

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

**Introduced by Senators Van Regenmorter, Shugars, Stille, Bennett, Steil, Rogers, Bullard, Schwarz,
Bouchard, Jaye, Koivisto, McManus, North, Emmons and Gast**

ENROLLED SENATE BILL No. 955

AN ACT to amend 1978 PA 642, entitled "An act to revise and consolidate the laws relative to the probate of decedents' estates, guardianships, conservatorships, protective proceedings, trusts, and powers of attorney; to prescribe penalties and liabilities; and to repeal certain acts and parts of acts," by amending sections 3, 8, 427, and 437 (MCL 700.3, 700.8, 700.427, and 700.437), section 3 as amended by 1988 PA 222, section 8 as amended by 1988 PA 398, and sections 427 and 437 as amended by 1990 PA 313, and by adding section 427a.

The People of the State of Michigan enact:

Sec. 3. (1) "Attorney" means, if appointed to represent a child under the provisions referenced in section 427a, an attorney serving as the child's legal advocate in the manner defined and described in section 13a of chapter XIIA of 1939 PA 288, MCL 712A.13a.

(2) "Authenticated" means that the genuineness and validity of the original or a copy of a public or official document, instrument, or record is proved.

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

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

(5) "Claim" includes, in respect to estates of decedents and protected persons, liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise before, at, or after the death of the decedent or the appointment of the conservator, including funeral and burial expenses and expenses of administration. Claim does not include estate and inheritance taxes, demands, or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

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

(7) "County public administrator" means a county public administrator appointed under 1947 PA 194, MCL 720.201 to 720.223.

(8) "Court" means the probate court.

Sec. 8. (1) “Lawyer-guardian ad litem” means an attorney appointed under section 427 or 437 who has the powers and duties referenced by and provided in section 427a.

(2) “Lease” includes an oil and gas lease or other mineral lease.

(3) “Legally incapacitated person”, as used in sections 3 to 12 and in article 4, means a person, other than a minor, who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions concerning his or her person. Except as used in sections 3 to 12 and in article 4, “legally incapacitated person” means a person, other than a minor, who is a legally incapacitated person as defined for purposes of article 4 or who is a protected person.

(4) “Limited guardian” means a guardian who possesses fewer than all of the legal rights and powers of a full guardian, and whose rights, powers, and duties have been specifically enumerated by court order.

(5) “Mental health professional” means a person who is trained and experienced in the area of mental illness and who is any of the following:

(a) A physician who is licensed to practice allopathic medicine or osteopathic medicine in this state.

(b) A psychologist who has been granted a full or limited license to practice in this state.

(c) A social worker who is registered as a certified social worker in this state.

(d) A registered professional nurse who is licensed to practice nursing in this state and who is a graduate of a state-approved school of nursing.

(6) “Minor” means a person who is less than 18 years of age.

(7) “Net estate” in respect to a decedent’s estate, means the property of a decedent exclusive of homestead allowance, exempt property, family allowance, enforceable claims, and administration expenses against the estate.

(8) “Nonresident decedent” means a decedent who was domiciled outside of this state at the time of his or her death.

(9) “Notice” means notice prescribed by supreme court rule, unless otherwise prescribed by law.

Sec. 427. (1) The petitioner shall give notice of the time and place of hearing of a petition for the appointment of a guardian of a minor to each of the following:

(a) The minor, if 14 years of age or older.

(b) The person who had the principal care and custody of the minor during the 60 days preceding the date of the petition.

(c) Each living parent of the minor or, if neither of them is living, the adult nearest of kin to the minor.

(2) Upon hearing of a petition to appoint a guardian, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 424 or 424a are satisfied, and the minor’s welfare will be served by the requested appointment, the court shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will serve the minor’s welfare.

(3) If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the temporary guardian’s authority shall not exceed 6 months.

(4) If, at any time in the proceeding, the court determines that the minor’s interests are inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the minor, giving consideration to the minor’s preference if the minor is 14 years of age or older. In addition to any other powers and duties, a lawyer-guardian ad litem’s powers and duties include those prescribed in section 427a.

(5) To assist the court in determining a child’s best interests, the court may appoint a guardian ad litem for a child involved in a proceeding under this section.

Sec. 427a. (1) A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act.

(2) In a proceeding in which a lawyer-guardian ad litem represents a child, he or she may file a written report and recommendation. The court may read the report and recommendation. The court shall not, however, admit the report and recommendation into evidence unless all parties stipulate the admission. The parties may make use of the report and recommendation for purposes of a settlement conference.

(3) After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of a lawyer-guardian ad litem against 1 or more of the parties involved in the proceedings or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad litem shall not be paid a fee unless the court first receives and approves the fee.

Sec. 437. (1) A person interested in a ward's welfare or the ward, if 14 or more years of age, may petition for a guardian's removal on the ground that removal would serve the ward's welfare. A guardian may petition for permission to resign. A petition for removal or for permission to resign may include a request for a successor guardian's appointment.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the ward's interests are, or may be, inadequately represented, the court shall appoint a lawyer-guardian ad litem to represent the minor, giving consideration to the minor's preference if the minor is 14 or more years of age.

Enacting section 1. This amendatory act takes effect March 1, 1999.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Mary R. Buehler

Clerk of the House of Representatives.

Approved _____

Governor.