

HOUSE BILL No. 4384

March 6, 2013, Introduced by Rep. Kurtz and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1103, 5303, 5305, and 5314 (MCL 700.1103, 700.5303, 700.5305, and 700.5314), section 1103 as amended by 2009 PA 46, section 5303 as amended by 2000 PA 468, section 5305 as amended by 2012 PA 210, and section 5314 as amended by 2012 PA 173.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1103. As used in this act:

2 (a) "Agent" includes, but is not limited to, an attorney-in-
3 fact under a durable or nondurable power of attorney and an
4 individual authorized to make decisions as a patient advocate
5 concerning another's health care.

6 (b) "Application" means a written request to the probate

1 register for an order of informal probate or informal appointment
2 under part 3 of article III.

3 (c) "Attorney" means, if appointed to represent a child under
4 the provisions referenced in section 5213, an attorney serving as
5 the child's legal advocate in the manner defined and described in
6 section 13a of chapter XIIA of the probate code of 1939, 1939 PA
7 288, MCL 712A.13a.

8 (d) "Beneficiary" includes, but is not limited to, the
9 following:

10 (i) In relation to a trust, a person that is a trust
11 beneficiary as defined in section 7103.

12 (ii) In relation to a charitable trust, a person that is
13 entitled to enforce the trust.

14 (iii) In relation to a beneficiary of a beneficiary designation,
15 a person that is a beneficiary of an insurance or annuity policy,
16 of an account with POD designation, of a security registered in
17 beneficiary form (TOD), of a pension, profit-sharing, retirement,
18 or similar benefit plan, or of another nonprobate transfer at
19 death.

20 (iv) In relation to a beneficiary designated in a governing
21 instrument, a person that is a grantee of a deed, devisee, trust
22 beneficiary, beneficiary of a beneficiary designation, donee,
23 appointee, taker in default of a power of appointment, or person in
24 whose favor a power of attorney or power held in an individual,
25 fiduciary, or representative capacity is exercised.

26 (e) "Beneficiary designation" means the naming in a governing
27 instrument of a beneficiary of an insurance or annuity policy, of

1 an account with POD designation, of a security registered in
2 beneficiary form (TOD), of a pension, profit-sharing, retirement,
3 or similar benefit plan, or of another nonprobate transfer at
4 death.

5 (f) "Child" includes, but is not limited to, an individual
6 entitled to take as a child under this act by intestate succession
7 from the parent whose relationship is involved. Child does not
8 include an individual who is only a stepchild, a foster child, or a
9 grandchild or more remote descendant.

10 (g) "Claim" includes, but is not limited to, in respect to a
11 decedent's or protected individual's estate, a liability of the
12 decedent or protected individual, whether arising in contract,
13 tort, or otherwise, and a liability of the estate that arises at or
14 after the decedent's death or after a conservator's appointment,
15 including funeral and burial expenses and costs and expenses of
16 administration. Claim does not include an estate or inheritance
17 tax, or a demand or dispute regarding a decedent's or protected
18 individual's title to specific property alleged to be included in
19 the estate.

20 (h) "Conservator" means a person appointed by a court to
21 manage a protected individual's estate.

22 (i) "Cost-of-living adjustment factor" means a fraction, the
23 numerator of which is the United States consumer price index for
24 the prior calendar year and the denominator of which is the United
25 States consumer price index for 1997. As used in this subdivision,
26 "United States consumer price index" means the annual average of
27 the United States consumer price index for all urban consumers as

1 defined and reported by the United States department of labor,
2 bureau of labor statistics, or its successor agency, and as
3 certified by the state treasurer.

4 (j) "Court" means the probate court or, when applicable, the
5 family division of circuit court.

6 (k) "Descendant" means, in relation to an individual, all of
7 his or her descendants of all generations, with the relationship of
8 parent and child at each generation being determined by the
9 definitions of child and parent contained in this act.

10 (l) "Devise" means, when used as a noun, a testamentary
11 disposition of real or personal property and, when used as a verb,
12 to dispose of real or personal property by will.

13 (m) "Devisee" means a person designated in a will to receive a
14 devise. For the purposes of article II, for a devise to a trustee
15 of an existing trust or to a trustee under a will, the trustee is a
16 devisee and a beneficiary is not.

17 (n) "Disability" means cause for a protective order as
18 described in section 5401.

19 (o) "Distributee" means a person that receives a decedent's
20 property from the decedent's personal representative or trust
21 property from the trustee other than as a creditor or purchaser. A
22 trustee of a trust created by will is a distributee only to the
23 extent that distributed property or an increment of the distributed
24 property remains in the trustee's hands. A beneficiary of a trust
25 created by will to whom the trustee distributes property received
26 from a personal representative is a distributee of the personal
27 representative. For the purposes of this subdivision, "trustee of a

1 trust created by will" includes a trustee to whom property is
2 transferred by will to the extent of the devised property.

3 (P) "DO-NOT-RESUSCITATE ORDER" MEANS THAT TERM AS DEFINED IN
4 SECTION 2 OF THE MICHIGAN DO-NOT-RESUSCITATE PROCEDURE ACT, 1996 PA
5 193, MCL 333.1052.

6 Sec. 5303. (1) An individual in his or her own behalf, or any
7 person interested in the individual's welfare, may petition for a
8 finding of incapacity and appointment of a guardian. The petition
9 shall contain specific facts about the individual's condition and
10 specific examples of the individual's recent conduct that
11 demonstrate the need for a guardian's appointment.

12 (2) Before a petition is filed under this section, the court
13 shall provide the person intending to file the petition with
14 written information that sets forth alternatives to appointment of
15 a full guardian, including, but not limited to, a limited guardian,
16 conservator, patient advocate designation, do-not-resuscitate
17 ~~declaration,~~ ORDER, or durable power of attorney with or without
18 limitations on purpose, authority, or time period, and an
19 explanation of each alternative.

20 (3) Upon the filing of a petition under subsection (1), the
21 court shall set a date for hearing on the issue of incapacity.
22 Unless the allegedly incapacitated individual has legal counsel of
23 his or her own choice, the court shall appoint a guardian ad litem
24 to represent the person in the proceeding.

25 Sec. 5305. (1) The duties of a guardian ad litem appointed for
26 an individual alleged to be incapacitated include all of the
27 following:

1 (a) Personally visiting the individual.

2 (b) Explaining to the individual the nature, purpose, and
3 legal effects of a guardian's appointment.

4 (c) Explaining to the individual the hearing procedure and the
5 individual's rights in the hearing procedure, including, but not
6 limited to, ~~the~~ **ALL OF THE FOLLOWING:**

7 (i) **THE** right to contest the petition. ~~7~~

8 (ii) **THE RIGHT** to request limits on the guardian's powers,
9 **INCLUDING A LIMITATION ON THE GUARDIAN'S POWER TO EXECUTE A DO-NOT-**
10 **RESUSCITATE ORDER ON BEHALF OF THE WARD.**

11 (iii) **THE RIGHT** to object to a particular person being appointed
12 guardian. ~~7~~

13 (iv) **THE RIGHT** to be present at the hearing. ~~7~~

14 (v) **THE RIGHT** to be represented by legal counsel. ~~7~~ ~~and~~

15 (vi) **THE RIGHT** to have legal counsel appointed for the
16 individual if he or she is unable to afford legal counsel.

17 (D) **INFORMING THE INDIVIDUAL THAT IF A GUARDIAN IS APPOINTED,**
18 **THE GUARDIAN MAY HAVE THE POWER TO EXECUTE A DO-NOT-RESUSCITATE**
19 **ORDER ON BEHALF OF THE INDIVIDUAL AND, IF MEANINGFUL COMMUNICATION**
20 **IS POSSIBLE, DISCERN IF THE INDIVIDUAL OBJECTS TO HAVING A DO-NOT-**
21 **RESUSCITATE ORDER EXECUTED ON HIS OR HER BEHALF.**

22 (E) ~~(d)~~—Informing the individual of the name of each person
23 known to be seeking appointment as guardian.

24 (F) ~~(e)~~—Asking the individual and the petitioner about the
25 amount of cash and property readily convertible into cash that is
26 in the individual's estate.

27 (G) ~~(f)~~—Making determinations, and informing the court of

1 those determinations, on all of the following:

2 (i) Whether there are 1 or more appropriate alternatives to the
3 appointment of a full guardian or whether 1 or more actions should
4 be taken in addition to the appointment of a guardian. Before
5 informing the court of his or her determination under this
6 subparagraph, the guardian ad litem shall consider the
7 appropriateness of at least each of the following as alternatives
8 or additional actions:

9 (A) Appointment of a limited guardian, including the specific
10 powers and limitation on those powers the guardian ad litem
11 believes appropriate.

12 (B) Appointment of a conservator or another protective order
13 under part 4 of this article. In the report informing the court of
14 the determinations under this subdivision, the guardian ad litem
15 shall include an estimate of the amount of cash and property
16 readily convertible into cash that is in the individual's estate.

17 (C) Execution of a patient advocate designation, do-not-
18 resuscitate declaration, ~~ORDER~~, or durable power of attorney with
19 or without limitations on purpose, authority, or duration.

20 (ii) Whether a disagreement or dispute related to the
21 guardianship petition might be resolved through court ordered
22 mediation.

23 (iii) Whether the individual wishes to be present at the
24 hearing.

25 (iv) Whether the individual wishes to contest the petition.

26 (v) Whether the individual wishes limits placed on the
27 guardian's powers.

1 (vi) WHETHER THE INDIVIDUAL OBJECTS TO HAVING A DO-NOT-
2 RESUSCITATE ORDER EXECUTED ON HIS OR HER BEHALF.

3 (vii) ~~(vi)~~—Whether the individual objects to a particular person
4 being appointed guardian.

5 (2) The court shall not order compensation of the guardian ad
6 litem unless the guardian ad litem states on the record or in the
7 guardian ad litem's written report that he or she has complied with
8 subsection (1).

9 (3) If the individual alleged to be incapacitated wishes to
10 contest the petition, to have limits placed on the guardian's
11 powers, or to object to a particular person being appointed
12 guardian and if legal counsel has not been secured, the court shall
13 appoint legal counsel to represent the individual alleged to be
14 incapacitated. If the individual alleged to be incapacitated is
15 indigent, the state shall bear the expense of legal counsel.

16 (4) If the individual alleged to be incapacitated requests
17 legal counsel or the guardian ad litem determines it is in the
18 individual's best interest to have legal counsel, and if legal
19 counsel has not been secured, the court shall appoint legal
20 counsel. If the individual alleged to be incapacitated is indigent,
21 the state shall bear the expense of legal counsel.

22 (5) If the individual alleged to be incapacitated has legal
23 counsel appointed under subsection (3) or (4), the appointment of a
24 guardian ad litem terminates.

25 Sec. 5314. Whenever meaningful communication is possible, a
26 legally incapacitated individual's guardian shall consult with the
27 legally incapacitated individual before making a major decision

1 affecting the legally incapacitated individual. To the extent a
2 guardian of a legally incapacitated individual is granted powers by
3 the court under section 5306, the guardian is responsible for the
4 ward's care, custody, and control, but is not liable to third
5 persons by reason of that responsibility for the ward's acts. In
6 particular and without qualifying the previous sentences, a
7 guardian has all of the following powers and duties, to the extent
8 granted by court order:

9 (a) The custody of the person of the ward and the power to
10 establish the ward's place of residence within or without this
11 state. The guardian shall visit the ward within 3 months after the
12 guardian's appointment and not less than once within 3 months after
13 each previous visit. The guardian shall notify the court within 14
14 days of a change in the ward's place of residence or a change in
15 the guardian's place of residence.

16 (b) If entitled to custody of the ward, the duty to make
17 provision for the ward's care, comfort, and maintenance and, when
18 appropriate, arrange for the ward's training and education. The
19 guardian shall secure services to restore the ward to the best
20 possible state of mental and physical well-being so that the ward
21 can return to self-management at the earliest possible time.
22 Without regard to custodial rights of the ward's person, the
23 guardian shall take reasonable care of the ward's clothing,
24 furniture, vehicles, and other personal effects and commence a
25 protective proceeding if the ward's other property needs
26 protection. If a guardian commences a protective proceeding because
27 the guardian believes that it is in the ward's best interest to

1 sell or otherwise dispose of the ward's real property or interest
2 in real property, the court may appoint the guardian as special
3 conservator and authorize the special conservator to proceed under
4 section 5423(3). A guardian shall not otherwise sell the ward's
5 real property or interest in real property.

6 (c) The power to give the consent or approval that is
7 necessary to enable the ward to receive medical or other
8 professional care, counsel, treatment, or service.

9 (D) THE POWER OF A GUARDIAN TO EXECUTE, REAFFIRM, AND REVOKE A
10 DO-NOT-RESUSCITATE ORDER ON BEHALF OF A WARD IS SUBJECT TO THIS
11 SUBDIVISION. A GUARDIAN SHALL NOT EXECUTE A DO-NOT-RESUSCITATE
12 ORDER UNLESS THE GUARDIAN DOES ALL OF THE FOLLOWING:

13 (i) NOT MORE THAN 14 DAYS BEFORE EXECUTING THE DO-NOT-
14 RESUSCITATE ORDER, THE GUARDIAN VISITS THE WARD AND, IF MEANINGFUL
15 COMMUNICATION IS POSSIBLE, CONSULTS WITH THE WARD ABOUT EXECUTING
16 THE DO-NOT-RESUSCITATE ORDER.

17 (ii) THE GUARDIAN CONSULTS DIRECTLY WITH THE WARD'S ATTENDING
18 PHYSICIAN AS TO THE SPECIFIC MEDICAL INDICATIONS THAT WARRANT THE
19 DO-NOT-RESUSCITATE ORDER.

20 (E) IF A GUARDIAN EXECUTES A DO-NOT-RESUSCITATE ORDER UNDER
21 SUBDIVISION (D), NOT LESS THAN ANNUALLY AFTER THE DO-NOT-
22 RESUSCITATE ORDER IS FIRST EXECUTED, THE GUARDIAN SHALL DO ALL OF
23 THE FOLLOWING:

24 (i) VISIT THE WARD AND, IF MEANINGFUL COMMUNICATION IS
25 POSSIBLE, CONSULT WITH THE WARD ABOUT REAFFIRMING THE DO-NOT-
26 RESUSCITATE ORDER.

27 (ii) CONSULT DIRECTLY WITH THE WARD'S ATTENDING PHYSICIAN AS TO

1 **SPECIFIC MEDICAL INDICATIONS THAT MAY WARRANT REAFFIRMING THE DO-**
2 **NOT-RESUSCITATE ORDER.**

3 (F) ~~(d)~~—If a conservator for the ward's estate is not
4 appointed, the power to do any of the following:

5 (i) Institute a proceeding to compel a person under a duty to
6 support the ward or to pay money for the ward's welfare to perform
7 that duty.

8 (ii) Receive money and tangible property deliverable to the
9 ward and apply the money and property for the ward's support, care,
10 and education. The guardian shall not use money from the ward's
11 estate for room and board that the guardian or the guardian's
12 spouse, parent, or child have furnished the ward unless a charge
13 for the service is approved by court order made upon notice to at
14 least 1 of the ward's next of kin, if notice is possible. The
15 guardian shall exercise care to conserve any excess for the ward's
16 needs.

17 (G) ~~(e)~~—The guardian shall report the condition of the ward
18 and the ward's estate that is subject to the guardian's possession
19 or control, as required by the court, but not less often than
20 annually. The guardian shall also serve the report required under
21 this subdivision on the ward and interested persons as specified in
22 the Michigan court rules. A report under this subdivision shall
23 contain all of the following:

24 (i) The ward's current mental, physical, and social condition.

25 (ii) Improvement or deterioration in the ward's mental,
26 physical, and social condition that occurred during the past year.

27 (iii) The ward's present living arrangement and changes in his

1 or her living arrangement that occurred during the past year.

2 (iv) Whether the guardian recommends a more suitable living
3 arrangement for the ward.

4 (v) Medical treatment received by the ward.

5 (vi) **WHETHER THE GUARDIAN HAS EXECUTED, REAFFIRMED, OR REVOKED**
6 **A DO-NOT-RESUSCITATE ORDER ON BEHALF OF THE WARD DURING THE PAST**
7 **YEAR.**

8 (vii) ~~(vi)~~—Services received by the ward.

9 (viii) ~~(vii)~~—A list of the guardian's visits with, and activities
10 on behalf of, the ward.

11 (ix) ~~(viii)~~—A recommendation as to the need for continued
12 guardianship.

13 (H) ~~(f)~~—If a conservator is appointed, the duty to pay to the
14 conservator, for management as provided in this act, the amount of
15 the ward's estate received by the guardian in excess of the amount
16 the guardian expends for the ward's current support, care, and
17 education. The guardian shall account to the conservator for the
18 amount expended.

19 Enacting section 1. This amendatory act does not take effect
20 unless Senate Bill No. ____ or House Bill No. 4382 (request no.
21 01829'13) of the 97th Legislature is enacted into law.