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BILL ANALYSIS

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House Bill 5466 (Substitute H-1 as reported without amendment)

Sponsor: Representative Judy Emmons

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 4-20-04

## **RATIONALE**

The Estates and Protected Individuals Code (EPIC) allows a minor's custodial parent or guardian or the guardian of a legally incapacitated individual to delegate his or her powers regarding the care, custody, or property of the minor child or ward for a period not exceeding six months. The power must be transferred by a properly executed power of attorney and does not include the power to consent to a marriage or adoption of a minor ward.

Apparently, this limit on the duration of the power of attorney over children and wards can create difficulties for military personnel who are deployed overseas for periods longer than six months. Those members of the military who are custodial parents or guardians apparently must execute documents so that the caregiver of their child or ward has the full legal authority to provide for his or her care during the parents' or guardians' absence. Since the documents granting legal authority over a child or ward are valid only for six months, the custodial parent or guardian must execute another power of attorney if the overseas rotation lasts longer than six months or is unexpectedly prolonged--a difficult or impossible task when one is serving in a foreign conflict.

Some people believe that EPIC should allow members of the armed services serving in a foreign country to delegate authority over a child in their custody or ward for a period encompassing their entire stay overseas.

## **CONTENT**

**The bill would amend the Estates and Protected Individuals Code to allow a parent or guardian to delegate his or**

**her authority over a minor or ward until after the parent's or guardian's military deployment to a foreign nation.**

The Code provides that, by a properly executed power of attorney, a parent or guardian of a minor or a guardian of a legally incapacitated individual may delegate to another person any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except for the power to consent to a minor ward's marriage or adoption or to the release of a minor ward for adoption. The delegation may be for a period of up to six months. Under the bill, if a parent or guardian were serving in the U.S. armed forces and deployed to a foreign nation, and if the power of attorney so provided, a delegation under that provision would be effective until the 31<sup>st</sup> day after the end of the deployment.

MCL 700.5103

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill would correct an unfortunate situation for military personnel who have custody of their children or guardianship of a ward and are assigned overseas for long periods. Since a power of attorney granting parental or guardianship authority may cover only a six-month period, there may be a lapse of legal authority if a custodial parent or guardian is assigned overseas for a longer period while in active military service and is unable to extend the power

through a signed writing. The bill would rectify this situation by allowing military personnel to execute a power of attorney delegating the care of their children to other people for the duration of their deployment, or extend the power of attorney beyond the originally scheduled time period when the overseas obligation is prolonged without warning. Military personnel serving in already stressful situations overseas would be relieved of the added stress of worrying whether their children or wards were well provided for.

Legislative Analyst: J.P. Finet

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.