)

may determine by a preponderance of evidence whether the killing was unlawful and intentional.

The bill provides that persons who purchase property from the killer without notice, and insurance companies and banks who make payment without notice are not liable under this section.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public: None.
B. Government: None.

III. COMMENTS:

Under current law, a person acquitted of murder in a criminal trial may be subject to a civil trial in order to determine whether he unlawfully and intentionally killed the decedent. If the killer is found by a preponderance of evidence to have unlawfully and intentionally killed the decedent, the killer's rights to the property will be determined according to the applicability of s. 732.802 or case law. For instance, the killer will be entitled to all property which passes through the decedent's estate because s. 732.802 requires a conviction in order to prevent the killer from inheriting the decedent's property or from taking any property as a devisee. The killer would not be entitled to collect life insurance proceeds because case law does not require a conviction but only requires that it be proven by a preponderance of the evidence that the killer unlawfully and intentionally killed the decedent. Carter v. Carter, 88 So. 2d 152 (Fla. 1956). In addition, the killer would be entitled to a 50 percent interest in any property held by the entirety because case law treats an unlawful and intentional killing as a severance of property held by the entirety. Ashwood v. Patterson, 49 So. 2d 840 (Fla. 1951).

Identical bill, HB 167, as amended, has passed the House Committee on Judiciary and now next to the Calendar.

IV. AMENDMENTS: None.
Re: Senate Bill 78 Repealing Florida Statute 732.802 Murderer

Dear Senator Vogt:

I understand that Senate Bill 78, sponsored by you, is to be considered by the Senate Judiciary Committee on December 2. The repeal of 732.802 F.S. is desirable, but only if it is replaced by a statute that clearly establishes that a person who kills another shall not inherit from his victim. There is real doubt that a simple repeal of the statute will re-establish the common law principle that a wrongdoer shall not benefit by his wrong.

The Probate Section of the Florida Conference of Circuit Judges has approved in principle the enactment of a statute that would substantially codify the present Florida case law on this subject. The need is clearly demonstrated in the recent case of Nable v. Estate of Godfrey, 403 So.2d 1038 (5th DCA Sept. 1981), a copy of which is enclosed.

I have drafted a proposed bill that would amend FS 732.802 by substituting substantially the language of the Uniform Probate Code. Two exceptions would be that a joint tenant or a tenant by the entirety who kills his joint tenant would be presumed to have died before his victim. Presently, the case law treats it as though they were divorced and the wrongdoer is entitled to a one-half interest as a tenant in common.

This draft does not go as far as Judge Cowart suggests in his concurring opinion in the Nable case. He would include manslaughter by culpable negligence and perhaps manslaughter while driving under the influence of alcohol or drugs. Manslaughter is death caused by the act, procurement or culpable negligence (gross and flagrant) without any conscious intention to harm. This would include DWI manslaughter. Perhaps the legislation should not go that far, but be limited to intentional acts.
The UPC does not consider the question of whether a person who murders his spouse loses the right to a life estate in homestead property. My draft provides that the killer would be presumed to have died before his spouse.

I hope to enlist sponsors for this bill in both the Senate and the House. I would appreciate it if SB 78 could be temporarily passed on December 2 until further consideration might be given to this proposed alternative.

Sincerely,

Harold R. Clark
Circuit Judge

HRC:la
Copy to: Attached list.
Dear Harold:

I am glad to see your efforts to encourage the Legislature to amend the murderer's section of our Probate Code. I support it totally. Our present statute is a disaster.

I would like to submit one change in the language of the second sentence of paragraph 2 of Don Fradley's proposed amendment. It now starts out --

"In the absence of a conviction of murder, the court may determine---"

I would like to see that changed to read:

"Without regard to any criminal proceedings, the court may determine ---"

The present language might be construed to imply that a criminal judgment of some sort was a condition precedent to the probate court determination.

I have spoken with Representative Elvin Martinez, who was majority floor leader of the last session, and gained his enthusiastic support. He plans to contact Ronald Richmond, Chairman of the House Sub-Committee on Probate, and Hamilton Upchurch, son of Judge Frank Upchurch, who is Chairman of the Full House Committee, and endeavor to obtain their support for this much needed amendment. I believe we should divorce the devolution of property rights from dependence upon the unreliable results of criminal trials and try the issue of property rights of succession in the probate courts. We determine extensive property rights of
people in divorce cases, personal injury cases etc., every day. The rights of the killer should not warrant greater protection.

Kindest personal wishes.

Sincerely yours,

Benjamin C. Sidwell

BCS/bm
cc: See attached list
The Honorable Ronald R. "Ron" Richmond  
Representative  
House Office Building  
Tallahassee, FL 32301  

Re: House Bill 167 as amended

Dear Mr. Richmond:

Thank you very much for your patient consideration, as Chairman of the Probate and Family Law Subcommittee, of the murderer-inheritance bill last Wednesday. I appreciate very much that the Subcommittee amended the bill to incorporate the language offered by the Florida Conference of Circuit Judges and that the bill will again be considered by your committee next Wednesday, February 3, 1982.

I regret that I was not better prepared to answer some of the questions of the Subcommittee. If a person is acquitted "on the merits" on a murder charge it is unlikely that any civil action under the proposed bill would occur, but it could. A civil action might follow if there was a dispute over money or property of the person killed. If the acquittal was because of self defense, it would not be an unlawful killing. If the gun accidentally went off, it would not be an intentional killing.

Since the requirement of proof in a criminal trial is "beyond and to the exclusion of every reasonable doubt", and the burden of proof in a civil action is "preponderance of evidence", an acquittal should not be conclusive of whether a person should inherit. In any event, if the killer is the beneficiary of life insurance there must be a subsequent civil trial by a preponderance of evidence as to whether the killing was intentional and unlawful. The bill simply codifies that case law and adds to it the same provisions for determining right to inheritance and division of property by the entireties and joint bank accounts.
It is not at all unusual to have both a criminal trial and a civil action on the same occurrence. This happens regularly in automobile collision cases and in many other types of negligence cases. As a practical matter, however, the determination of the criminal case may lead to settlement of a civil action.

House Bill 167 as amended is a good bill, and we urge your Subcommittee to favorably report it out so that it may be considered by the full Civil Judiciary Committee.

Sincerely,

Harold R. Clark
Circuit Judge

HRC:la

Copies to: Rep. Mary Ellen Hawkins
Rep. Hamilton Upchurch
Rep. Elvin L. Martinez
Judge Benjamin C. Sidwell
Sen. John W. Vogt

Ham -
Sure appreciate your help -
Harold
Section 732.802, F.S., presently provides that:

A person convicted of the murder of a decedent shall not be entitled to inherit from the decedent or take any part of his estate as a devisee...

The Florida courts have strictly construed the above provision in that the statute can work a forfeiture of one's right to his inheritance. Peeples v. Corbett, 157 So. 510 (Fla. 1934).

Based upon this reasoning, the statute extends only to the crime named and the estate expressly delineated. See e.g., Peeples; Ashwood v. Patterson, 49 So.2d 848 (Fla. 1951); Carter v. Carter, 88 So.2d 153 (Fla. 1956).

HB 167 addresses the problem faced in permitting an heir or devisee who has unlawfully and intentionally killed the decedent, but who has not been convicted of murder, to inherit or take from the decedent. In the Peeples case, a son conspired to effect the murder of his father. The son committed suicide subsequent to the death of his father and prior to any possible conviction of murder. The son's estate was able to share in the father's estate, and consequently the son's sole heir (his wife) was able to participate in the father's estate. In a more recent case, a husband was charged with the murder of his wife. The husband pleaded guilty to manslaughter and thus could not be required to forfeit the right to his wife's estate. Nable v. Estate of Godfrey, 403 So.2d 1038 (Fla. 5th DCA 1981).

A disturbing aspect of allowing one who has caused the unlawful and intentional killing of another to inherit the victim's estate was noted by Judge Cowart in his special concurrence in Nable, wherein he questions the propriety of determining the relative rights to the property of a decedent, as between the killer and the other heirs or devisees based
upon the willingness of a prosecutor and the ability of defense counsel to make a deal as to one degree of homicide rather than another.

Judge Cowart also found it ironic that a statute enacted to enable courts to deny benefits to a killer is now being used as a tool to accomplish what it was designed to prevent.

Another troublesome aspect with the state of the law is that the result of whether the killer will be entitled to share in the assets of the decedent depends upon how those assets are held; that is, whether they are a part of the probate estate. Section 732.802, F.S. as part of the Florida Probate Code, controls and is exclusive with regard to the probate estate; however, where there is no estate upon which the statutes relating to descent and distribution can operate, §732.802 is ineffective and the common law controls.

Property held by the entirety, by its nature, vests by operation of law and not pursuant to statutes of descent and distribution. Florida treats an unlawful and intentional killing as an act which destroys the unity of estate. In such an instance, the parties are considered tenants in common. Ashwood v. Patterson, 49 So.2d 848 (Fla. 1951).

Section 732.802, F.S. further does not relate to the right to receive proceeds payable under an insurance contract. Again, the common law principle that no person should be permitted to benefit from his own wrong controls. Carter v. Carter, 88 So.2d 153 (Fla. 1956).

While no Florida cases were found on the subject, it can be presumed that §732.802, F.S. would not apply in an instance where the decedent had established an inter vivos trust that

≥
does not become part of his estate.

In all of the above cases, the present law provides for a probate court determination, notwithstanding any criminal proceeding, as to whether the killing was unlawful and intentional, based upon the standard of the greater weight of the evidence. It would seem to be the trend that more and more property of decedents would involve assets not part of the probate estate, such as insurance proceeds, trusts or entirety property. Further, we are not breaking new ground in exposing one suspected of wrongdoing to both criminal and civil liability. In addition to the examples above, both criminal and civil liability is imposed in wrongful death cases and many negligence actions.

HB 167, as amended, speaks in terms of one who "unlawfully and intentionally kills" the decedent. Use of the nontechnical term "kill" would include murder and manslaughter, killing being a necessary element of either crime. Use of the term "unlawful and intentional" would require a showing that the killing was intentional and unlawful in nature and without the purifying effect of excuse or justification (e.g., self-defense, accident, insanity).

Subsection (2) of the bill addresses joint tenancies and tenancies by the entirety. As is noted above, if the decedent was such a tenant upon being killed, present case law provides for a civil determination of unlawful and intentional killing. If such is found, presently it is the law that the tenancy would be severed and the tenants are considered tenants in common. HB 167 alters this principle by treating the killer as having predeceased the decedent so that the killer has no rights in such property.
Subsection (3) codifies the present common law as to contractual arrangements.

Subsection (5) provides that a final judgment of conviction of murder is conclusive as to whether the killing was unlawful and intentional. The bill makes no such conclusion as to an acquittal. This is because different considerations, as well as a different burden of proof enter into the finding of guilty in the criminal prosecution. There are many constitutional protections which must be accorded to a person accused of a crime due to the severity of the possible consequences of conviction, most notably imprisonment. It has been uniformly held that denial of the right of one who has "killed" another to inherit from the person killed is constitutional. Am Jur.2d Descent and Distribution §101. Such a denial does not deprive the killer of his property but merely prevents him from acquiring additional property in an unauthorized and unlawful way.
Date of meeting February 3, 1982
Time 2:30 p.m.
Place Room 212, HOB

FINAL ACTION: ______ FAVORABLE
______ FAVORABLE WITH ______ AMENDMENTS
X FAVORABLE WITH SUBSTITUTE
______ UNFAVORABLE

VOTE:

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Total Yea 8
Total Nay 0

Committee Appearance Record

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name  Representing  Address
Harold R. Clark  Conf.Circuit Judges  227 Co Courthouse, Jacksonville

Note: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(File 2 copies with Clerk)
A bill to be entitled
an act relating to Florida Probate Code;
amending s. 732.802, Florida Statutes,
providing for the determination of the
question of when a person who unlawfully
and intentionally kills a decedent is
precluded from receiving benefits by
reason of the death of the person killed;
providing that the surviving spouse or
deviser who unlawfully and intentionally
kills a decedent is presumed to have
predeceased the decedent; providing that
a joint tenant who unlawfully and
intentionally kills another joint tenant
or tenant by the entirety has no rights
by survivorship; providing that a named
beneficiary of a bond, life insurance
policy or other contractual arrangement
who unlawfully and intentionally kills
the principal obligee or person upon
whose life the policy is issued is not
entitled to any benefit thereunder;
providing that any other acquisition of
property or interest by the killer
including a life estate in homestead
property shall be treated in accordance
with the principles of this section;
providing that a final judgment of
conviction of murder in any degree is
conclusive for the purposes of this
section and that in the absence of
conviction of murder in any degree the
court may determine by preponderance of
evidence whether the killing was unlawful
and intentional; providing for the
protection of rights of persons without
notice acting before the rights under this section have been adjudicated; providing for an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 732.802, Florida Statutes, is amended to read: (Substantial rewording of s. 732.802. See s. 732.802, Florida Statutes, for present text.)

(1) A surviving spouse, heir or devisee who unlawfully and intentionally kills the decedent is not entitled to any benefits under the will or under this Article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who unlawfully and intentionally kills the principal obligee or the person upon

Participant in procuring the death
whose life the policy is issued is not entitled
to any benefit under the bond, policy or other
contractual arrangement, and it becomes payable
as though the killer had predeceased the
decedent.

(4) Any other acquisition of property or interest
by the killer, including a life estate in homestead prop­
erty, elective share, family allowance, exempt property
and rights under prenuptial or antenuptial agreements,
or any form of trusts, shall be treated in accordance
with the principles of this section.

(5) A final judgment of conviction of murder in any
degree is admissible in evidence and is conclusive for
purposes of this section. Without regard to criminal pro­
cedings, the court may determine by a preponderance of
evidence whether the killing was unlawful and intentional
for purposes of this section. A prior, or subsequent, judg­
ment of acquittal for any reason shall not affect the de­
termination of the probate court.

(6) This section does not affect the rights of any per­
son who, before rights under this section have been ad­
judicated, purchases from the killer for value and without
notice property which the killer would have acquired ex­
cept for this section, but the killer is liable for the
amount of the proceeds or the value of the property.
Any insurance company, bank, or other obligor making
payment according to the terms of its policy or obligation,
is not liable by reason of this section unless prior to pay­
ment it has received at its home office or principal address
written notice of a claim under this section.
I. SUMMARY

A. Present Situation:

Section 732.802 provides that a person who is convicted of murder is precluded from sharing in the victim's estate. The statute treats the murderer as having predeceased the victim, therefore, any claim for exempt property, family allowance, elective share or pretermitted share would also be disallowed. The courts have strictly construed the statute to require a conviction of murder for application of the statute. See, e.g., Nable v. Estate of Godfrey, 403 So.2d 1038 (Fla. 5th DCA 1981). Therefore, a person charged with murder but convicted of manslaughter, through the trial process or plea bargaining, or a person acquitted by reason of insanity would be eligible to inherit the victim's estate.

B. Probable Effect of Proposed Changes:

Section 732.802 is amended to include the conviction of manslaughter as a factor precluding the ability to share in the victim's estate. While this language would operate to cover the instance of a plea to the lesser charge of manslaughter, it would also include a wide array of other circumstances. Manslaughter is defined as the causing of death by the act, procurement or culpable negligence of a person without any conscious intent to harm the victim, and includes vehicular homicide and DUI manslaughter. It is questionable whether in all cases of manslaughter the decedent would choose to prevent his devisee or legatee from sharing in his estate.

II. FISCAL IMPACT: None.

III. COMMENTS:

SB 518 (1979) provided that a person who unlawfully and intentionally kills the decedent would not be entitled to share in the decedent's estate. The bill passed in the Senate and died in House Judiciary.
I. SUMMARY

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II. FISCAL IMPACT: None.

III. COMMENTS:

SB 518 (1979) provided that a person who unlawfully and intentionally kills the decedent would not be entitled to share in the decedent's estate. The bill passed in the Senate and died in House Judiciary.

IV. AMENDMENTS:

HB 167 has been amended by striking everything after the enacting clause. The bill now substitutes the concept of "unlawful and intentional killing" in the place of a conviction of murder as precluding a killer
from sharing in his victim's estate. CS for HB 167 codifies the present law with regard to joint tenancies and tenancies by the entirety, insurance and other contractual matters, and extends the principle that no person should be permitted to benefit from his own wrong as is applied in those situations, to the probate estate.