



# SENATE BILL No. 490

May 2, 1995, Introduced by Senator VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to amend sections 497, 703, 704, 710, 712, and 717 of Act No. 642 of the Public Acts of 1978, entitled as amended "Revised probate code," sections 703, 704, 710, 712, and 717 as added by Act No. 222 of the Public Acts of 1988, being sections 700.497, 700.703, 700.704, 700.710, 700.712, and 700.717 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 497, 703, 704, 710, 712, and 717 of Act  
2 No. 642 of the Public Acts of 1978, sections 703, 704, 710, 712,  
3 and 717 as added by Act No. 222 of the Public Acts of 1988, being  
4 sections 700.497, 700.703, 700.704, 700.710, 700.712, and 700.717  
5 of the Michigan Compiled Laws, are amended to read as follows:

6 Sec. 497. (1) The death ~~, disability, or incompetence~~ of  
7 ~~any~~ A principal who has executed a power of attorney in

1 writing, ~~other than a power as described by section 495~~ DURABLE  
2 OR OTHERWISE, does not revoke or terminate the agency ~~as to~~ OF  
3 the attorney in fact, agent, or other person who, without actual  
4 knowledge of the death, ~~disability, or incompetence of the~~  
5 ~~principal,~~ acts in good faith under the power of attorney or  
6 agency. ~~Any~~ AN action so taken, unless otherwise invalid or  
7 unenforceable, binds the principal and ~~his~~ THE PRINCIPAL'S  
8 heirs, devisees, and personal representatives. THE DISABILITY OR  
9 INCOMPETENCE OF A PRINCIPAL WHO HAS EXECUTED A POWER OF ATTORNEY  
10 IN WRITING DOES NOT REVOKE OR TERMINATE THE AGENCY OF THE ATTOR-  
11 NEY IN FACT, AGENT, OR OTHER PERSON WHO, WITHOUT ACTUAL KNOWLEDGE  
12 OF THE DISABILITY OR INCOMPETENCE, ACTS IN GOOD FAITH UNDER THE  
13 POWER OF ATTORNEY OR AGENCY. AN ACTION SO TAKEN, UNLESS OTHER-  
14 WISE INVALID OR UNENFORCEABLE, BINDS THE PRINCIPAL AND THE  
15 PRINCIPAL'S HEIRS, DEVISEES, AND PERSONAL REPRESENTATIVES. THIS  
16 SUBSECTION DOES NOT APPLY TO A POWER OF ATTORNEY DESCRIBED IN  
17 SECTION 495.

18 (2) ~~An~~ IN THE ABSENCE OF FRAUD, AN affidavit ~~is~~ executed  
19 by the attorney in fact or agent stating that he OR SHE did not  
20 have, at the time of doing an act pursuant to the power of attor-  
21 ney, actual knowledge of the revocation or termination of the  
22 power of attorney by death, disability, or incompetence ~~is~~ is ~~is~~  
23 ~~in the absence of fraud,~~ conclusive proof of the nonrevocation  
24 or nontermination of the power at that time. If the exercise of  
25 the power requires execution and delivery of any instrument  
26 ~~which~~ THAT is recordable, the affidavit when authenticated for  
27 record is likewise recordable.

1 (3) This section shall not be construed to alter or affect  
2 ~~any~~ A provision for revocation or termination contained in the  
3 power of attorney.

4 Sec. 703. (1) Unless notice has already been given, upon  
5 appointment a personal representative shall publish and a tempo-  
6 rary personal representative may publish a notice, as provided by  
7 supreme court rule, notifying creditors of the estate to present  
8 their claims within 4 months after the date of the publication of  
9 the notice or be forever barred. The personal representative who  
10 ~~has published~~ PUBLISHES THE notice also shall send pursuant to  
11 subsection (2) a copy of the notice or a similar notice to any  
12 creditor of the estate who at the time of publication or during  
13 the 4 months following publication is known to the personal  
14 representative. For purposes of this section, a ~~personal repre-~~  
15 ~~sentative has knowledge of a~~ creditor of the decedent ~~if~~ IS  
16 KNOWN TO the personal representative ~~is aware that the creditor~~  
17 ~~has demanded payment from the decedent or the decedent's estate~~  
18 IF THE PERSONAL REPRESENTATIVE HAS ACTUAL NOTICE OF THE CREDITOR  
19 OR THE EXISTENCE OF THE CREDITOR WAS REASONABLY ASCERTAINABLE BY  
20 THE PERSONAL REPRESENTATIVE.

21 (2) Notice to known creditors of the estate shall be given  
22 as follows:

23 (a) Within 4 months after the date of the publication of  
24 notice to creditors.

25 (b) If the personal representative first learns of a credi-  
26 tor of the estate less than ~~30 days~~ 1 MONTH before the  
27 expiration of the time period in subdivision (a), within ~~30~~

1 ~~days~~ 1 MONTH after the personal representative first ~~learned~~  
2 LEARNS of the creditor.

3       Sec. 704. (1) If the personal representative or his or her  
4 attorney in good faith believes that notice to a creditor of the  
5 estate is or may be required by section 703 and gives notice  
6 based on that belief, the personal representative or his or her  
7 attorney ~~shall~~ IS not ~~be~~ liable to any person for giving  
8 notice.

9       (2) If the personal representative or his or her attorney in  
10 good faith fails to give the notice required by section 703, the  
11 personal representative or his or her attorney is not personally  
12 liable to any person for the failure to give notice. Liability,  
13 if any, for failure to give notice is on the estate.

14       ~~(3) This act does not impose a duty on the personal repre-~~  
15 ~~sentative or his or her attorney to conduct a search for credi-~~  
16 ~~tors of the estate.~~

17       Sec. 710. (1) A claim against a decedent's estate that  
18 arose before the death of the decedent, including a claim of the  
19 state or any subdivision of the state, whether due or to become  
20 due, absolute or contingent, liquidated or unliquidated, OR  
21 founded on contract, tort, or other legal basis, if not barred  
22 earlier by other statute of limitations, is barred against the  
23 estate, the personal representative, and the decedent's heirs and  
24 devisees unless presented as follows:

25       (a) If notice is given in compliance with section 703(1),  
26 within 4 months after the date of the publication of notice to  
27 creditors, except that a claim barred by a statute at the

1 decedent's domicile before the publication for claims in this  
2 state is also barred in this state.

3 (b) ~~If notice required by section 703(2) has not been sent~~  
4 ~~to a known creditor~~ IN THE CASE OF A CREDITOR KNOWN TO THE PER-  
5 SONAL REPRESENTATIVE AT THE TIME OF PUBLICATION OR DURING THE 4  
6 MONTHS FOLLOWING PUBLICATION, within 1 month after the subsequent  
7 sending of notice or 4 months after the date of the publication  
8 of notice to creditors, whichever is later.

9 (c) If the notice requirements of section 703 have not been  
10 met, within 3 years after the decedent's death.

11 (2) A claim against a decedent's estate that arises at or  
12 after the death of the decedent, including a claim of the state  
13 or any subdivision of the state, whether due or to become due,  
14 absolute or contingent, liquidated or unliquidated, OR founded on  
15 contract, tort, or other legal basis, is barred against the  
16 estate, the personal representative, and the heirs and devisees  
17 of the decedent, unless presented as follows:

18 (a) If for a claim based on a contract with the personal  
19 representative, within 4 months after performance by the personal  
20 representative is due.

21 (b) For a claim not within subdivision (a), within 4 months  
22 after the claim arises or the time specified in subsection  
23 (1)(a), whichever is later.

24 (3) This section ~~shall~~ DOES not affect or prevent any of  
25 the following:

26 (a) A proceeding to enforce a mortgage, pledge, or other  
27 lien upon property of the estate.

1 (b) A proceeding to establish the decedent's or the personal  
2 representative's liability for which the decedent or the personal  
3 representative is protected by liability insurance to the limits  
4 of the insurance protection only.

5 (c) Collection of compensation for services rendered and  
6 reimbursement of expenses advanced by the personal representative  
7 or by ~~the~~ AN attorney, ~~or accountant~~ AUDITOR, INVESTMENT  
8 ADVISER, OR OTHER SPECIALIZED AGENT OR ASSISTANT for the personal  
9 representative of the estate.

10 Sec. 712. (1) A claimant with a claim against a decedent's  
11 estate shall present the claim by DOING either of the following:

12 (a) Delivering or mailing to the personal representative or  
13 proposed personal representative a written statement of the claim  
14 indicating its basis, the name and address of the claimant, and  
15 the amount claimed, or by filing a written statement of the  
16 claim, in the form prescribed by supreme court rule, with the  
17 court and delivering or mailing a copy of the statement to the  
18 personal representative or proposed personal representative. The  
19 claim shall be considered presented on receipt of the written  
20 statement of claim by the personal representative or the filing  
21 of the claim with the court, whichever occurs first. If a claim  
22 is not yet due, the date when it will become due shall be  
23 stated. If the claim is contingent or unliquidated, the nature  
24 of the uncertainty shall be stated. If the claim is secured, the  
25 security shall be described. Failure to describe correctly the  
26 security, the nature of an uncertainty, and the due date of a

1 claim not yet due ~~shall~~ DOES not invalidate the presentation  
2 made.

3 (b) Commencing a proceeding to obtain payment of a claim  
4 against the estate in a court where the personal representative  
5 may be subjected to jurisdiction. The ~~commencement of~~ CLAIMANT  
6 SHALL COMMENCE the proceeding ~~shall occur~~ within the time  
7 limited for presenting the claim. A presentation of a claim is  
8 not required in matters claimed in proceedings against the dece-  
9 dent that were pending at the time of death.

10 (2) Except as otherwise provided in this subsection, if a  
11 claim is presented under subsection (1)(a), a proceeding on the  
12 claim shall not be commenced more than 63 days after the personal  
13 representative has mailed a notice of disallowance. For a claim  
14 that is not presently due or that is contingent or unliquidated,  
15 the personal representative may consent to an extension of the  
16 63-day period, or to avoid injustice the court, on petition, may  
17 order an extension of the 63-day period, but an extension shall  
18 not be consented to or ordered if the extension would run beyond  
19 the applicable statute of limitations.

20 (3) Claims by the personal representative against the estate  
21 shall be in the form prescribed by supreme court rule. ~~and~~  
22 ~~filed with the court.~~ The personal representative shall give a  
23 copy of the claim to all interested persons not later than 7 days  
24 after the time for original presentation of the claim has  
25 expired. THE CLAIM SHALL CONTAIN A WARNING THAT THE PERSONAL  
26 REPRESENTATIVE'S CLAIM WILL BE ALLOWED UNLESS A NOTICE OF  
27 OBJECTION IS DELIVERED OR MAILED TO THE PERSONAL REPRESENTATIVE

1 WITHIN 63 DAYS AFTER THE TIME FOR ORIGINAL PRESENTATION OF THE  
2 CLAIM HAS EXPIRED. THIS SUBSECTION DOES NOT APPLY TO A CLAIM FOR  
3 COLLECTION OF COMPENSATION FOR SERVICES RENDERED OR FOR REIM-  
4 BURSEMENT OF EXPENSES ADVANCED BY THE PERSONAL REPRESENTATIVE.

5       Sec. 717. (1) If a claim is presented in ~~the~~ A manner  
6 described in section 712 AND WITHIN THE TIME LIMIT PRESCRIBED IN  
7 SECTION 710, the personal representative may DELIVER OR mail a  
8 notice to a claimant stating that the claim has been disallowed  
9 in whole or in part. If, after allowing or disallowing a claim,  
10 the personal representative changes a decision concerning the  
11 claim, the personal representative shall notify the claimant.  
12 The personal representative shall not change a decision disallow-  
13 ing a claim if the time for the claimant to file a petition for  
14 allowance has passed or if the time to commence a proceeding on  
15 the claim has run and the claim has been barred. A claim that is  
16 disallowed in whole or in part by the personal representative is  
17 barred to the extent not allowed unless the claimant files a  
18 petition for allowance in the court or commences a proceeding  
19 against the personal representative not later than 63 days after  
20 the mailing of the notice of disallowance or partial allowance if  
21 the notice warns the claimant of the impending bar. Failure by  
22 the personal representative to DELIVER OR mail to a claimant  
23 notice of action on the claim within 63 days after the time for  
24 original presentation of the claim has expired or within 63 days  
25 after the appointment of the personal representative, whichever  
26 is later, ~~shall constitute~~ CONSTITUTES a notice of allowance.  
27 Failure by an interested person to DELIVER OR mail to the

1 personal representative notice of an objection to a personal  
2 representative's claim within 63 days after the time for original  
3 presentation of the claim has expired ~~shall constitute~~  
4 CONSTITUTES a notice of allowance.

5 (2) Upon the personal representative's or a claimant's peti-  
6 tion, the court may allow in whole or in part a claim presented  
7 to the personal representative or filed with the court in due  
8 time and not barred by subsection (1). Upon an interested  
9 person's petition concerning a claim by the personal representa-  
10 tive, the court may allow in whole or in part a claim of the per-  
11 sonal representative ~~filed with the court~~ PRESENTED TO THE  
12 INTERESTED PERSONS in due time AND NOT PREVIOUSLY ALLOWED BY SUB-  
13 SECTION (1).

14 (3) A judgment in a proceeding in another court against a  
15 personal representative to enforce a claim against a decedent's  
16 estate ~~shall constitute~~ CONSTITUTES an allowance of the claim.

17 (4) Unless otherwise provided in a judgment in another court  
18 entered against the estate, allowed claims bear interest at a  
19 rate determined under section 6013 of the revised judicature act  
20 of 1961, Act No. 236 of the Public Acts of 1961, being  
21 section 600.6013 of the Michigan Compiled Laws, for the period  
22 commencing 63 days after the time for original presentation of  
23 the claim has expired unless based on a contract making a provi-  
24 sion for interest, in which case they bear interest in accordance  
25 with that provision.