

HOUSE BILL No. 5524

December 14, 2005, Introduced by Reps. Lipsey, Condino, Stewart, Vander Veen, Gillard, Shaffer, Kolb, Tobocman, Gaffney, Bieda, Alma Smith and Cushingberry and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," (MCL 700.1101 to 700.8102) by amending the heading for part 5 of article V and by adding sections 5525 and 5527.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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PART 5

DURABLE POWER OF ATTORNEY, ~~AND~~ DESIGNATION OF PATIENT ADVOCATE,
AND LIVING WILL

SEC. 5525. (1) AN INDIVIDUAL 18 YEARS OF AGE OR OLDER WHO IS OF SOUND MIND MAY MAKE A LIVING WILL TO DIRECT THE PROVISION, CONTINUATION, WITHHOLDING, OR WITHDRAWAL OF MEDICAL TREATMENT IN THE EVENT THAT THE INDIVIDUAL BECOMES UNABLE TO PARTICIPATE IN MEDICAL TREATMENT DECISIONS FOR HIMSELF OR HERSELF. DIRECTIONS IN A LIVING WILL MAY INCLUDE DIRECTIONS AS TO THE WITHHOLDING OR

1 WITHDRAWAL OF ARTIFICIAL NUTRITION OR HYDRATION AND DIRECTIONS THAT
2 MAY RESULT IN THE INDIVIDUAL'S DEATH.

3 (2) SECTIONS 2502 TO 2510 APPLY TO A LIVING WILL.

4 (3) THE EXISTENCE OR NONEXISTENCE OF A LIVING WILL DOES NOT
5 AFFECT THE VALIDITY OF PROVISIONS IN A PATIENT ADVOCATE DESIGNATION
6 THAT RELATE TO THE PROVISION, CONTINUATION, WITHHOLDING, OR
7 WITHDRAWAL OF MEDICAL TREATMENT THAT WOULD RESULT IN THE DEATH OF
8 THE INDIVIDUAL MAKING THE PATIENT ADVOCATE DESIGNATION.

9 SEC. 5527. (1) A SUPERVISING HEALTH PROFESSIONAL WHO KNOWS OF
10 THE EXISTENCE OF A LIVING WILL OR A REVOCATION OF A LIVING WILL
11 SHALL PROMPTLY RECORD ITS EXISTENCE OR REVOCATION IN THE MEDICAL
12 RECORD OF THE INDIVIDUAL WHO MADE THE LIVING WILL AND SHALL REQUEST
13 A COPY. IF A COPY IS FURNISHED, THE SUPERVISING HEALTH PROFESSIONAL
14 SHALL ARRANGE FOR IT TO BE KEPT IN THE MEDICAL RECORD.

15 (2) AN ATTENDING PHYSICIAN WHO MAKES A DETERMINATION THAT AN
16 INDIVIDUAL WHO MADE A LIVING WILL IS UNABLE TO PARTICIPATE IN
17 MEDICAL TREATMENT DECISIONS FOR HIMSELF OR HERSELF, OR WHO IS
18 INFORMED OF SUCH A DETERMINATION MADE BY AN ATTENDING PHYSICIAN,
19 SHALL PROMPTLY RECORD THE DETERMINATION IN THE INDIVIDUAL'S MEDICAL
20 RECORD.

21 (3) EXCEPT AS PROVIDED IN SUBSECTIONS (4) AND (5), IF A
22 DETERMINATION HAS BEEN MADE AS DESCRIBED IN SUBSECTION (2), A
23 HEALTH PROFESSIONAL OR HEALTH FACILITY PROVIDING CARE TO THE
24 INDIVIDUAL SHALL COMPLY WITH AN INSTRUCTION CONTAINED IN THE LIVING
25 WILL AND WITH A REASONABLE INTERPRETATION OF THAT INSTRUCTION MADE
26 BY A PERSON WITH THE LEGAL POWER TO MAKE MEDICAL TREATMENT
27 DECISIONS FOR THE INDIVIDUAL.

1 (4) A HEALTH PROFESSIONAL MAY DECLINE TO COMPLY WITH AN
2 INSTRUCTION CONTAINED IN A LIVING WILL FOR REASONS OF CONSCIENCE. A
3 HEALTH FACILITY MAY DECLINE TO COMPLY WITH AN INSTRUCTION CONTAINED
4 IN A LIVING WILL IF THE INSTRUCTION OR DECISION IS CONTRARY TO A
5 POLICY OF THE HEALTH FACILITY THAT IS EXPRESSLY BASED ON REASONS OF
6 CONSCIENCE AND IF THE POLICY WAS TIMELY COMMUNICATED TO THE
7 INDIVIDUAL WHO MADE THE LIVING WILL OR TO A PERSON WITH THE LEGAL
8 POWER TO MAKE MEDICAL TREATMENT DECISIONS FOR THE INDIVIDUAL.

9 (5) A HEALTH PROFESSIONAL OR HEALTH FACILITY MAY DECLINE TO
10 COMPLY WITH AN INSTRUCTION CONTAINED IN A LIVING WILL THAT REQUIRES
11 MEDICALLY INEFFECTIVE MEDICAL TREATMENT OR MEDICAL TREATMENT
12 CONTRARY TO GENERALLY ACCEPTED MEDICAL TREATMENT STANDARDS
13 APPLICABLE TO THE HEALTH PROFESSIONAL OR HEALTH FACILITY.

14 (6) A HEALTH PROFESSIONAL OR HEALTH FACILITY THAT DECIDES NOT
15 TO COMPLY WITH AN INSTRUCTION CONTAINED IN A LIVING WILL SHALL DO
16 ALL OF THE FOLLOWING:

17 (A) PROMPTLY INFORM THE INDIVIDUAL WHO MADE THE LIVING WILL,
18 IF POSSIBLE, AND ANY PERSON WITH THE LEGAL POWER TO MAKE MEDICAL
19 TREATMENT DECISIONS FOR THE INDIVIDUAL OF THE DECISION.

20 (B) PROVIDE CONTINUING CARE TO THE INDIVIDUAL WHO MADE THE
21 LIVING WILL UNTIL A TRANSFER UNDER SUBDIVISION (C) CAN BE EFFECTED.

22 (C) UNLESS THE INDIVIDUAL WHO MADE THE LIVING WILL OR A PERSON
23 WITH LEGAL POWER TO MAKE MEDICAL TREATMENT DECISIONS FOR THE
24 INDIVIDUAL REFUSES ASSISTANCE, IMMEDIATELY MAKE ALL REASONABLE
25 EFFORTS TO ASSIST IN THE TRANSFER OF THE INDIVIDUAL TO THE CARE OF
26 ANOTHER HEALTH PROFESSIONAL OR HEALTH FACILITY THAT IS WILLING TO
27 COMPLY WITH THE INSTRUCTION.

1 (7) A HEALTH PROFESSIONAL OR HEALTH FACILITY SHALL NOT REQUIRE
2 OR PROHIBIT THE EXECUTION OR REVOCATION OF A LIVING WILL AS A
3 CONDITION FOR PROVIDING MEDICAL TREATMENT.

4 (8) AS USED IN THIS SECTION:

5 (A) "ATTENDING PHYSICIAN" MEANS A PHYSICIAN DESIGNATED, BY AN
6 INDIVIDUAL OR A PERSON WITH LEGAL AUTHORITY TO MAKE MEDICAL
7 TREATMENT DECISIONS FOR THE INDIVIDUAL, TO HAVE PRIMARY
8 RESPONSIBILITY FOR THE INDIVIDUAL'S HEALTH CARE OR, IN THE ABSENCE
9 OF A DESIGNATION OR IF THE DESIGNATED PHYSICIAN IS NOT REASONABLY
10 AVAILABLE, A PHYSICIAN WHO UNDERTAKES THE RESPONSIBILITY.

11 (B) "HEALTH FACILITY" MEANS A FACILITY OR AGENCY LICENSED
12 UNDER ARTICLE 17 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
13 333.20101 TO 333.22260.

14 (C) "HEALTH PROFESSIONAL" MEANS AN INDIVIDUAL LICENSED TO
15 PROVIDE MEDICAL TREATMENT UNDER ARTICLE 15 OF THE PUBLIC HEALTH
16 CODE, 1978 PA 368, MCL 333.16101 TO 333.18838.

17 (D) "MEDICAL TREATMENT" MEANS ANY CARE, TREATMENT, SERVICE, OR
18 PROCEDURE TO MAINTAIN, DIAGNOSE, OR OTHERWISE AFFECT AN
19 INDIVIDUAL'S PHYSICAL OR MENTAL CONDITION, INCLUDING DIAGNOSTIC
20 TESTS, SURGICAL PROCEDURES, PROGRAMS OF MEDICATION, AND THE
21 PROVISION, CONTINUATION, WITHHOLDING, OR WITHDRAWAL OF ARTIFICIAL
22 NUTRITION AND HYDRATION.

23 (E) "PHYSICIAN" MEANS A PHYSICIAN LICENSED TO PRACTICE
24 MEDICINE OR OSTEOPATHIC MEDICINE AND SURGERY UNDER ARTICLE 15 OF
25 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101 TO 333.18838.

26 (F) "REASONABLY AVAILABLE" MEANS READILY ABLE TO BE CONTACTED
27 WITHOUT UNDUE EFFORT AND WILLING AND ABLE TO ACT IN A TIMELY MANNER

1 CONSIDERING THE URGENCY OF THE INDIVIDUAL'S MEDICAL TREATMENT
2 NEEDS.

3 (G) "SUPERVISING HEALTH PROFESSIONAL" MEANS THE ATTENDING
4 PHYSICIAN OR, IF THERE IS NO ATTENDING PHYSICIAN OR THE ATTENDING
5 PHYSICIAN IS NOT REASONABLY AVAILABLE, THE HEALTH PROFESSIONAL WHO
6 HAS UNDERTAKEN PRIMARY RESPONSIBILITY FOR AN INDIVIDUAL'S MEDICAL
7 TREATMENT.