

# HOUSE BILL No. 4016

January 28, 2003, Introduced by Rep. Stewart and referred to the Committee on Family and Children Services.

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

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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

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1 provide procedures to facilitate enforcement of certain trusts;  
2 **to make 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 law,  
5 rule, regulation, or ordinance that relates to the protection of  
6 the environment or human health.

7 (b) "Estate" includes the property of the decedent, trust, or  
8 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 section  
18 2403.

19 (e) "Fiduciary" includes, but is not limited to, a personal  
20 representative, guardian, conservator, trustee, plenary or  
21 partial 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  
26 financial institution and includes, but is not limited to, a  
27 bank, trust company, savings bank, building and loan association,

1 savings and loan company or association, and credit union.

2 (g) "Foreign personal representative" means a personal  
3 representative appointed by another jurisdiction.

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

6 (i) "General personal representative" means a personal  
7 representative other than a special personal representative.

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

15 (k) "Guardian" means a person who has qualified as a guardian  
16 of a minor or a legally incapacitated individual under a parental  
17 or spousal nomination or a court appointment and includes a  
18 limited guardian as described in sections 5205, 5206, and 5306.  
19 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) ~~(l)~~** "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 section 2720,  
26 a person, including the surviving spouse or the state, that is  
27 entitled under the statutes of intestate succession to a

1 decedent's property.

2       (o) ~~(n)~~ "Homestead allowance" means the allowance  
3 prescribed in section 2402.

4       Sec. 5120. (1) The guardianship ombudsman is created in the  
5 executive office of the governor. The governor shall appoint the  
6 guardianship ombudsman, with the advice and consent of the  
7 senate. In choosing the guardianship ombudsman, the governor  
8 shall consider at least all of the following qualifications:

9       (a) Stature in the field of guardianships and  
10 conservatorships.

11       (b) Legal training, with special emphasis on an understanding  
12 of the issues that the guardianship ombudsman must address.

13       (c) Ability as a communicator.

14       (d) Leadership ability.

15       (2) For the fiscal year ending September 30, 2003, there is  
16 appropriated to the executive office of the governor, for the  
17 establishment and operation of the guardianship ombudsman office,  
18 \$197,000.00.

19       Sec. 5121. The guardianship ombudsman has all of the  
20 following duties:

21       (a) Investigating complaints of alleged wrongdoing by  
22 guardians and conservators.

23       (b) Developing educational materials on topics such as the  
24 following:

25       (i) Alternatives to guardianship and conservatorship.

26       (ii) The process for becoming a guardian or conservator.

27       (iii) Doing the job of a guardian or conservator in a legal,

1 ethical, proper, and financially efficient manner.

2 (iv) Guardian and conservator training programs.

3 (v) Continuing education programs for the judicial branch  
4 regarding guardianships and conservatorships.

5 (c) Providing technical assistance to the court.

6 (d) Advising the legislature on proposed guardianship and  
7 conservatorship legislation.

8 (e) Advising the supreme court on court rules relating to  
9 guardianships and conservatorships.

10 (f) Exploring development of local guardianship ombudsman and  
11 volunteer programs.

12 (g) Researching approaches to guardianships and  
13 conservatorships used in other states, including systems that use  
14 public guardians.

15 Sec. 5122. The guardianship ombudsman shall hire and train  
16 investigators for investigation of complaints of both physical  
17 abuse or neglect and financial abuse or neglect. The  
18 guardianship ombudsman shall hire an individual with training and  
19 experience in the development of educational materials.

20 Sec. 5123. If a guardianship ombudsman's investigation of a  
21 complaint reveals evidence that warrants further action beyond an  
22 investigation, the guardianship ombudsman shall refer the  
23 complaint to the appropriate agency, such as the court, the  
24 attorney general, a prosecuting attorney, an entity that receives  
25 grievances concerning the judicial branch or attorneys, or  
26 another state or local agency.