

SUBSTITUTE FOR  
HOUSE BILL NO. 4777

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending section 2922 (MCL 600.2922), as amended by 2000 PA 56.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 2922. (1) Whenever the death of a person, ~~or~~ injuries  
2       resulting in death, **OR DEATH AS DESCRIBED IN SECTION 2922A** shall be  
3       caused by wrongful act, neglect, or fault of another, and the act,  
4       neglect, or fault is such as would, if death had not ensued, have  
5       entitled the party injured to maintain an action and recover  
6       damages, the person who or the corporation that would have been  
7       liable, if death had not ensued, shall be liable to an action for  
8       damages, notwithstanding the death of the person injured **OR DEATH**  
9       **AS DESCRIBED IN SECTION 2922A**, and although the death was caused

1 under circumstances that constitute a felony.

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

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

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

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

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

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

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

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

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

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

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

27           (6) In every action under this section, the court or jury may

1 award damages as the court or jury shall consider fair and  
2 equitable, under all the circumstances including reasonable  
3 medical, hospital, funeral, and burial expenses for which the  
4 estate is liable; reasonable compensation for the pain and  
5 suffering, while conscious, undergone by the deceased ~~person~~  
6 during the period intervening between the time of the injury and  
7 death; and damages for the loss of financial support and the loss  
8 of the society and companionship of the deceased. The proceeds of a  
9 settlement or judgment in an action for damages for wrongful death  
10 shall be distributed as follows:

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

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

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

24 (d) After a hearing by the court, the court shall order  
25 payment from the proceeds of the reasonable medical, hospital,  
26 funeral, and burial expenses of the decedent for which the estate  
27 is liable. The proceeds shall not be applied to the payment of any

1 other charges against the estate of the decedent. The court shall  
2 then enter an order distributing the proceeds to those persons  
3 designated in subsection (3) who suffered damages and to the estate  
4 of the deceased for compensation for conscious pain and suffering,  
5 if any, in the amount as the court or jury considers fair and  
6 equitable considering the relative damages sustained by each of the  
7 persons and the estate of the deceased. If there is a special  
8 verdict by a jury in the wrongful death action, damages shall be  
9 distributed as provided in the special verdict.

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

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

23 (8) A person who may be entitled to damages under this section  
24 shall advise the attorney for the personal representative within 60  
25 days after service of the complaint and notice as provided for  
26 under subsection (2) of any material fact of which the person has  
27 knowledge and that may constitute evidence of any claim for

1 damages. The person's right to claim at a hearing any proceeds may  
2 be barred by the court if the person fails to advise the personal  
3 representative as prescribed in this subsection.

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