

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4126**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1106, 5506, 5507, 5508, and 5510
(MCL 700.1106, 700.5506, 700.5507, 700.5508, and 700.5510),
section 1106 as amended by 2000 PA 463.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1106. As used in this act:
- 2 (a) "Mental health professional" means an individual who is
- 3 trained and experienced in the area of mental illness or
- 4 developmental disabilities and who is 1 of the following:
- 5 (i) A physician who is licensed to practice medicine or
- 6 osteopathic medicine and surgery in this state under article 15
- 7 of the public health code, 1978 PA 368, MCL 333.16101 to
- 8 333.18838.
- 9 (ii) A psychologist licensed to practice in this state under

1 article 15 of the public health code, 1978 PA 368, MCL 333.16101
2 to 333.18838.

3 (iii) A registered professional nurse licensed to practice in
4 this state under article 15 of the public health code, 1978
5 PA 368, MCL 333.16101 to 333.18838.

6 (iv) A social worker registered as a certified social worker
7 under article 15 of the public health code, 1978 PA 368,
8 MCL 333.16101 to 333.18838.

9 (v) A physician's assistant licensed to practice in this
10 state under article 15 of the public health code, 1978 PA 368,
11 MCL 333.16101 to 333.18838.

12 (b) "Michigan prudent investor rule" means the fiduciary
13 investment and management rule prescribed by part 5 of this
14 article.

15 (c) "Minor" means an individual who is less than 18 years of
16 age.

17 (d) "Minor ward" means a minor for whom a guardian is
18 appointed solely because of minority.

19 (e) "Money" means legal tender or a note, draft, certificate
20 of deposit, stock, bond, check, or credit card.

21 (f) "Mortgage" means a conveyance, agreement, or arrangement
22 in which property is encumbered or used as security.

23 (g) "Nonresident decedent" means a decedent who was domiciled
24 in another jurisdiction at the time of his or her death.

25 (h) "Organization" means a corporation, business trust,
26 estate, trust, partnership, joint venture, association, limited
27 liability company, government, governmental subdivision or

1 agency, or another legal or commercial entity.

2 (i) "Parent" includes, but is not limited to, an individual
3 entitled to take, or who would be entitled to take, as a parent
4 under this act by intestate succession from a child who dies
5 without a will and whose relationship is in question. Parent
6 does not include an individual who is only a stepparent, foster
7 parent, or grandparent.

8 (j) "Patient advocate" means an individual designated to
9 exercise powers concerning another individual's care, custody,
10 and medical treatment **or authorized to make an anatomical gift on**
11 **behalf of another individual, or both,** as provided in section
12 5506.

13 (k) "Patient advocate designation" means the written document
14 executed and with the effect as described in sections 5506 to
15 5512.

16 (l) "Payor" means a trustee, insurer, business entity,
17 employer, government, governmental subdivision or agency, or
18 other person authorized or obligated by law or a governing
19 instrument to make payments.

20 (m) "Person" means an individual or an organization.

21 (n) "Personal representative" includes, but is not limited
22 to, an executor, administrator, successor personal
23 representative, and special personal representative, and any
24 other person who performs substantially the same function under
25 the law governing that person's status.

26 (o) "Petition" means a written request to the court for an
27 order after notice.

1 (p) "Proceeding" includes an application and a petition, and
2 may be an action at law or a suit in equity. A proceeding may be
3 denominated a civil action under court rules.

4 (q) "Professional conservator" means a person that provides
5 conservatorship services for a fee. Professional conservator
6 does not include a person who is an individual who is related to
7 all but 2 of the protected individuals for whom he or she is
8 appointed as conservator.

9 (r) "Professional guardian" means a person that provides
10 guardianship services for a fee. Professional guardian does not
11 include a person who is an individual who is related to all but 2
12 of the wards for whom he or she is appointed as guardian.

13 (s) "Property" means anything that may be the subject of
14 ownership, and includes both real and personal property or an
15 interest in real or personal property.

16 (t) "Protected individual" means a minor or other individual
17 for whom a conservator has been appointed or other protective
18 order has been made as provided in part 4 of article V.

19 (u) "Protective proceeding" means a proceeding under the
20 provisions of part 4 of article V.

21 Sec. 5506. (1) An individual 18 years of age or older who
22 is of sound mind at the time ~~the~~ **a patient advocate** designation
23 is made may designate in writing another individual who is 18
24 years of age or older to exercise powers concerning care,
25 custody, and medical treatment decisions for the individual
26 making the **patient advocate** designation. **An individual making a**
27 **patient advocate designation under this subsection may include in**

1 the patient advocate designation the authority for the designated
2 individual to make an anatomical gift of all or part of the
3 individual's body in accordance with this act and section 10102
4 of the public health code, 1978 PA 368, MCL 333.10102.

5 (2) For purposes of this section and sections 5507 to 5512,
6 an individual who is named in a **patient advocate** designation to
7 exercise powers concerning care, custody, and medical treatment
8 decisions is known as a patient advocate and an individual who
9 makes a **patient advocate** designation is known as a patient.

10 (3) ~~-(2)-~~ A **patient advocate** designation under this section
11 must be in writing, signed, witnessed as provided in subsection
12 ~~-(3)-~~ (4), dated, executed voluntarily, and, before its
13 implementation, made part of the patient's medical record with
14 the patient's attending physician and, if applicable, with the
15 facility where the patient is located. The **patient advocate**
16 designation must include a statement that the authority conferred
17 under this section is exercisable only when the patient is unable
18 to participate in medical treatment decisions **and, in the case of**
19 **the authority to make an anatomical gift as described in**
20 **subsection (1), a statement that the authority remains**
21 **exercisable after the patient's death.**

22 (4) ~~-(3)-~~ A **patient advocate** designation under this section
23 must be executed in the presence of and signed by 2 witnesses. A
24 witness under this section shall not be the patient's spouse,
25 parent, child, grandchild, sibling, presumptive heir, known
26 devisee at the time of the witnessing, physician, or patient
27 advocate or an employee of a life or health insurance provider

1 for the patient, of a health facility that is treating the
2 patient, or of a home for the aged as defined in section 20106 of
3 the public health code, 1978 PA 368, MCL 333.20106, where the
4 patient resides. A witness shall not sign the **patient advocate**
5 designation unless the patient appears to be of sound mind and
6 under no duress, fraud, or undue influence.

7 Sec. 5507. (1) A patient advocate designation may include a
8 statement of the patient's desires on care, custody, and medical
9 treatment. **A patient advocate designation may also include a**
10 **statement of the patient's desires on the making of an anatomical**
11 **gift of all or part of the patient's body under part 101 of the**
12 **public health code, 1978 PA 368, MCL 333.10101 to 333.10109.** The
13 patient may authorize the patient advocate to exercise 1 or more
14 powers concerning the patient's care, custody, and medical
15 treatment **or concerning the making of an anatomical gift** that the
16 patient could have exercised on his or her own behalf.

17 (2) A patient may designate in the **patient advocate**
18 designation a successor individual as a patient advocate who may
19 exercise powers concerning care, custody, and medical treatment
20 decisions **or concerning the making of an anatomical gift** for the
21 patient if the first individual named as patient advocate does
22 not accept, is incapacitated, resigns, or is removed.

23 (3) Before a patient advocate designation is implemented, a
24 copy of the **patient advocate** designation must be given to the
25 proposed patient advocate and must be given to a successor
26 patient advocate before the successor acts as patient advocate.
27 Before acting as a patient advocate, the proposed patient

1 advocate must sign an acceptance of the **patient advocate**
2 designation.

3 (4) The acceptance of a designation as a patient advocate
4 must include substantially all of the following statements:

5 1. This **patient advocate** designation is not effective unless
6 the patient is unable to participate in medical treatment
7 decisions. **If this patient advocate designation includes the**
8 **authority to make an anatomical gift as described in**
9 **section 5506, the authority remains exercisable after the**
10 **patient's death.**

11 2. A patient advocate shall not exercise powers concerning
12 the patient's care, custody, and medical treatment that the
13 patient, if the patient were able to participate in the decision,
14 could not have exercised on his or her own behalf.

15 3. This **patient advocate** designation cannot be used to make
16 a medical treatment decision to withhold or withdraw treatment
17 from a patient who is pregnant that would result in the pregnant
18 patient's death.

19 4. A patient advocate may make a decision to withhold or
20 withdraw treatment that would allow a patient to die only if the
21 patient has expressed in a clear and convincing manner that the
22 patient advocate is authorized to make such a decision, and that
23 the patient acknowledges that such a decision could or would
24 allow the patient's death.

25 5. A patient advocate shall not receive compensation for the
26 performance of his or her authority, rights, and
27 responsibilities, but a patient advocate may be reimbursed for

1 actual and necessary expenses incurred in the performance of his
2 or her authority, rights, and responsibilities.

3 6. A patient advocate shall act in accordance with the
4 standards of care applicable to fiduciaries when acting for the
5 patient and shall act consistent with the patient's best
6 interests. The known desires of the patient expressed or
7 evidenced while the patient is able to participate in medical
8 treatment decisions are presumed to be in the patient's best
9 interests.

10 7. A patient may revoke his or her **patient advocate**
11 designation at any time and in any manner sufficient to
12 communicate an intent to revoke.

13 8. A patient advocate may revoke his or her acceptance ~~to~~
14 **of the patient advocate** designation at any time and in any manner
15 sufficient to communicate an intent to revoke.

16 9. A patient admitted to a health facility or agency has the
17 rights enumerated in section 20201 of the public health code,
18 1978 PA 368, MCL 333.20201.

19 Sec. 5508. (1) ~~The~~ **Except as provided under subsection**
20 **(3), the** authority under a patient advocate designation is
21 exercisable by a patient advocate only when the patient is unable
22 to participate in medical treatment decisions. The patient's
23 attending physician and another physician or licensed
24 psychologist shall determine upon examination of the patient when
25 the patient is unable to participate in medical treatment
26 decisions, shall put the determination in writing, shall make the
27 determination part of the patient's medical record, and shall

1 review the determination not less than annually. If the
2 patient's religious beliefs prohibit an examination and this is
3 stated in the designation, the patient must indicate in the
4 designation how it shall be determined when the patient advocate
5 exercises powers concerning decisions on behalf of the patient.

6 (2) If a dispute arises as to whether the patient is unable
7 to participate in medical treatment decisions, a petition may be
8 filed with the court in the county in which the patient resides
9 or is found requesting the court's determination as to whether
10 the patient is unable to participate in medical treatment
11 decisions. If a petition is filed under this subsection, the
12 court shall appoint a guardian ad litem to represent the patient
13 for the purposes of this subsection. The court shall conduct a
14 hearing on a petition under this subsection as soon as possible
15 and not later than 7 days after the court receives the petition.
16 As soon as possible and not later than 7 days after the hearing,
17 the court shall determine whether or not the patient is able to
18 participate in medical treatment decisions. If the court
19 determines that the patient is unable to participate in medical
20 treatment decisions, the patient advocate's authority, rights,
21 and responsibilities are effective. If the court determines that
22 the patient is able to participate in medical treatment
23 decisions, the patient advocate's authority, rights, and
24 responsibilities are not effective.

25 (3) In the case of a patient advocate designation that
26 authorizes a patient advocate to make an anatomical gift of all
27 or part of the patient's body, the patient advocate shall act on

1 the patient's behalf in accordance with section 10102 of the
2 public health code, 1978 PA 368, MCL 333.10102, and may do so
3 only after the patient has been declared unable to participate in
4 medical treatment decisions as provided in subsection (1) or
5 declared dead by a licensed physician. The patient advocate's
6 authority to make an anatomical gift remains exercisable after
7 the patient's death.

8 Sec. 5510. (1) A patient advocate designation is revoked by
9 ~~any~~ 1 or more of the following:

10 (a) The patient's death, **except that part of the patient**
11 **advocate designation, if any, that authorizes the patient**
12 **advocate to make an anatomical gift of all or part of the**
13 **deceased patient's body in accordance with this act and**
14 **section 10102 of the public health code, 1978 PA 368,**
15 **MCL 333.10102.**

16 (b) An order of removal by the probate court under
17 section 5511(4).

18 (c) The patient advocate's resignation or removal by the
19 court, unless a successor patient advocate has been designated.

20 (d) The patient's revocation of the **patient advocate**
21 designation. Even if the patient is unable to participate in
22 medical treatment decisions, a patient may revoke a **patient**
23 **advocate** designation at any time and in any manner by which he or
24 she is able to communicate an intent to revoke the **patient**
25 **advocate** designation. If there is a dispute as to the intent of
26 the patient to revoke the **patient advocate** designation, the court
27 may make a determination on the patient's intent to revoke the

1 **patient advocate** designation. If the revocation is not in
2 writing, an individual who witnesses a revocation of a **patient**
3 **advocate** designation shall describe in writing the circumstances
4 of the revocation, must sign the writing, and shall notify, if
5 possible, the patient advocate of the revocation. If the
6 patient's physician or health facility has notice of the
7 patient's revocation of a **patient advocate** designation, the
8 physician or health facility shall note the revocation in the
9 patient's medical records and bedside chart and must notify the
10 patient advocate.

11 (e) A subsequent **patient advocate** designation that revokes
12 the prior **patient advocate** designation either expressly or by
13 inconsistency.

14 (f) The occurrence of a provision for revocation contained in
15 the **patient advocate** designation.

16 (g) If a **patient advocate** designation is executed during a
17 patient's marriage naming the patient's spouse as the patient
18 advocate, the **patient advocate** designation is suspended during
19 the pendency of an action for separate maintenance, annulment, or
20 divorce and is revoked upon the entry of a judgment of separate
21 maintenance, annulment, or divorce, unless the patient has named
22 a successor individual to serve as a patient advocate. If a
23 successor patient advocate is named, that individual acts as the
24 patient advocate.

25 (2) The revocation of a patient advocate designation under
26 subsection (1) does not revoke or terminate the agency as to the
27 patient advocate or other person who acts in good faith under the

1 **patient advocate** designation and without actual knowledge of the
2 revocation. Unless the action is otherwise invalid or
3 unenforceable, an action taken without knowledge of the
4 revocation binds the patient and his or her heirs, devisees, and
5 personal representatives. A sworn statement executed by the
6 patient advocate stating that, at the time of doing an act in
7 accordance with the **patient advocate** designation, he or she did
8 not have actual knowledge of the revocation of the **patient**
9 **advocate** designation is, in the absence of fraud, conclusive
10 proof that the patient advocate did not have actual knowledge of
11 the revocation at the time of the act.

12 Enacting section 1. This amendatory act does not take
13 effect unless House Bill No. 4125 of the 92nd Legislature is
14 enacted into law.