



# SENATE BILL No. 1036

May 21, 1996, Introduced by Senator GOUGEON and referred to the Committee on Judiciary.

A bill to amend sections 3, 21, 401, and 424c of Act No. 642 of the Public Acts of 1978, entitled as amended "Revised probate code,"

section 3 as amended by Act No. 222 of the Public Acts of 1988, section 21 as amended by Act No. 69 of the Public Acts of 1989, section 401 as amended by Act No. 396 of the Public Acts of 1980, and section 424c as amended by Act No. 8 of the Public Acts of 1996, being sections 700.3, 700.21, 700.401, and 700.424c of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 3, 21, 401, and 424c of Act No. 642 of  
2 the Public Acts of 1978, section 3 as amended by Act No. 222 of  
3 the Public Acts of 1988, section 21 as amended by Act No. 69 of  
4 the Public Acts of 1989, section 401 as amended by Act No. 396 of  
5 the Public Acts of 1980, and section 424c as amended by Act No. 8

1 of the Public Acts of 1996, being sections 700.3, 700.21,  
2 700.401, and 700.424c of the Michigan Compiled Laws, are amended  
3 to read as follows:

4       Sec. 3. (1) "Authenticated" means that the genuineness and  
5 validity of the original or a copy of a public or official docu-  
6 ment, instrument, or record is proved.

7       (2) "Beneficiary" as it relates to trust beneficiaries,  
8 includes a beneficiary of a present or future interest, vested or  
9 contingent, and the owner of an interest by assignment or other  
10 transfer. Beneficiary includes a party entitled to enforce the  
11 trust if the trust is a charitable trust.

12       (3) "Child" includes a person entitled to take as a child  
13 under this act by intestate succession from the parent whose  
14 relationship is in question and excludes a stepchild, a foster  
15 child, a grandchild, or any more remote descendant who is not so  
16 entitled to inherit.

17       (4) "Claim" in respect to estates of decedents and protected  
18 persons includes liabilities of the decedent or protected person  
19 whether arising in contract, in tort, or otherwise, and liabili-  
20 ties of the estate that arise before, at, or after the death of  
21 the decedent or the appointment of the conservator, including  
22 funeral and burial expenses and expenses of administration.  
23 Claim does not include estate and inheritance taxes, demands, or  
24 disputes regarding title of a decedent or protected person to  
25 specific assets alleged to be included in the estate.

1 (5) "Conservator" means a person appointed by the court, as  
2 provided in article 4, to exercise powers over the estate of a  
3 protected person.

4 (6) "County public administrator" means a county public  
5 administrator appointed under Act No. 194 of the Public Acts of  
6 1947, ~~as amended,~~ being sections 720.201 to 720.223 of the  
7 Michigan Compiled Laws.

8 (7) "Court" means the probate court, EXCEPT AS PROVIDED IN  
9 ARTICLE 4.

10 Sec. 21. The court has exclusive legal and equitable juris-  
11 diction of all of the following:

12 (a) Matters relating to the settlement of the estate of a  
13 deceased person, whether testate or intestate, who was at the  
14 time of death domiciled in the county or was at the time of death  
15 domiciled out of state leaving an estate within the county to be  
16 administered, including, but not limited to, the following  
17 proceedings:

18 (i) The internal affairs of the estate.

19 (ii) Estate administration, settlement, and distribution.

20 (iii) Declaration of rights involving estates, devisees,  
21 heirs, and fiduciaries.

22 (iv) The construction of a will.

23 (v) The determination of heirs.

24 (b) Proceedings concerning the validity, internal affairs,  
25 and settlement of trusts, the administration, distribution, modi-  
26 fication, reformation, and termination of trusts, and the  
27 declaration of rights involving trusts, trustees, and

1 beneficiaries of trusts, including, but not limited to, the  
2 following proceedings to:

3 (i) Appoint or remove a trustee.

4 (ii) Review the fees of a trustee.

5 (iii) Require, hear, and settle interim or final accounts.

6 (iv) Ascertain beneficiaries.

7 (v) Determine any question arising in the administration or  
8 distribution of any trust, including questions of construction of  
9 wills and trusts; instruct trustees, and determine relative  
10 thereto the existence or nonexistence of an immunity, power,  
11 privilege, duty, or right.

12 (vi) Release registration of a trust.

13 (vii) Determine an action or proceeding involving settlement  
14 of an inter vivos trust as provided in Act No. 185 of the Public  
15 Acts of 1966, being sections 555.81 to 555.84 of the Michigan  
16 Compiled Laws.

17 ~~(c) Proceedings concerning guardianships, conservatorships,~~  
18 ~~and protective proceedings.~~

19 (C) ~~(d)~~ Proceedings to review and settle the accounts of a  
20 fiduciary as defined in section 5, and to order, upon request of  
21 an interested person, instructions or directions to a fiduciary,  
22 concerning an estate within the court's jurisdiction.

23 Sec. 401. (1) AS USED IN THIS ARTICLE, "COURT" MEANS THE  
24 FAMILY DIVISION OF CIRCUIT COURT.

25 (2) ~~(+)~~ The court has jurisdiction over protective pro-  
26 ceedings and guardianship proceedings.

1           (3) ~~(2)~~ When both guardianship and protective proceedings  
2 as to the same person are commenced or pending in the same court,  
3 the proceedings may be consolidated.

4           (4) ~~(3)~~ In proceedings under this article, a spouse may  
5 testify for or against the other spouse.

6           Sec. 424c. (1) The parent or parents of a minor may peti-  
7 tion the court to terminate a guardianship for the minor, as  
8 follows:

9           (a) If the guardianship is a limited guardianship, the par-  
10 ents or the sole parent with a right to custody of the minor.

11          (b) If the guardianship was established under section 424,  
12 the parent or parents of the minor.

13          (2) If a petition has been filed to terminate a guardianship  
14 under this section, the court may do 1 or more of the following:

15          (a) Order the ~~department of social services~~ FAMILY INDE-  
16 PENDENCE AGENCY or an employee or agent of the court to conduct  
17 an investigation and file a written report of the investigation  
18 regarding the best interests of the minor or give testimony con-  
19 cerning the investigation.

20          (b) Utilize the community resources in behavioral sciences  
21 and other professions in the investigation and study of the best  
22 interests of the minor and consider their recommendations for the  
23 disposition of the petition.

24          (c) Appoint a guardian ad litem or attorney to represent the  
25 minor.

26          (d) Take any other action considered necessary in a  
27 particular case.

1 (3) After notice and hearing on a petition to terminate a  
2 limited guardianship, the court shall terminate the limited  
3 guardianship if it determines that the parent or parents of the  
4 minor have substantially complied with the limited guardianship  
5 placement plan. The court may enter orders to facilitate the  
6 reintegration of the minor into the home of the parent or parents  
7 for a period of up to 6 months prior to the termination.

8 (4) For all petitions to terminate a guardianship in which  
9 subsection (3) does not apply, the court, after notice and hear-  
10 ing, may do any of the following:

11 (a) Terminate the guardianship if the court determines that  
12 it is in the best interests of the minor, and may do any of the  
13 following:

14 (i) Enter orders to facilitate the reintegration of the  
15 minor into the home of the parent for a period of up to 6 months  
16 prior to the termination.

17 (ii) Order the ~~department of social services~~ FAMILY INDE-  
18 PENDENCE AGENCY to supervise the transition period when the minor  
19 is being reintegrated into the home of his or her parent.

20 (iii) Order the ~~department of social services~~ FAMILY INDE-  
21 PENDENCE AGENCY to provide services to facilitate the reintegra-  
22 tion of the minor into the home of his or her parent.

23 (b) Continue the guardianship for not more than 1 year from  
24 the date of the hearing if the court determines that it is in the  
25 best interests of the minor, and do any of the following:

26 (i) If the guardianship is a limited guardianship, order the  
27 parent or parents to comply with 1 of the following:

1 (A) The limited guardianship placement plan.

2 (B) A court-modified limited guardianship placement plan.

3 (C) If the limited guardianship was established before  
4 December 20, 1990, a court-structured plan that enables the child  
5 to return to the home of his or her parent or parents.

6 (ii) If the guardianship was ordered under section 424,  
7 order the parent or parents to follow a court-structured plan  
8 that enables the child to return to the home of his or her parent  
9 or parents.

10 (iii) If a guardianship is continued pursuant to subpara-  
11 graph (i) or (ii), schedule and conduct a hearing to review the  
12 guardianship before the expiration of the period of time that the  
13 guardianship is continued and either terminate the guardianship  
14 or limited guardianship, or proceed under subdivision (c) or  
15 (d).

16 (c) If the minor has resided with the guardian or limited  
17 guardian for not less than 1 year and if the court finds that the  
18 parent or parents of the minor have failed to provide the minor  
19 with parental care, love, guidance, and attention appropriate to  
20 the child's age and individual needs resulting in a substantial  
21 disruption of the parent-child relationship, continue the guard-  
22 ianship if it is established by clear and convincing evidence  
23 that the continuation would serve the best interests of the  
24 minor.

25 (d) Appoint an attorney to represent the minor or refer the  
26 matter to the ~~department of social services~~ FAMILY INDEPENDENCE  
27 AGENCY. The attorney or the ~~department of social services~~

1 FAMILY INDEPENDENCE AGENCY may file a complaint on behalf of the  
2 minor requesting the ~~juvenile division of the probate~~ court to  
3 take jurisdiction of the minor under section 2(b) of chapter XIIA  
4 of Act No. 288 of the Public Acts of 1939, being section 712A.2  
5 of the Michigan Compiled Laws.

6 (5) As used in this section, "best interests of the minor"  
7 means the sum total of the following factors to be considered,  
8 evaluated, and determined by the court:

9 (a) The love, affection, and other emotional ties existing  
10 between the parties involved and the child.

11 (b) The capacity and disposition of the parties involved to  
12 give the child love, affection, and guidance and continuation of  
13 the educating and raising of the child in its religion or creed,  
14 if any.

15 (c) The capacity and disposition of the parties involved to  
16 provide the child with food, clothing, medical care or other  
17 remedial care recognized and permitted under the laws of this  
18 state in place of medical care, and other material needs.

19 (d) The length of time the child has lived in a stable, sat-  
20 isfactory environment, and the desirability of maintaining  
21 continuity.

22 (e) The permanence, as a family unit, of the existing or  
23 proposed custodial home.

24 (f) The moral fitness of the parties involved.

25 (g) The mental and physical health of the parties involved.

26 (h) The home, school, and community record of the child.

1 (i) The reasonable preference of the child, if the court  
2 considers the child to be of sufficient age to express  
3 preference.

4 (j) The willingness and ability of the guardian to facili-  
5 tate and encourage a close and continuing parent-child relation-  
6 ship between the child and his or her parent or parents.

7 (k) Any other factor considered by the court to be relevant  
8 to a particular dispute regarding termination of a guardianship,  
9 removal of a guardian, or parenting time.

10 (6) This section applies to all guardianships established  
11 before, on, or after the effective date of this section.

12 Section 2. This amendatory act applies to guardianships,  
13 conservatorships, and protective proceedings commenced on or  
14 after January 1, 1998.

15 Section 3. This amendatory act shall not take effect unless  
16 House Bill No. 5158 of the 88th Legislature is enacted into law.