

# HOUSE BILL No. 5783

April 29, 1992, Introduced by Reps. Hertel and Gubow and referred to the Committee on Judiciary.

A bill to amend sections 424a and 431 of Act No. 642 of the Public Acts of 1978, entitled as amended

"Revised probate code,"

section 424a as amended by Act No. 313 of the Public Acts of 1990 and section 431 as amended by Act No. 377 of the Public Acts of 1984, being sections 700.424a and 700.431 of the Michigan Compiled Laws; and to add sections 432 and 455a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 424a and 431 of Act No. 642 of the  
2 Public Acts of 1978, section 424a as amended by Act No. 313 of  
3 the Public Acts of 1990 and section 431 as amended by Act No. 377  
4 of the Public Acts of 1984, being sections 700.424a and 700.431  
5 of the Michigan Compiled Laws, are amended and sections 432 and  
6 455a are added to read as follows:

1       Sec. 424a. (1) Beginning on the effective date of the  
2 amendatory act that added section 424b, the court may appoint a  
3 limited guardian for an unmarried minor under this section upon  
4 the petition of the parent or parents if all of the following  
5 requirements are met:

6       (a) The parents with custody of the minor consent or, in the  
7 case of only 1 parent having custody of the minor, the sole  
8 parent consents to the appointment of a limited guardian.

9       (b) The parent or parents voluntarily consent to the suspen-  
10 sion of their parental rights.

11       (c) The court approves a limited guardianship placement plan  
12 agreed to by both of the following parties:

13       (i) The parents with custody of the minor or, in the case of  
14 only 1 parent having custody of the minor, the sole parent who  
15 has custody of the minor.

16       (ii) The person or persons who the court will appoint as  
17 limited guardian of the minor.

18       (2) The parent or parents of a minor who desire to have the  
19 court appoint a limited guardian for that minor and the person or  
20 persons who desire to be appointed limited guardian for that  
21 minor shall develop a limited guardianship placement plan. The  
22 parties shall use a limited guardianship placement plan form pre-  
23 scribed by the state court administrator. A limited guardianship  
24 placement plan form shall include a notice that informs a parent  
25 who is a party to the plan that substantial failure to comply  
26 with the plan without good cause may result in the termination of  
27 the parent's parental rights pursuant to chapter XIIIA of Act

1 No. 288 of the Public Acts of 1939, being sections 712A.1 to  
2 712A.28 of the Michigan Compiled Laws. The proposed limited  
3 guardianship placement plan shall be attached to the petition  
4 requesting the court to appoint a limited guardian. The limited  
5 guardianship placement plan shall include provisions concerning  
6 all of the following:

7 (a) The reason why the parent or parents are requesting the  
8 court to appoint a limited guardian for the minor.

9 (b) Visitation and contact with the minor by his or her  
10 parent or parents sufficient to maintain a parent and child  
11 relationship.

12 (c) The duration of the limited guardianship.

13 (d) Financial support for the minor.

14 (e) Any other provisions that the parties agree to include  
15 in the plan.

16 (3) The court shall review a proposed limited guardianship  
17 placement plan filed with the court pursuant to this section and  
18 shall do 1 of the following:

19 (a) Approve the proposed plan.

20 (b) Disapprove the proposed plan.

21 (c) On its own motion, modify a proposed plan and approve it  
22 as modified, if the parties agree to the modification. The modi-  
23 fied plan shall be filed with the court.

24 (4) A limited guardianship placement plan that has been  
25 approved by the court may be modified upon agreement of the par-  
26 ties and approval of the court. A modified limited guardianship  
27 placement plan shall be filed with the court.

1       (5) The suspension of parental rights under this section  
2 does not prevent the parent or parents from filing a petition to  
3 terminate the limited guardianship at any time pursuant to sec-  
4 tion 424c. Appointment of a limited guardian under this section  
5 shall be a continuing appointment.

6       (6) A limited guardian appointed under this section shall  
7 have all of the powers and duties enumerated in section 431,  
8 except that a limited guardian may not ~~consent to the adoption~~  
9 ~~of the minor or release of the minor for adoption nor may a~~  
10 ~~limited guardian~~ consent to the marriage of a minor ward.

11       (7) A LIMITED GUARDIAN SHALL NOT RELEASE OR BE GIVEN AUTHOR-  
12 ITY TO RELEASE THE MINOR UNDER SECTION 28(4) OF CHAPTER X OF ACT  
13 NO. 288 OF THE PUBLIC ACTS OF 1939, BEING SECTION 710.28 OF THE  
14 MICHIGAN COMPILED LAWS, AND SHALL NOT CONSENT OR BE GIVEN AUTHOR-  
15 ITY TO CONSENT TO THE ADOPTION OF THE CHILD UNDER SECTION 43(5)  
16 OF CHAPTER X OF ACT NO. 288 OF THE PUBLIC ACTS OF 1939, BEING  
17 SECTION 710.43 OF THE MICHIGAN COMPILED LAWS.

18       Sec. 431. (1) A guardian of a minor has the powers and  
19 responsibilities of a parent who is not deprived of custody of  
20 the parent's minor and unemancipated child, except that a guard-  
21 ian is not legally obligated to provide from the guardian's own  
22 funds for the ward and is not liable to third persons by reason  
23 of the parental relationship for acts of the ward. A guardian  
24 has the following powers and duties:

25       (a) The guardian shall take reasonable care of a ward's per-  
26 sonal effects and commence protective proceedings if necessary to  
27 protect other property of the ward.

1 (b) The guardian may receive money payable for the support  
2 of the ward to the ward's parent, guardian, or custodian under  
3 the terms of any statutory benefit or insurance system, or any  
4 private contract, devise, trust, conservatorship, or  
5 custodianship. The guardian may receive money or property of the  
6 ward paid or delivered pursuant to section 403. A sum so  
7 received shall be applied to the ward's current needs for sup-  
8 port, care, and education. The guardian shall exercise due care  
9 to conserve any excess for the ward's future needs unless a con-  
10 servator is appointed for the estate of the ward, in which case  
11 excess shall be paid over at least annually to the conservator.  
12 A sum so received by the guardian is not to be used for compensa-  
13 tion for the guardian's services except as approved by order of  
14 the court or as determined by a duly appointed conservator other  
15 than the guardian. A guardian may institute proceedings to  
16 compel the performance by a person of a duty to support the ward  
17 or to pay sums for the welfare of the ward.

18 (c) The guardian shall facilitate the ward's education and  
19 social or other activities, and shall authorize medical or other  
20 professional care, treatment, or advice. A guardian is not  
21 liable by reason of this consent for injury to the ward resulting  
22 from the negligence or acts of third persons unless it would be  
23 illegal for a parent to have consented. A guardian may consent  
24 to the marriage of a minor ward. ~~Subject to the conditions and~~  
25 ~~restrictions of chapter X of Act No. 288 of the Public Acts of~~  
26 ~~1939, as amended, being sections 710.21 to 710.70 of the Michigan~~

~~1 Compiled Laws, a guardian may consent to the adoption of a minor~~  
~~2 ward or release a minor ward for adoption.~~

3 (d) A guardian shall report the condition of the ward and of  
4 the ward's estate which is subject to the guardian's possession  
5 or control, as ordered by court on petition of any person inter-  
6 ested in the minor's welfare or as required by court rule. The  
7 report shall detail the condition of the ward, any medical ~~or~~  
8 ~~sanitary~~ treatment or care to which the ward was subjected, and  
9 what reason, if any, exists for the continuation of the  
10 guardianship.

11 (2) If a minor dies while under guardianship, and a conser-  
12 vator has not been appointed for the estate of the minor, and if  
13 the guardian has possession of any money of the deceased minor,  
14 the court may, upon petition of the guardian and with or without  
15 notice, hear a claim for burial expenses or any other claim as  
16 the court considers advisable. Upon hearing the claim, the court  
17 may enter an order allowing or disallowing the claim or any part  
18 of it and provide in the order of allowance that the claim or any  
19 part of it be paid immediately if the payment can be made without  
20 injury or serious inconvenience to the minor's estate.

21 SEC. 432. (1) IF THE GUARDIAN OF A MINOR DESIRES TO OBTAIN  
22 AUTHORITY TO EXECUTE A RELEASE OF THE MINOR AS REQUIRED BY SEC-  
23 TION 28(4) OF CHAPTER X OF ACT NO. 288 OF THE PUBLIC ACTS OF  
24 1939, BEING SECTION 710.28 OF THE MICHIGAN COMPILED LAWS, OR EXE-  
25 CUTE A CONSENT TO THE MINOR'S ADOPTION BY THAT GUARDIAN OR BY  
26 ANOTHER PERSON AS REQUIRED BY SECTION 43(5) OF CHAPTER X OF ACT  
27 NO. 288 OF THE PUBLIC ACTS OF 1939, BEING SECTION 710.43 OF THE

1 MICHIGAN COMPILED LAWS, THE GUARDIAN SHALL PETITION THE COURT  
2 THAT APPOINTED THE GUARDIAN FOR AN ORDER GRANTING THAT AUTHORITY  
3 TO THE GUARDIAN.

4 (2) UPON THE FILING OF A PETITION UNDER THIS SECTION, THE  
5 COURT MAY APPOINT A GUARDIAN AD LITEM FOR THE MINOR. THE COURT  
6 SHALL FIX A DATE AND A PLACE FOR A HEARING TO BE HELD WITHIN 30  
7 DAYS AFTER THE FILING DATE OF THE PETITION. NOTICE OF THE TIME  
8 AND PLACE OF THE HEARING SHALL BE GIVEN TO THE PETITIONER, THE  
9 MINOR, IF OVER 14 YEARS OF AGE, THE GUARDIAN AD LITEM OF THE  
10 WARD, IF A GUARDIAN AD LITEM HAS BEEN APPOINTED, AND TO THOSE  
11 PARTIES DESCRIBED IN SECTION 24A(1) OF CHAPTER X OF ACT NO. 288  
12 OF THE PUBLIC ACTS OF 1939, BEING SECTION 710.24A OF THE MICHIGAN  
13 COMPILED LAWS.

14 (3) UPON HEARING THE PETITION, THE COURT SHALL AUTHORIZE THE  
15 GUARDIAN OF THE MINOR TO EXECUTE A RELEASE OF THE MINOR OR EXE-  
16 CUTE A CONSENT TO THE MINOR'S ADOPTION BY THAT GUARDIAN OR BY  
17 ANOTHER PERSON IF THE COURT IS SATISFIED THAT THE WELFARE OF THE  
18 MINOR WILL BE SERVED BY THE RELEASE OF THE MINOR OR THE CONSENT  
19 TO THE MINOR'S ADOPTION, SUBJECT TO SECTION 31 OF CHAPTER X OF  
20 ACT NO. 288 OF THE PUBLIC ACTS OF 1939, BEING SECTION 710.31 OF  
21 THE MICHIGAN COMPILED LAWS.

22 SEC. 455A. (1) IF THE GUARDIAN OF A LEGALLY INCAPACITATED  
23 PARENT OF A CHILD DESIRES TO OBTAIN AUTHORITY TO EXECUTE A  
24 RELEASE OF THE PARENT'S CHILD AS REQUIRED BY SECTION 28(5) OF  
25 CHAPTER X OF ACT NO. 288 OF THE PUBLIC ACTS OF 1939, BEING  
26 SECTION 710.28 OF THE MICHIGAN COMPILED LAWS, OR EXECUTE A  
27 CONSENT TO THE ADOPTION OF THE PARENT'S CHILD BY THAT GUARDIAN OR

1 BY ANOTHER PERSON AS REQUIRED BY SECTION 43(6) OF CHAPTER X OF  
2 ACT NO. 288 OF THE PUBLIC ACTS OF 1939, BEING SECTION 710.43 OF  
3 THE MICHIGAN COMPILED LAWS, THE GUARDIAN SHALL PETITION THE COURT  
4 THAT APPOINTED THE GUARDIAN FOR AN ORDER GRANTING THAT AUTHORITY  
5 TO THE GUARDIAN.

6 (2) UPON THE FILING OF A PETITION UNDER THIS SECTION, THE  
7 COURT MAY APPOINT A GUARDIAN AD LITEM FOR THE CHILD. THE COURT  
8 SHALL FIX A DATE AND A PLACE FOR A HEARING TO BE HELD WITHIN 30  
9 DAYS AFTER THE FILING DATE OF THE PETITION. NOTICE OF THE TIME  
10 AND PLACE OF THE HEARING SHALL BE GIVEN TO THE PETITIONER, THE  
11 WARD, THE GUARDIAN AD LITEM OF THE CHILD, IF A GUARDIAN AD LITEM  
12 HAS BEEN APPOINTED, AND TO THOSE PARTIES DESCRIBED IN  
13 SECTION 24A(1) OF CHAPTER X OF ACT NO. 288 OF THE PUBLIC ACTS OF  
14 1939, BEING SECTION 710.24A OF THE MICHIGAN COMPILED LAWS.

15 (3) UPON HEARING THE PETITION, THE COURT SHALL AUTHORIZE THE  
16 GUARDIAN OF THE LEGALLY INCAPACITATED PARENT TO EXECUTE A RELEASE  
17 OF THE CHILD OR EXECUTE A CONSENT TO THE CHILD'S ADOPTION BY THAT  
18 GUARDIAN OR BY ANOTHER PERSON IF THE COURT IS SATISFIED THAT THE  
19 WELFARE OF THE CHILD WILL BE SERVED BY THE RELEASE OF THE CHILD  
20 OR THE CONSENT TO THE CHILD'S ADOPTION, SUBJECT TO SECTION 31 OF  
21 CHAPTER X OF ACT NO. 288 OF THE PUBLIC ACTS OF 1939, BEING  
22 SECTION 710.31 OF THE MICHIGAN COMPILED LAWS.

23 Section 2. This amendatory act shall not take effect unless  
24 all of the following bills of the 86th Legislature are enacted  
25 into law:

26 (a) House Bill No. 4252.



1 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. <sup>5784</sup>\_\_\_\_\_ (request  
2 no. 00746'91b).