

**SUBSTITUTE FOR
HOUSE BILL NO. 4384**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1106, 5506, 5507, and 5510 (MCL 700.1106,
700.5506, 700.5507, and 700.5510), section 1106 as amended by
2000 PA 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1106. As used in this act:

2 (a) "Mental health professional" means an individual who is
3 trained and experienced in the area of mental illness or develop-
4 mental disabilities and who is 1 of the following:

5 (i) A physician who is licensed to practice medicine or
6 osteopathic medicine and surgery in this state under article 15
7 of the public health code, 1978 PA 368, MCL 333.16101 to
8 333.18838.

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

4 (iii) A registered professional nurse licensed to practice
5 in this state under article 15 of the public health code, 1978 PA
6 368, MCL 333.16101 to 333.18838.

7 (iv) A social worker registered as a certified social worker
8 under article 16 of the occupational code, 1980 PA 299, MCL
9 339.1601 to 339.1610.

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

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

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

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

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

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

24 (g) "Nonresident decedent" means a decedent who was domi-
25 ciled in another jurisdiction at the time of his or her death.

26 (h) "Organization" means a corporation, business trust,
27 estate, trust, partnership, joint venture, association, limited

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1 liability company, government, governmental subdivision or
2 agency, or another legal or commercial entity.

3 (i) "Parent" includes, but is not limited to, an individual
4 entitled to take, or who would be entitled to take, as a parent
5 under this act by intestate succession from a child who dies
6 without a will and whose relationship is in question. Parent
7 does not include an individual who is only a stepparent, foster
8 parent, or grandparent.

9 (j) "Patient advocate" means an individual designated to
10 exercise powers concerning another individual's care, custody,
11 and medical treatment OR GIVEN THE AUTHORITY TO MAKE AN ANATOM-
12 ICAL GIFT ON BEHALF OF ANOTHER INDIVIDUAL, OR BOTH, as provided
13 in section 5506.

14 (k) "Patient advocate designation" means the written docu-
15 ment executed and with the effect as described in sections 5506
16 to 5512.

17 (l) "Payor" means a trustee, insurer, business entity,
18 employer, government, governmental subdivision or agency, or
19 other person authorized or obligated by law or a governing
20 instrument to make payments.

21 (m) "Person" means an individual or an organization.

22 (n) "Personal representative" includes, but is not limited
23 to, an executor, administrator, successor personal representa-
24 tive, and special personal representative, and any other person
25 who performs substantially the same function under the law gov-
26 erning that person's status.

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1 (o) "Petition" means a written request to the court for an
2 order after notice.

3 (p) "Proceeding" includes an application and a petition, and
4 may be an action at law or a suit in equity. A proceeding may be
5 denominated a civil action under court rules.

6 (q) "Property" means anything that may be the subject of
7 ownership, and includes both real and personal property or an
8 interest in real or personal property.

9 (r) "Protected individual" means a minor or other individual
10 for whom a conservator has been appointed or other protective
11 order has been made as provided in part 4 of article V.

12 (s) "Protective proceeding" means a proceeding under the
13 provisions of part 4 of article V.

14 Sec. 5506. (1) An individual 18 years of age or older who
15 is of sound mind at the time the designation is made may desig-
16 nate in writing another individual who is 18 years of age or
17 older to exercise powers concerning care, custody, and medical
18 treatment decisions for the individual making the designation.
19 AN INDIVIDUAL MAKING A DESIGNATION UNDER THIS SUBSECTION MAY
20 INCLUDE IN THE DESIGNATION THE AUTHORITY TO MAKE AN ANATOMICAL
21 GIFT OF ALL OR PART OF THE INDIVIDUAL'S BODY UNDER
22 SECTION 10102(2) OF THE PUBLIC HEALTH CODE, 1978 PA 368,
23 MCL 333.10102.

24 (2) For purposes of this section and sections 5507 to 5512,
25 an individual who is named in a designation to exercise powers
26 concerning care, custody, and medical treatment decisions is

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1 known as a patient advocate and an individual who makes a
2 designation is known as a patient.

3 (3) ~~—(2)—~~ A designation under this section must be in writ-
4 ing, signed, witnessed as provided in subsection ~~—(3)—~~ (4),
5 dated, executed voluntarily, and, before its implementation, made
6 part of the patient's medical record with the patient's attending
7 physician and, if applicable, with the facility where the patient
8 is located. The designation must include a statement that the
9 authority conferred under this section is exercisable only when
10 the patient is unable to participate in medical treatment deci-
11 sions AND, IN THE CASE OF THE AUTHORITY TO MAKE AN ANATOMICAL
12 GIFT AS DESCRIBED IN SUBSECTION (1), A STATEMENT THAT THE AUTHOR-
13 ITY IS EXERCISABLE ONLY WHEN THE PATIENT IS DEAD OR WHEN THE
14 PATIENT'S DEATH IS, WITHIN REASONABLE MEDICAL JUDGMENT, IMMINENT
15 AND INEVITABLE.

16 (4) ~~—(3)—~~ A designation under this section must be executed
17 in the presence of and signed by 2 witnesses. A witness under
18 this section shall not be the patient's spouse, parent, child,
19 grandchild, sibling, presumptive heir, known devisee at the time
20 of the witnessing, physician, or patient advocate or an employee
21 of a life or health insurance provider for the patient, of a
22 health facility that is treating the patient, or of a home for
23 the aged as defined in section 20106 of the public health code,
24 1978 PA 368, MCL 333.20106, where the patient resides. A witness
25 shall not sign the designation unless the patient appears to be
26 of sound mind and under no duress, fraud, or undue influence.

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1 Sec. 5507. (1) A patient advocate designation may include a
2 statement of the patient's desires on care, custody, and medical
3 treatment. A PATIENT ADVOCATE DESIGNATION MAY ALSO INCLUDE A
4 STATEMENT OF THE PATIENT'S DESIRES ON THE MAKING OF AN ANATOMICAL
5 GIFT OF ALL OR PART OF THE PATIENT'S BODY UNDER PART 101 OF THE
6 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.10101 TO 333.10109. The
7 patient may authorize the patient advocate to exercise 1 or more
8 powers concerning the patient's care, custody, and medical treat-
9 ment OR CONCERNING THE MAKING OF AN ANATOMICAL GIFT that the
10 patient could have exercised on his or her own behalf.

11 (2) A patient may designate in the designation a successor
12 individual as a patient advocate who may exercise powers concern-
13 ing care, custody, and medical treatment decisions OR CONCERNING
14 THE MAKING OF AN ANATOMICAL GIFT for the patient if the first
15 individual named as patient advocate does not accept, is incapac-
16 itated, resigns, or is removed.

17 (3) Before a patient advocate designation is implemented, a
18 copy of the designation must be given to the proposed patient
19 advocate and must be given to a successor patient advocate before
20 the successor acts as patient advocate. Before acting as a
21 patient advocate, the proposed patient advocate must sign an
22 acceptance of the designation.

23 (4) The acceptance of a designation as a patient advocate
24 must include substantially all of the following statements:

25 1. This designation is not effective unless the patient is
26 unable to participate in medical treatment decisions. IF THIS
27 DESIGNATION INCLUDES THE AUTHORITY TO MAKE AN ANATOMICAL GIFT AS

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1 DESCRIBED IN SECTION 5506(1), THE AUTHORITY IS NOT EFFECTIVE
2 UNLESS THE PATIENT IS DEAD OR THE PATIENT'S DEATH IS, WITHIN REA-
3 SONABLE MEDICAL JUDGMENT, IMMINENT AND INEVITABLE.

4 2. A patient advocate shall not exercise powers concerning
5 the patient's care, custody, and medical treatment that the
6 patient, if the patient were able to participate in the decision,
7 could not have exercised on his or her own behalf.

8 3. This designation cannot be used to make a medical treat-
9 ment decision to withhold or withdraw treatment from a patient
10 who is pregnant that would result in the pregnant patient's
11 death.

12 4. A patient advocate may make a decision to withhold or
13 withdraw treatment that would allow a patient to die only if the
14 patient has expressed in a clear and convincing manner that the
15 patient advocate is authorized to make such a decision, and that
16 the patient acknowledges that such a decision could or would
17 allow the patient's death.

18 5. A patient advocate shall not receive compensation for
19 the performance of his or her authority, rights, and responsibil-
20 ities, but a patient advocate may be reimbursed for actual and
21 necessary expenses incurred in the performance of his or her
22 authority, rights, and responsibilities.

23 6. A patient advocate shall act in accordance with the
24 standards of care applicable to fiduciaries when acting for the
25 patient and shall act consistent with the patient's best
26 interests. The known desires of the patient expressed or
27 evidenced while the patient is able to participate in medical

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1 treatment decisions are presumed to be in the patient's best
2 interests.

3 7. A patient may revoke his or her designation OF A PATIENT
4 ADVOCATE at any time and in any manner sufficient to communicate
5 an intent to revoke.

6 8. A patient advocate may revoke his or her acceptance to
7 the designation AS A PATIENT ADVOCATE at any time and in any
8 manner sufficient to communicate an intent to revoke.

9 9. A patient admitted to a health facility or agency has
10 the rights enumerated in section 20201 of the public health code,
11 1978 PA 368, MCL 333.20201.

12 Sec. 5510. (1) A patient advocate designation is revoked by
13 ~~any~~ 1 OR MORE of the following:

14 (a) The patient's death, EXCEPT THAT PART OF THE DESIGNA-
15 TION, IF ANY, THAT AUTHORIZES THE PATIENT ADVOCATE TO MAKE AN
16 ANATOMICAL GIFT OF ALL OR PART OF THE DECEASED PATIENT'S BODY
17 UNDER SECTION 10102(2) OF THE PUBLIC HEALTH CODE, 1978 PA 368,
18 MCL 333.10102.

19 (b) An order of removal by the probate court under
20 section 5511(4).

21 (c) The patient advocate's resignation or removal by the
22 court, unless a successor patient advocate has been designated.

23 (d) The patient's revocation of the designation. Even if
24 the patient is unable to participate in medical treatment deci-
25 sions, a patient may revoke a designation at any time and in any
26 manner by which he or she is able to communicate an intent to
27 revoke the designation. If there is a dispute as to the intent

1 of the patient to revoke the designation, the court may make a
2 determination on the patient's intent to revoke the designation.
3 If the revocation is not in writing, an individual who witnesses
4 a revocation of a designation shall describe in writing the cir-
5 cumstances of the revocation, must sign the writing, and shall
6 notify, if possible, the patient advocate of the revocation. If
7 the patient's physician or health facility has notice of the
8 patient's revocation of a designation, the physician or health
9 facility shall note the revocation in the patient's medical
10 records and bedside chart and must notify the patient advocate.

11 (e) A subsequent designation that revokes the prior designa-
12 tion either expressly or by inconsistency.

13 (f) The occurrence of a provision for revocation contained
14 in the designation.

15 (g) If a designation is executed during a patient's marriage
16 naming the patient's spouse as the patient advocate, the designa-
17 tion is suspended during the pendency of an action for separate
18 maintenance, annulment, or divorce and is revoked upon the entry
19 of a judgment of separate maintenance, annulment, or divorce,
20 unless the patient has named a successor individual to serve as a
21 patient advocate. If a successor patient advocate is named, that
22 individual acts as the patient advocate.

23 (2) The revocation of a patient advocate designation under
24 subsection (1) does not revoke or terminate the agency as to the
25 patient advocate or other person who acts in good faith under the
26 designation and without actual knowledge of the revocation.
27 Unless the action is otherwise invalid or unenforceable, an

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1 action taken without knowledge of the revocation binds the
2 patient and his or her heirs, devisees, and personal
3 representatives. A sworn statement executed by the patient advo-
4 cate stating that, at the time of doing an act in accordance with
5 the designation, he or she did not have actual knowledge of the
6 revocation of the designation is, in the absence of fraud, con-
7 clusive proof that the patient advocate did not have actual
8 knowledge of the revocation at the time of the act.

9 Enacting section 1. This amendatory act does not take
10 effect unless Senate Bill No. _____ or House Bill No. _____
11 (request no. 00706'99) of the 90th Legislature is enacted into
12 law.