

Act No. 56
Public Acts of 2000
Approved by the Governor
March 29, 2000
Filed with the Secretary of State
March 30, 2000
EFFECTIVE DATE: April 1, 2000

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Rep. Shulman

ENROLLED HOUSE BILL No. 5486

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending sections 816, 841, 880, 880b, 880c, 1021, 1517, and 2922 (MCL 600.816, 600.841, 600.880, 600.880b, 600.880c, 600.1021, 600.1517, and 600.2922), section 816 as amended by 1995 PA 14, sections 841 and 1517 as amended and section 1021 as added by 1996 PA 388, section 880 as amended and sections 880b and 880c as added by 1993 PA 189, and section 2922 as amended by 1985 PA 93.

The People of the State of Michigan enact:

Sec. 816. (1) A probate judge shall hold sessions of the probate court at the county seat of each county, unless an alternative primary location is designated as provided in subsection (3), and may hold sessions of the probate court in a city of the county where sessions of the circuit court are authorized by law to be held. A probate judge may maintain an office at a place where sessions of the probate court are held.

(2) A probate judge may hold sessions of the court at the regional diagnostic and treatment center assigned to his or her court if sessions are approved by the state court administrator. The center shall provide an area for court sessions to which the public has access.

(3) Subject to the approval of the county board of commissioners and the state court administrator, the chief probate judge of a county may designate 1 or more places in the county where regular sessions of probate court may be held. A designation made under this subsection shall be delivered to the county clerk.

(4) Nothing in this section prohibits a judge from holding a hearing regarding an allegedly incapacitated individual or an allegedly mentally ill person at a site considered appropriate by the court as provided by section 5304 of the estates and protected individuals code, 1998 PA 386, MCL 700.5304, or section 456 of the mental health code, 1974 PA 258, MCL 330.1456. Nothing in this section prohibits a judge from holding a hearing regarding an individual alleged to need protection at a site the court considers appropriate as provided by section 5406 of the estates and protected individuals code, 1998 PA 386, MCL 700.5406.

Sec. 841. The probate court has jurisdiction and power as follows:

- (a) As conferred upon it under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102.
- (b) As conferred upon it under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.
- (c) As conferred upon it under this act.
- (d) As conferred upon it under another law or compact.

Sec. 880. (1) Except as otherwise provided in this section and section 880a, at the time of commencing a civil action or proceeding in the probate court, the party commencing the civil action or proceeding shall pay a \$100.00 filing fee to the probate court register.

(2) At the time of commencing a proceeding under section 3982 of the estates and protected individuals code, 1998 PA 386, MCL 700.3982, the party commencing the proceeding shall pay a \$25.00 filing fee to the probate court register.

(3) Except as otherwise provided by law, a fee shall not be charged for commencing a proceeding in probate court under a provision of the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(4) A party is not required to pay a fee under this section if the party is the attorney general, department of treasury, family independence agency, state public administrator, or administrator of veterans affairs of the United States veterans administration, or an agency of county government.

(5) The probate register, on or before the fifth day of the month following the month in which fees are collected under this section, shall transmit to the county treasurer all fees collected under this section during the preceding month. Within 15 days after receiving the fees, the county treasurer shall transmit \$21.00 of each fee collected under subsection (1) to the executive secretary of the Michigan judges retirement system created by the judges retirement act of 1992, 1992 PA 234, MCL 38.2101 to 38.2670, and the balance of each fee collected under subsection (1) and all fees collected under subsection (2) to the state treasurer for deposit in the state court fund created by section 151a.

Sec. 880b. (1) Except as otherwise provided by law, after the commencement of a civil action or proceeding in the probate court, a party filing a motion, petition, account, objection, or claim shall pay a \$15.00 motion fee to the probate register.

(2) A fee shall not be charged under this section in a guardianship or limited guardianship proceeding if the moving party is the subject of the proceeding.

(3) A fee shall not be charged under this section in a conservatorship proceeding if the moving party is the subject of the proceeding or, if the conservatorship is for a minor, for a motion to release restricted funds.

(4) A party is not required to pay a fee under this section if the party is the attorney general, department of treasury, family independence agency, state public administrator, or administrator of veterans affairs of the United States veterans administration, or an agency of county government.

(5) The probate register, on or before the fifth day of the month following the month in which fees are collected under this section, shall transmit to the county treasurer all fees collected under this section during the preceding month. Within 15 days after receiving the fees, the county treasurer shall transmit 50% of each fee collected to the state treasurer for deposit in the state court fund created by section 151a and shall deposit the remaining 50% of each fee in the county general fund for use exclusively for expenses of the probate court, to be first applied toward expenses in adult guardianship proceedings of the independent evaluations, legal counsel, and periodic review mandated by article 5 of the estates and protected individuals code, 1998 PA 386, MCL 700.5101 to 700.5513.

Sec. 880c. (1) Upon appeal from the probate court to the circuit court or court of appeals, the party bringing the appeal shall pay a \$25.00 fee to the probate court register.

(2) Upon registering a trust or depositing a will for safekeeping, the person registering the trust or depositing the will shall pay a \$25.00 fee to the probate court register.

(3) The probate court register, on or before the fifth day of the month following the month in which fees are collected under this section, shall transmit all fees collected under this section during the previous month to the county treasurer. The county treasurer shall deposit all the fees in the county general fund for use exclusively for expenses of the probate court, to be first applied toward expenses in adult guardianship proceedings of the independent evaluations, legal counsel, and periodic review mandated by article 5 of the estates and protected individuals code, 1998 PA 386, MCL 700.5101 to 700.5513.

Sec. 1021. (1) Except as otherwise provided by law, the family division of circuit court has sole and exclusive jurisdiction over the following cases commenced on or after January 1, 1998:

(a) Cases of divorce and ancillary matters as set forth in the following statutes:

(i) 1846 RS 84, MCL 552.1 to 552.45.

(ii) 1909 PA 259, MCL 552.101 to 552.104.

(iii) 1911 PA 52, MCL 552.121 to 552.123.

(iv) 1913 PA 379, MCL 552.151 to 552.156.

(v) The friend of the court act, 1982 PA 294, MCL 552.501 to 552.535.

(vi) 1905 PA 299, MCL 552.391.

(vii) 1949 PA 42, MCL 552.401 to 552.402.

- (viii) The family support act, 1966 PA 138, MCL 552.451 to 552.459.
- (ix) The support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650.
- (x) The interstate income withholding act, 1985 PA 216, MCL 552.671 to 552.685.
- (b) Cases of adoption as provided in chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70.
- (c) Cases involving certain children incapable of adoption under 1925 PA 271, MCL 722.531 to 722.534.
- (d) Cases involving a change of name as provided in chapter XI of the probate code of 1939, 1939 PA 288, MCL 711.1 to 711.2.
- (e) Cases involving juveniles as provided in chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.
- (f) Cases involving the status of minors and the emancipation of minors under 1968 PA 293, MCL 722.1 to 722.6.
- (g) Cases of child custody under the child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.30, and child custody jurisdiction as provided in sections 651 to 673.
- (h) Cases involving paternity and child support under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.
- (i) Cases involving parental consent for abortions performed on unemancipated minors under the parental rights restoration act, 1990 PA 211, MCL 722.901 to 722.908.
- (j) Cases involving child support under the revised uniform reciprocal enforcement of support act, 1952 PA 8, MCL 780.151 to 780.183.
- (k) Cases involving personal protection orders under sections 2950 and 2950a.
- (2) The family division of circuit court has ancillary jurisdiction over the following cases commenced on or after January 1, 1998:
 - (a) Cases involving guardians and conservators as provided in article 5 of the estates and protected individuals code, 1998 PA 386, MCL 700.5101 to 700.5513.
 - (b) Cases involving treatment of, or guardianship of, mentally ill or developmentally disabled persons under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

Sec. 1517. (1) Subject to the approvals required under subsections (2) and (3), the chief judge of a circuit may designate 1 or more places in the county or counties in that circuit, in addition to the county seat and places otherwise designated by law, where regular terms of circuit court may be held. The designation shall be in writing and shall be delivered to the state court administrator and to the county clerk of each county in the circuit.

(2) A designation made under subsection (1) shall not take effect unless the designation is approved by the state court administrator and by the county board of commissioners of each county in the circuit. The approval by a county board of commissioners and the state court administrator may be for a specific period of time and may require that the designation be subject to reapproval by that county board of commissioners and the state court administrator at intervals determined by that county board of commissioners and the state court administrator.

(3) The family division of circuit court may hold sessions of court at an alternative primary location designated under section 816.

(4) If the family division has ancillary jurisdiction in the case, a judge of the family division may hold sessions of the court at the regional diagnostic and treatment center assigned to his or her court if sessions are approved by the state court administrator. The center shall provide an area for court sessions to which the public has access.

(5) Nothing in this section prohibits a judge from holding a hearing regarding an allegedly incapacitated individual or an allegedly mentally ill person at a site considered appropriate by the court as provided by section 5304 of the estates and protected individuals code, 1998 PA 386, MCL 700.5304, or section 456 of the mental health code, 1974 PA 258, MCL 330.1456. Nothing in this section prohibits a judge from holding a hearing regarding an individual alleged to need protection at a site the court considers appropriate as provided by section 5406 of the estates and protected individuals code, 1998 PA 386, MCL 700.5406.

Sec. 2922. (1) Whenever the death of a person or injuries resulting in death shall be caused by wrongful act, neglect, or fault of another, and the act, neglect, or fault is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, the person who or the corporation that would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under circumstances that constitute a felony.

(2) Every action under this section shall be brought by, and in the name of, the personal representative of the estate of the deceased person. Within 30 days after the commencement of an action, the personal representative shall serve a copy of the complaint and notice as prescribed in subsection (4) upon the person or persons who may be entitled to damages under subsection (3) in the manner and method provided in the rules applicable to probate court proceedings.

(3) Subject to sections 2802 to 2805 of the estates and protected individuals code, 1998 PA 386, MCL 700.2802 to 700.2805, the person or persons who may be entitled to damages under this section shall be limited to any of the following who suffer damages and survive the deceased:

(a) The deceased's spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would pass under the laws of intestate succession determined as of the date of death of the deceased.

(b) The children of the deceased's spouse.

(c) Those persons who are devisees under the will of the deceased, except those whose relationship with the decedent violated Michigan law, including beneficiaries of a trust under the will, those persons who are designated in the will as persons who may be entitled to damages under this section, and the beneficiaries of a living trust of the deceased if there is a devise to that trust in the will of the deceased.

(4) The notice required in subsection (2) shall contain the following:

(a) The name and address of the personal representative and the personal representative's attorney.

(b) A statement that the attorney for the personal representative shall be advised within 60 days after the mailing of the notice of any material fact that may constitute evidence of any claim for damages and that failure to do so may adversely affect his or her recovery of damages and could bar his or her right to any claim at a hearing to distribute proceeds.

(c) A statement that he or she will be notified of a hearing to determine the distribution of the proceeds after the adjudication or settlement of the claim for damages.

(d) A statement that to recover damages under this section the person who may be entitled to damages must present a claim for damages to the personal representative on or before the date set for hearing on the motion for distribution of the proceeds under subsection (6) and that failure to present a claim for damages within the time provided shall bar the person from making a claim to any of the proceeds.

(5) If, for the purpose of settling a claim for damages for wrongful death where an action for those damages is pending, a motion is filed in the court where the action is pending by the personal representative asking leave of the court to settle the claim, the court shall, with or without notice, conduct a hearing and approve or reject the proposed settlement.

(6) In every action under this section, the court or jury may award damages as the court or jury shall consider fair and equitable, under all the circumstances including reasonable medical, hospital, funeral, and burial expenses for which the estate is liable; reasonable compensation for the pain and suffering, while conscious, undergone by the deceased person during the period intervening between the time of the injury and death; and damages for the loss of financial support and the loss of the society and companionship of the deceased. The proceeds of a settlement or judgment in an action for damages for wrongful death shall be distributed as follows:

(a) The personal representative shall file with the court a motion for authority to distribute the proceeds. Upon the filing of the motion, the court shall order a hearing.

(b) Unless waived, notice of the hearing shall be served upon all persons who may be entitled to damages under subsection (3) in the time, manner, and method provided in the rules applicable to probate court proceedings.

(c) If any interested person is a minor, a disappeared person, or an incapacitated individual for whom a fiduciary is not appointed, a fiduciary or guardian ad litem shall be first appointed, and the notice provided in subdivision (b) shall be given to the fiduciary or guardian ad litem of the minor, disappeared person, or legally incapacitated individual.

(d) After a hearing by the court, the court shall order payment from the proceeds of the reasonable medical, hospital, funeral, and burial expenses of the decedent for which the estate is liable. The proceeds shall not be applied to the payment of any other charges against the estate of the decedent. The court shall then enter an order distributing the proceeds to those persons designated in subsection (3) who suffered damages and to the estate of the deceased for compensation for conscious pain and suffering, if any, in the amount as the court or jury considers fair and equitable considering the relative damages sustained by each of the persons and the estate of the deceased. If there is a special verdict by a jury in the wrongful death action, damages shall be distributed as provided in the special verdict.

(e) If none of the persons entitled to the proceeds is a minor, a disappeared person, or a legally incapacitated individual and all of the persons entitled to the proceeds execute a verified stipulation or agreement in writing in which the portion of the proceeds to be distributed to each of the persons is specified, the order of the court shall be entered in accordance with the stipulation or agreement.

(7) A person who may be entitled to damages under this section must present a claim for damages to the personal representative on or before the date set for hearing on the motion for distribution of the proceeds under subsection (6). The failure to present a claim for damages within the time provided shall bar the person from making a claim to any of the proceeds.

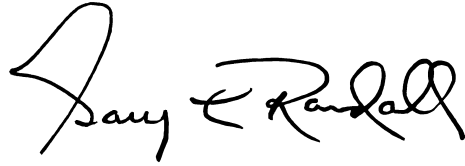
(8) A person who may be entitled to damages under this section shall advise the attorney for the personal representative within 60 days after service of the complaint and notice as provided for under subsection (2) of any

material fact of which the person has knowledge and that may constitute evidence of any claim for damages. The person's right to claim at a hearing any proceeds may be barred by the court if the person fails to advise the personal representative as prescribed in this subsection.

(9) If a claim under this section is to be settled and a civil action for wrongful death is not pending under this section, the procedures prescribed in section 3924 of the estates and protected individuals code, 1998 PA 386, MCL 700.3924, shall be applicable to the distribution of the proceeds.

Enacting section 1. This amendatory act takes effect April 1, 2000.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.