



SENATE BILL No. 1036

May 21, 1996, Introduced by Senator GOUGEON and referred to the Committee on Judiciary.

A bill to amend sections 3, 21, 401, and 424c of Act No. 642 of the Public Acts of 1978, entitled as amended "Revised probate code,"

section 3 as amended by Act No. 222 of the Public Acts of 1988, section 21 as amended by Act No. 69 of the Public Acts of 1989, section 401 as amended by Act No. 396 of the Public Acts of 1980, and section 424c as amended by Act No. 8 of the Public Acts of 1996, being sections 700.3, 700.21, 700.401, and 700.424c of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 3, 21, 401, and 424c of Act No. 642 of
2 the Public Acts of 1978, section 3 as amended by Act No. 222 of
3 the Public Acts of 1988, section 21 as amended by Act No. 69 of
4 the Public Acts of 1989, section 401 as amended by Act No. 396 of
5 the Public Acts of 1980, and section 424c as amended by Act No. 8

1 of the Public Acts of 1996, being sections 700.3, 700.21,
2 700.401, and 700.424c of the Michigan Compiled Laws, are amended
3 to read as follows:

4 Sec. 3. (1) "Authenticated" means that the genuineness and
5 validity of the original or a copy of a public or official docu-
6 ment, instrument, or record is proved.

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

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

17 (4) "Claim" in respect to estates of decedents and protected
18 persons includes liabilities of the decedent or protected person
19 whether arising in contract, in tort, or otherwise, and liabili-
20 ties of the estate that arise before, at, or after the death of
21 the decedent or the appointment of the conservator, including
22 funeral and burial expenses and expenses of administration.
23 Claim does not include estate and inheritance taxes, demands, or
24 disputes regarding title of a decedent or protected person to
25 specific assets alleged to be included in the estate.

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

4 (6) "County public administrator" means a county public
5 administrator appointed under Act No. 194 of the Public Acts of
6 1947, ~~as amended,~~ being sections 720.201 to 720.223 of the
7 Michigan Compiled Laws.

8 (7) "Court" means the probate court, EXCEPT AS PROVIDED IN
9 ARTICLE 4.

10 Sec. 21. The court has exclusive legal and equitable juris-
11 diction of all of the following:

12 (a) Matters relating to the settlement of the estate of a
13 deceased person, whether testate or intestate, who was at the
14 time of death domiciled in the county or was at the time of death
15 domiciled out of state leaving an estate within the county to be
16 administered, including, but not limited to, the following
17 proceedings:

18 (i) The internal affairs of the estate.

19 (ii) Estate administration, settlement, and distribution.

20 (iii) Declaration of rights involving estates, devisees,
21 heirs, and fiduciaries.

22 (iv) The construction of a will.

23 (v) The determination of heirs.

24 (b) Proceedings concerning the validity, internal affairs,
25 and settlement of trusts, the administration, distribution, modi-
26 fication, reformation, and termination of trusts, and the
27 declaration of rights involving trusts, trustees, and

1 beneficiaries of trusts, including, but not limited to, the
2 following proceedings to:

3 (i) Appoint or remove a trustee.

4 (ii) Review the fees of a trustee.

5 (iii) Require, hear, and settle interim or final accounts.

6 (iv) Ascertain beneficiaries.

7 (v) Determine any question arising in the administration or
8 distribution of any trust, including questions of construction of
9 wills and trusts; instruct trustees, and determine relative
10 thereto the existence or nonexistence of an immunity, power,
11 privilege, duty, or right.

12 (vi) Release registration of a trust.

13 (vii) Determine an action or proceeding involving settlement
14 of an inter vivos trust as provided in Act No. 185 of the Public
15 Acts of 1966, being sections 555.81 to 555.84 of the Michigan
16 Compiled Laws.

17 ~~(c) Proceedings concerning guardianships, conservatorships,~~
18 ~~and protective proceedings.~~

19 (C) ~~(d)~~ Proceedings to review and settle the accounts of a
20 fiduciary as defined in section 5, and to order, upon request of
21 an interested person, instructions or directions to a fiduciary,
22 concerning an estate within the court's jurisdiction.

23 Sec. 401. (1) AS USED IN THIS ARTICLE, "COURT" MEANS THE
24 FAMILY DIVISION OF CIRCUIT COURT.

25 (2) ~~(+)~~ The court has jurisdiction over protective pro-
26 ceedings and guardianship proceedings.

1 (3) ~~(2)~~ When both guardianship and protective proceedings
2 as to the same person are commenced or pending in the same court,
3 the proceedings may be consolidated.

4 (4) ~~(3)~~ In proceedings under this article, a spouse may
5 testify for or against the other spouse.

6 Sec. 424c. (1) The parent or parents of a minor may peti-
7 tion the court to terminate a guardianship for the minor, as
8 follows:

9 (a) If the guardianship is a limited guardianship, the par-
10 ents or the sole parent with a right to custody of the minor.

11 (b) If the guardianship was established under section 424,
12 the parent or parents of the minor.

13 (2) If a petition has been filed to terminate a guardianship
14 under this section, the court may do 1 or more of the following:

15 (a) Order the ~~department of social services~~ FAMILY INDE-
16 PENDENCE AGENCY or an employee or agent of the court to conduct
17 an investigation and file a written report of the investigation
18 regarding the best interests of the minor or give testimony con-
19 cerning the investigation.

20 (b) Utilize the community resources in behavioral sciences
21 and other professions in the investigation and study of the best
22 interests of the minor and consider their recommendations for the
23 disposition of the petition.

24 (c) Appoint a guardian ad litem or attorney to represent the
25 minor.

26 (d) Take any other action considered necessary in a
27 particular case.

1 (3) After notice and hearing on a petition to terminate a
2 limited guardianship, the court shall terminate the limited
3 guardianship if it determines that the parent or parents of the
4 minor have substantially complied with the limited guardianship
5 placement plan. The court may enter orders to facilitate the
6 reintegration of the minor into the home of the parent or parents
7 for a period of up to 6 months prior to the termination.

8 (4) For all petitions to terminate a guardianship in which
9 subsection (3) does not apply, the court, after notice and hear-
10 ing, may do any of the following:

11 (a) Terminate the guardianship if the court determines that
12 it is in the best interests of the minor, and may do any of the
13 following:

14 (i) Enter orders to facilitate the reintegration of the
15 minor into the home of the parent for a period of up to 6 months
16 prior to the termination.

17 (ii) Order the ~~department of social services~~ FAMILY INDE-
18 PENDENCE AGENCY to supervise the transition period when the minor
19 is being reintegrated into the home of his or her parent.

20 (iii) Order the ~~department of social services~~ FAMILY INDE-
21 PENDENCE AGENCY to provide services to facilitate the reintegra-
22 tion of the minor into the home of his or her parent.

23 (b) Continue the guardianship for not more than 1 year from
24 the date of the hearing if the court determines that it is in the
25 best interests of the minor, and do any of the following:

26 (i) If the guardianship is a limited guardianship, order the
27 parent or parents to comply with 1 of the following:

1 (A) The limited guardianship placement plan.

2 (B) A court-modified limited guardianship placement plan.

3 (C) If the limited guardianship was established before
4 December 20, 1990, a court-structured plan that enables the child
5 to return to the home of his or her parent or parents.

6 (ii) If the guardianship was ordered under section 424,
7 order the parent or parents to follow a court-structured plan
8 that enables the child to return to the home of his or her parent
9 or parents.

10 (iii) If a guardianship is continued pursuant to subpara-
11 graph (i) or (ii), schedule and conduct a hearing to review the
12 guardianship before the expiration of the period of time that the
13 guardianship is continued and either terminate the guardianship
14 or limited guardianship, or proceed under subdivision (c) or
15 (d).

16 (c) If the minor has resided with the guardian or limited
17 guardian for not less than 1 year and if the court finds that the
18 parent or parents of the minor have failed to provide the minor
19 with parental care, love, guidance, and attention appropriate to
20 the child's age and individual needs resulting in a substantial
21 disruption of the parent-child relationship, continue the guard-
22 ianship if it is established by clear and convincing evidence
23 that the continuation would serve the best interests of the
24 minor.

25 (d) Appoint an attorney to represent the minor or refer the
26 matter to the ~~department of social services~~ FAMILY INDEPENDENCE
27 AGENCY. The attorney or the ~~department of social services~~

1 FAMILY INDEPENDENCE AGENCY may file a complaint on behalf of the
2 minor requesting the ~~juvenile division of the probate~~ court to
3 take jurisdiction of the minor under section 2(b) of chapter XIIA
4 of Act No. 288 of the Public Acts of 1939, being section 712A.2
5 of the Michigan Compiled Laws.

6 (5) As used in this section, "best interests of the minor"
7 means the sum total of the following factors to be considered,
8 evaluated, and determined by the court:

9 (a) The love, affection, and other emotional ties existing
10 between the parties involved and the child.

11 (b) The capacity and disposition of the parties involved to
12 give the child love, affection, and guidance and continuation of
13 the educating and raising of the child in its religion or creed,
14 if any.

15 (c) The capacity and disposition of the parties involved to
16 provide the child with food, clothing, medical care or other
17 remedial care recognized and permitted under the laws of this
18 state in place of medical care, and other material needs.

19 (d) The length of time the child has lived in a stable, sat-
20 isfactory environment, and the desirability of maintaining
21 continuity.

22 (e) The permanence, as a family unit, of the existing or
23 proposed custodial home.

24 (f) The moral fitness of the parties involved.

25 (g) The mental and physical health of the parties involved.

26 (h) The home, school, and community record of the child.

1 (i) The reasonable preference of the child, if the court
2 considers the child to be of sufficient age to express
3 preference.

4 (j) The willingness and ability of the guardian to facili-
5 tate and encourage a close and continuing parent-child relation-
6 ship between the child and his or her parent or parents.

7 (k) Any other factor considered by the court to be relevant
8 to a particular dispute regarding termination of a guardianship,
9 removal of a guardian, or parenting time.

10 (6) This section applies to all guardianships established
11 before, on, or after the effective date of this section.

12 Section 2. This amendatory act applies to guardianships,
13 conservatorships, and protective proceedings commenced on or
14 after January 1, 1998.

15 Section 3. This amendatory act shall not take effect unless
16 House Bill No. 5158 of the 88th Legislature is enacted into law.