



**House  
Legislative  
Analysis  
Section**

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**SMALL ESTATES**

**House Bill 5024 as enrolled  
Public Act 274 of 1994  
Second Analysis (1-22-95)**

**Sponsor: Rep. Michael E. Nye  
House Committee: Judiciary  
Senate Committee: Judiciary**

***THE APPARENT PROBLEM:***

Under the Revised Probate Code, if the estate of a deceased person is valued at \$5,000 or less, the court may order the property to be turned over to the surviving spouse, if any, or to a person who paid the funeral expenses, up to the amount of that payment, with the balance going to the spouse or heirs. This provision streamlines the probating of small estates and allows the payment of funeral expenses without the necessity of going through the more involved and time-consuming procedures usually required to probate an estate.

Shortcomings of the law have been identified, however. For one thing, the low limit means that an estate with virtually any assets at all--such as a car and some furniture--can exceed the limit and have to go through a more lengthy probate process.

Another reported problem has been that of inconsistent interpretation of the law. Although the provision is commonly read to apply to estates with a gross value of \$5,000 or less, apparently some judges compute the value of the estate as a net value, first deducting any encumbrances on the property, along with the exceptions and allowances made for a surviving spouse and minor children. Those allowances entitle a surviving spouse to receive a homestead allowance of \$10,000, a personal property allowance of \$3,500, and a family allowance to support and maintain the surviving spouse and any minor children pending settlement of the estate, up to one year.

Legislation has been proposed to increase the size of an estate that may be processed as a small estate, and to provide for the satisfaction of any claims against it.

***THE CONTENT OF THE BILL:***

The bill would amend the Revised Probate Code to allow more estates to be processed as "small estates" that can be turned over to heirs by simple application and court order. The current limit of \$5,000 would be increased to \$15,000, and the limit would be based on the value of the estate minus any funeral and burial expenses.

Upon being shown satisfactory evidence that funeral and burial expenses had not yet been paid, the court would order that the property first be used to pay the unpaid funeral and burial expenses, or to reimburse the person that paid those expenses. The court could order that the balance be turned over to the surviving spouse, or if there were no spouse, to the decedent's heirs.

Other than a surviving spouse who qualified for allowances under the probate code or minor children of the decedent, an heir who received property under the bill would be responsible for 60 days for any unsatisfied debt of the decedent up to the value of the property received. This condition would be stated in the court's order turning over the property.

The bill would take effect October 1, 1994.

MCL 700.102

***FISCAL IMPLICATIONS:***

The Senate Fiscal Agency (SFA) has reported that the bill would reduce funds to the state court fund. Outstate courts, state-funded trial courts in Wayne County, the court of appeals, and civil legal

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assistance to indigent people are funded by the state court fund. Reductions in the funds to these court functions could result in decreased productivity, according to the SFA. (4-26-94)

### **ARGUMENTS:**

#### ***For:***

The bill would clarify and expand the use of the streamlined procedures for the processing of small estates, thus allowing more estates to be transferred to surviving spouses or heirs by simple application to and order of the probate court. With the current limit of \$5,000, ownership of even a small amount of property--such as a car--can disqualify a decedent's estate. Further, as some judges apparently have construed the law to mean that the limit applies to the value of the estate minus certain claims and statutory allowances, while others have applied the limit to the gross value of the estate, the bill would settle the matter by specifying that the limit is to apply to the gross value of the estate less any funeral and burial expenses.

#### ***Against:***

The bill would change the basic purpose of the small estate process, which is to offer streamlined procedures for estates whose value roughly approximates the cost of a funeral. While any amount remaining after funeral expenses are paid is supposed to go to heirs, the statute has been constructed so that there is very little, if any, left over in an estate processed as a small estate. Thus, with a low limit, the lack of notice for creditors and other procedural safeguards in the small estate process are without any significant impact. The bill however, both increases the limit and changes the method of its computation, changing the limit from a gross figure to a net figure. Much larger estates thus could be processed as small estates, leaving creditors without notice or the opportunity to satisfy their claims prior to the estate's changing hands.

#### ***Response:***

The bill contains provisions to protect creditors' interests: heirs would be subject to paying creditors' claims against the estate for 60 days after the date of the court order transferring the estate.