

**SUBSTITUTE FOR
HOUSE BILL NO. 5484**

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," 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:

- 1 Sec. 1103. As used in this act:
2 (a) "Agent" includes, but is not limited to, an
3 attorney-in-fact under a durable or nondurable power of attorney
4 and an individual authorized to make decisions as a patient advo-
5 cate concerning another's health care.

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

4 (c) "Attorney" means, if appointed to represent a child
5 under the provisions referenced in section 5213, an attorney
6 serving as the child's legal advocate in the manner defined and
7 described in section 13a of chapter XIIIA of the probate code of
8 1939, 1939 PA 288, MCL 712A.13a.

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

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

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

15 (iii) In relation to a beneficiary of a beneficiary designa-
16 tion, a person that is a beneficiary of an insurance or annuity
17 policy, of an account with POD designation, of a security regis-
18 tered in beneficiary form (TOD), of a pension, profit-sharing,
19 retirement, or similar benefit plan, or of another nonprobate
20 transfer at death.

21 (iv) In relation to a beneficiary designated in a governing
22 instrument, a person that is a grantee of a deed, devisee, trust
23 beneficiary, beneficiary of a beneficiary designation, donee,
24 appointee, taker in default of a power of appointment, or person
25 in whose favor a power of attorney or power held in an individu-
26 al, fiduciary, or representative capacity is exercised.

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1 (e) "Beneficiary designation" means the naming in a
2 governing instrument of a beneficiary of an insurance or annuity
3 policy, of an account with POD designation, of a security regis-
4 tered in beneficiary form (TOD), of a pension, profit-sharing,
5 retirement, or similar benefit plan, or of another nonprobate
6 transfer at death.

7 (f) "Child" includes, but is not limited to, an individual
8 entitled to take as a child under this act by intestate succes-
9 sion from the parent whose relationship is involved. Child does
10 not include an individual who is only a stepchild, a foster
11 child, or a grandchild or more remote descendant.

12 (g) "Claim" includes, but is not limited to, in respect to a
13 decedent's or protected individual's estate, a liability of the
14 decedent or protected individual, whether arising in contract,
15 tort, or otherwise, and a liability of the estate that arises at
16 or after the decedent's death or after a conservator's appoint-
17 ment, including funeral AND BURIAL expenses and COSTS AND
18 expenses of administration. Claim does not include an estate or
19 inheritance tax, or a demand or dispute regarding a decedent's or
20 protected individual's title to specific property alleged to be
21 included in the estate.

22 (h) "Conservator" means a person appointed by a court to
23 manage a protected individual's estate.

24 (i) "Cost-of-living adjustment factor" means a fraction, the
25 numerator of which is the United States consumer price index for
26 the prior calendar year and the denominator of which is the
27 United States consumer price index for 1997. As used in this

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1 subdivision, "United States consumer price index" means the
2 annual average of the United States consumer price index for all
3 urban consumers as defined and reported by the United States
4 department of labor, bureau of labor statistics, or its successor
5 agency, and as certified by the state treasurer.

6 (j) "Court" means the probate court or, when applicable, the
7 family division of ~~the~~ circuit court.

8 (k) "Current trust beneficiary" means a beneficiary about
9 which either of the following is true:

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

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

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

19 (m) "Devise" means, when used as a noun, a testamentary dis-
20 position of real or personal property and, when used as a verb,
21 to dispose of real or personal property by will.

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

26 (o) "Disability" means cause for a protective order as
27 described in section 5401.

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1 (p) "Distributee" means a person that receives a decedent's
2 property from the decedent's personal representative other than
3 as a creditor or purchaser. A testamentary trustee is a distrib-
4 utee only to the extent that distributed property or an increment
5 of the distributed property remains in the trustee's hands. A
6 testamentary trust beneficiary to whom the trustee distributes
7 property received from a personal representative is a distributee
8 of the personal representative. For the purposes of this subdi-
9 vision, "testamentary trustee" includes a trustee to whom prop-
10 erty is transferred by will to the extent of the devised
11 property.

12 Sec. 2402. A decedent's surviving spouse is entitled to a
13 homestead allowance of \$15,000.00, adjusted as provided in sec-
14 tion 1210. If there is no surviving spouse, each minor child and
15 each dependent child of the decedent is entitled to a homestead
16 allowance equal to \$15,000.00, adjusted as provided in section
17 1210, divided by the number of the decedent's minor and dependent
18 children. The homestead allowance is exempt from and has prior-
19 ity over all claims against the estate, EXCEPT ADMINISTRATION
20 COSTS AND EXPENSES AND REASONABLE FUNERAL AND BURIAL EXPENSES. A
21 homestead allowance is in addition to any share passing to the
22 surviving spouse or minor or dependent child by the will of the
23 decedent, unless otherwise provided, by intestate succession, or
24 by elective share.

25 Sec. 2403. (1) For their maintenance during the period of
26 administration, a reasonable family allowance is payable to the
27 decedent's surviving spouse and minor children whom the decedent

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1 was obligated to support, and children of the decedent or another
2 who were in fact being supported by the decedent, which allowance
3 shall not continue for longer than 1 year if the estate is inade-
4 quate to discharge allowed claims. The family allowance may be
5 paid in a lump sum or in periodic installments. The family
6 allowance is payable to the surviving spouse, if living, for the
7 use of the surviving spouse and minor and dependent children;
8 otherwise to the children or persons having their care and
9 custody. If a minor child or dependent child is not living with
10 the surviving spouse, the allowance may be paid partially to the
11 child or to a fiduciary or other person having the child's care
12 and custody, and partially to the spouse, as their needs may
13 appear.

14 (2) The family allowance is exempt from and has priority
15 over all claims except ADMINISTRATION COSTS AND EXPENSES, REASON-
16 ABLE FUNERAL AND BURIAL EXPENSES, AND the homestead allowance.
17 The family allowance is not chargeable against a benefit or share
18 passing to the surviving spouse or children by the will of the
19 decedent, unless otherwise provided, by intestate succession, or
20 by way of elective share. The death of an individual entitled to
21 family allowance terminates the right to allowances not yet
22 paid.

23 Sec. 2404. (1) The decedent's surviving spouse is also
24 entitled to household furniture, automobiles, furnishings, appli-
25 ances, and personal effects from the estate up to a value not to
26 exceed \$10,000.00 more than the amount of any security interests
27 to which the property is subject. If there is no surviving

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1 spouse, the decedent's children are entitled jointly to the same
2 value.

3 (2) If encumbered assets are selected and the value in
4 excess of security interests, plus that of other exempt property,
5 is less than \$10,000.00, or if there is not \$10,000.00 worth of
6 exempt property in the estate, the spouse or children are enti-
7 tled to other assets of the estate, if any, to the extent neces-
8 sary to make up the \$10,000.00 value. Rights to exempt property
9 and assets needed to make up a deficiency of exempt property have
10 priority over all claims against the estate, except that the
11 right to assets to make up a deficiency of exempt property abates
12 as necessary to permit payment of ~~homestead allowance and family~~
13 ~~allowance.~~ ALL OF THE FOLLOWING IN THE FOLLOWING ORDER:

14 (A) ADMINISTRATION COSTS AND EXPENSES.

15 (B) REASONABLE FUNERAL AND BURIAL EXPENSES.

16 (C) HOMESTEAD ALLOWANCE.

17 (D) FAMILY ALLOWANCE.

18 (3) The rights under this section are in addition to a bene-
19 fit or share passing to the surviving spouse or children by the
20 decedent's will, unless otherwise provided, by intestate succes-
21 sion, or by elective share. The \$10,000.00 amount expressed in
22 this section shall be adjusted as provided in section 1210.

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

26 (a) A safe deposit box of which the decedent was an
27 individual or joint lessee may be opened following the decedent's

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1 death only upon compliance with the Michigan estate tax act, 1899
2 PA 188, MCL 205.201 to 205.256.

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

8 (2) In the estate of a decedent who dies after September 30,
9 1993, the following apply to the opening of a safe deposit box:

10 (a) Whenever it appears to the court by petition of an
11 interested person that a safe and collateral deposit company,
12 trust company, corporation, bank, or other institution has leased
13 to a decedent, either as an individual or joint lessee, a safe
14 deposit box in the county in which the probate court has juris-
15 diction and that the safe deposit box may contain a will of the
16 decedent or a deed to a burial plot in which the decedent is to
17 be interred, the court may ~~make~~ ISSUE an order directing the
18 institution to permit the person named in the order to examine
19 the safe deposit box in the presence of an officer or other
20 authorized employee of the institution. ~~, and if~~ IF a paper
21 purporting to be a will of the decedent or a deed to a burial
22 plot is found in the box, ~~to~~ THE PERSON NAMED IN THE ORDER
23 SHALL deliver the will or deed to the probate register or his or
24 her deputy. The probate register or his or her deputy shall fur-
25 nish a receipt to the ~~institution~~ PERSON NAMED IN THE ORDER.
26 An item contained in the safe deposit box other than the will or
27 deed shall not be removed from the safe deposit box. At the time

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1 of the opening of the safe deposit box, all individuals in
2 attendance shall execute a written statement certifying whether a
3 will or deed to a burial plot is found and that no other items
4 are removed, which statement shall be delivered within 7 days
5 after execution to the probate register or his or her deputy.
6 Before the court enters the order, there shall be paid to the
7 probate register a fee of \$10.00, which shall be credited to the
8 general fund of the county. If the decedent's estate is adminis-
9 tered in a probate court in the state, the party making payment
10 of the fee may file a claim in the estate for that amount, which
11 shall be charged as a cost of administration.

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

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

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1 Sec. 3805. (1) If the applicable estate property is
2 insufficient to pay all claims [AND ALLOWANCES] in full, the
 personal
3 representative shall make payment in the following order of
4 priority:
5 (a) Costs and expenses of administration.
6 (b) Reasonable funeral and burial expenses.
7 (c) HOMESTEAD ALLOWANCE.
8 (d) FAMILY ALLOWANCE.
9 (e) EXEMPT PROPERTY.
10 (f) ~~(c)~~ Debts and taxes with priority under federal law.
11 (g) ~~(d)~~ Reasonable and necessary medical and hospital
12 expenses of the decedent's last illness, including a compensation
13 of persons attending the decedent.
14 (h) ~~(e)~~ Debts and taxes with priority under other laws of
15 this state.
16 (i) ~~(f)~~ All other claims.
17 (2) A preference shall not be given in the payment of a
18 claim over another claim of the same class, and a claim due and
19 payable is not entitled to a preference over a claim not due.
20 (3) If there are insufficient assets to pay all claims in
21 full or to satisfy homestead allowance, family allowance, and
22 exempt property, the personal representative shall certify the
23 amount and nature of the deficiency to the trustee of a trust
24 described in section 7501(1) for payment by the trustee in
25 accordance with section 7502. If the personal representative is
26 aware of other nonprobate transfers that may be liable for claims
27 and allowances, then, unless the will provides otherwise, the

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1 personal representative shall proceed to collect the deficiency
2 in a manner reasonable under the circumstances so that each non-
3 probate transfer, including those made under a trust described in
4 section 7501(1), bears a proportionate share or equitable share
5 of the total burden.

6 Sec. 3807. (1) Upon the expiration of 4 months after the
7 publication date of the notice to creditors, and after providing
8 FOR ADMINISTRATION COSTS AND EXPENSES, FOR [REASONABLE] FUNERAL AND
 BURIAL
9 EXPENSES, for dower, for the homestead, family, and exempt prop-
10 erty allowances, for claims already presented that have not yet
11 been allowed or whose allowance has been appealed, and for
12 unbarred claims that may yet be presented, including costs and
13 expenses of administration, the personal representative shall pay
14 the claims allowed against the estate in the order of priority as
15 provided in this act. A claimant whose claim has been allowed,
16 but not paid as provided in this section, may petition the court
17 to secure an order directing the personal representative to pay
18 the claim to the extent that property of the estate is available
19 for the payment.

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

25 (a) Payment is made before the expiration of the time limit
26 stated in subsection (1) and the personal representative fails to

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1 require the payee to give adequate security for the refund of any
2 of the payment necessary to pay another claimant.

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

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

12 Sec. 3987. If it appears from the inventory and appraisal
13 that the value of the entire estate, less liens and encumbrances,
14 does not exceed ~~homestead allowance, family allowance, exempt~~
15 ~~property,~~ administration costs and expenses, reasonable funeral
16 AND BURIAL expenses, HOMESTEAD ALLOWANCE, FAMILY ALLOWANCE,
17 EXEMPT PROPERTY, and reasonable, necessary medical and hospital
18 expenses of the decedent's last illness, the personal representa-
19 tive, without giving notice to creditors, may immediately dis-
20 burse and distribute the estate to the persons entitled to the
21 estate and may file a closing statement as provided in
22 section 3988.

23 Sec. 3988. (1) Unless prohibited by court order and except
24 for an estate being administered by a supervised personal repre-
25 sentative, a personal representative may close an estate adminis-
26 tered under the summary procedures of section 3987 by filing with

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1 the court, at any time after disbursement and distribution of the
2 estate, a sworn statement stating all of the following:

3 (a) To the best knowledge of the personal representative,
4 the value of the entire estate, less liens and encumbrances, did
5 not exceed ~~homestead allowance, family allowance, exempt~~
6 ~~property,~~ administration costs and expenses, reasonable funeral
7 AND BURIAL expenses, HOMESTEAD ALLOWANCE, FAMILY ALLOWANCE,
8 EXEMPT PROPERTY, and reasonable, necessary medical and hospital
9 expenses of the decedent's last illness.

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

13 (c) The personal representative has sent a copy of the clos-
14 ing statement to all estate distributees and to all creditors or
15 other claimants of whom the personal representative is aware
16 whose claims are neither paid nor barred, and has furnished a
17 full account in writing of the estate administration to the dis-
18 tributees whose interests are affected.

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

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

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

3 (a) Upon the failure or insufficiency of money or property
4 out of which payment should be made, to the extent of the insuf-
5 ficiency, a distribution of property from the trust that is to be
6 satisfied out of specified or identified property shall be clas-
7 sed as a distribution to be satisfied out of the general trust
8 property not otherwise disposed of in the trust instrument.

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

14 (c) Except as otherwise provided in this section, distribu-
15 tions of property from the trust shall abate equally and ratably
16 and without preference or priority as between real and personal
17 property.

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

26 (2) Costs and expenses of trust administration, including
27 trustee compensation and attorney fees, shall be paid by the

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1 trustee before and in preference to the administration COSTS AND
2 expenses of the settlor's estate, an enforceable and timely filed
3 claim of a creditor of the settlor, and homestead, family, and
4 exempt property allowances. If, after paying costs and expenses
5 of trust administration, the trust property is insufficient to
6 pay in full all charges for which the trust is liable under sec-
7 tion 7501(1), the trustee shall make payment in the following
8 order of priority:

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

11 ~~(b) Homestead, family, and exempt property allowances.~~

12 (B) ~~(c)~~ Reasonable funeral and burial expenses.

13 (C) HOMESTEAD ALLOWANCE.

14 (D) FAMILY ALLOWANCE.

15 (E) EXEMPT PROPERTY.

16 (F) ~~(d)~~ Debts and taxes with priority under federal law.

17 (G) ~~(e)~~ Reasonable and necessary medical and hospital
18 expenses of the decedent's last illness, including compensation
19 of a person attending the decedent.

20 (H) ~~(f)~~ Debts and taxes with priority under other laws of
21 this state.

22 (I) ~~(g)~~ All other claims.

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

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

12 Sec. 7508. (1) Upon the expiration of 4 months after the
13 date of the publication of the notice to creditors, the trustee
14 shall proceed to pay the claims allowed against the trust in the
15 order of priority prescribed in section ~~7503(2)(c) to (e)~~
16 7503(2)(F) TO (G), after making provision for costs and expenses
17 of trust administration, FOR [REASONABLE FUNERAL AND BURIAL
EXPENSES] , FOR THE HOMESTEAD, FAMILY,
18 AND EXEMPT PROPERTY ALLOWANCES, for each claim already presented
19 that is not yet allowed or whose allowance is appealed, and for
20 each unbarred claim that may yet be presented. A claimant whose
21 claim is allowed, but not paid as provided in this section, may
22 petition the court to secure an order directing the trustee to
23 pay the claim to the extent that money of the trust is available
24 for the payment.

25 (2) At any time, the trustee may pay a claim that is not
26 barred, with or without formal presentation, but is individually

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1 liable to another claimant whose claim is allowed and who is
2 injured by the payment if either of the following occurs:

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

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

10 (3) If a claim is allowed, but the whereabouts of the claim-
11 ant is unknown at the time the trustee attempts to pay the claim,
12 upon petition by the trustee and after notice the court considers
13 advisable, the court may disallow the claim. If the court disal-
14 lows a claim under this subsection, the claim is barred.