

SUBSTITUTE FOR  
HOUSE BILL NO. 6272

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending sections 5410, 5422, 5423, and 5501 (MCL 700.5410,  
700.5422, 700.5423, and 700.5501), section 5423 as amended by 2005  
PA 204.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 5410. (1) The court may require a conservator to furnish  
2 a bond. IF THE COURT DETERMINES THAT THE VALUE OF CASH AND PROPERTY  
3 THAT IS READILY CONVERTIBLE INTO CASH IN THE ESTATE AND IN THE  
4 CONSERVATOR'S CONTROL EXCEEDS THE LIMIT FOR ADMINISTERING A  
5 DECEDENT'S ESTATE UNDER SECTION 3982, ADJUSTED IN THE MANNER  
6 PROVIDED UNDER SECTION 1210 FOR THE YEAR IN WHICH THE CONSERVATOR  
7 IS APPOINTED, THE COURT SHALL REQUIRE THE CONSERVATOR TO FURNISH A  
8 BOND, UNLESS 1 OR MORE OF THE FOLLOWING APPLY:

1 (A) THE ESTATE CONTAINS NO PROPERTY READILY CONVERTIBLE TO  
 2 CASH AND THE CASH IS IN A RESTRICTED ACCOUNT WITH A FINANCIAL  
 3 INSTITUTION.

4 (B) THE CONSERVATOR HAS BEEN GRANTED TRUST POWERS UNDER  
 5 SECTION 4401 OF THE BANKING CODE OF 1999, 1999 PA 276, MCL  
 6 487.14401.

7 (C) THE COURT DETERMINES THAT REQUIRING A BOND WOULD IMPOSE A  
 8 FINANCIAL HARDSHIP ON THE ESTATE.

9 (D) THE COURT STATES ON THE RECORD THE REASONS WHY A BOND IS  
 10 NOT NECESSARY.

11 (2) A BOND FURNISHED UNDER THIS SECTION SHALL BE conditioned  
 12 upon faithful discharge of all duties of the **CONSERVATOR'S** trust  
 13 according to law, with sureties as the court specifies. Unless  
 14 otherwise directed, the bond shall be in the amount of the  
 15 aggregate capital value of the estate property in the conservator's  
 16 control plus 1 year's estimated income minus the value of  
 17 securities deposited under arrangements requiring a court order for  
 18 their removal and the value of land that the fiduciary, by express  
 19 limitation of power, lacks power to sell or convey without court  
 20 authorization. Instead of sureties on a bond, the court may accept  
 21 other security for the performance of the bond, including a pledge  
 22 of securities or a mortgage of land.

23 Sec. 5422. (1) A person who in good faith either assists or  
 24 deals with a conservator for value in a transaction, other than  
 25 ~~those requiring~~ **A TRANSACTION THAT REQUIRES** a court order as  
 26 provided in section 5407 **OR 5423(3)**, is protected as if the  
 27 conservator properly exercised the power. ~~The~~ **EXCEPT AS PROVIDED IN**

1 **SUBSECTION (3), THE** fact that a person knowingly deals with a  
2 conservator does not alone require the person to inquire into the  
3 existence of a power or the propriety of its exercise, but a  
4 restriction on a conservator's powers that is endorsed on letters  
5 as provided in section 5427 is effective as to third persons. A  
6 person is not bound to see to the proper application of estate  
7 property paid or delivered to a conservator.

8 (2) The protection expressed in this section extends to a  
9 procedural irregularity or jurisdictional defect that occurs in a  
10 proceeding leading to the issuance of letters and is not a  
11 substitution for protection provided by a comparable provision of  
12 the law relating to a commercial transaction or to simplifying a  
13 transfer of securities by a fiduciary.

14 (3) **A CONSERVATOR SHALL RECORD AN ORDER ALLOWING THE SALE,**  
15 **DISPOSAL, MORTGAGE, OR PLEDGE OF OR PLACEMENT OF A LIEN ON REAL**  
16 **PROPERTY UNDER SECTION 5423 IN THE RECORDS OF THE REGISTER OF DEEDS**  
17 **FOR THE COUNTY IN WHICH THE REAL ESTATE IS LOCATED. UNLESS THE**  
18 **ORDER HAS BEEN RECORDED OR A PERSON TO WHOM AN INTEREST IN THE REAL**  
19 **ESTATE IS TRANSFERRED HAS BEEN GIVEN A COPY OF THE ORDER, THE**  
20 **PERSON IS NOT ENTITLED TO PRESUME THAT THE CONSERVATOR HAS THE**  
21 **POWER TO SELL OR OTHERWISE DISPOSE OF THE REAL PROPERTY, OR TO**  
22 **MORTGAGE, PLEDGE, OR CAUSE A LIEN TO BE PLACED ON THE PROTECTED**  
23 **INDIVIDUAL'S HOME, AS APPLICABLE.**

24 Sec. 5423. (1) Subject to a limitation imposed under section  
25 5427, a conservator has all of the powers conferred in this section  
26 and the additional powers conferred by law on trustees in this  
27 state. In addition, a conservator of the estate of an unmarried

1 minor, as to whom no one has parental rights, has the powers,  
2 responsibilities, and duties of a guardian described in section  
3 5215 until the individual is no longer a minor or marries. The  
4 parental rights conferred on a conservator by this section do not  
5 preclude a guardian's appointment as provided in part 2.

6 (2) Acting reasonably in an effort to accomplish the purpose  
7 of the appointment and without court authorization or confirmation,  
8 a conservator may do any of the following:

9 (a) Collect, hold, or retain estate property, including land  
10 in another state, until the conservator determines that disposition  
11 of the property should be made. Property may be retained even  
12 though it includes property in which the conservator is personally  
13 interested.

14 (b) Receive an addition to the estate.

15 (c) Continue or participate in the operation of a business or  
16 other enterprise.

17 (d) Acquire an undivided interest in estate property in which  
18 the conservator, in a fiduciary capacity, holds an undivided  
19 interest.

20 (e) Invest or reinvest estate property. If the conservator  
21 exercises the power conferred by this subdivision, the conservator  
22 must invest or reinvest the property in accordance with the  
23 Michigan prudent investor rule.

24 (f) Deposit estate money in a state or federally insured  
25 financial institution including one operated by the conservator.

26 (g) Except as provided in subsection (3), acquire or dispose  
27 of estate property, including land in another state, for cash or on

1 credit, at public or private sale, or manage, develop, improve,  
2 exchange, partition, change the character of, or abandon estate  
3 property.

4 (h) Make an ordinary or extraordinary repair or alteration in  
5 a building or other structure, demolish an improvement, or raze an  
6 existing or erect a new party wall or building.

7 (i) Subdivide, develop, or dedicate land to public use; make  
8 or obtain the vacation of a plat or adjust a boundary; adjust a  
9 difference in valuation on exchange or partition by giving or  
10 receiving consideration; or dedicate an easement to public use  
11 without consideration.

12 (j) Enter for any purpose into a lease as lessor or lessee  
13 with or without option to purchase or renew for a term within or  
14 extending beyond the term of the conservatorship.

15 (k) Enter into a lease or arrangement for exploration and  
16 removal of a mineral or other natural resource or enter into a  
17 pooling or unitization agreement.

18 (l) Grant an option involving disposition of estate property or  
19 take an option for the acquisition of property.

20 (m) Vote a security, in person or by general or limited proxy.

21 (n) Pay a call, assessment, or other amount chargeable or  
22 accruing against or on account of a security.

23 (o) Sell or exercise stock subscription or conversion rights.

24 (p) Consent, directly or through a committee or other agent,  
25 to the reorganization, consolidation, merger, dissolution, or  
26 liquidation of a corporation or other business enterprise.

27 (q) Hold a security in the name of a nominee or in other form

1 without disclosure of the conservatorship so that title to the  
2 security may pass by delivery. However, the conservator is liable  
3 for an act of the nominee in connection with the stock so held.

4 (r) Insure the estate property against damage or loss or the  
5 conservator against liability with respect to third persons.

6 (s) Borrow money to be repaid from estate property or  
7 otherwise.

8 (t) Advance money for the protection of the estate or the  
9 protected individual, and for all expense, loss, or liability  
10 sustained in the estate's administration or because of the holding  
11 or ownership of estate property. The conservator has a lien on the  
12 estate as against the protected individual for such an advance.

13 (u) Pay or contest a claim; settle a claim by or against the  
14 estate or the protected individual by compromise, arbitration, or  
15 otherwise; and release, in whole or in part, a claim belonging to  
16 the estate to the extent that the claim is uncollectible.

17 (v) Pay a tax, assessment, conservator's compensation, or  
18 other expense incurred in the estate's collection, care,  
19 administration, and protection.

20 (w) Allocate an item of income or expense to either estate  
21 income or principal, as provided by law, including creation of a  
22 reserve out of income for depreciation, obsolescence, or  
23 amortization, or for depletion in ~~a~~-mineral or timber property.

24 (x) Pay money distributable to a protected individual or the  
25 protected individual's dependent by paying the money to the  
26 distributee or by paying the money for the use of the distributee  
27 to the distributee's guardian, or if none, to a relative or other

1 person having custody of the distributee.

2 (y) Employ a person, including an auditor, investment advisor,  
3 or agent, even though the person is associated with the  
4 conservator, to advise or assist in the performance of an  
5 administrative duty; act upon the person's recommendation without  
6 independent investigation; and, instead of acting personally,  
7 employ an agent to perform an act of administration, whether or not  
8 discretionary.

9 (z) Employ an attorney to perform necessary legal services or  
10 to advise or assist the conservator in the performance of the  
11 conservator's administrative duties, even if the attorney is  
12 associated with the conservator, and act without independent  
13 investigation upon the attorney's recommendation. An attorney  
14 employed under this subdivision shall receive reasonable  
15 compensation for his or her employment.

16 (aa) Prosecute or defend an action, claim, or proceeding in  
17 any jurisdiction for the protection of estate property and of the  
18 conservator in the performance of a fiduciary duty.

19 (bb) Execute and deliver an instrument that will accomplish or  
20 facilitate the exercise of a power vested in the conservator.

21 (cc) Respond to an environmental concern or hazard affecting  
22 property as provided in section 5424.

23 (3) A conservator shall not sell or otherwise dispose of the  
24 protected individual's real property or interest in real property  
25 **OR MORTGAGE, PLEDGE, OR CAUSE A LIEN TO BE PLACED ON THE PROTECTED**  
26 **INDIVIDUAL'S HOME** without approval of the court. The court shall  
27 only approve the sale, ~~or other disposal,~~ **MORTGAGE, OR PLEDGE** of **OR**

1 **LIEN AGAINST** the real property or interest in real property if,  
2 after a hearing with notice to interested persons as specified in  
3 the Michigan court rules, the court considers evidence of the value  
4 of the real property or interest in real property and otherwise  
5 determines that the sale, ~~or other disposal~~, **MORTGAGE, PLEDGE, OR**  
6 **ALLOWANCE OF THE LIEN** is in the protected individual's best  
7 interest.

8       Sec. 5501. (1) A durable power of attorney is a power of  
9 attorney by which a principal designates another as the principal's  
10 attorney in fact in **A** writing ~~and the writing~~ **THAT** contains the  
11 words "This power of attorney is not affected by the principal's  
12 subsequent disability or incapacity, or by the lapse of time", or  
13 "This power of attorney is effective upon the disability or  
14 incapacity of the principal", or similar words showing the  
15 principal's intent that the authority conferred is exercisable  
16 notwithstanding the principal's subsequent disability or incapacity  
17 and, unless the power states a termination time, notwithstanding  
18 the lapse of time since the execution of the instrument.

19       (2) **BEFORE EXERCISING AUTHORITY AS ATTORNEY IN FACT UNDER A**  
20 **DURABLE POWER OF ATTORNEY, A PERSON SHALL SIGN AN ACCEPTANCE OF THE**  
21 **DESIGNATION, ACKNOWLEDGING AND ACCEPTING ALL OF THE FOLLOWING**  
22 **OBLIGATIONS, LIABILITIES, AND RIGHTS:**

23       (A) **TO ACT IN THE BEST INTEREST OF THE PRINCIPAL.**

24       (B) **TO KEEP THE PRINCIPAL INFORMED OF THE ATTORNEY IN FACT'S**  
25 **ACTIONS AND ACCOUNT TO THE PRINCIPAL.**

26       (C) **TO NOT MAKE GIFTS OF THE PRINCIPAL'S PROPERTY UNLESS**  
27 **SPECIFICALLY AUTHORIZED BY THE POWER OF ATTORNEY.**



1 (D) TO BE PROSECUTED AND PUNISHED FOR ANY CRIMINAL ACTS.

2 (E) TO KEEP THE PRINCIPAL'S ASSETS IN AN ACCOUNT THAT DOES NOT  
3 INCLUDE MONEY OF THE ATTORNEY IN FACT OR ANOTHER PERSON.

4 (F) TO ONLY USE THE PRINCIPAL'S PROPERTY AND INCOME FOR THE  
5 BENEFIT OF THE PRINCIPAL, UNLESS OTHERWISE AUTHORIZED SPECIFICALLY  
6 IN THE POWER OF ATTORNEY.

7 (G) IF REQUESTED, TO PROVIDE AN ACCOUNTING AT ANY TIME TO THE  
8 PRINCIPAL, A FIDUCIARY APPOINTED ON BEHALF OF THE PRINCIPAL, OR THE  
9 COURT.

10 (H) TO MAINTAIN SUFFICIENT RECORDS OF EVERY TRANSACTION AND BE  
11 PREPARED TO DEFEND EACH ACTION.

12 (I) TO BE HELD FINANCIALLY RESPONSIBLE FOR ANY TRANSACTION  
13 THAT IS NOT SPECIFICALLY AUTHORIZED IN THE POWER OF ATTORNEY.

14 (J) TO HIRE AN ADVISOR, ATTORNEY, ACCOUNTANT, OR OTHER  
15 PROFESSIONAL AS REASONABLY REQUIRED TO COMPLY WITH THE ATTORNEY IN  
16 FACT'S DUTIES AND TO PAY FOR THE PROFESSIONAL'S SERVICES FROM THE  
17 ESTATE OF THE PRINCIPAL.

18 (K) UNLESS PROHIBITED BY THE POWER OF ATTORNEY, TO RECEIVE  
19 REASONABLE COMPENSATION FOR THE ATTORNEY IN FACT'S SERVICES, WHICH  
20 COMPENSATION MAY BE SUBJECT TO SCRUTINY BY THE COURT.

21 Enacting section 1. This amendatory act takes effect April 1,  
22 2011.

23 Enacting section 2. This amendatory act does not take effect  
24 unless House Bill No. 4619 of the 95th Legislature is enacted into  
25 law.