

# HOUSE BILL No. 5368

February 26, 2014, Introduced by Reps. Cotter, Leonard, LaFontaine, Geiss, Lauwers,  
Kowall and Jenkins and referred to the Committee on Judiciary.

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  
8 under part 3 of article III.

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

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

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

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

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

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

24 (e) "Beneficiary designation" means the naming in a governing  
25 instrument of a beneficiary of an insurance or annuity policy, of  
26 an account with POD designation, of a security registered in  
27 beneficiary form (TOD), of a pension, profit-sharing, retirement,

1 or similar benefit plan, or of another nonprobate transfer at  
2 death.

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

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

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

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

1 certified by the state treasurer.

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

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

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

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

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

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

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

27 (Q) "DIGITAL CUSTODIAN" MEANS A PERSON THAT ELECTRONICALLY

1 STORES DIGITAL PROPERTY OF A DIGITAL ACCOUNT HOLDER OR OTHERWISE  
2 HAS CONTROL OVER DIGITAL PROPERTY OF THE DIGITAL ACCOUNT HOLDER.

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

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

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

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

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

26 (W) ~~(p)~~—"Do-not-resuscitate order" means that term as defined  
27 in section 2 of the Michigan do-not-resuscitate procedure act, 1996

1 PA 193, MCL 333.1052.

2 Sec. 1104. As used in this act:

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

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

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

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

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

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

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

24 (H) ~~(e)~~—"Fiduciary" includes, but is not limited to, a  
25 personal representative, guardian, conservator, trustee, plenary  
26 guardian, partial guardian, and successor fiduciary.

27 (I) ~~(f)~~—"Financial institution" means an organization

1 authorized to do business under state or federal laws relating to a  
2 financial institution and includes, but is not limited to, a bank,  
3 trust company, savings bank, building and loan association, savings  
4 and loan company or association, credit union, insurance company,  
5 and entity that offers mutual fund, securities brokerage, money  
6 market, or retail investment accounts.

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

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

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

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

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

23 (O) ~~(l)~~—"Guardian" means a person who has qualified as a  
24 guardian of a minor or a legally incapacitated individual under a  
25 parental or spousal nomination or a court appointment and includes  
26 a limited guardian as described in sections 5205, 5206, and 5306.  
27 Guardian does not include a guardian ad litem.

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

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

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

9       Sec. 1106. As used in this act:

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

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

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

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

22       (iv) A licensed master's social worker licensed under article  
23 15 of the public health code, 1978 PA 368, MCL 333.16101 to  
24 333.18838.

25       (v) A physician's assistant licensed to practice in this state  
26 under article 15 of the public health code, 1978 PA 368, MCL  
27 333.16101 to 333.18838.



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

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

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

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

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

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

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

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

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

27          (j) "Partial guardian" means that term as defined in section

1 600 of the mental health code, 1974 PA 258, MCL 330.1600.

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

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

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

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

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

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

22 (q) "Plenary guardian" means that term as defined in section  
23 600 of the mental health code, 1974 PA 258, MCL 330.1600.

24 (r) "Proceeding" includes an application and a petition, and  
25 may be an action at law or a suit in equity. A proceeding may be  
26 denominated a civil action under court rules.

27 (s) "Professional conservator" means a person that provides

1 conservatorship services for a fee. Professional conservator does  
2 not include a person who is an individual who is related to all but  
3 2 of the protected individuals for whom he or she is appointed as  
4 conservator.

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

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

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

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

18 Sec. 1107. As used in this act:

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

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

24 (c) "Security" includes, but is not limited to, a note, stock,  
25 treasury stock, bond, debenture, evidence of indebtedness,  
26 certificate of interest or participation in an oil, gas, or mining  
27 title or lease or in payments out of production under such a title

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

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

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

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

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

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

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

26 (j) "Survive" means that an individual neither predeceases an  
27 event, including the death of another individual, nor is considered

1 to predecease an event under section 2104 or 2702.

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

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

11 (M) ~~(l)~~—"Testacy proceeding" means a proceeding to establish a  
12 will or determine intestacy.

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

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

1 another.

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

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

8 (a) Senate Bill No.\_\_\_\_ or House Bill No. 5367 (request no.  
9 04550'13).

10 (b) Senate Bill No.\_\_\_\_ or House Bill No. 5366 (request no.  
11 04551'13).

12 (c) Senate Bill No.\_\_\_\_ or House Bill No. 5369 (request no.  
13 04552'13).

14 (d) Senate Bill No.\_\_\_\_ or House Bill No. 5370 (request no.  
15 04553'13).