

# HOUSE BILL No. 6094

September 17, 1998, Introduced by Rep. Bogardus and referred to the Committee on Judiciary.

A bill to amend 1978 PA 642, entitled  
"Revised probate code,"  
by amending sections 455, 468, and 484 (MCL 700.455, 700.468, and  
700.484), section 455 as amended by 1988 PA 398 and section 468  
as amended by 1980 PA 396.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 455. (1) Except as limited under section ~~444(3)~~, a  
2 ~~guardian of~~ 444, a legally incapacitated ~~person~~ PERSON'S  
3 GUARDIAN is responsible for the care, custody, and control of the  
4 ward, but is not liable to third persons by reason of that  
5 responsibility for THE WARD'S acts. ~~of the ward.~~ In particular,  
6 and without qualifying the ~~foregoing~~ PROVISIONS OF THE PREVIOUS  
7 SENTENCE, a guardian has the following powers and duties, except  
8 as modified by COURT order: ~~of the court:~~

1 (a) To the extent that it is consistent with the terms of an  
2 order by a court of competent jurisdiction relating to THE WARD'S  
3 detention or commitment, ~~of the ward,~~ the guardian is entitled  
4 to custody of the WARD'S person ~~of his or her ward~~ and may  
5 establish the ward's place of residence within or without this  
6 state. The guardian shall notify the court within 14 days of  
7 ~~any~~ A change in the ward's place of residence.

8 (b) If entitled to custody of the ward, the guardian shall  
9 ~~make provision~~ PROVIDE for the WARD'S care, comfort, and main-  
10 tenance ~~of the ward~~ and, when appropriate, arrange for the  
11 ward's training and education. The guardian shall ~~have the~~  
12 ~~responsibility of securing~~ SECURE services to restore the ward  
13 to the best possible state of mental and physical well-being so  
14 that the ward can return to self-management at the earliest pos-  
15 sible time. Without regard to custodial rights of the ward's  
16 person, the guardian shall take reasonable care of the ward's  
17 clothing, furniture, vehicles, and other personal effects and  
18 commence protective proceedings if other property of the ward ~~is~~  
19 ~~in need of~~ NEEDS protection.

20 (c) A guardian may give ~~any~~ consent or approval that ~~may~~  
21 ~~be~~ IS necessary to enable the ward to receive medical or other  
22 professional care, counsel, treatment, or service.

23 (d) If a conservator for the WARD'S estate ~~of the ward~~ is  
24 not appointed, a guardian may DO ALL OF THE FOLLOWING:

25 (i) Institute proceedings to compel a person under a duty to  
26 support the ward or to pay sums for the WARD'S welfare ~~of the~~  
27 ~~ward~~ to perform that duty.

1       (ii) Receive money and tangible property deliverable to the  
2 ward and apply the money and property for THE WARD'S support,  
3 care, and education. ~~of the ward.~~ The guardian may not use  
4 ~~funds~~ MONEY from the ward's estate for room and board ~~which~~  
5 THAT the guardian or the guardian's spouse, parent, or child have  
6 furnished the ward unless a charge for the service is approved by  
7 COURT order ~~of the court~~ made upon notice to at least 1 of the  
8 WARD'S next of kin, ~~of the incompetent ward,~~ if notice is  
9 possible. The guardian shall exercise care to conserve any  
10 excess for the ward's needs.

11       (e) ~~To~~ THE GUARDIAN SHALL report the condition of the ward  
12 and of the estate ~~which~~ THAT is subject to the guardian's pos-  
13 session or control, as required by the court, but not less often  
14 than annually. ~~A~~ THE report shall contain all of the  
15 following:

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

18       (ii) Any improvement or deterioration in the ward's mental,  
19 physical, and social condition that has occurred during the past  
20 year.

21       (iii) The ward's present living arrangement and ~~any~~  
22 changes in his or her living arrangement that have occurred  
23 during the past year.

24       (iv) Whether the guardian recommends a more suitable living  
25 arrangement for the ward.

26       (v) Any medical treatment received by the ward.

1 (vi) Services received by the ward.

2 (vii) A list of the guardian's visits with, and activities  
3 on behalf of, the ward.

4 (viii) A recommendation as to the need for continued  
5 guardianship.

6 (f) If a conservator is appointed, THE GUARDIAN SHALL PAY TO  
7 THE CONSERVATOR, FOR MANAGEMENT AS PROVIDED IN THIS ACT, the  
8 ward's estate received by the guardian in excess of ~~those funds~~  
9 THE MONEY expended to meet current expenses for THE WARD'S sup-  
10 port, care, and education. ~~of the ward shall be paid to the con-~~  
11 ~~servator for management as provided in this act, and the~~ THE  
12 guardian shall account to the conservator for ~~funds~~ MONEY  
13 expended.

14 (2) A guardian of a person for whom a conservator also is  
15 appointed shall control the custody and care of the ward and is  
16 entitled to receive reasonable sums for his or her services and  
17 for room and board furnished to the ward as agreed upon between  
18 the guardian and the conservator if the amounts agreed upon are  
19 reasonable under the circumstances. The guardian may request the  
20 conservator to expend the ward's estate by payment to third per-  
21 sons or institutions for the ward's care and maintenance.

22 (3) If a ward dies while under guardianship, ~~and~~ a conser-  
23 vator has not been appointed for the WARD'S estate, ~~of the~~  
24 ~~ward,~~ and ~~if~~ the guardian has possession of any ~~money~~ of the  
25 deceased ~~ward~~ WARD'S MONEY, the court may, upon THE GUARDIAN'S  
26 petition ~~of the guardian~~ and with or without notice, hear a  
27 claim for burial expense or any other claim as the court

1 considers advisable. Upon hearing the claim, the court may enter  
2 an order allowing or disallowing the claim or any part of it and  
3 provide in the order of allowance that the claim or any part of  
4 it be paid immediately if the payment can be made without injury  
5 or serious inconvenience to the ward's estate.

6 (4) IF A CONSERVATOR IS NOT APPOINTED FOR THE WARD'S ESTATE,  
7 A GUARDIAN SHALL NOT SELL THE WARD'S REAL PROPERTY EXCEPT AS  
8 AUTHORIZED BY THE COURT UNDER THIS SUBSECTION. THE COURT MAY  
9 AUTHORIZE A GUARDIAN TO SELL A WARD'S REAL PROPERTY ONLY IF THE  
10 COURT IS SATISFIED, AFTER NOTICE AND A HEARING, THAT THE SALE IS  
11 IN THE WARD'S BEST INTERESTS AND THAT THE WARD IS INCAPABLE OF  
12 CONSENTING OR HAS CONSENTED TO THE SALE.

13 Sec. 468. (1) The court has the following powers, which may  
14 be exercised directly or through a conservator, with respect to  
15 the estate and affairs of protected persons:

16 (a) While a petition for appointment of a conservator or  
17 other protective order is pending and after preliminary hearing  
18 and without notice to others, the court may preserve and apply  
19 the property of the person to be protected as may be required for  
20 the person's benefit or the benefit of the person's dependents.

21 (b) After a hearing, and upon determining that a basis for  
22 an appointment or other protective order exists with respect to a  
23 minor without other disability, the court has all those powers  
24 over the MINOR'S estate and affairs ~~of the minor which~~ THAT are  
25 or may be necessary for the best interests of the minor, the  
26 minor's family, and members of the minor's household.

1 (c) After a hearing, and upon determining that a basis for  
 2 an appointment or other protective order exists with respect to a  
 3 person for reasons other than minority, the court, for the bene-  
 4 fit of the person and members of the person's household, has all  
 5 the powers over the person's estate and affairs ~~which~~ THAT the  
 6 person could exercise if present and not under disability, except  
 7 the power to make a will. These powers include ~~the power to~~  
 8 ALL OF THE FOLLOWING POWERS:

9 (i) TO make gifts. ~~, to~~

10 (ii) TO convey or release contingent and expectant interests  
 11 in property including marital property rights and ~~any~~ A  
 12 SURVIVORSHIP right ~~of survivorship~~ incident to joint tenancy or  
 13 tenancy by the entirety. ~~, to~~

14 (iii) TO exercise or release powers as trustee, personal  
 15 representative, custodian for minors, conservator, or donee of a  
 16 power of appointment. ~~, to~~

17 (iv) TO enter into contracts. ~~, to~~

18 (v) TO create revocable or irrevocable trusts of ESTATE  
 19 property ~~of the estate which~~ THAT may extend beyond disability  
 20 or life. ~~, to~~

21 (vi) TO exercise ~~options of~~ the disabled ~~person~~ PERSON'S  
 22 OPTIONS to purchase securities or other property. ~~, to~~

23 (vii) TO exercise rights to elect options and change benefi-  
 24 ciaries under insurance and annuity policies and to surrender the  
 25 policies for their cash value. ~~, to~~

26 (viii) TO exercise the right to an elective share in ~~the~~ A  
 27 DECEASED SPOUSE'S estate. ~~of a deceased spouse, and to~~

1 (ix) TO renounce ~~any~~ AN interest by testate or intestate  
2 succession or by inter vivos transfer.

3 (d) ~~The~~ ONLY IF SATISFIED AFTER NOTICE AND A HEARING THAT  
4 IT IS IN THE PROTECTED PERSON'S BEST INTERESTS AND THAT THE PRO-  
5 TECTED PERSON IS INCAPABLE OF CONSENTING OR HAS CONSENTED TO THE  
6 PROPOSED EXERCISE OF THE POWER, THE court may exercise, or direct  
7 the exercise of, its authority to DO 1 OR MORE OF THE FOLLOWING:

8 (i) TO exercise or release powers of appointment of which  
9 the protected person is donee. ~~, to~~

10 (ii) TO renounce interests. ~~, to~~

11 (iii) TO make gifts in trust or otherwise exceeding 20% of  
12 any year's ESTATE income. ~~of the estate, or to~~

13 (iv) TO change beneficiaries under insurance and annuity  
14 policies. ~~, only if satisfied, after notice and hearing, that it~~  
15 ~~is in the best interests of the protected person, and that the~~  
16 ~~person is incapable of consenting or has consented to the pro-~~  
17 ~~posed exercise of power.~~

18 (v) TO SELL THE PROTECTED PERSON'S PRIMARY RESIDENCE.

19 (vi) TO PURCHASE A PREPAID FUNERAL OR BURIAL SERVICES  
20 CONTRACT.

21 (2) An order made ~~pursuant to~~ UNDER this section determin-  
22 ing that a basis for appointment of a conservator or other pro-  
23 tective order exists ~~,~~ does not affect the capacity of the pro-  
24 tected person.

25 (3) To encourage the self-reliance and independence of a  
26 protected person, the court may authorize the individual to  
27 function without the consent or supervision of the person's

1 conservator in the handling of part of his or her money or  
2 property, including the maintenance of a savings or checking  
3 account in a bank or other institution. ~~—, and, to~~ TO the extent  
4 authorized ~~—, any~~ UNDER THIS SUBSECTION, A person may deal with  
5 that individual as though the individual were mentally  
6 competent.

7       Sec. 484. (1) A conservator has all of the powers conferred  
8 in this section. In addition, a conservator of the estate of an  
9 unmarried minor as to whom no person has parental rights ~~—~~ has  
10 the duties and powers of a MINOR'S guardian ~~of a minor~~  
11 described in section 431 until the minor marries. ~~but~~ HOWEVER,  
12 the parental rights ~~so~~ conferred BY THIS SUBSECTION on a con-  
13 servator do not preclude appointment of a guardian as provided  
14 ~~by sections 421 to 437~~ IN THIS ARTICLE.

15       (2) A conservator, without court authorization or confirma-  
16 tion, may invest ~~and~~ OR reinvest ~~funds of the~~ estate MONEY as  
17 would a trustee.

18       (3) A conservator, acting reasonably in efforts to accom-  
19 plish the purpose for which he or she was appointed, may act  
20 without court authorization or confirmation to DO ALL OF THE  
21 FOLLOWING:

22       (a) Collect, hold, ~~and~~ OR retain ESTATE assets ~~of the~~  
23 ~~estate~~ including land in another state, until in the  
24 conservator's judgment, disposition of the assets should be made,  
25 which assets may be retained even though they include an asset in  
26 which the conservator is personally interested.



- 1 (b) Receive additions to the estate.
- 2 (c) Continue or participate in the operation of a business  
3 or other enterprise.
- 4 (d) Acquire an undivided interest in an estate asset in  
5 which the conservator, in any fiduciary capacity, holds an undi-  
6 vided interest.
- 7 (e) Invest ~~and~~ OR reinvest estate assets pursuant to sub-  
8 section (2).
- 9 (f) Deposit estate funds in a bank including a bank operated  
10 by the conservator.
- 11 (g) ~~Acquire~~ EXCEPT AS PROVIDED IN SECTION 468 REGARDING  
12 THE SALE OF THE PROTECTED PERSON'S PRIMARY RESIDENCE, ACQUIRE or  
13 dispose of an estate asset including land in another state for  
14 cash or on credit, at public or private sale; ~~and to~~ OR manage,  
15 develop, improve, exchange, partition, change the character of,  
16 or abandon an estate asset.
- 17 (h) Make ordinary or extraordinary repairs or alterations in  
18 buildings or other structures, ~~to~~ demolish any improvements,  
19 ~~and to~~ OR raze existing or erect new party walls or buildings.
- 20 (i) Subdivide, develop, or dedicate land to public use; ~~to~~  
21 make or obtain the vacation of plats ~~and~~ OR adjust boundaries;  
22 ~~to~~ adjust differences in valuation on exchange, or ~~to~~ parti-  
23 tion by giving or receiving consideration; ~~and to~~ OR dedicate  
24 easements to public use without consideration.
- 25 (j) Enter for any purpose into a lease as lessor or lessee  
26 with or without option to purchase or renew for a term within or

1 extending beyond the CONSERVATORSHIP'S term. ~~of the~~  
2 conservatorship.

3 (k) Enter into a lease or arrangement for exploration ~~and~~  
4 OR removal of minerals or other natural resources, or enter into  
5 a pooling or unitization agreement.

6 (l) Grant an option involving disposition of an estate asset  
7 or ~~to~~ take an option for the acquisition of ~~any~~ AN asset.

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

10 (n) Pay calls, assessments, ~~and any~~ OR other sums charge-  
11 able or accruing against or on account of securities.

12 (o) Sell or exercise stock subscription or conversion  
13 rights; ~~to~~ OR consent, directly or through a committee or other  
14 agent, to the reorganization, consolidation, merger, dissolution,  
15 or liquidation of a corporation or other business enterprise.

16 (p) Hold a security in the name of a nominee or in other  
17 form without disclosure of the conservatorship so that title to  
18 the security may pass by delivery. The conservator is liable for  
19 ~~any~~ AN act of the nominee in connection with the stock so  
20 held.

21 (q) Insure the ESTATE assets ~~of the estate~~ against damage  
22 or loss, ~~and~~ OR the conservator against liability with respect  
23 to third persons.

24 (r) Borrow money to be repaid from estate assets or other-  
25 wise; ~~to~~ advance money for the protection of the estate or the  
26 protected person ~~and for all~~ OR FOR expenses, losses, ~~and~~ OR  
27 liability sustained in the administration of the estate or

1 because of the holding or ownership of any estate assets. The  
2 conservator has a lien on the estate as against the protected  
3 person for advances made under this subdivision.

4 (s) Pay or contest a claim; ~~to~~ settle a claim by or  
5 against the estate or the protected person by compromise, arbi-  
6 tration, or otherwise; ~~and to~~ OR release, in whole or in part,  
7 a claim belonging to the estate to the extent that the claim is  
8 uncollectible.

9 (t) Pay taxes, assessments, reasonable compensation of the  
10 conservator, ~~and~~ OR other expenses incurred in the collection,  
11 care, administration, ~~and~~ OR protection of the estate.

12 (u) Allocate items of income or expense to estate income or  
13 principal, as provided by law, including creation of reserves out  
14 of income for depreciation, obsolescence, or amortization, or for  
15 depletion in mineral or timber properties.

16 (v) Pay ~~any~~ A sum distributable to a protected person or  
17 that person's dependent without liability to the conservator, by  
18 paying the sum to the distributee or by paying the sum for the  
19 use of the distributee to his or her guardian or if none, to a  
20 relative or other person with custody of his or her person.

21 (w) Employ persons, including attorneys, auditors, invest-  
22 ment advisors, or agents, even though they are associated with  
23 the conservator, to advise or assist the conservator in the per-  
24 formance of his or her administrative duties; ~~to~~ act upon their  
25 recommendation without independent investigation; ~~and~~ OR  
26 instead of acting personally, to employ 1 or more agents to

1 perform ~~any~~ AN act of administration, whether or not  
2 discretionary.

3 (x) Prosecute or defend actions, claims, or proceedings in  
4 any jurisdiction for the protection of estate assets ~~and~~ OR of  
5 the conservator in the performance of his or her duties.

6 (y) Execute and deliver ~~any~~ AN instrument ~~which~~ THAT  
7 will accomplish or facilitate the exercise of the powers vested  
8 in the conservator.

9 (4) THIS SECTION DOES NOT AUTHORIZE THE PURCHASE OF, AND A  
10 CONSERVATOR SHALL NOT PURCHASE, A PREPAID FUNERAL OR BURIAL SERV-  
11 ICES CONTRACT WITHOUT COURT AUTHORIZATION AS PRESCRIBED IN SEC-  
12 TION 468.