

SENATE BILL NO. 1118

June 30, 2022, Introduced by Senators SCHMIDT, SANTANA, GEISS, POLEHANKI, MOSS, BAYER, BULLOCK, MCMORROW, HOLLIER, HUIZENGA and MACDONALD and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 2519, 5103, 5204, 5206, and 5215 (MCL 700.2519, 700.5103, 700.5204, 700.5206, and 700.5215), section 2519 as amended by 2010 PA 325, section 5103 as amended by 2016 PA 483, section 5204 as amended by 2005 PA 204, and section 5215 as amended by 2020 PA 365.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2519. (1) A will executed in the form prescribed by
2 subsection (2) and otherwise in compliance with the terms of the

1 Michigan statutory will form is a valid will. A person printing and
2 distributing the Michigan statutory will shall print and distribute
3 the form verbatim as it appears in subsection (2). The notice
4 provisions ~~shall~~**must** be printed in 10-point boldfaced type.

5 (2) The form of the Michigan statutory will is as follows:

6 MICHIGAN STATUTORY WILL NOTICE

7 1. An individual age 18 or older who has sufficient mental
8 capacity may make a will.

9 2. There are several kinds of wills. If you choose to complete
10 this form, you will have a Michigan statutory will. If this will
11 does not meet your wishes in any way, you should talk with a lawyer
12 before choosing a Michigan statutory will.

13 3. Warning! It is strongly recommended that you do not add or
14 cross out any words on this form except for filling in the blanks
15 because all or part of this will may not be valid if you do so.

16 4. This will has no effect on jointly held assets, on
17 retirement plan benefits, or on life insurance on your life if you
18 have named a beneficiary who survives you.

19 5. This will is not designed to reduce estate taxes.

20 6. This will treats adopted children and children born outside
21 of wedlock who would inherit if their parent died without a will
22 the same way as children born or conceived during marriage.

23 7. You should keep this will in your safe deposit box or other
24 safe place. By paying a small fee, you may file this will in your
25 county's probate court for safekeeping. You should tell your family
26 where the will is kept.

27 8. You may make and sign a new will at any time. If you marry
28 or divorce after you sign this will, you should make and sign a new
29 will.

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INSTRUCTIONS:

1. To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your presence.

2. Read the entire Michigan statutory will carefully before you begin filling in the blanks. If there is anything you do not understand, you should ask a lawyer to explain it to you.

MICHIGAN STATUTORY WILL OF _____

(Print or type your full name)

ARTICLE 1. DECLARATIONS

This is my will and I revoke any prior wills and codicils. I live in _____ County, Michigan.

My spouse is _____.

(Insert spouse's name or write "none")

My children now living are:

(Insert names or write "none")

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES.

(Optional)

I can leave no more than ~~two (2)~~ **2** cash gifts. I make the following cash gifts to the persons or charities in the amount stated here. Any transfer tax due upon my death shall be paid from the balance of my estate and not from these gifts. Full name and address of person or charity to receive cash gift (name only 1

1 person or charity here):

2 _____

3 (Insert name of person or charity)

4 _____

5 (Insert address)

6 AMOUNT OF GIFT (In figures): \$ _____

7 AMOUNT OF GIFT (In words): _____ Dollars

8 _____

9 (Your signature)

10 Full name and address of person or charity to receive cash gift

11 (Name only 1 person or charity):

12 _____

13 (Insert name of person or charity)

14 _____

15 (Insert address)

16 AMOUNT OF GIFT (In figures): \$ _____

17 AMOUNT OF GIFT (In words): _____ Dollars

18 _____

19 (Your signature)

20 2.2 PERSONAL AND HOUSEHOLD ITEMS.

21 I may leave a separate list or statement, either in my
22 handwriting or signed by me at the end, regarding gifts of specific
23 books, jewelry, clothing, automobiles, furniture, and other
24 personal and household items.

25 I give my spouse all my books, jewelry, clothing, automobiles,
26 furniture, and other personal and household items not included on
27 such a separate list or statement. If I am not married at the time
28 I sign this will or if my spouse dies before me, my personal
29 representative shall distribute those items, as equally as

1 possible, among my children who survive me. If no children survive
2 me, these items shall be distributed as set forth in paragraph 2.3.

3 2.3 ALL OTHER ASSETS.

4 I give everything else I own to my spouse. If I am not married
5 at the time I sign this will or if my spouse dies before me, I give
6 these assets to my children and the descendants of any deceased
7 child. If no spouse, children, or descendants of children survive
8 me, I choose 1 of the following distribution clauses by signing my
9 name on the line after that clause. If I sign on both lines, if I
10 fail to sign on either line, or if I am not now married, these
11 assets will go under distribution clause (b).

12 Distribution clause, if no spouse, children, or descendants of
13 children survive me.

14 (Select only 1)

15 (a) One-half to be distributed to my heirs as if I did not
16 have a will, and one-half to be distributed to my spouse's heirs as
17 if my spouse had died just after me without a will.

18 _____
19 (Your signature)

20 (b) All to be distributed to my heirs as if I did not have a
21 will.

22 _____
23 (Your signature)

24 ARTICLE 3. NOMINATIONS OF PERSONAL
25 REPRESENTATIVE, GUARDIAN, AND CONSERVATOR

26 Personal representatives, guardians, and conservators have a
27 great deal of responsibility. The role of a personal representative
28 is to collect your assets, pay debts and taxes from those assets,
29 and distribute the remaining assets as directed in the will. A

1 guardian is a person who will look after the physical well-being of
2 a child. A conservator is a person who will manage a child's assets
3 and make payments from those assets for the child's benefit. Select
4 them carefully. Also, before you select them, ask them whether they
5 are willing and able to serve.

6 3.1 PERSONAL REPRESENTATIVE.

7 (Name at least 1)

8 I nominate _____

9 (Insert name of person or eligible financial institution)

10 of _____ to serve as personal representative.

11 (Insert address)

12 If my first choice does not serve, I nominate _____

13 _____

14 (Insert name of person or eligible financial institution)

15 of _____ to serve as personal representative.

16 (Insert address)

17 3.2 GUARDIAN AND CONSERVATOR.

18 Your spouse may die before you. Therefore, if you have a child
19 under age 18, name an individual as guardian of the child, and an
20 individual or eligible financial institution as conservator of the
21 child's assets. The guardian and the conservator may, but need not
22 be, the same person.

23 If a guardian or conservator is needed for a child of mine, I
24 nominate _____

25 (Insert name of individual)

26 of _____ as guardian and

27 (Insert address)

28 _____

29 (Insert name of individual or eligible financial institution)

1 of _____ to serve as conservator.

2 (Insert address)

3 If my first choice cannot serve, I nominate

4 _____

5 (Insert name of individual)

6 of _____ as guardian and

7 (Insert address)

8 _____

9 (Insert name of individual or eligible financial institution)

10 of _____ to serve as conservator.

11 (Insert address)

12 3.3 BOND.

13 A bond is a form of insurance in case your personal
14 representative or a conservator performs improperly and jeopardizes
15 your assets. A bond is not required. You may choose whether you
16 wish to require your personal representative and any conservator to
17 serve with or without bond. Bond premiums would be paid out of your
18 assets. (Select only 1)

19 (a) My personal representative and any conservator I have
20 named shall serve with bond.

21 _____

22 (Your signature)

23 (b) My personal representative and any conservator I have
24 named shall serve without bond.

25 _____

26 (Your signature)

27 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

28 Definitions and additional clauses found at the end of this

29

1 form are part of this will.

2 I sign my name to this Michigan statutory will on

3 _____ , 20____.

4 _____

5 (Your signature)

6 NOTICE REGARDING WITNESSES

7 You must use 2 adults as witnesses. It is preferable to have 3
8 adult witnesses. All the witnesses must observe you sign the will,
9 have you tell them you signed the will, or have you tell them the
10 will was signed at your direction in your presence.

11 STATEMENT OF WITNESSES

12 We sign below as witnesses, declaring that the individual who
13 is making this will appears to have sufficient mental capacity to
14 make this will and appears to be making this will freely, without
15 duress, fraud, or undue influence, and that the individual making
16 this will acknowledges that he or she has read the will, or has had
17 it read to him or her, and understands the contents of this will.

18 _____

19 (Print Name)

20 _____

21 (Signature of witness)

22 _____

23 (Address)

24 _____

25 (City) (State) (Zip)

26 _____

27 (Print name)

28 _____

29 (Signature of witness)

1 _____
2 (Address)

3 _____
4 (City) (State) (Zip)

5 _____
6 (Print name)

7 _____
8 (Signature of witness)

9 _____
10 (Address)

11 _____
12 (City) (State) (Zip)

13 DEFINITIONS

14 The following definitions and rules of construction apply to
15 this Michigan statutory will:

16 (a) "Assets" means all types of property you can own, such as
17 real estate, stocks and bonds, bank accounts, business interests,
18 furniture, and automobiles.

19 (b) "Descendants" means your children, grandchildren, and
20 their descendants.

21 (c) "Descendants" or "children" includes individuals born or
22 conceived during marriage, individuals legally adopted, and
23 individuals born out of wedlock who would inherit if their parent
24 died without a will.

25 (d) "Jointly held assets" means those assets to which
26 ownership is transferred automatically upon the death of 1 of the
27 owners to the remaining owner or owners.

28 (e) "Spouse" means your husband or wife at the time you sign
29 this will.

1 (f) Whenever a distribution under a Michigan statutory will is
 2 to be made to an individual's descendants, the assets are to be
 3 divided into as many equal shares as there are then living
 4 descendants of the nearest degree of living descendants and
 5 deceased descendants of that same degree who leave living
 6 descendants. Each living descendant of the nearest degree ~~shall~~
 7 **will** receive 1 share. The remaining shares, if any, are combined
 8 and then divided in the same manner among the surviving descendants
 9 of the deceased descendants as if the surviving descendants who
 10 were allocated a share and their surviving descendants had
 11 predeceased the descendant. In this manner, all descendants who are
 12 in the same generation will take an equal share.

13 (g) "Heirs" means those persons who would have received your
 14 assets if you had died without a will, domiciled in Michigan, under
 15 the laws that are then in effect.

16 (h) "Person" includes individuals and institutions.

17 (i) Plural and singular words include each other, where
 18 appropriate.

19 (j) If a Michigan statutory will states that a person shall
 20 perform an act, the person is required to perform that act. If a
 21 Michigan statutory will states that a person may do an act, the
 22 person's decision to do or not to do the act ~~shall~~**must** be made in
 23 ~~good faith~~**good-faith** exercise of the person's powers.

24 ADDITIONAL CLAUSES

25 Powers of personal representative

26 1. A personal representative has all powers of administration
 27 given by Michigan law to personal representatives and, to the
 28 extent ~~funds are~~**money is** not needed to meet debts and expenses
 29 currently payable and are not immediately distributable, the power

1 to invest and reinvest the estate from time to time in accordance
 2 with the Michigan prudent investor rule. In dividing and
 3 distributing the estate, the personal representative may distribute
 4 partially or totally in kind, may determine the value of
 5 distributions in kind without reference to income tax bases, and
 6 may make non-pro rata distributions.

7 2. The personal representative may distribute estate assets
 8 otherwise distributable to a minor beneficiary to the minor's
 9 conservator or, in amounts not exceeding \$5,000.00 per year, either
 10 to the minor, if married **before the effective date of the 2022**
 11 **amendatory act that amended this sentence;** to a parent or another
 12 adult with whom the minor resides and who has the care, custody, or
 13 control of the minor; or to the guardian. The personal
 14 representative is free of liability and is discharged from further
 15 accountability for distributing assets in compliance with ~~the~~
 16 ~~provisions of~~ this paragraph.

17 POWERS OF GUARDIAN AND CONSERVATOR

18 A guardian named in this will has the same authority with
 19 respect to the child as a parent having legal custody would have. A
 20 conservator named in this will has all of the powers conferred by
 21 law.

22 Sec. 5103. (1) By a properly executed power of attorney, a
 23 parent or guardian of a minor or a guardian of a legally
 24 incapacitated individual may delegate to another person, for a
 25 period not exceeding 180 days, any of the parent's or guardian's
 26 powers regarding care, custody, or property of the minor child or
 27 ward, except the power to consent to ~~marriage or~~ adoption of a
 28 minor ward or to release of a minor ward for adoption.

29 (2) A parent shall not knowingly and intentionally delegate

1 his or her powers under this section regarding care and custody of
 2 the parent's minor child for longer than 180 days for the purpose
 3 of permanently transferring custody of the child in violation of
 4 section 136c(3) of the Michigan penal code, 1931 PA 328, MCL
 5 750.136c.

6 (3) If a parent or guardian is serving in the armed forces of
 7 the United States and is deployed to a foreign nation, and if the
 8 power of attorney so provides, a delegation under this section is
 9 effective until the thirty-first day after the end of the
 10 deployment.

11 (4) If a guardian for a minor or legally incapacitated
 12 individual delegates any power under this section, the guardian
 13 shall notify the court within 7 days after execution of the power
 14 of attorney and provide the court the name, address, and telephone
 15 number of the attorney-in-fact.

16 Sec. 5204. (1) A person interested in the welfare of a minor,
 17 or a minor if 14 years of age or older, may petition for the
 18 appointment of a guardian for the minor. The court may order the
 19 ~~family independence agency~~ **department of health and human services**
 20 or a court employee or agent to conduct an investigation of the
 21 proposed guardianship and file a written report of the
 22 investigation.

23 (2) The court may appoint a guardian for ~~an unmarried~~ a minor
 24 if any of the following circumstances exist:

25 (a) The parental rights of both parents or the surviving
 26 parent are terminated or suspended by prior court order, by
 27 judgment of divorce or separate maintenance, by death, by judicial
 28 determination of mental incompetency, by disappearance, or by
 29 confinement in a place of detention.

1 (b) The parent or parents permit the minor to reside with
2 another person and do not provide the other person with legal
3 authority for the minor's care and maintenance, and the minor is
4 not residing with his or her parent or parents when the petition is
5 filed.

6 (c) All of the following:

7 (i) The minor's biological parents have never been married to
8 one another.

9 (ii) The minor's parent who has custody of the minor dies or is
10 missing and the other parent has not been granted legal custody
11 under court order.

12 (iii) The person whom the petition asks to be appointed guardian
13 is related to the minor within the fifth degree by marriage, blood,
14 or adoption.

15 (3) A minor's limited guardian may petition to be appointed a
16 guardian for that minor, except that the petition ~~shall~~**must** not be
17 based ~~upon~~**on** suspension of parental rights by the order that
18 appointed that person the limited guardian for that minor.

19 (4) A guardian appointed under section 5202 whose appointment
20 is not prevented or nullified under section 5203 has priority over
21 a guardian who may be appointed by the court. The court may proceed
22 with an appointment ~~upon~~**on** a finding that a guardian appointed in
23 a manner described in section 5202 has failed to accept the
24 appointment within 28 days after the notice of the guardianship
25 proceeding.

26 (5) For the minor ward's welfare, the court may at any time
27 order the minor ward's parents to pay reasonable support and order
28 reasonable parenting time and contact of the minor ward with his or
29 her parents.

1 Sec. 5206. (1) The court shall review a proposed limited
2 guardianship placement plan filed with the court under section 5205
3 and shall do 1 of the following:

4 (a) Approve the proposed plan.

5 (b) Disapprove the proposed plan.

6 (c) On its own motion, modify a proposed plan and approve it
7 as modified, if the parties agree to the modification. The modified
8 plan ~~shall~~**must** be filed with the court.

9 (2) A limited guardianship placement plan that has been
10 approved by the court may be modified ~~upon~~**on** agreement of the
11 parties and approval of the court. A modified limited guardianship
12 placement plan ~~shall~~**must** be filed with the court.

13 (3) The voluntary suspension of parental rights under section
14 5205 does not prevent the parent or parents from filing a petition
15 to terminate the limited guardianship at any time as provided in
16 section 5208. Appointment of a limited guardian under this section
17 is a continuing appointment.

18 (4) A limited guardian appointed under this section has all of
19 the powers and duties enumerated in section 5215 except that a
20 minor's limited guardian shall not consent to ~~marriage or~~ adoption
21 of the minor ward or to the release of the minor ward for adoption.

22 Sec. 5215. A minor's guardian has the powers and
23 responsibilities of a parent who is not deprived of custody of the
24 parent's minor and unemancipated child, except that a guardian is
25 not legally obligated to provide for the ward from the guardian's
26 own money and is not liable to third persons because of the
27 parental relationship for the ward's acts. A guardian has all of
28 the following powers and duties:

29 (a) The guardian shall take reasonable care of a ward's

1 personal effects and commence a protective proceeding if necessary
2 to protect the ward's other property. If a guardian commences a
3 protective proceeding because the guardian believes that it is in
4 the ward's best interest to sell or otherwise dispose of the ward's
5 real property or interest in real property, the court may appoint
6 the guardian as special conservator and authorize the special
7 conservator to proceed under section 5423(3). A guardian shall not
8 otherwise sell the ward's real property or interest in real
9 property.

10 (b) The guardian may receive money payable for the ward's
11 support to the ward's parent, guardian, or custodian under the
12 terms of a statutory benefit or insurance system, or a private
13 contract, devise, trust, conservatorship, or custodianship. The
14 guardian may receive the ward's money or property paid or delivered
15 under section 5102. Money or property received under section 5102
16 must be applied to the ward's current needs for support, care, and
17 education. The guardian shall exercise due care to conserve any
18 excess for the ward's future needs unless a conservator is
19 appointed for the ward's estate, in which case the excess must be
20 paid over at least annually to the conservator. The guardian shall
21 not use that money or property for compensation for the guardian's
22 services except as approved by court order or as determined by an
23 appointed conservator other than the guardian. A guardian may
24 institute a proceeding to compel a person's performance of a duty
25 to support the ward or to pay money for the ward's welfare.

26 (c) The guardian shall facilitate the ward's education and
27 social or other activities, and shall authorize medical or other
28 professional care, treatment, or advice. A guardian is not liable
29 because of this consent for injury to the ward resulting from the

1 negligence or acts of third persons unless it would be illegal for
2 a parent to have consented.

3 ~~(d) A guardian may consent to a minor ward's marriage.~~

4 **(d)** ~~(e)~~ Subject to the conditions and restrictions of chapter
5 X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, a
6 guardian may consent to ~~marriage or~~ adoption of a minor ward or to
7 the release of a minor ward for adoption.

8 **(e)** ~~(f)~~ A guardian must report the condition of the ward and
9 of the ward's estate that is subject to the guardian's possession
10 or control as ordered by the court on petition of a person
11 interested in the minor's welfare or as required by court rule. The
12 report must detail the condition of the ward, medical or mental
13 health treatment or care to which the ward was subjected, and what
14 reason, if any, exists for the continuation of the guardianship.

15 **(f)** ~~(g)~~ Within 14 days after a change in the ward's place of
16 residence, the guardian shall give to the court notice of the
17 ward's new address.

18 **(g)** ~~(h)~~ A guardian may execute a do-not-resuscitate order on
19 behalf of the ward as provided in section 3a of the Michigan do-
20 not-resuscitate procedure act, 1996 PA 193, MCL 333.1053a.

21 Enacting section 1. This amendatory act does not take effect
22 unless Senate Bill No. 1114 of the 101st Legislature is enacted
23 into law.