

HOUSE BILL No. 5541

February 5, 1998, Introduced by Rep. Gubow and referred to the Committee on Judiciary.

A bill to amend 1978 PA 642, entitled
"Revised probate code,"
by amending sections 6, 10, and 421 (MCL 700.6, 700.10, and
700.421) and by adding sections 438, 438a, 438b, 439, 439a, 440,
440a, 440b, and 440c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6. (1) "Foreign personal representative" means a per-
2 sonal representative of a jurisdiction other than this state.

3 (2) "Guardian" means a person appointed by the court, ~~or~~
4 designated as ~~such~~ A GUARDIAN in a will, OR NAMED AS A STANDBY
5 GUARDIAN as provided in article 4, to exercise powers over the
6 person of a minor or of a legally incapacitated person. Guardian
7 does not include a guardian ad litem.

1 (3) "Heirs" means those persons, including the surviving
2 spouse, who are entitled to the property of a decedent under the
3 statutes of intestate succession.

4 Sec. 10. (1) "Security" includes a note, stock, treasury
5 stock, bond, debenture, evidence of indebtedness, certificate of
6 interest or participation in an oil, gas, or mining title or
7 lease or in payments out of production under a title or lease,
8 collateral trust certificate, transferable share, voting trust
9 certificate, or in general, an interest or instrument commonly
10 known as a security, or a certificate of interest or participa-
11 tion, a temporary or interim certificate, receipt or certificate
12 of deposit for, or a warrant or right to subscribe to, or pur-
13 chase any of the ~~foregoing~~ LISTED ITEMS.

14 (2) "Settlement" as to a decedent's estate, includes the
15 full process of administration, distribution, and closing.

16 (3) "Special party" means any of the following persons
17 ~~which~~ THAT are required to be given notice ~~pursuant to~~ BY law
18 or supreme court rule: attorney general; foreign consul; ~~a~~
19 county or state ~~department of social services~~ FAMILY INDEPEN-
20 DENCE AGENCY; guardian; guardian ad litem; attorney of record of
21 an interested party; or ~~an~~ attorney in fact or agent having
22 durable power of attorney.

23 (4) "STANDBY GUARDIAN" MEANS A GUARDIAN WHOSE AUTHORITY TO
24 ACT AS A GUARDIAN IS PRESCRIBED BY SECTIONS 438 TO 440D.

25 (5) ~~-(4)-~~ "State public administrator" means a state public
26 administrator appointed under ~~Act No. 194 of the Public Acts of~~

1 ~~1947, being sections 720.201 to 720.223 of the Michigan Compiled~~
2 ~~Laws~~ 1947 PA 194, MCL 720.201 TO 720.223.

3 (6) ~~(5)~~ "Supervised administration" means administration
4 in a proceeding authorized by law or rule and designed to give
5 court control of the acts of a personal representative.

6 Sec. 421. A person becomes a MINOR'S guardian ~~of a minor~~
7 by acceptance of a testamentary appointment, ~~or upon~~ BY COURT
8 appointment, ~~by the court~~ OR AS PROVIDED IN SECTIONS 438 TO
9 440D. The guardianship status continues until terminated, with-
10 out regard to the location from time to time of the guardian and
11 minor ward.

12 SEC. 438. AS USED IN SECTIONS 438 TO 440C:

13 (A) "AGE OF REASON" MEANS THE AGE BY WHICH A MINOR AT-RISK
14 CHILD IS CAPABLE OF UNDERSTANDING THE NATURE AND CONSEQUENCES OF
15 DECISIONS CONCERNING HIS OR HER OWN CARE, GENERALLY BY AGE 14.

16 (B) "AT-RISK CHILD" MEANS AN UNDER-18-YEAR-OLD CHILD WHO HAS
17 A DEBILITATED OR INCAPACITATED PARENT OR GUARDIAN AND WHO, AS A
18 RESULT OF THAT CIRCUMSTANCE, MIGHT BE REMOVED BY THE STATE AND
19 PLACED IN FOSTER CARE.

20 (C) "ATTENDING PHYSICIAN" MEANS A PETITIONER'S OR
21 DESIGNATOR'S PRIMARY PHYSICIAN OR A PHYSICIAN ACTING ON THE PRI-
22 MARY PHYSICIAN'S BEHALF. IF NO PHYSICIAN HAS THIS RESPONSIBILI-
23 TY, A PHYSICIAN WHO IS FAMILIAR WITH THE PETITIONER'S OR
24 DESIGNATOR'S MEDICAL CONDITION MAY ACT AS THE ATTENDING
25 PHYSICIAN.

26 (D) "CONSENT" MEANS WRITTEN CONSENT SIGNED BY A CHILD'S
27 PARENT OR LEGAL CUSTODIAN IN THE PRESENCE OF 2 WITNESSES WHO ALSO

1 SIGN THE CONSENT. THE CONSENT CONSTITUTES THE TERMS FOR THE
2 COMMENCEMENT OF THE STANDBY GUARDIAN'S DUTIES.

3 (E) "DEBILITY" MEANS A PETITIONER'S OR DESIGNATOR'S CHRONIC
4 AND SUBSTANTIAL INABILITY, AS THE RESULT OF A PHYSICAL ILLNESS,
5 DISEASE, OR INJURY, TO PROVIDE PRIMARY CARE FOR HIS OR HER
6 AT-RISK CHILD.

7 (F) "DEBILITY DETERMINATION" MEANS A WRITTEN DETERMINATION
8 BY AN ATTENDING PHYSICIAN THAT CONTAINS THE ATTENDING PHYSICIAN'S
9 OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY REGARDING THE
10 NATURE, CAUSE, EXTENT, AND PROBABLE DURATION OF A PETITIONER'S OR
11 DESIGNATOR'S DEBILITY.

12 (G) "DESIGNATION" MEANS A WRITTEN DOCUMENT EXECUTED BY A
13 DESIGNATOR AS PRESCRIBED BY SECTION 440.

14 (H) "DESIGNATOR" MEANS A PARENT OR GUARDIAN WHO DESIGNATES A
15 STANDBY GUARDIAN IN A DESIGNATION.

16 (I) "EXTENDED FAMILY" MEANS ALL BIOLOGICAL FAMILY MEMBERS,
17 OTHER THAN A PARENT, AND CLOSE FAMILY FRIENDS WHO HAVE AN ESTAB-
18 LISHED BOND WITH THE CHILD.

19 (J) "INCAPACITY" MEANS A PETITIONER'S OR DESIGNATOR'S
20 CHRONIC AND SUBSTANTIAL INABILITY, AS A RESULT OF MENTAL OR
21 ORGANIC IMPAIRMENT, TO UNDERSTAND THE NATURE AND CONSEQUENCES OF
22 DECISIONS CONCERNING THE CARE OF HIS OR HER MINOR AT-RISK CHILD
23 AND A CONSEQUENT INABILITY TO MAKE THESE DECISIONS.

24 (K) "INCAPACITY DETERMINATION" MEANS A WRITTEN DETERMINATION
25 BY AN ATTENDING PHYSICIAN THAT CONTAINS THE ATTENDING PHYSICIAN'S
26 OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY REGARDING THE

1 NATURE, CAUSE, EXTENT, AND PROBABLE DURATION OF A PETITIONER'S OR
2 DESIGNATOR'S INCAPACITY.

3 SEC. 438A. AS USED IN SECTIONS 438 TO 440C:

4 (A) "MINOR CHILD" MEANS A CHILD UNDER THE AGE OF 18 YEARS
5 BUT EXCLUDES A CHILD RESIDING IN A PLACEMENT FUNDED OR APPROVED
6 BY THE FAMILY INDEPENDENCE AGENCY UNDER EITHER A VOLUNTARY PLACE-
7 MENT AGREEMENT OR COURT ORDER.

8 (B) "PETITIONER" MEANS A PARENT OR GUARDIAN WHO PETITIONS
9 FOR COURT APPOINTMENT OF A STANDBY GUARDIAN FOR HIS OR HER MINOR
10 CHILD OR WARD.

11 (C) "STANDBY GUARDIAN" MEANS A GUARDIAN WHO IS EMPOWERED
12 UNDER A COURT ORDER OR DESIGNATION TO TEMPORARILY ASSUME GUARD-
13 IANSHIP OF A MINOR CHILD'S OR WARD'S PERSON OR PROPERTY, OR BOTH,
14 UPON A PARENT'S OR GUARDIAN'S DEATH, INCAPACITY, DEBILITY, OR
15 CONSENT AS PROVIDED IN SECTIONS 438B TO 440C.

16 (D) "STANDBY OPEN ADOPTION" MEANS THE DIRECT ADOPTION OF AN
17 AT-RISK CHILD BY A STANDBY GUARDIAN UPON THE DEATH OF THE CHILD'S
18 PARENT OR GUARDIAN, IN WHICH COMMUNICATION AND SUPPORT WITH THE
19 ADOPTED AT-RISK CHILD'S EXTENDED FAMILY, AS WELL AS THE CHILD'S
20 COMMUNITY, ARE SOUGHT, OBTAINED, AND MAINTAINED.

21 (E) "TRIGGERING EVENT" MEANS AN EVENT STATED IN A PETITION
22 OR DESIGNATION, OR IN A COURT ORDER, THAT EMPOWERS A STANDBY
23 GUARDIAN TO ASSUME GUARDIANSHIP OF THE MINOR CHILD WHO IS THE
24 SUBJECT OF THE PETITION OR DESIGNATION, WHICH EVENT MAY BE THE
25 PETITIONER'S OR DESIGNATOR'S DEATH, DEBILITY, INCAPACITY, OR
26 CONSENT.

1 (F) "VOLUNTARY PLACEMENT" MEANS THE PRIMARY CAREGIVER'S
2 CONSENSUAL PLACEMENT OF AN AT-RISK CHILD INTO THE CARE OF A
3 STANDBY GUARDIAN.

4 SEC. 438B. (1) A PROVISION OF THIS ACT RELATING TO GUARDI-
5 ANS AND GUARDIANSHIPS APPLIES TO A STANDBY GUARDIAN. IF, HOWEVER,
6 ANOTHER PROVISION CONFLICTS WITH A PROVISION OF SECTIONS 438 TO
7 440C, THEN THE PROVISION IN SECTIONS 438 TO 440C CONTROLS.

8 (2) IF THE PARENT OR GUARDIAN IS LIVING, THE EMPOWERMENT OF
9 A STANDBY GUARDIAN DOES NOT BY ITSELF TERMINATE PARENTAL RIGHTS
10 OR THE GUARDIANSHIP. THE PARENT OR GUARDIAN AND THE STANDBY
11 GUARDIAN HAVE CONCURRENT AUTHORITY WITH RESPECT TO THOSE ASPECTS
12 OF THE MINOR CHILD'S PERSON OR PROPERTY THAT ARE UNDER THE
13 STANDBY GUARDIAN'S AUTHORITY.

14 SEC. 439. (1) UPON A PARENT'S OR GUARDIAN'S PETITION, THE
15 COURT MAY APPOINT A STANDBY GUARDIAN FOR A MINOR CHILD. IF IDEN-
16 TIFIED IN THE PETITION, THE COURT MAY ALSO APPOINT AN ALTERNATE
17 STANDBY GUARDIAN TO ACT IF THE APPOINTED STANDBY GUARDIAN DIES,
18 BECOMES INCAPACITATED, OR OTHERWISE REFUSES OR IS UNABLE TO
19 ASSUME THE DUTIES OF THE STANDBY GUARDIAN AFTER A TRIGGERING
20 EVENT.

21 (2) A PETITION FOR THE COURT APPOINTMENT OF A MINOR CHILD'S
22 STANDBY GUARDIAN SHALL STATE AT LEAST ALL OF THE FOLLOWING:

23 (A) WHICH TRIGGERING EVENT OR EVENTS ACTIVATE THE AUTHORITY
24 OF THE STANDBY GUARDIAN.

25 (B) THAT THERE IS A SIGNIFICANT RISK OF THE PARENT'S OR
26 GUARDIAN'S DEATH, INCAPACITY, OR DEBILITY AS A RESULT OF A
27 PROGRESSIVE CHRONIC CONDITION OR A FATAL ILLNESS. A PETITIONER

1 IS NOT REQUIRED TO SUBMIT MEDICAL DOCUMENTATION OF THE
2 PETITIONER'S TERMINAL STATUS.

3 (C) THE PROPOSED STANDBY GUARDIAN'S NAME AND ADDRESS.

4 (3) A PETITIONER UNDER THIS SECTION IS NOT REQUIRED TO
5 APPEAR IN COURT IF UNABLE TO APPEAR, EXCEPT UPON MOTION OF THE
6 COURT OR BY A PARTY, AND FOR GOOD CAUSE SHOWN.

7 SEC. 439A. (1) THE COURT SHALL APPOINT A STANDBY GUARDIAN
8 UNDER SECTION 439 IF THE COURT FINDS THAT THERE IS A SIGNIFICANT
9 RISK OF THE PETITIONER'S DEATH, INCAPACITY, OR DEBILITY AS A
10 RESULT OF A PROGRESSIVE CHRONIC CONDITION OR A FATAL ILLNESS AND
11 THAT THE MINOR CHILD'S INTERESTS WOULD BE PROMOTED BY THE
12 APPOINTMENT. THE ORDER APPOINTING THE STANDBY GUARDIAN SHALL
13 SPECIFY EACH TRIGGERING EVENT THAT EMPOWERS THE STANDBY
14 GUARDIAN.

15 (2) WITHIN 30 DAYS AFTER FILING OF A PETITION UNDER SECTION
16 439, NOTICE SHALL BE SERVED ON THE MINOR CHILD'S PARENT OR GUARD-
17 IAN, OR THE PROPOSED STANDBY GUARDIAN, AS APPROPRIATE. DURING
18 THE TIME THE PETITION IS PENDING, THE COURT SHALL GIVE PREFERENCE
19 TO MAINTAINING CUSTODY WITH THE PARENT OR GUARDIAN, OR THE PRO-
20 POSED STANDBY GUARDIAN. THIS SECTION DOES NOT AFFECT A PARENT'S
21 PARENTAL RIGHTS.

22 (3) IF, AFTER DILIGENT SEARCH, A PARENT OR GUARDIAN CANNOT
23 BE FOUND, THE PARENT OR GUARDIAN SHALL BE SERVED AS PROVIDED IN
24 SUPREME COURT RULES. AS PART OF THIS PROCESS, IF THERE IS A NON-
25 CUSTODIAL PARENT, HE OR SHE SHALL BE GIVEN AN OPPORTUNITY TO LIT-
26 IGATE HIS OR HER FITNESS.

1 (4) A TEMPORARY GUARDIAN MAY BE APPOINTED AFTER THE
2 PROCEEDING HAS BEGUN TO ENSURE GUARDIANSHIP CONTINUITY THROUGHOUT
3 THE PROCESS. A PETITIONER MUST BE IN SUFFICIENT GOOD HEALTH TO
4 PROVIDE APPROPRIATE CARE OF THE MINOR CHILD.

5 SEC. 440. (1) A PARENT MAY DESIGNATE IN A WRITING A PERSON
6 QUALIFIED TO BE EMPOWERED TO BE GUARDIAN OF THE PERSON OR ESTATE,
7 OR BOTH, OF THE PARENT'S UNMARRIED MINOR CHILD OR CHILD LIKELY TO
8 BE BORN UPON OCCURRENCE OF A TRIGGERING EVENT. IF, HOWEVER, A
9 MINOR CHILD HAS REACHED THE AGE OF REASON, HE OR SHE MAY NAME A
10 STANDBY GUARDIAN OF HIS OR HER OWN CHOICE. A PARENT OR GUARDIAN
11 OF AN UNMARRIED MINOR OR A CHILD LIKELY TO BE BORN MAY DESIGNATE
12 IN A WRITING A PERSON QUALIFIED TO BE EMPOWERED TO BE A SUCCESSOR
13 GUARDIAN OF THE MINOR'S PERSON OR ESTATE, OR BOTH. THE DESIGNA-
14 TION MUST BE WITNESSED BY 2 OR MORE CREDIBLE WITNESSES AT LEAST
15 18 YEARS OF AGE, NEITHER OF WHOM IS THE PERSON DESIGNATED AS THE
16 GUARDIAN.

17 (2) IF THE PARENT OR GUARDIAN IS SO ILL THAT HE OR SHE MAY
18 DIE BEFORE THE COURT DATE, IF THE PARENT IS RELUCTANT AT THAT
19 MOMENT TO FILE IN COURT, OR AS A FIRST STEP, IF PRO BONO COUNSEL
20 WILL BE UTILIZED BUT HAS NOT YET BEEN OBTAINED, THE DESIGNATION
21 MAY BE PROVIDED BY ANY COMPETENT EVIDENCE.

22 (3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DEPRIVE A
23 PARENT OF PARENTAL RIGHTS.

24 SEC. 440A. (1) UPON THE OCCURRENCE OF A TRIGGERING EVENT
25 STATED IN A WRITTEN DESIGNATION EXECUTED UNDER SECTION 440, THE
26 STANDBY GUARDIAN ASSUMES GUARDIANSHIP. IF THE TRIGGERING EVENT
27 IS THE DESIGNATOR'S INCAPACITY OR DEBILITY, A COPY OF THE

1 ATTENDING PHYSICIAN'S DETERMINATION SHALL BE PROVIDED TO THE
2 STANDBY GUARDIAN AND TO THE PRESIDING COURT WITHIN 60 DAYS AFTER
3 THE TRIGGERING EVENT.

4 (2) A STANDBY GUARDIAN MAY DECLINE THE DESIGNATION AT ANY
5 TIME BEFORE THE ASSUMPTION OF DUTIES BY NOTIFYING THE DESIGNATOR
6 OF THIS REFUSAL IN WRITING.

7 (3) A DESIGNATOR MAY REVOKE A STANDBY GUARDIANSHIP DESIGNA-
8 TION BY NOTIFYING THE STANDBY GUARDIAN ORALLY OR IN WRITING OR BY
9 ANY OTHER ACT EVIDENCING A SPECIFIC INTENT TO REVOKE THE
10 DESIGNATION.

11 SEC. 440B. (1) UNLESS A PETITION FOR COURT APPOINTMENT OF A
12 STANDBY GUARDIAN IS MADE BY THE DESIGNATOR OR THE DESIGNATED
13 STANDBY GUARDIAN, A DESIGNATION MADE UNDER SECTION 440 EXPIRES 2
14 YEARS AFTER THE DATE OF THE WRITTEN DESIGNATION AND MAY BE
15 RENEWED BY REFILEING THE PETITION.

16 (2) IN A PROCEEDING FOR COURT APPOINTMENT OF A STANDBY
17 GUARDIAN, A DESIGNATION CONSTITUTES A REBUTTABLE PRESUMPTION THAT
18 THE PROPOSED STANDBY GUARDIAN IS CAPABLE OF SERVING AS GUARDIAN.
19 IN THE EVENT OF THE DESIGNATOR'S DEATH, A DESIGNATION CONFERS A
20 PREFERENCE UPON THE DESIGNATED STANDBY GUARDIAN FOR THE CHOICE OF
21 PERMANENT GUARDIAN, SUBJECT TO THE RIGHT OF THE OTHER PARENT, AND
22 IS INTENDED TO FACILITATE THE DIRECT STANDBY OPEN ADOPTION OF THE
23 MINOR AT-RISK CHILD.

24 (3) EXCEPT AS SET FORTH IN THIS SECTION, THE PETITION FOR
25 THE COURT APPOINTMENT OF A DESIGNATED STANDBY GUARDIAN SHALL
26 COMPLY WITH THE PROCEDURE SET FORTH IN SECTION 439.

1 SEC. 440C. A DESIGNATION MAY BE, BUT NEED NOT BE, IN THE
2 FOLLOWING FORM:

3 "DESIGNATION OF STANDBY GUARDIAN

4 I, (PARENT'S OR GUARDIAN'S NAME), NAME (STANDBY GUARDIAN'S
5 NAME, HOME ADDRESS, AND TELEPHONE NUMBER) AS STANDBY GUARDIAN OF
6 (CHILD'S NAME), MY CHILD (OR WARD). BY THIS CONSENT AND DESIGNA-
7 TION, I AM PROVIDING THAT THE DESIGNATED STANDBY GUARDIAN'S
8 AUTHORITY TAKES EFFECT IF AND WHEN ANY OF THE FOLLOWING EVENTS
9 OCCUR:

10 (1) MY ATTENDING PHYSICIAN CONCLUDES THAT I AM MENTALLY
11 INCAPACITATED, AND THUS UNABLE TO CARE FOR MY CHILD (OR WARD).

12 (2) MY ATTENDING PHYSICIAN CONCLUDES THAT I AM PHYSICALLY
13 DEBILITATED, AND THUS UNABLE TO CARE FOR MY CHILD (OR WARD), AND
14 I CONSENT IN WRITING BEFORE 2 WITNESSES TO THE DESIGNATED STANDBY
15 GUARDIAN'S AUTHORITY TO TAKE EFFECT.

16 (3) MY DEATH.

17 THERE IS CONCURRENT AUTHORITY BETWEEN MYSELF AND MY CHILD'S (OR
18 WARD'S) STANDBY GUARDIAN.

19 IN THE EVENT THAT THE PERSON DESIGNATED IS UNABLE OR UNWILL-
20 ING TO ACT AS MY CHILD'S (OR WARD'S) GUARDIAN, I NAME (ALTERNATE
21 STANDBY GUARDIAN'S NAME, ADDRESS, AND TELEPHONE NUMBER) AS ALTER-
22 NATE STANDBY GUARDIAN OF MY CHILD.

23 IN THE EVENT THAT I AM INCAPACITATED OR DEBILITATED AND A
24 STANDBY GUARDIAN IS EMPOWERED AS PROVIDED IN THIS STATEMENT, I
25 DECLARE THAT IT IS MY INTENTION TO RETAIN FULL PARENTAL RIGHTS TO
26 THE EXTENT CONSISTENT WITH MY CONDITION AND, FURTHER, THAT I

1 RETAIN THE AUTHORITY TO REVOKE THE STANDBY GUARDIANSHIP

2 CONSISTENT WITH MY RIGHTS UNDER LAW AT ANY TIME.

3 DESIGNATOR'S SIGNATURE: _____

4 WITNESS'S SIGNATURE: _____

5 ADDRESS: _____

6 DATE: _____

7 WITNESS'S SIGNATURE: _____

8 ADDRESS: _____

9 DATE: _____ " .