

# Legislative Analysis



## EPIC CODE: MISCELLANEOUS AMENDMENTS

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**House Bill 4968 (Substitute H-2)**  
**Sponsor: Rep. Tonya Schuitmaker**  
**Committee: Judiciary**

**Complete to 9-19-05**

## A SUMMARY OF HOUSE BILL 4968 AS REPORTED FROM COMMITTEE 9-14-05

The bill would make miscellaneous amendments to the Estates and Protected Individuals Code endorsed by the Probate and Estate Planning Section of the State Bar of Michigan. The code was enacted as Public Act 386 of 1998 and took effect April 1, 2000. It replaced the Probate Code. Among other things, the bill would do the following:

### Definitions (Section 1104)

The definition of "estate" would include the rights and obligations of the personal representative and trustee to collect from others the amounts necessary to pay claims, allowances, and taxes (as described elsewhere in the code). The bill would delete a reference to the term "probate estate" in the definitions.

### Witnesses to a Will (Section 2519)

This section deals with the Michigan statutory will and currently requires that witnesses to the will be individuals who will not receive assets under the will. The bill deletes that requirement.

### Entitlement of Spouse (Section 2301)

A spouse who receives an intestate share under Section 2301 (the entitlement of spouse provision) may also exercise the right of election under Section 2202 (the election of surviving spouse provision). However, the intestate share received by the spouse under Section 2301 reduces the sum available to the spouse under Section 2202.

### Power of Appointment (Section 2908)

If the donee of a power of appointment or other power not held in a fiduciary capacity disclaims the power, all of the following would apply: if the donee has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes effective; if the donee has exercised power, the disclaimer take effect immediately after the last exercise of the power; and the instrument creating the power is construed as if the power expired when the disclaimer become effective.

### Parental Nomination of Guardian (Sections 5202 and 5301)

This section deals with cases where parents nominate a guardian for a minor in a will. Subject to the rights of a minor older than 14 years, if both parents are deceased or the surviving parent has no parental rights, a parental appointment would become effective when the guardian's acceptance is filed in the court in which *the will containing the*

*nomination* is probated, or if the nomination is contained in a nontestamentary instrument, *or the testator who made the nomination is not deceased*, is filed in a court at the place where the minor resides or is present. (New language is in italics.)

The same language would be inserted in a later section dealing with parents of an unmarried legally incapacitated individual.

Guardian Appointment Termination (Section 5217)

A parental appointment of a guardian under an *unprobated* or informally probated will would terminate if the will is later denied probate in a formal proceeding.

Employment of Attorney by PR, Conservator, or Trustee (Sections 3715, 5423, & 7401)

A personal representative, conservator, or trustee could employ an attorney to perform necessary legal services, or to advise or assist the personal representative, conservator, or trustee in the performance of administrative duties *even if the attorney is associated with the personal representative, conservator, or trustee, and could act without independent investigation upon the attorney's recommendation.*

Trust's Liabilities (Section 7502)

Under the bill, if a personal representative is not appointed for the settlor's estate *within four months after the date of the publication of notice of creditors*, a trust is not liable for payment of homestead, family, or exempt property allowances.

***POSITIONS:***

Michigan Probate Judges Association supports the bill. (9-14-05)

Probate and Estate Planning Council supports the bill. (9-14-05)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.