SUBSTITUTE FOR

SENATE BILL NO. 585

A bill to amend 1998 PA 386, entitled

"Estates and protected individuals code,"

by amending section 5423 (MCL 700.5423), as amended by 2012 PA 173.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 5423. (1) Subject to a limitation imposed under section 5427, a conservator has all of the powers conferred in this section and the additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has the powers, responsibilities, and duties of a guardian described in section 5215 until the individual is no longer a minor or marries. The parental rights conferred on a conservator by this section do not preclude a guardian's appointment as provided in part 2.

(2) Acting reasonably in an effort to accomplish the purpose of the appointment and without court authorization or confirmation, a conservator may do any of the following:

(a) Collect, hold, or retain estate property, including land in another state, until the conservator determines that disposition of the property should be made. Property may be retained even though it includes property in which the conservator is personally interested.

(b) Receive an addition to the estate.

(c) Continue or participate in the operation of a business or other enterprise.

(d) Acquire an undivided interest in estate property in which the conservator, in a fiduciary capacity, holds an undivided interest.

(e) Invest or reinvest estate property. If the conservator exercises the power conferred by this subdivision, the conservator must invest or reinvest the property in accordance with the Michigan prudent investor rule.

(f) Deposit estate money in a state or federally insured financial institution including one operated by the conservator.

(g) Except as provided in subsection (3), acquire or dispose of estate property, including land in another state, for cash or on credit, at public or private sale, or manage, develop, improve, exchange, partition, change the character of, or abandon estate property.

(h) Make an ordinary or extraordinary repair or alteration in a building or other structure, demolish an improvement, or raze an existing or erect a new party wall or building.

(i) Subdivide, develop, or dedicate land to public use; make

or obtain the vacation of a plat or adjust a boundary; adjust a difference in valuation on exchange or partition by giving or receiving consideration; or dedicate an easement to public use without consideration.

(j) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship.

(k) Enter into a lease or arrangement for exploration and removal of a mineral or other natural resource or enter into a pooling or unitization agreement.

(*l*) Grant an option involving disposition of estate property or take an option for the acquisition of property.

(m) Vote a security, in person or by general or limited proxy.

(n) Pay a call, assessment, or other amount chargeable or accruing against or on account of a security.

(o) Sell or exercise stock subscription or conversion rights.

(p) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(q) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery. However, the conservator is liable for an act of the nominee in connection with the stock so held.

(r) Insure the estate property against damage or loss or the conservator against liability with respect to third persons.

(s) Borrow money to be repaid from estate property or otherwise.

(t) Advance money for the protection of the estate or the protected individual, and for all expense, loss, or liability

sustained in the estate's administration or because of the holding or ownership of estate property. The conservator has a lien on the estate as against the protected individual for such an advance.

(u) Pay or contest a claim; settle a claim by or against the estate or the protected individual by compromise, arbitration, or otherwise; and release, in whole or in part, a claim belonging to the estate to the extent that the claim is uncollectible.

(v) Pay a tax, assessment, conservator's compensation, or other expense incurred in the estate's collection, care, administration, and protection.

(w) Allocate an item of income or expense to either estate income or principal, as provided by law, including creation of a reserve out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber property.

(x) Pay money distributable to a protected individual or the protected individual's dependent by paying the money to the distributee or by paying the money for the use of the distributee to the distributee's guardian, or if none, to a relative or other person having custody of the distributee.

(y) Employ a person, including an auditor, investment advisor, or agent, even though the person is associated with the conservator, to advise or assist in the performance of an administrative duty; act upon the person's recommendation without independent investigation; and, instead of acting personally, employ an agent to perform an act of administration, whether or not discretionary.

(z) Employ an attorney to perform necessary legal services or to advise or assist the conservator in the performance of the conservator's administrative duties, even if the attorney is

associated with the conservator, and act without independent investigation upon the attorney's recommendation. An attorney employed under this subdivision ~~shall~~ **must** receive reasonable compensation for ~~his or her~~ **the attorney's** employment.

(aa) Prosecute or defend an action, claim, or proceeding in any jurisdiction for the protection of estate property and of the conservator in the performance of a fiduciary duty.

(bb) Execute and deliver an instrument that will accomplish or facilitate the exercise of a power vested in the conservator.

(cc) Respond to an environmental concern or hazard affecting property as provided in section 5424.

(3) A conservator shall not sell or otherwise dispose of the protected individual's principal dwelling, real property, or interest in real property or mortgage, pledge, or cause a lien to be placed on any such property without approval of the court. The court shall only approve the sale, disposal, mortgage, or pledge of or lien against the principal dwelling, real property, or interest in real property if, after a hearing with notice to interested persons as specified in the Michigan court rules, the court considers evidence of the value of the property, **which must include an appraisal of the value of the property conducted within the preceding 6 months by a professional licensed under article 26 of the occupational code, 1980 PA 299, MCL 339.2601 to 399.2637,** and otherwise determines that the sale, disposal, mortgage, pledge, or lien is in the protected individual's best interest. **If the court approves a sale of the principal dwelling that is less than the appraised value of the property, the court shall explain on the record why the sale is in the protected individual's best interest.**