

**SUBSTITUTE FOR
HOUSE BILL NO. 5366**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5407 and 5415 (MCL 700.5407 and 700.5415),
section 5407 as amended by 2009 PA 46, and by adding section 5423a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5407. (1) The court shall exercise the authority
2 conferred in this part to encourage the development of maximum
3 self-reliance and independence of a protected individual and shall
4 make protective orders only to the extent necessitated by the
5 protected individual's mental and adaptive limitations and other
6 conditions warranting the procedure. Accordingly, the court may
7 authorize a protected individual to function without the consent or
8 supervision of the individual's conservator in handling part of his

1 or her money or property, including authorizing the individual to
2 maintain an account with a financial institution. To the extent the
3 individual is authorized to function autonomously, a person may
4 deal with the individual as though the individual is mentally
5 competent.

6 (2) The court has the following powers that may be exercised
7 directly or through a conservator in respect to a protected
8 individual's estate and business affairs:

9 (a) While a petition for a conservator's appointment or
10 another protective order is pending and after preliminary hearing
11 and without notice to others, the court has the power to preserve
12 and apply property of the individual to be protected as may be
13 required for the support of the individual or the individual's
14 dependents.

15 (b) After hearing and upon determining that a basis for an
16 appointment or other protective order exists with respect to a
17 minor without other disability, the court has all those powers over
18 the minor's estate and business affairs that are or may be
19 necessary for the best interests of the minor and members of the
20 minor's immediate family.

21 (c) After hearing and upon determining that a basis for an
22 appointment or other protective order exists with respect to an
23 individual for a reason other than minority, the court, for the
24 benefit of the individual and members of the individual's immediate
25 family, has all the powers over the estate and business affairs
26 that the individual could exercise if present and not under
27 disability, except the power to make a will. Those powers include,

1 but are not limited to, all of the following:

2 (i) To make gifts.

3 (ii) To convey or release a contingent or expectant interest in
4 property including marital property rights and a right of
5 survivorship incident to joint tenancy or tenancy by the entirety.

6 (iii) To exercise or release a power held by the protected
7 individual as personal representative, custodian for a minor,
8 conservator, or donee of a power of appointment.

9 (iv) To enter into a contract.

10 (v) To create a revocable or irrevocable trust of estate
11 property that may extend beyond the disability or life of the
12 protected individual.

13 (vi) To exercise an option of the protected individual to
14 purchase securities or other property.

15 (vii) To exercise a right to elect an option and change a
16 beneficiary under an insurance or annuity policy and to surrender
17 the policy for its cash value.

18 (viii) To exercise a right to an elective share in the estate of
19 the individual's deceased spouse.

20 (ix) To renounce or disclaim an interest by testate or
21 intestate succession or by inter vivos transfer.

22 (x) **SUBJECT TO STATE AND FEDERAL LAW, INCLUDING COPYRIGHT LAW,
23 AND THE APPLICABLE TERMS-OF-SERVICE AGREEMENT:**

24 **(A) TO EXERCISE CONTROL OVER DIGITAL PROPERTY OF THE PROTECTED
25 INDIVIDUAL.**

26 **(B) TO EXERCISE A RIGHT IN DIGITAL PROPERTY OF THE PROTECTED
27 INDIVIDUAL.**

**(C) TO CHANGE A GOVERNING INSTRUMENT AFFECTING THE DIGITAL
PROPERTY OF THE PROTECTED INDIVIDUAL.**

(3) The court may exercise or direct the exercise of the following powers only if satisfied, after the notice and hearing, that it is in the protected individual's best interests and that the individual either is incapable of consenting or has consented to the proposed exercise of the power:

(a) To exercise or release a power of appointment of which the protected individual is donee.

(b) To renounce or disclaim an interest.

(c) To make a gift in trust or otherwise exceeding 20% of a year's income of the estate.

(d) To change a beneficiary under an insurance and annuity policy.

(4) A determination that a basis for a conservator's appointment or another protective order exists has no effect on the protected individual's capacity.

**(5) TO THE EXTENT ORDERED BY THE COURT UNDER SUBSECTION (2),
AND SUBJECT TO STATE AND FEDERAL LAW, INCLUDING COPYRIGHT LAW, AND
THE APPLICABLE LAW AND TERMS-OF-SERVICE AGREEMENT, WITH RESPECT TO
THE PROTECTED INDIVIDUAL'S DIGITAL PROPERTY, A CONSERVATOR HAS THE
LAWFUL CONSENT OF THE PROTECTED INDIVIDUAL AND IS AN AUTHORIZED
USER UNDER ALL APPLICABLE STATE AND FEDERAL STATUTES.**

Sec. 5415. (1) A person interested in the welfare of an individual for whom a conservator is appointed may file a petition in the appointing court for an order to do any of the following:

(a) Require bond or security or additional bond or security,

1 or reduce bond.

2 (b) Require an accounting for the administration of the trust.

3 (c) Direct distribution.

4 (d) Remove the conservator and appoint a temporary or
5 successor conservator.

6 (E) LIMIT OR ELIMINATE THE CONSERVATOR'S POWER OVER DIGITAL
7 PROPERTY.

8 (F) ~~(e)~~ Grant other appropriate relief.

9 (2) ON RECEIPT OF A PETITION UNDER SUBSECTION (1)(E), THE
10 COURT SHALL SET A DATE FOR A HEARING ON THE PETITION. THE HEARING
11 DATE SHALL BE NOT LESS THAN 14 DAYS AND NOT MORE THAN 56 DAYS AFTER
12 THE DATE THE PETITION IS FILED.

13 (3) ~~(2)~~ A conservator may petition the appointing court for
14 instructions concerning fiduciary responsibility. Upon notice and
15 hearing, the court may give appropriate instructions or make an
16 appropriate order.

17 SEC. 5423A. (1) ON RECEIPT OF A CONSERVATOR'S WRITTEN REQUEST
18 UNDER THIS SUBSECTION FOR ACCESS TO DIGITAL PROPERTY, OWNERSHIP OF
19 DIGITAL PROPERTY, OR A COPY OF A DIGITAL ASSET, A DIGITAL CUSTODIAN
20 SHALL PROVIDE THE CONSERVATOR WITH THE REQUESTED ACCESS, OWNERSHIP,
21 OR COPY, AS APPLICABLE. A CONSERVATOR'S WRITTEN REQUEST UNDER THIS
22 SUBSECTION MUST BE ACCOMPANIED BY A CERTIFIED COPY OF THE COURT
23 ORDER THAT GIVES THE CONSERVATOR POWER OVER THE DIGITAL PROPERTY.

24 (2) A DIGITAL CUSTODIAN SHALL COMPLY NOT LATER THAN 56 DAYS
25 AFTER RECEIPT OF A REQUEST MADE UNDER SUBSECTION (1). IF, NOT LATER
26 THAN 56 DAYS AFTER RECEIVING A REQUEST MADE UNDER SUBSECTION (1),
27 THE DIGITAL CUSTODIAN FAILS TO COMPLY WITH THE REQUEST OR ORDER,

1 THE CONSERVATOR MAY PETITION THE COURT FOR AN ORDER DIRECTING
2 COMPLIANCE.

3 (3) A DIGITAL CUSTODIAN IS NOT LIABLE FOR AN ACTION DONE IN
4 COMPLIANCE WITH THIS SECTION.

5 Enacting section 1. This amendatory act does not take effect
6 unless all of the following bills of the 97th Legislature are
7 enacted into law:

8 (a) House Bill No. 5367.

9 (b) House Bill No. 5368.

10 (c) House Bill No. 5369.

11 (d) House Bill No. 5370.