

HOUSE BILL NO. 5206

November 06, 2019, Introduced by Rep. Lilly and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2922 (MCL 600.2922), as amended by 2005 PA 270.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2922. (1) ~~Whenever~~**If** the death of a ~~person, an~~
2 **individual**, injuries resulting in death, or death as described in
3 section 2922a ~~shall be~~**is** caused by **the** wrongful act, neglect, or
4 fault of another ~~, and the act, neglect, or fault is such as would,~~
5 if death had not ensued, have entitled the ~~party~~**injured individual**
6 to maintain an action and recover damages, the person, ~~who or the~~



~~corporation~~ **including, but not limited to, any legal entity**, that would have been liable ~~, if death had not ensued, shall be~~ **is** liable ~~to~~ **in** an action for damages, notwithstanding the death of the ~~person~~ **injured individual** or death as described in section 2922a, and ~~although~~ **even though** the death was caused under circumstances that constitute a felony.

(2) ~~Every~~ **An** action under this section ~~shall~~ **must** be brought by ~~, and in the name of, the~~ personal representative of the estate of the ~~deceased~~ **decedent**. 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~~ **on** 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~~ **are** limited to any of the following who suffer damages and survive the ~~deceased~~ **decedent**:

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

(b) The children of the ~~deceased's~~ **decedent's** spouse. **As used in this subdivision, "decedent's spouse" includes a spouse who survives the decedent and a predeceased spouse of the decedent who was married to the decedent at the time of the spouse's death, but**



1 does not include an individual from whom the decedent was divorced
2 at the time of the decedent's death.

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

11 (4) The notice required ~~in~~ **under** subsection (2) ~~shall~~ **must**
12 contain **all of** the following:

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

15 (b) A statement that the attorney for the personal
16 representative ~~shall~~ **must** be advised within 60 days after the
17 mailing of the notice of any material fact that may constitute
18 evidence of any claim for damages and that failure to do so may
19 adversely affect ~~his or her~~ **the** recovery of damages **by the person**
20 **who may be entitled to damages** and could bar ~~his or her~~ **the**
21 **person's** right to any claim at a hearing to distribute proceeds.

22 (c) A statement that ~~he or she~~ **the person who may be entitled**
23 **to damages** will be notified of a hearing to determine the
24 distribution of the proceeds after the adjudication or settlement
25 of the claim for damages.

26 (d) A statement that to recover damages under this section the
27 person who may be entitled to damages must present a claim for
28 damages to the personal representative on or before the date set
29 for hearing on the motion for distribution of the proceeds under



1 subsection ~~(6)~~ **(7)** and that failure to present a claim for damages
 2 within the time provided ~~shall bar~~ **bars** the person from making a
 3 claim to any of the proceeds.

4 (5) If ~~, for the purpose of settling a claim for damages for~~
 5 ~~wrongful death where an action for those damages is pending, a~~
 6 ~~motion is filed in the court where the action is pending by the~~
 7 personal representative **in an action under this section files a**
 8 **motion** asking leave of the court to settle the claim **for damages**
 9 **for wrongful death**, the court shall, with or without notice,
 10 conduct a hearing and approve or reject the proposed settlement.

11 (6) In ~~every~~ **an** action under this section, the court or jury
 12 may award damages as the court or jury ~~shall consider~~ **considers**
 13 fair and equitable, ~~under all the circumstances, including~~
 14 reasonable medical, hospital, funeral, and burial expenses for
 15 which the estate is liable; reasonable compensation for the pain
 16 and suffering, while conscious, undergone by the ~~deceased~~ **decedent**
 17 during the period intervening between the time of the injury and
 18 death; and damages for the loss of financial support and the loss
 19 of the society and companionship of the ~~deceased~~ **decedent**.

20 (7) The proceeds of a settlement or judgment in an action for
 21 damages for wrongful death ~~shall~~ **must** be distributed as follows:

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

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

29 (c) If any interested person is a minor, a disappeared person,



1 or an incapacitated individual for whom a fiduciary is not
2 appointed, a fiduciary or guardian ad litem ~~shall~~**must** be first
3 appointed, and the notice provided in subdivision (b) ~~shall~~**must** be
4 given to the fiduciary or guardian ad litem of the minor,
5 disappeared person, or legally incapacitated individual.

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

19 ~~(d)~~ ~~(e)~~ If none of the persons entitled to the proceeds is a
20 minor, a disappeared person, or a legally incapacitated individual
21 and all of the persons entitled to the proceeds execute a verified
22 stipulation or agreement in writing in which the portion of the
23 proceeds to be distributed to each of the persons is specified, ~~the~~
24 ~~order of the court shall be entered~~**enter an order** in accordance
25 with the stipulation or agreement.

26 **(e) After a hearing by the court, the court shall order**
27 **payment from the proceeds of the reasonable medical, hospital,**
28 **funeral, and burial expenses of the decedent for which the estate**
29 **is liable. The proceeds must 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 decedent 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 decedent. If there is a special
 8 verdict by a jury in the wrongful death action, damages must be
 9 distributed as provided in the special verdict.

10 (8) ~~(7)~~—A person who may be entitled to damages under this
 11 section must present a claim for damages to the personal
 12 representative on or before the date set for hearing on the motion
 13 for distribution of the proceeds under subsection ~~(6)~~—(7). The
 14 failure to present a claim for damages within the time provided
 15 ~~shall bar~~ **bars** the person from making a claim to any of the
 16 proceeds.

17 (9) ~~(8)~~—A person who may be entitled to damages under this
 18 section shall advise the attorney for the personal representative
 19 within 60 days after service of the complaint and notice ~~as~~
 20 ~~provided for~~ under subsection (2) of any material fact of which the
 21 person has knowledge and that may constitute evidence of any claim
 22 for damages. ~~The~~ **At a hearing to distribute proceeds, the court may**
 23 **bar a person's right to claim at a hearing any proceeds may be**
 24 ~~barred by the court~~ if the person fails to advise the personal
 25 representative as ~~prescribed in~~ **required by** this subsection.

26 (10) ~~(9)~~—If a claim ~~under this section~~ **for damages for**
 27 **wrongful death** is to be settled and ~~a civil~~ **an** action ~~for wrongful~~
 28 ~~death under this section~~ is not pending, ~~under this section, the~~
 29 ~~procedures prescribed in~~ section 3924 of the estates and protected



- 1 individuals code, 1998 PA 386, MCL 700.3924, ~~shall be applicable~~
- 2 **applies** to the **settlement and** distribution of the proceeds.

