

**SUBSTITUTE FOR
HOUSE BILL NO. 5368**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1103, 1104, 1106, and 1107 (MCL 700.1103,
700.1104, 700.1106, and 700.1107), section 1103 as amended by 2013
PA 157 and sections 1104, 1106, and 1107 as amended by 2009 PA 46.

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
7 register for an order of informal probate or informal appointment

1 under part 3 of article III.

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

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

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

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

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

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

25 (e) "Beneficiary designation" means the naming in a governing
26 instrument of a beneficiary of an insurance or annuity policy, of
27 an account with POD designation, of a security registered in

1 beneficiary form (TOD), of a pension, profit-sharing, retirement,
2 or similar benefit plan, or of another nonprobate transfer at
3 death.

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

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

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

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

1 bureau of labor statistics, or its successor agency, and as
2 certified by the state treasurer.

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

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

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

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

16 (N) "DIGITAL ACCOUNT" MEANS AN ELECTRONIC SYSTEM FOR CREATING,
17 GENERATING, SENDING, RECEIVING, STORING, DISPLAYING, OR PROCESSING
18 ELECTRONIC INFORMATION THAT PROVIDES ACCESS TO A DIGITAL ASSET OR A
19 DIGITAL SERVICE.

20 (O) "DIGITAL ACCOUNT HOLDER" MEANS A DECEDENT, PROTECTED
21 INDIVIDUAL, PRINCIPAL OF A DURABLE POWER OF ATTORNEY, OR SETTLOR
22 WHO HAS A TERMS-OF-SERVICE AGREEMENT WITH A DIGITAL CUSTODIAN.

23 (P) "DIGITAL ASSET" MEANS ELECTRONIC INFORMATION CREATED,
24 GENERATED, SENT, COMMUNICATED, RECEIVED, OR STORED BY ELECTRONIC
25 MEANS ON A DIGITAL SERVICE OR DIGITAL DEVICE. DIGITAL ACCOUNT
26 INCLUDES A USERNAME, WORD, CHARACTER, CODE, OR CONTRACT RIGHT UNDER
27 A TERMS-OF-SERVICE AGREEMENT.

1 (Q) "DIGITAL CUSTODIAN" MEANS A PERSON THAT ELECTRONICALLY
2 STORES DIGITAL PROPERTY OF A DIGITAL ACCOUNT HOLDER OR OTHERWISE
3 HAS CONTROL OVER DIGITAL PROPERTY OF THE DIGITAL ACCOUNT HOLDER.

4 (R) "DIGITAL DEVICE" MEANS AN ELECTRONIC DEVICE THAT CAN
5 RECEIVE, STORE, PROCESS, OR SEND DIGITAL INFORMATION.

6 (S) "DIGITAL PROPERTY" MEANS THE OWNERSHIP AND MANAGEMENT OF
7 AND RIGHTS RELATED TO A DIGITAL ACCOUNT AND DIGITAL ASSET.

8 (T) "DIGITAL SERVICE" MEANS THE DELIVERY OF DIGITAL
9 INFORMATION, SUCH AS DATA OR CONTENT, AND TRANSACTIONAL SERVICES,
10 SUCH AS ONLINE FORMS AND BENEFITS APPLICATIONS, ACROSS A VARIETY OF
11 PLATFORMS, DEVICES, AND DELIVERY MECHANISMS, SUCH AS WEBSITES,
12 MOBILE APPLICATIONS, AND SOCIAL MEDIA.

13 (U) ~~(n)~~—"Disability" means cause for a protective order as
14 described in section 5401.

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

27 (W) ~~(p)~~—"Do-not-resuscitate order" means that term as defined

1 in section 2 of the Michigan do-not-resuscitate procedure act, 1996
2 PA 193, MCL 333.1052.

3 Sec. 1104. As used in this act:

4 (A) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
5 ELECTRONIC, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC,
6 OR SIMILAR CAPABILITIES.

7 (B) "ELECTRONIC INFORMATION" INCLUDES DATA, TEXT, IMAGES,
8 SOUNDS, AUDIOVISUAL WORKS, CODES, COMPUTER PROGRAMS, SOFTWARE, AND
9 DATABASES.

10 (C) "ELECTRONIC RECORD" MEANS ELECTRONIC INFORMATION THAT IS
11 INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC
12 OR OTHER MEDIUM AND IS RETRIEVABLE IN A PERCEIVABLE FORM.

13 (D) ~~(a)~~—"Environmental law" means a federal, state, or local
14 law, rule, regulation, or ordinance that relates to the protection
15 of the environment or human health.

16 (E) ~~(b)~~—"Estate" includes the property of the decedent, trust,
17 or other person whose affairs are subject to this act as the
18 property is originally constituted and as it exists throughout
19 administration. Estate also includes the rights described in
20 sections 3805, 3922, and 7606 to collect from others amounts
21 necessary to pay claims, allowances, and taxes.

22 (F) ~~(c)~~—"Exempt property" means property of a decedent's
23 estate that is described in section 2404.

24 (G) ~~(d)~~—"Family allowance" means the allowance prescribed in
25 section 2403.

26 (H) ~~(e)~~—"Fiduciary" includes, but is not limited to, a
27 personal representative, guardian, conservator, trustee, plenary

1 guardian, partial guardian, and successor fiduciary.

2 (I) ~~(f)~~—"Financial institution" means an organization
3 authorized to do business under state or federal laws relating to a
4 financial institution and includes, but is not limited to, a bank,
5 trust company, savings bank, building and loan association, savings
6 and loan company or association, credit union, insurance company,
7 and entity that offers mutual fund, securities brokerage, money
8 market, or retail investment accounts.

9 (J) ~~(g)~~—"Foreign personal representative" means a personal
10 representative appointed by another jurisdiction.

11 (K) ~~(h)~~—"Formal proceedings" means proceedings conducted
12 before a judge with notice to interested persons.

13 (L) ~~(i)~~—"Funeral establishment" means that term as defined in
14 section 1801 of the occupational code, 1980 PA 299, MCL 339.1801,
15 and the owners, employees, and agents of the funeral establishment.

16 (M) ~~(j)~~—"General personal representative" means a personal
17 representative other than a special personal representative.

18 (N) ~~(k)~~—"Governing instrument" means a deed; will; trust;
19 insurance or annuity policy; account with POD designation; security
20 registered in beneficiary form (TOD); pension, profit-sharing,
21 retirement, or similar benefit plan; instrument creating or
22 exercising a power of appointment or a power of attorney; or
23 dispositive, appointive, or nominative instrument of any similar
24 type.

25 (O) ~~(l)~~—"Guardian" means a person who has qualified as a
26 guardian of a minor or a legally incapacitated individual under a
27 parental or spousal nomination or a court appointment and includes

1 a limited guardian as described in sections 5205, 5206, and 5306.
2 Guardian does not include a guardian ad litem.

3 (P) ~~(m)~~—"Hazardous substance" means a substance defined as
4 hazardous or toxic or otherwise regulated by an environmental law.

5 (Q) ~~(n)~~—"Heir" means, except as controlled by section 2720, a
6 person, including the surviving spouse or the state, that is
7 entitled under the statutes of intestate succession to a decedent's
8 property.

9 (R) ~~(o)~~—"Homestead allowance" means the allowance prescribed
10 in section 2402.

11 Sec. 1106. As used in this act:

12 (a) "Mental health professional" means an individual who is
13 trained and experienced in the area of mental illness or
14 developmental disabilities and who is 1 of the following:

15 (i) A physician who is licensed to practice medicine or
16 osteopathic medicine and surgery in this state under article 15 of
17 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

18 (ii) A psychologist licensed to practice in this state under
19 article 15 of the public health code, 1978 PA 368, MCL 333.16101 to
20 333.18838.

21 (iii) A registered professional nurse licensed to practice in
22 this state under article 15 of the public health code, 1978 PA 368,
23 MCL 333.16101 to 333.18838.

24 (iv) A licensed master's social worker licensed under article
25 15 of the public health code, 1978 PA 368, MCL 333.16101 to
26 333.18838.

27 (v) A physician's assistant licensed to practice in this state

1 under article 15 of the public health code, 1978 PA 368, MCL
2 333.16101 to 333.18838.

3 (vi) A licensed professional counselor licensed under part 181
4 of the public health code, 1978 PA 368, MCL 333.18101 to 333.18117.

5 (b) "Michigan prudent investor rule" means the fiduciary
6 investment and management rule prescribed by part 5 of this
7 article.

8 (c) "Minor" means an individual who is less than 18 years of
9 age.

10 (d) "Minor ward" means a minor for whom a guardian is
11 appointed solely because of minority.

12 (e) "Money" means legal tender or a note, draft, certificate
13 of deposit, stock, bond, check, or credit card.

14 (f) "Mortgage" means a conveyance, agreement, or arrangement
15 in which property is encumbered or used as security.

16 (g) "Nonresident decedent" means a decedent who was domiciled
17 in another jurisdiction at the time of his or her death.

18 (h) "Organization" means a corporation, business trust,
19 estate, trust, partnership, limited liability company, association,
20 or joint venture; governmental subdivision, agency, or
21 instrumentality; public corporation; or another legal or commercial
22 entity.

23 (i) "Parent" includes, but is not limited to, an individual
24 entitled to take, or who would be entitled to take, as a parent
25 under this act by intestate succession from a child who dies
26 without a will and whose relationship is in question. Parent does
27 not include an individual who is only a stepparent, foster parent,

1 or grandparent.

2 (j) "Partial guardian" means that term as defined in section
3 600 of the mental health code, 1974 PA 258, MCL 330.1600.

4 (k) "Patient advocate" means an individual designated to
5 exercise powers concerning another individual's care, custody, and
6 medical or mental health treatment or authorized to make an
7 anatomical gift on behalf of another individual, or both, as
8 provided in section 5506.

9 (l) "Patient advocate designation" means the written document
10 executed and with the effect as described in sections 5506 to 5515.

11 (m) "Payor" means a trustee, insurer, business entity,
12 employer, government, governmental subdivision or agency, or other
13 person authorized or obligated by law or a governing instrument to
14 make payments.

15 (n) "Person" means an individual or an organization.

16 (o) "Personal representative" includes, but is not limited to,
17 an executor, administrator, successor personal representative, and
18 special personal representative, and any other person, other than a
19 trustee of a trust subject to article VII, who performs
20 substantially the same function under the law governing that
21 person's status.

22 (p) "Petition" means a written request to the court for an
23 order after notice.

24 (q) "Plenary guardian" means that term as defined in section
25 600 of the mental health code, 1974 PA 258, MCL 330.1600.

26 (r) "Proceeding" includes an application and a petition, and
27 may be an action at law or a suit in equity. A proceeding may be

1 denominated a civil action under court rules.

2 (s) "Professional conservator" means a person that provides
3 conservatorship services for a fee. Professional conservator does
4 not include a person who is an individual who is related to all but
5 2 of the protected individuals for whom he or she is appointed as
6 conservator.

7 (t) "Professional guardian" means a person that provides
8 guardianship services for a fee. Professional guardian does not
9 include a person who is an individual who is related to all but 2
10 of the wards for whom he or she is appointed as guardian.

11 (u) "Property" means anything that may be the subject of
12 ownership, and includes both real and personal property or an
13 interest in real or personal property. **PROPERTY INCLUDES DIGITAL**
14 **PROPERTY.**

15 (v) "Protected individual" means a minor or other individual
16 for whom a conservator has been appointed or other protective order
17 has been made as provided in part 4 of article V.

18 (w) "Protective proceeding" means a proceeding under the
19 provisions of part 4 of article V.

20 Sec. 1107. As used in this act:

21 (a) "Register" or "probate register" means the official of the
22 court designated to perform the functions of register as provided
23 in section 1304.

24 (b) "Revised judicature act of 1961" means the revised
25 judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

26 (c) "Security" includes, but is not limited to, a note, stock,
27 treasury stock, bond, debenture, evidence of indebtedness,

1 certificate of interest or participation in an oil, gas, or mining
2 title or lease or in payments out of production under such a title
3 or lease, collateral trust certificate, transferable share, voting
4 trust certificate, or interest in a regulated investment company or
5 other entity generally referred to as a mutual fund or, in general,
6 an interest or instrument commonly known as a security, or a
7 certificate of interest or participation for, a temporary or
8 interim certificate, receipt, or certificate of deposit for, or any
9 warrant or right to subscribe to or purchase any of the items
10 listed in this subdivision.

11 (d) "Settlement" means, in reference to a decedent's estate,
12 the full process of administration, distribution, and closing.

13 (e) "Special personal representative" means a personal
14 representative as described by sections 3614 to 3618.

15 (f) "State" means a state of the United States, the District
16 of Columbia, the Commonwealth of Puerto Rico, or a territory or
17 insular possession subject to the jurisdiction of the United
18 States.

19 (g) "Successor" means a person, other than a creditor, who is
20 entitled to property of a decedent under the decedent's will or
21 this act.

22 (h) "Successor personal representative" means a personal
23 representative, other than a special personal representative, who
24 is appointed to succeed a previously appointed personal
25 representative.

26 (i) "Supervised administration" means the proceedings
27 described in part 5 of article III.

1 (j) "Survive" means that an individual neither predeceases an
2 event, including the death of another individual, nor is considered
3 to predecease an event under section 2104 or 2702.

4 (K) "TERMS-OF-SERVICE AGREEMENT" MEANS A CONTRACT THAT
5 CONTROLS THE RELATIONSHIP BETWEEN A DIGITAL ACCOUNT HOLDER AND A
6 DIGITAL CUSTODIAN. TERMS-OF-SERVICE AGREEMENT INCLUDES A TERMS-OF-
7 USE AGREEMENT.

8 (I) ~~(k)~~ "Terms of a trust" or "terms of the trust" means the
9 manifestation of the settlor's intent regarding a trust's
10 provisions as expressed in the trust instrument or as may be
11 established by other evidence that would be admissible in a
12 judicial proceeding.

13 (M) ~~(l)~~ "Testacy proceeding" means a proceeding to establish a
14 will or determine intestacy.

15 (N) ~~(m)~~ "Testator" includes an individual of either gender.

16 (O) ~~(n)~~ "Trust" includes, but is not limited to, an express
17 trust, private or charitable, with additions to the trust, wherever
18 and however created. Trust includes, but is not limited to, a trust
19 created or determined by judgment or decree under which the trust
20 is to be administered in the manner of an express trust. Trust does
21 not include a constructive trust or a resulting trust,
22 conservatorship, personal representative, custodial arrangement
23 under the Michigan uniform transfers to minors act, 1998 PA 433,
24 MCL 554.521 to 554.552, business trust providing for a certificate
25 to be issued to a beneficiary, common trust fund, voting trust,
26 security arrangement, liquidation trust, or trust for the primary
27 purpose of paying debts, dividends, interest, salaries, wages,

1 profits, pensions, or employee benefits of any kind, or another
2 arrangement under which a person is a nominee or escrowee for
3 another.

4 (P) ~~(e)~~—"Trustee" includes an original, additional, or
5 successor trustee, whether or not appointed or confirmed by the
6 court.

7 Enacting section 1. This amendatory act does not take effect
8 unless all of the following bills of the 97th Legislature are
9 enacted into law:

- 10 (a) House Bill No. 5366.
- 11 (b) House Bill No. 5367.
- 12 (c) House Bill No. 5369.
- 13 (d) House Bill No. 5370.