

SENATE BILL NO. 1159

November 26, 2024, Introduced by Senator IRWIN and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

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

1 liable, if death had not ensued, ~~shall be~~**is** liable ~~to~~**in** an action
2 for damages, notwithstanding the death of the person injured or
3 death as described in section 2922a, and although the death was
4 caused under circumstances that constitute a felony.

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

1 devise to that trust in the will of the deceased.

2 (4) The notice required in subsection (2) ~~shall~~**must** contain
3 the following:

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

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

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

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

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

28 (6) In every action under this section, the court or jury may
29 award **past and future** damages as the court or jury ~~shall consider~~

1 **considers** fair and equitable ~~—~~under all the circumstances,
 2 including, **but not limited to**, reasonable medical, hospital,
 3 funeral, and burial expenses for which the estate is liable;
 4 reasonable compensation for the pain and suffering, while
 5 conscious, undergone by the deceased during the period intervening
 6 between the time of the injury and death; ~~and damages for the any~~
 7 loss of financial support ~~and of the persons listed in subsection~~
 8 **(3); damages for** the loss of the society and companionship of the
 9 deceased; **damages for the deceased's lost earning capacity and, if**
 10 **the deceased was an unemancipated minor, damages for loss of**
 11 **earning capacity the deceased would have sustained after reaching**
 12 **the age of 14; and damages for the loss of the deceased's household**
 13 **services.**

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

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

19 (b) Unless waived, notice of the hearing ~~shall~~**must** be served
 20 ~~upon~~**on** all persons who may be entitled to damages under subsection
 21 (3) in the time, manner, and method provided in the rules
 22 applicable to 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 not
 25 appointed, a fiduciary or guardian ad litem ~~shall~~**must** be first
 26 appointed, and the notice provided in subdivision (b) ~~shall~~**must** be
 27 given to the fiduciary or guardian ad litem of the minor,
 28 disappeared person, or legally incapacitated individual.

29 (d) After a hearing by the court, the court shall order

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

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

20 (8) ~~(7)~~—A person who may be entitled to damages under this
21 section must present a claim for damages to the personal
22 representative on or before the date set for hearing on the motion
23 for distribution of the proceeds under subsection ~~(6)~~—(7). The
24 failure to present a claim for damages within the time provided
25 ~~shall bar~~**bars** the person from making a claim to any of the
26 proceeds.

27 (9) ~~(8)~~—A person who may be entitled to damages under this
28 section shall advise the attorney for the personal representative
29 within 60 days after service of the complaint and notice as

1 provided for under subsection (2) of any material fact of which the
2 person has knowledge and that may constitute evidence of any claim
3 for damages. The person's right to claim at a hearing any proceeds
4 may be barred by the court if the person fails to advise the
5 personal representative as prescribed in this subsection.

6 **(10)** ~~(9)~~ If a claim under this section is to be settled and a
7 civil action for wrongful death is not pending under this section,
8 the procedures prescribed in section 3924 of the estates and
9 protected individuals code, 1998 PA 386, MCL 700.3924, ~~shall be~~
10 ~~applicable~~ **apply** to the distribution of the proceeds.

11 Enacting section 1. The amendments to section 2922 of the
12 revised judicature act of 1961, 1961 PA 236, MCL 600.2922, as made
13 by this amendatory act, are curative, to correct the holding of
14 *Daher v Prime Healthcare Services-Garden City, LLC*, ___ Mich ___
15 (2024) (Docket No. 165377).