

Act No. 177
Public Acts of 2000
Approved by the Governor
June 20, 2000
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Rep. Richner

Reps. Callahan, DeRossett, DeWeese, Faunce, Hart, Howell, Ruth Johnson, Julian, Kowall, Kukuk, Middaugh, Pappageorge, Patterson, Raczkowski, Richardville, Rocca, Shackleton, Tabor, Vander Roest, Vear, Voorhees and Woodward named co-sponsors

ENROLLED HOUSE BILL No. 5484

AN ACT to amend 1998 PA 386, entitled "An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts," by amending sections 1103, 2402, 2403, 2404, 2517, 3805, 3807, 3987, 3988, 7503, and 7508 (MCL 700.1103, 700.2402, 700.2403, 700.2404, 700.2517, 700.3805, 700.3807, 700.3987, 700.3988, 700.7503, and 700.7508), sections 1103 and 3807 as amended by 2000 PA 54.

The People of the State of Michigan enact:

Sec. 1103. As used in this act:

(a) "Agent" includes, but is not limited to, an attorney-in-fact under a durable or nondurable power of attorney and an individual authorized to make decisions as a patient advocate concerning another's health care.

(b) "Application" means a written request to the probate register for an order of informal probate or informal appointment under part 3 of article III.

(c) "Attorney" means, if appointed to represent a child under the provisions referenced in section 5213, an attorney serving as the child's legal advocate in the manner defined and described in section 13a of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(d) "Beneficiary" includes, but is not limited to, the following:

(i) In relation to a trust beneficiary, a person that is an interested trust beneficiary.

(ii) In relation to a charitable trust, a person that is entitled to enforce the trust.

(iii) In relation to a beneficiary of a beneficiary designation, a person that is a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), of a pension, profit-sharing, retirement, or similar benefit plan, or of another nonprobate transfer at death.

(iv) In relation to a beneficiary designated in a governing instrument, a person that is a grantee of a deed, devisee, trust beneficiary, beneficiary of a beneficiary designation, donee, appointee, taker in default of a power of appointment, or person in whose favor a power of attorney or power held in an individual, fiduciary, or representative capacity is exercised.

(e) “Beneficiary designation” means the naming in a governing instrument of a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), of a pension, profit-sharing, retirement, or similar benefit plan, or of another nonprobate transfer at death.

(f) “Child” includes, but is not limited to, an individual entitled to take as a child under this act by intestate succession from the parent whose relationship is involved. Child does not include an individual who is only a stepchild, a foster child, or a grandchild or more remote descendant.

(g) “Claim” includes, but is not limited to, in respect to a decedent’s or protected individual’s estate, a liability of the decedent or protected individual, whether arising in contract, tort, or otherwise, and a liability of the estate that arises at or after the decedent’s death or after a conservator’s appointment, including funeral and burial expenses and costs and expenses of administration. Claim does not include an estate or inheritance tax, or a demand or dispute regarding a decedent’s or protected individual’s title to specific property alleged to be included in the estate.

(h) “Conservator” means a person appointed by a court to manage a protected individual’s estate.

(i) “Cost-of-living adjustment factor” means a fraction, the numerator of which is the United States consumer price index for the prior calendar year and the denominator of which is the United States consumer price index for 1997. As used in this subdivision, “United States consumer price index” means the annual average of the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics, or its successor agency, and as certified by the state treasurer.

(j) “Court” means the probate court or, when applicable, the family division of circuit court.

(k) “Current trust beneficiary” means a beneficiary about which either of the following is true:

(i) The beneficiary has a current right to receive all or a portion of the income, if any, of the trust property.

(ii) The beneficiary is currently eligible to receive all or a portion of a mandatory or discretionary distribution of income or principal.

(l) “Descendant” means, in relation to an individual, all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this act.

(m) “Devise” means, when used as a noun, a testamentary disposition of real or personal property and, when used as a verb, to dispose of real or personal property by will.

(n) “Devisee” means a person designated in a will to receive a devise. For the purposes of article II, for a devise to a trustee of an existing trust or to a trustee under a will, the trustee is a devisee and a beneficiary is not.

(o) “Disability” means cause for a protective order as described in section 5401.

(p) “Distributee” means a person that receives a decedent’s property from the decedent’s personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent that distributed property or an increment of the distributed property remains in the trustee’s hands. A testamentary trust beneficiary to whom the trustee distributes property received from a personal representative is a distributee of the personal representative. For the purposes of this subdivision, “testamentary trustee” includes a trustee to whom property is transferred by will to the extent of the devised property.

Sec. 2402. A decedent’s surviving spouse is entitled to a homestead allowance of \$15,000.00, adjusted as provided in section 1210. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance equal to \$15,000.00, adjusted as provided in section 1210, divided by the number of the decedent’s minor and dependent children. The homestead allowance is exempt from and has priority over all claims against the estate, except administration costs and expenses and reasonable funeral and burial expenses. A homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by elective share.

Sec. 2403. (1) For their maintenance during the period of administration, a reasonable family allowance is payable to the decedent’s surviving spouse and minor children whom the decedent was obligated to support, and children of the decedent or another who were in fact being supported by the decedent, which allowance shall not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The family allowance may be paid in a lump sum or in periodic installments. The family allowance is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be paid partially to the child or to a fiduciary or other person having the child’s care and custody, and partially to the spouse, as their needs may appear.

(2) The family allowance is exempt from and has priority over all claims except administration costs and expenses, reasonable funeral and burial expenses, and the homestead allowance. The family allowance is not chargeable against a benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by

intestate succession, or by way of elective share. The death of an individual entitled to family allowance terminates the right to allowances not yet paid.

Sec. 2404. (1) The decedent's surviving spouse is also entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed \$10,000.00 more than the amount of any security interests to which the property is subject. If there is no surviving spouse, the decedent's children are entitled jointly to the same value.

(2) If encumbered assets are selected and the value in excess of security interests, plus that of other exempt property, is less than \$10,000.00, or if there is not \$10,000.00 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

- (a) Administration costs and expenses.
- (b) Reasonable funeral and burial expenses.
- (c) Homestead allowance.
- (d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The \$10,000.00 amount expressed in this section shall be adjusted as provided in section 1210.

Sec. 2517. (1) In the estate of a decedent who died before October 1, 1993, the following apply to the opening of a safe deposit box:

(a) A safe deposit box of which the decedent was an individual or joint lessee may be opened following the decedent's death only upon compliance with the Michigan estate tax act, 1899 PA 188, MCL 205.201 to 205.256.

(b) A safe deposit box of the decedent who was an individual or joint lessee and for whom a fiduciary was appointed may be opened by that fiduciary in a like manner as provided by the Michigan estate tax act, 1899 PA 188, MCL 205.201 to 205.256, as it relates to deceased individuals.

(2) In the estate of a decedent who dies after September 30, 1993, the following apply to the opening of a safe deposit box:

(a) Whenever it appears to the court by petition of an interested person that a safe and collateral deposit company, trust company, corporation, bank, or other institution has leased to a decedent, either as an individual or joint lessee, a safe deposit box in the county in which the probate court has jurisdiction and that the safe deposit box may contain a will of the decedent or a deed to a burial plot in which the decedent is to be interred, the court may issue an order directing the institution to permit the person named in the order to examine the safe deposit box in the presence of an officer or other authorized employee of the institution. If a paper purporting to be a will of the decedent or a deed to a burial plot is found in the box, the person named in the order shall deliver the will or deed to the probate register or his or her deputy. The probate register or his or her deputy shall furnish a receipt to the person named in the order. An item contained in the safe deposit box other than the will or deed shall not be removed from the safe deposit box. At the time of the opening of the safe deposit box, all individuals in attendance shall execute a written statement certifying whether a will or deed to a burial plot is found and that no other items are removed, which statement shall be delivered within 7 days after execution to the probate register or his or her deputy. Before the court enters the order, there shall be paid to the probate register a fee of \$10.00, which shall be credited to the general fund of the county. If the decedent's estate is administered in a probate court in the state, the party making payment of the fee may file a claim in the estate for that amount, which shall be charged as a cost of administration.

(b) The safe deposit box of an individual who is an individual or joint lessee and for whom a fiduciary was appointed may be opened by that fiduciary and its contents removed. If the safe deposit box is jointly leased, then the fiduciary may examine the safe deposit box only in the presence of an officer or other authorized employee of the safe deposit and collateral company, trust company, corporation, bank, or other institution. At the time of the opening of the safe deposit box, all individuals in attendance shall execute a written statement certifying as to what is removed from the box by the fiduciary. The fiduciary shall serve a copy of that statement on the other joint lessees within 7 days after removing the items.

(c) Notwithstanding another provision of this section, a surviving joint lessee of a joint safe deposit box has full access to the safe deposit box.

Sec. 3805. (1) If the applicable estate property is insufficient to pay all claims and allowances in full, the personal representative shall make payment in the following order of priority:

- (a) Costs and expenses of administration.

- (b) Reasonable funeral and burial expenses.
- (c) Homestead allowance.
- (d) Family allowance.
- (e) Exempt property.
- (f) Debts and taxes with priority under federal law.

(g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including a compensation of persons attending the decedent.

- (h) Debts and taxes with priority under other laws of this state.
- (i) All other claims.

(2) A preference shall not be given in the payment of a claim over another claim of the same class, and a claim due and payable is not entitled to a preference over a claim not due.

(3) If there are insufficient assets to pay all claims in full or to satisfy homestead allowance, family allowance, and exempt property, the personal representative shall certify the amount and nature of the deficiency to the trustee of a trust described in section 7501(1) for payment by the trustee in accordance with section 7502. If the personal representative is aware of other nonprobate transfers that may be liable for claims and allowances, then, unless the will provides otherwise, the personal representative shall proceed to collect the deficiency in a manner reasonable under the circumstances so that each nonprobate transfer, including those made under a trust described in section 7501(1), bears a proportionate share or equitable share of the total burden.

Sec. 3807. (1) Upon the expiration of 4 months after the publication date of the notice to creditors, and after providing for administration costs and expenses, for reasonable funeral and burial expenses, for dower, for the homestead, family, and exempt property allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration, the personal representative shall pay the claims allowed against the estate in the order of priority as provided in this act. A claimant whose claim has been allowed, but not paid as provided in this section, may petition the court to secure an order directing the personal representative to pay the claim to the extent that property of the estate is available for the payment.

(2) The personal representative may pay a claim that is not barred at any time, with or without formal presentation, but is individually liable to another claimant whose claim is allowed and who is injured by the payment if either of the following occurs:

(a) Payment is made before the expiration of the time limit stated in subsection (1) and the personal representative fails to require the payee to give adequate security for the refund of any of the payment necessary to pay another claimant.

(b) Payment is made, due to the negligence or willful fault of the personal representative, in a manner that deprives the injured claimant of priority.

(3) If a claim is allowed, but the claimant's whereabouts are unknown at the time the personal representative attempts to pay the claim, upon petition by the personal representative and after notice that the court considers advisable, the court may disallow the claim. If the court disallows a claim under this subsection, the claim is barred.

Sec. 3987. If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed administration costs and expenses, reasonable funeral and burial expenses, homestead allowance, family allowance, exempt property, and reasonable, necessary medical and hospital expenses of the decedent's last illness, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to the estate and may file a closing statement as provided in section 3988.

Sec. 3988. (1) Unless prohibited by court order and except for an estate being administered by a supervised personal representative, a personal representative may close an estate administered under the summary procedures of section 3987 by filing with the court, at any time after disbursement and distribution of the estate, a sworn statement stating all of the following:

(a) To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed administration costs and expenses, reasonable funeral and burial expenses, homestead allowance, family allowance, exempt property, and reasonable, necessary medical and hospital expenses of the decedent's last illness.

(b) The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled to the estate.

(c) The personal representative has sent a copy of the closing statement to all estate distributees and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred, and has furnished a full account in writing of the estate administration to the distributees whose interests are affected.

(2) The sworn statement filed under this section has the same effect as a sworn statement filed under section 3954. If an objection to the sworn statement is not filed within 28 days after the filing date, the register shall issue a certificate described in section 3958.

(3) If an action or proceeding involving the personal representative is not pending in the court 1 year after the closing statement is filed under this section, the personal representative's appointment terminates.

Sec. 7503. (1) The following rules apply to section 7502(2):

(a) Upon the failure or insufficiency of money or property out of which payment should be made, to the extent of the insufficiency, a distribution of property from the trust that is to be satisfied out of specified or identified property shall be classed as a distribution to be satisfied out of the general trust property not otherwise disposed of in the trust instrument.

(b) A distribution of property from the trust given for valuable consideration shall abate with other distributions of the same class only to the extent of the excess over the amount of the value of the consideration until all others of the same class are exhausted.

(c) Except as otherwise provided in this section, distributions of property from the trust shall abate equally and ratably and without preference or priority as between real and personal property.

(d) If a specified or identified item of property that has been designated for distribution in the trust instrument or that is charged with a distribution is sold or taken by the trustee, other beneficiaries shall contribute according to their respective interests to the beneficiary whose property is sold or taken, and before distribution, the trustee shall determine the amounts of the respective contributions, which shall be paid or withheld before distribution is made.

(2) Costs and expenses of trust administration, including trustee compensation and attorney fees, shall be paid by the trustee before and in preference to the administration costs and expenses of the settlor's estate, an enforceable and timely filed claim of a creditor of the settlor, and homestead, family, and exempt property allowances. If, after paying costs and expenses of trust administration, the trust property is insufficient to pay in full all charges for which the trust is liable under section 7501(1), the trustee shall make payment in the following order of priority:

(a) Costs and expenses of administration of the decedent's estate.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(e) Exempt property.

(f) Debts and taxes with priority under federal law.

(g) Reasonable and necessary medical and hospital expenses of the decedent's last illness, including compensation of a person attending the decedent.

(h) Debts and taxes with priority under other laws of this state.

(i) All other claims.

(3) A preference shall not be given in the payment of a charge over another charge of the same class under subsection (2), and a charge due and payable is not entitled to a preference over a charge not due.

(4) If the decedent was the settlor of more than 1 trust described in section 7501(1), the charges described in that section are payable pro rata from those trusts, based on the gross values of the respective trusts on the date of the decedent's death. Each trustee is entitled to right of contribution as necessary to effect the pro rata liability. The allocation and contribution, however, are subject to provisions in the trusts regarding the allocation and burden of the charges. If there is conflict between the governing instruments regarding the allocation and burden of the charges, the decedent's will controls.

Sec. 7508. (1) Upon the expiration of 4 months after the date of the publication of the notice to creditors, the trustee shall proceed to pay the claims allowed against the trust in the order of priority prescribed in section 7503(2)(f) to (g), after making provision for costs and expenses of trust administration, for reasonable funeral and burial expenses, for the homestead, family, and exempt property allowances, for each claim already presented that is not yet allowed or whose allowance is appealed, and for each unbarred claim that may yet be presented. A claimant whose claim is allowed, but not paid as provided in this section, may petition the court to secure an order directing the trustee to pay the claim to the extent that money of the trust is available for the payment.

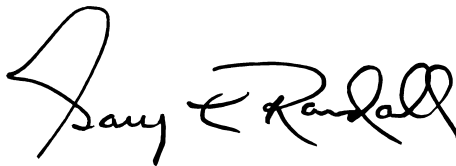
(2) At any time, the trustee may pay a claim that is not barred, with or without formal presentation, but is individually liable to another claimant whose claim is allowed and who is injured by the payment if either of the following occurs:

(a) Payment is made before the expiration of the time limit stated in subsection (1) and the trustee fails to require the payee to give adequate security for the refund of any of the payment necessary to pay another claimant.

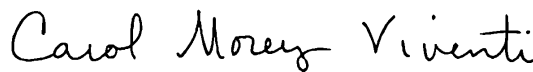
(b) Payment is made, due to the negligence or willful fault of the trustee, in a manner that deprives the injured claimant of priority.

(3) If a claim is allowed, but the whereabouts of the claimant is unknown at the time the trustee attempts to pay the claim, upon petition by the trustee and after notice the court considers advisable, the court may disallow the claim. If the court disallows a claim under this subsection, the claim is barred.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.