

# HOUSE BILL No. 4777

May 11, 2005, Introduced by Rep. Van Regenmorter and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending sections 2922 and 2922a (MCL 600.2922 and 600.2922a),  
section 2922 as amended by 2000 PA 56 and section 2922a as amended  
by 2002 PA 164.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 ~~liable to~~ **IS LIABLE IN** an action for damages. ~~—, notwithstanding~~  
2 ~~the death of the person injured, and although~~ **LIABILITY UNDER THIS**  
3 **SUBSECTION APPLIES REGARDLESS OF WHETHER** the death was caused under  
4 circumstances that constitute a felony.

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

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

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

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

24 (c) Those persons who are devisees under the will of the  
25 deceased, except those whose relationship with the decedent  
26 violated Michigan law, including beneficiaries of a trust under the  
27 will, those persons who are designated in the will as persons who

1 may be entitled to damages under this section, and the  
2 beneficiaries of a living trust of the deceased if there is a  
3 devise to that trust in the will of the deceased.

4 (4) ~~The~~ **A** notice required ~~in~~ **BY** subsection (2) shall  
5 contain the following:

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

8 (b) A statement that the attorney for the personal  
9 representative ~~shall~~ **MUST** be advised within 60 days after the  
10 mailing of the notice of any material fact that may constitute  
11 evidence of any claim for damages and that failure to do so may  
12 adversely affect ~~his or her~~ recovery of damages **BY THE PERSON WHO**  
13 **MAY BE ENTITLED TO DAMAGES** and could bar his or her right to any  
14 claim at a hearing to distribute proceeds.

15 (c) A statement that ~~he or she~~ **THE PERSON WHO MAY BE**  
16 **ENTITLED TO DAMAGES** will be notified of a hearing to determine the  
17 distribution of the proceeds after the adjudication or settlement  
18 of the claim for damages.

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

26 (5) If, for the purpose of settling a claim for damages for  
27 wrongful death where an action for those damages is pending, a

1 motion is filed in the court where the action is pending by the  
2 personal representative asking leave of the court to settle the  
3 claim, the court shall, with or without notice, conduct a hearing  
4 and approve or reject the proposed settlement.

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

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

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

23 (c) If any interested person is a minor, a disappeared person,  
24 or an incapacitated individual for whom a fiduciary ~~is~~ **HAS** not  
25 **BEEN** appointed, a fiduciary or guardian ad litem shall be ~~first~~  
26 appointed, and the notice provided in subdivision (b) shall be  
27 given to the fiduciary or guardian ad litem of the minor,

1 disappeared person, or legally incapacitated individual.

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

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

23 (7) A person who may be entitled to damages under this section  
24 must present a claim for damages to the personal representative on  
25 or before the date set for hearing on the motion for distribution  
26 of the proceeds under subsection (6). The failure to present a  
27 claim for damages within the time provided ~~shall bar~~ **BARS** the

1 person from making a claim to any of the proceeds.

2 (8) A person who may be entitled to damages under this section  
3 shall advise the attorney for the personal representative within 60  
4 days after service of the complaint and notice as provided for  
5 under subsection (2) of any material fact of which the person has  
6 knowledge and that may constitute evidence of any claim for  
7 damages. The person's right to claim ~~at a hearing~~ any proceeds **AT**  
8 **A HEARING** may be barred by the court if the person fails to advise  
9 the personal representative as ~~prescribed in~~ **REQUIRED BY** this  
10 subsection.

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

16 Sec. 2922a. (1) A person who commits a wrongful or negligent  
17 act against a pregnant individual is liable for damages if the act  
18 results in a miscarriage or stillbirth by that individual, or  
19 physical injury to or the death of the embryo or fetus, **REGARDLESS**  
20 **OF THE GESTATIONAL AGE OF THE EMBRYO OR FETUS.**

21 (2) This section does not apply to any of the following:

22 (a) An act committed by the pregnant individual.

23 (b) A medical procedure performed by a physician or other  
24 licensed health professional within the scope of his or her  
25 practice and with the pregnant individual's consent or the consent  
26 of an individual who may lawfully provide consent on her behalf or  
27 without consent as necessitated by a medical emergency.

1           (c) The lawful dispensation, administration, or prescription  
2 of medication.

3           (3) This section does not prohibit a civil action under any  
4 other applicable law.

5           (4) As used in this section, "physician or other licensed  
6 health professional" means a person licensed under article 15 of  
7 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.