

# HOUSE BILL No. 5492

February 6, 1992, Introduced by Reps. Perry Bullard, Gubow, Gire, Bennett, Dobronski, Yokich, Bennane, Power, Randall, Emerson, Joe Young, Jr., Bender, Kosteva, Gilmer, Dolan, Profit, Barns, Anthony, Wozniak, Olshove and Bobier and referred to the Committee on Judiciary.

A bill to amend Act No. 642 of the Public Acts of 1978,  
entitled as amended

"Revised probate code,"

as amended, being sections 700.1 to 700.993 of the Michigan  
Compiled Laws, by adding sections 495a, 495b, and 495c.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Act No. 642 of the Public Acts of 1978, as  
2 amended, being sections 700.1 to 700.993 of the Michigan Compiled  
3 Laws, is amended by adding sections 495a, 495b, and 495c to read  
4 as follows:

5       SEC. 495A. A DURABLE POWER OF ATTORNEY THAT IS EXECUTED IN  
6 THE FORM PRESCRIBED BY SECTION 495C AND THAT IS OTHERWISE IN COM-  
7 PLIANCE WITH THE TERMS OF THE STATUTORY DURABLE POWER OF ATTORNEY  
8 FORM IS A VALID DURABLE POWER OF ATTORNEY.

1        SEC. 495B. PERSONS PRINTING AND DISTRIBUTING THE STATUTORY  
2 DURABLE POWER OF ATTORNEY SHALL PRINT AND DISTRIBUTE THE FORM  
3 VERBATIM AS IT APPEARS IN SECTION 495C. THE NOTICE PROVISIONS  
4 SHALL BE PRINTED IN NOT LESS THAN 10-POINT BOLDFACE TYPE.

5        SEC. 495C. THE FOLLOWING FORM IS LEGALLY SUFFICIENT AS A  
6 STATUTORY DURABLE POWER OF ATTORNEY:

7                                **STATUTORY DURABLE POWER OF ATTORNEY**

8    **NOTICE**

9        1. IF YOU ARE AGE 18 OR OLDER AND OF SOUND MIND, YOU MAY VOL-  
10 UNTARILY SIGN A STATUTORY DURABLE POWER OF ATTORNEY.

11       2. THE DECISION WHETHER TO HAVE A STATUTORY DURABLE POWER OF  
12 ATTORNEY IS YOURS ALONE.

13       3. THE PURPOSE OF A STATUTORY DURABLE POWER OF ATTORNEY IS TO  
14 CHOOSE ANOTHER INDIVIDUAL, CALLED AN ATTORNEY-IN-FACT, TO MAKE  
15 FINANCIAL DECISIONS FOR YOU WHEN YOU ARE NO LONGER ABLE TO MAKE  
16 THEM FOR YOURSELF.

17       4. A STATUTORY DURABLE POWER OF ATTORNEY ONLY TAKES EFFECT  
18 WHEN YOU ARE NO LONGER ABLE TO PARTICIPATE IN FINANCIAL DECI-  
19 SIONS, AND ONLY AFFECTS YOUR PROPERTY AND FINANCIAL AFFAIRS.

20       5. THERE ARE OTHER TYPES OF POWER OF ATTORNEY.

1 6. YOUR ATTORNEY-IN-FACT UNDER A STATUTORY DURABLE POWER OF  
2 ATTORNEY WILL NOT BE ABLE TO MAKE HEALTH CARE DECISIONS FOR  
3 YOU. TO GIVE ANOTHER INDIVIDUAL THAT POWER, YOU CAN SIGN A  
4 SEPARATE DOCUMENT, KNOWN AS EITHER A DURABLE POWER OF ATTORNEY  
5 FOR HEALTH CARE OR A PATIENT ADVOCATE DESIGNATION.

6 7. THIS DOCUMENT WILL HAVE NO EFFECT AFTER YOUR DEATH.

7 8. WARNING! BY SIGNING A STATUTORY DURABLE POWER OF ATTORNEY,  
8 YOU ARE GIVING ANOTHER PERSON BROAD POWERS TO DEAL WITH YOUR  
9 PROPERTY AND FINANCIAL AFFAIRS. CHOOSE THAT PERSON WISELY.

10 9. IF YOU CHANGE YOUR MIND LATER, YOU MAY REVOKE THIS STATU-  
11 TORY DURABLE POWER OF ATTORNEY.

12 **INSTRUCTIONS**

13 1. TO HAVE A STATUTORY DURABLE POWER OF ATTORNEY, YOU MUST  
14 COMPLETE THIS FORM.

15 2. READ THE ENTIRE STATUTORY DURABLE POWER OF ATTORNEY FORM  
16 CAREFULLY BEFORE YOU BEGIN FILLING IN THE BLANKS. IF THERE IS  
17 ANYTHING YOU DO NOT UNDERSTAND, SEEK AN EXPLANATION BEFORE  
18 PROCEEDING.

19 3. YOU MAY CHOOSE 1 INDIVIDUAL TO BE YOUR ATTORNEY-IN-FACT,  
20 AND A SECOND INDIVIDUAL TO BE YOUR ATTORNEY-IN-FACT IF THE  
21 FIRST PERSON CANNOT SERVE WHEN THE TIME COMES.

1 4. YOU MAY GIVE YOUR ATTORNEY-IN-FACT CONTROL OVER ALL YOUR  
2 PROPERTY AND FINANCIAL AFFAIRS, OR YOU MAY SPECIFY PROPERTY IN  
3 ARTICLE 3 OVER WHICH YOUR ATTORNEY-IN-FACT WILL HAVE NO  
4 CONTROL.

5 5. UNDER ARTICLE 4, YOU MAY PROVIDE SPECIAL INSTRUCTIONS TO  
6 YOUR ATTORNEY-IN-FACT ON HOW HE OR SHE IS TO DEAL WITH YOUR  
7 PROPERTY, AND WHETHER YOU WANT AN ANNUAL ACCOUNTING DONE.

8 6. YOU MAY CHOOSE AN INDIVIDUAL TO DETERMINE WHEN YOU ARE NO  
9 LONGER ABLE TO PARTICIPATE IN FINANCIAL DECISIONS, EXCEPT YOU  
10 MAY NOT CHOOSE THE SAME INDIVIDUAL WHO IS TO SERVE AS YOUR  
11 ATTORNEY-IN-FACT. IF YOU DO NOT DESIGNATE A PARTICULAR INDI-  
12 VIDUAL, YOU AUTHORIZE ANY MEDICAL DOCTOR TO MAKE THIS  
13 DETERMINATION.

14 7. YOU MUST SIGN THE FORM OR HAVE ANOTHER INDIVIDUAL SIGN IT  
15 IN YOUR NAME AND IN YOUR PRESENCE. THE FORM ALSO MUST BE  
16 SIGNED BY A NOTARY PUBLIC, AND BY 2 WITNESSES. THE WITNESSES  
17 MUST BE INDIVIDUALS OTHER THAN THOSE YOU HAVE CHOSEN AS YOUR  
18 ATTORNEY-IN-FACT AND SUCCESSOR ATTORNEY-IN-FACT.

19 8. YOUR ATTORNEY-IN-FACT CANNOT EXERCISE HIS OR HER POWERS  
20 UNTIL ARTICLE 8, LABELED "CERTIFICATION," IS SIGNED.

**STATUTORY DURABLE POWER OF**

\_\_\_\_\_  
(PRINT OR TYPE YOUR FULL NAME)

I LIVE AT \_\_\_\_\_  
(INSERT YOUR ADDRESS)

**ARTICLE 1 - APPOINTMENT**

I APPOINT \_\_\_\_\_  
(INSERT FULL NAME OF PERSON YOU ARE APPOINTING)

OF \_\_\_\_\_  
(INSERT ADDRESS OF ATTORNEY-IN-FACT)

AS MY ATTORNEY-IN-FACT. IF HE OR SHE IS UNABLE TO ACT WHEN THE  
TIME COMES, I APPOINT

\_\_\_\_\_  
(INSERT FULL NAME OF SUCCESSOR ATTORNEY-IN-FACT)

OF \_\_\_\_\_  
(INSERT ADDRESS OF SUCCESSOR)

AS MY ATTORNEY IN FACT.

**ARTICLE 2 - DETERMINATION**

MY ATTORNEY-IN-FACT SHALL ONLY HAVE POWER TO MAKE DECISIONS  
IN MY BEHALF WHEN I AM NO LONGER ABLE TO PARTICIPATE IN FINANCIAL  
DECISIONS. I WISH THE DETERMINATION THAT I AM NO LONGER ABLE TO  
PARTICIPATE IN FINANCIAL DECISIONS TO BE MADE BY

\_\_\_\_\_  
(INSERT FULL NAME OF PERSON TO MAKE DETERMINATION)

OF \_\_\_\_\_  
(INSERT ADDRESS)

**ARTICLE 3 - PROPERTY AFFECTED**

MY ATTORNEY-IN-FACT SHALL HAVE POWER TO ACT OVER ALL MY  
PROPERTY AND FINANCIAL AFFAIRS, EXCEPT AS LIMITED BELOW.

(INDICATE BY AN ADEQUATE DESCRIPTION ANY ASSET OR ASSETS YOU DO  
NOT WANT YOUR ATTORNEY-IN-FACT TO CONTROL.) \_\_\_\_\_

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_

9 **ARTICLE 4 - POWERS**

10 IN EXERCISING POWERS UNDER THIS DOCUMENT, MY  
11 ATTORNEY-IN-FACT SHALL FOLLOW ANY SPECIAL INSTRUCTIONS IN THIS  
12 DOCUMENT AND ANY OTHER OF MY WISHES OF WHICH HE OR SHE IS AWARE.  
13 MY ATTORNEY-IN-FACT SHALL RESPECT MY ESTATE PLAN AND MAKE DECI-  
14 SIONS THAT DISRUPT MY ESTATE PLAN ONLY WHEN NECESSARY TO PROVIDE  
15 FOR MY NEEDS OR THOSE OF MY DEPENDENTS.

16 SPECIAL INSTRUCTIONS: \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_

25 **ARTICLE 5 - THIRD PARTIES**

26 ANY THIRD PARTY WHO RECEIVES A COPY OF THIS DOCUMENT WITH  
27 THE CERTIFICATION SECTION COMPLETED MAY RELY UPON IT. I AGREE TO

1 BE BOUND BY ANY ACTION OF MY ATTORNEY-IN-FACT IN COMPLIANCE WITH  
 2 THIS DOCUMENT AND THIS ACT. REVOCATION OF THIS DOCUMENT IS NOT  
 3 EFFECTIVE AS TO A THIRD PARTY UNTIL THE THIRD PARTY LEARNS OF THE  
 4 REVOCATION.

5 **ARTICLE 6 - SIGNATURE AND ACKNOWLEDGMENT**

6 I SIGN MY NAME TO THIS STATUTORY DURABLE POWER OF ATTORNEY  
 7 ON \_\_\_\_\_  
 8 (INSERT DATE) (YOUR SIGNATURE)

9 THIS DOCUMENT WAS ACKNOWLEDGED BEFORE ME ON \_\_\_\_\_  
 10 (INSERT DATE)

11 BY \_\_\_\_\_  
 12 (INSERT NAME OF PRINCIPAL)

13 \_\_\_\_\_  
 14 (SIGNATURE OF NOTARY)

15 MY COMMISSION EXPIRES: \_\_\_\_\_

16 **ARTICLE 7 - WITNESSES**

17 (YOU MUST HAVE 2 ADULT WITNESSES WHO ARE NOT THE INDIVIDUALS  
 18 YOU HAVE APPOINTED AS YOUR ATTORNEY-IN-FACT OR SUCCESSOR  
 19 ATTORNEY-IN-FACT.)

20 WE SIGN BELOW AS WITNESSES, DECLARING THAT THE PERSON WHO IS  
 21 MAKING THIS STATUTORY DURABLE POWER OF ATTORNEY APPEARS TO BE OF  
 22 SOUND MIND AND APPEARS TO BE MAKING THIS STATUTORY DURABLE POWER  
 23 OF ATTORNEY FREELY AND WITHOUT DURESS, FRAUD, OR UNDUE  
 24 INFLUENCE.

25 \_\_\_\_\_  
 26 (PRINT NAME) (SIGNATURE OF WITNESS)

27 \_\_\_\_\_  
 28 (INSERT ADDRESS OF WITNESS)

1 \_\_\_\_\_  
 2 (PRINT NAME) (SIGNATURE OF WITNESS)

3 \_\_\_\_\_  
 4 (INSERT ADDRESS OF WITNESS)

5 **ARTICLE 8 - CERTIFICATION**

6 IT IS MY DETERMINATION THAT \_\_\_\_\_ IS  
 7 (INSERT NAME OF PRINCIPAL)

8 NOT ABLE TO PARTICIPATE IN FINANCIAL DECISIONS.

9 \_\_\_\_\_  
 10 (PRINT NAME) (SIGNATURE)

11 \_\_\_\_\_  
 12 (INSERT DATE) (INSERT ADDRESS)

13 **ARTICLE 9 - ADDITIONAL CLAUSES**

14 1. AN ATTORNEY-IN-FACT APPOINTED UNDER THIS DOCUMENT IS A  
 15 FIDUCIARY, AND IS BOUND BY ANY INSTRUCTIONS OF THE PRINCIPAL OF  
 16 WHICH THE ATTORNEY-IN-FACT IS AWARE.

17 2. EXCEPT AS LIMITED BY ARTICLES 3 AND 4, AN ATTORNEY-IN-FACT  
 18 UNDER THIS DOCUMENT SHALL HAVE ALL THE POWERS A TRUSTEE MAY  
 19 HAVE UNDER ARTICLE 8 OF THE REVISED PROBATE CODE, ACT NO. 642  
 20 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 700.801 TO 700.835  
 21 OF THE MICHIGAN COMPILED LAWS.

22 3. NO PERSON SHALL USE DURESS, FRAUD, OR UNDUE INFLUENCE TO  
 23 HAVE AN INDIVIDUAL EXECUTE THIS DOCUMENT, OR TO HAVE A PARTICU-  
 24 LAR INDIVIDUAL APPOINTED AS AN ATTORNEY-IN-FACT.

25 4. IF A DISPUTE ARISES AS TO THE VALIDITY OF THIS DOCUMENT, OR  
 26 AS TO WHETHER AN ATTORNEY-IN-FACT IS BREACHING HIS OR HER



1 FIDUCIARY DUTY, AN INTERESTED PARTY MAY PETITION THE PROBATE  
2 COURT FOR A CONSERVATORSHIP, A PROTECTIVE ORDER, OR OTHER COURT  
3 ORDER.