

HOUSE BILL No. 4916

June 6, 2001, Introduced by Reps. Stewart, LaSata, Mead, Vear, Plakas, Toy, Adamini, Switalski, Murphy, McConico, Lipsey, Hart, Faunce, Raczkowski, Hager, Basham, Clark, Frank, DeWeese, Bernero, Scranton, Neumann, Cameron Brown, Schauer, Phillips and Lemmons and referred to the Committee on Civil Law and the Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending the title and section 1104 (MCL 700.1104), section 1104 as amended by 2000 PA 54, and by adding sections 5120, 5121, 5122, and 5123.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide

1 procedures to facilitate enforcement of certain trusts; TO MAKE
2 AN APPROPRIATION; and to repeal acts and parts of acts.

3 Sec. 1104. As used in this act:

4 (a) "Environmental law" means a federal, state, or local
5 law, rule, regulation, or ordinance that relates to the protec-
6 tion of the environment or human health.

7 (b) "Estate" includes the property of the decedent, trust,
8 or other person whose affairs are subject to this act as the
9 property is originally constituted and as it exists throughout
10 administration. Except when used in the term "probate estate",
11 estate includes the right of an estate described in section 7502
12 to proceed against a recipient of a nonprobate transfer on death
13 and against a trust subject to a power of revocation as necessary
14 to enable the estate to discharge claims and family allowances.

15 (c) "Exempt property" means property of a decedent's estate
16 that is described in section 2404.

17 (d) "Family allowance" is the allowance prescribed in sec-
18 tion 2403.

19 (e) "Fiduciary" includes, but is not limited to, a personal
20 representative, guardian, conservator, trustee, plenary or par-
21 tial guardian appointed as provided in chapter 6 of the mental
22 health code, 1974 PA 258, MCL 330.1600 to 330.1644, and successor
23 fiduciary.

24 (f) "Financial institution" means an organization authorized
25 to do business under state or federal laws relating to a finan-
26 cial institution and includes, but is not limited to, a bank,

1 trust company, savings bank, building and loan association,
2 savings and loan company or association, and credit union.

3 (g) "Foreign personal representative" means a personal rep-
4 resentative appointed by another jurisdiction.

5 (h) "Formal proceedings" means proceedings conducted before
6 a judge with notice to interested persons.

7 (i) "General personal representative" means a personal rep-
8 resentative other than a special personal representative.

9 (j) "Governing instrument" means a deed; will; trust; insur-
10 ance or annuity policy; account with POD designation; security
11 registered in beneficiary form (TOD); pension, profit-sharing,
12 retirement, or similar benefit plan; instrument creating or exer-
13 cising a power of appointment or a power of attorney; or disposi-
14 tive, appointive, or nominative instrument of any similar type.

15 (k) "Guardian" means a person who has qualified as a guard-
16 ian of a minor or a legally incapacitated individual under a
17 parental or spousal nomination or a court appointment and
18 includes a limited guardian as described in sections 5205, 5206,
19 and 5306. Guardian does not include a guardian ad litem.

20 (l) "GUARDIANSHIP OMBUDSMAN" MEANS THE INDIVIDUAL APPOINTED
21 UNDER, AND WITH THE DUTIES AS PROVIDED BY, SECTIONS 5120 TO 5123.

22 (M) ~~(I)~~ "Hazardous substance" means a substance defined as
23 hazardous or toxic or otherwise regulated by an environmental
24 law.

25 (N) ~~(m)~~ "Heir" means, except as controlled by
26 section 2720, a person, including the surviving spouse or the

1 state, that is entitled under the statutes of intestate
2 succession to a decedent's property.

3 (O) ~~(n)~~ "Homestead allowance" means the allowance pre-
4 scribed in section 2402.

5 SEC. 5120. (1) THE GUARDIANSHIP OMBUDSMAN IS CREATED IN THE
6 EXECUTIVE OFFICE OF THE GOVERNOR. THE GOVERNOR SHALL APPOINT THE
7 GUARDIANSHIP OMBUDSMAN, WITH THE ADVICE AND CONSENT OF THE
8 SENATE. IN CHOOSING THE GUARDIANSHIP OMBUDSMAN, THE GOVERNOR
9 SHALL CONSIDER AT LEAST ALL OF THE FOLLOWING QUALIFICATIONS:

10 (A) STATURE IN THE FIELD OF GUARDIANSHIPS AND
11 CONSERVATORSHIPS.

12 (B) LEGAL TRAINING, WITH SPECIAL EMPHASIS ON AN UNDERSTAND-
13 ING OF THE ISSUES THAT THE GUARDIANSHIP OMBUDSMAN MUST ADDRESS.

14 (C) ABILITY AS A COMMUNICATOR.

15 (D) LEADERSHIP ABILITY.

16 (2) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2001, THERE IS
17 APPROPRIATED TO THE EXECUTIVE OFFICE OF THE GOVERNOR, FOR THE
18 ESTABLISHMENT AND OPERATION OF THE GUARDIANSHIP OMBUDSMAN OFFICE,
19 \$197,000.00.

20 SEC. 5121. THE GUARDIANSHIP OMBUDSMAN HAS ALL OF THE FOL-
21 LOWING DUTIES:

22 (A) INVESTIGATING COMPLAINTS OF ALLEGED WRONGDOING BY GUARD-
23 IANS AND CONSERVATORS.

24 (B) DEVELOPING EDUCATIONAL MATERIALS ON TOPICS SUCH AS THE
25 FOLLOWING:

26 (i) ALTERNATIVES TO GUARDIANSHIP AND CONSERVATORSHIP.

- 1 (ii) THE PROCESS FOR BECOMING A GUARDIAN OR CONSERVATOR.
- 2 (iii) DOING THE JOB OF A GUARDIAN OR CONSERVATOR IN A LEGAL,
3 ETHICAL, PROPER, AND FINANCIALLY EFFICIENT MANNER.
- 4 (iv) GUARDIAN AND CONSERVATOR TRAINING PROGRAMS.
- 5 (v) CONTINUING EDUCATION PROGRAMS FOR THE JUDICIAL BRANCH
6 REGARDING GUARDIANSHIPS AND CONSERVATORSHIPS.
- 7 (C) PROVIDING TECHNICAL ASSISTANCE TO THE COURT.
- 8 (D) ADVISING THE LEGISLATURE ON PROPOSED GUARDIANSHIP AND
9 CONSERVATORSHIP LEGISLATION.
- 10 (E) ADVISING THE SUPREME COURT ON COURT RULES RELATING TO
11 GUARDIANSHIPS AND CONSERVATORSHIPS.
- 12 (F) EXPLORING DEVELOPMENT OF LOCAL GUARDIANSHIP OMBUDSMAN
13 AND VOLUNTEER PROGRAMS.
- 14 (G) RESEARCHING APPROACHES TO GUARDIANSHIPS AND CONSERVATOR-
15 SHIPS USED IN OTHER STATES, INCLUDING SYSTEMS THAT USE PUBLIC
16 GUARDIANS.
- 17 SEC. 5122. THE GUARDIANSHIP OMBUDSMAN SHALL HIRE AND TRAIN
18 INVESTIGATORS FOR INVESTIGATION OF COMPLAINTS OF BOTH PHYSICAL
19 ABUSE OR NEGLECT AND FINANCIAL ABUSE OR NEGLECT. THE GUARDIAN-
20 SHIP OMBUDSMAN SHALL HIRE AN INDIVIDUAL WITH TRAINING AND
21 EXPERIENCE IN THE DEVELOPMENT OF EDUCATIONAL MATERIALS.
- 22 SEC. 5123. IF A GUARDIANSHIP OMBUDSMAN'S INVESTIGATION OF A
23 COMPLAINT REVEALS EVIDENCE THAT WARRANTS FURTHER ACTION BEYOND AN
24 INVESTIGATION, THE GUARDIANSHIP OMBUDSMAN SHALL REFER THE COM-
25 PLAIN TO THE APPROPRIATE AGENCY, SUCH AS THE COURT, THE ATTORNEY
26 GENERAL, A PROSECUTING ATTORNEY, AN ENTITY THAT RECEIVES

- 1 GRIEVANCES CONCERNING THE JUDICIAL BRANCH OR ATTORNEYS, OR
- 2 ANOTHER STATE OR LOCAL AGENCY.