



SENATE BILL No. 800

August 31, 1993, 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 ~~—~~ 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 ~~—~~
 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.