

HOUSE BILL No. 5366

February 26, 2014, Introduced by Reps. LaFontaine, Cotter, Geiss, Leonard, Lauwers,
Kowall and Jenkins and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5407 and 5415 (MCL 700.5407 and 700.5415),
section 5407 as amended by 2009 PA 46, and by adding section 5423a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5407. (1) The court shall exercise the authority
2 conferred in this part to encourage the development of maximum
3 self-reliance and independence of a protected individual and shall
4 make protective orders only to the extent necessitated by the
5 protected individual's mental and adaptive limitations and other
6 conditions warranting the procedure. Accordingly, the court may
7 authorize a protected individual to function without the consent or
8 supervision of the individual's conservator in handling part of his
9 or her money or property, including authorizing the individual to

1 maintain an account with a financial institution. To the extent the
2 individual is authorized to function autonomously, a person may
3 deal with the individual as though the individual is mentally
4 competent.

5 (2) The court has the following powers that may be exercised
6 directly or through a conservator in respect to a protected
7 individual's estate and business affairs:

8 (a) While a petition for a conservator's appointment or
9 another protective order is pending and after preliminary hearing
10 and without notice to others, the court has the power to preserve
11 and apply property of the individual to be protected as may be
12 required for the support of the individual or the individual's
13 dependents.

14 (b) After hearing and upon determining that a basis for an
15 appointment or other protective order exists with respect to a
16 minor without other disability, the court has all those powers over
17 the minor's estate and business affairs that are or may be
18 necessary for the best interests of the minor and members of the
19 minor's immediate family.

20 (c) After hearing and upon determining that a basis for an
21 appointment or other protective order exists with respect to an
22 individual for a reason other than minority, the court, for the
23 benefit of the individual and members of the individual's immediate
24 family, has all the powers over the estate and business affairs
25 that the individual could exercise if present and not under
26 disability, except the power to make a will. Those powers include,
27 but are not limited to, all of the following:

1 (i) To make gifts.

2 (ii) To convey or release a contingent or expectant interest in
3 property including marital property rights and a right of
4 survivorship incident to joint tenancy or tenancy by the entirety.

5 (iii) To exercise or release a power held by the protected
6 individual as personal representative, custodian for a minor,
7 conservator, or donee of a power of appointment.

8 (iv) To enter into a contract.

9 (v) To create a revocable or irrevocable trust of estate
10 property that may extend beyond the disability or life of the
11 protected individual.

12 (vi) To exercise an option of the protected individual to
13 purchase securities or other property.

14 (vii) To exercise a right to elect an option and change a
15 beneficiary under an insurance or annuity policy and to surrender
16 the policy for its cash value.

17 (viii) To exercise a right to an elective share in the estate of
18 the individual's deceased spouse.

19 (ix) To renounce or disclaim an interest by testate or
20 intestate succession or by inter vivos transfer.

21 (x) **SUBJECT TO THE APPLICABLE TERMS-OF-SERVICE AGREEMENT:**

22 **(A) TO EXERCISE CONTROL OVER DIGITAL PROPERTY OF THE PROTECTED**
23 **INDIVIDUAL.**

24 **(B) TO EXERCISE A RIGHT IN DIGITAL PROPERTY OF THE PROTECTED**
25 **INDIVIDUAL.**

26 **(C) TO CHANGE A GOVERNING INSTRUMENT AFFECTING THE DIGITAL**
27 **PROPERTY OF THE PROTECTED INDIVIDUAL.**

1 (3) The court may exercise or direct the exercise of the
2 following powers only if satisfied, after the notice and hearing,
3 that it is in the protected individual's best interests and that
4 the individual either is incapable of consenting or has consented
5 to the proposed exercise of the power:

6 (a) To exercise or release a power of appointment of which the
7 protected individual is donee.

8 (b) To renounce or disclaim an interest.

9 (c) To make a gift in trust or otherwise exceeding 20% of a
10 year's income of the estate.

11 (d) To change a beneficiary under an insurance and annuity
12 policy.

13 (4) A determination that a basis for a conservator's
14 appointment or another protective order exists has no effect on the
15 protected individual's capacity.

16 **(5) TO THE EXTENT ORDERED BY THE COURT UNDER SUBSECTION (2),**
17 **AND SUBJECT TO THE APPLICABLE LAW AND TERMS-OF-SERVICE AGREEMENT,**
18 **WITH RESPECT TO THE PROTECTED INDIVIDUAL'S DIGITAL PROPERTY, A**
19 **CONSERVATOR HAS THE LAWFUL CONSENT OF THE PROTECTED INDIVIDUAL AND**
20 **IS AN AUTHORIZED USER UNDER ALL APPLICABLE STATE AND FEDERAL**
21 **STATUTES.**

22 Sec. 5415. (1) A person interested in the welfare of an
23 individual for whom a conservator is appointed may file a petition
24 in the appointing court for an order to do any of the following:

25 (a) Require bond or security or additional bond or security,
26 or reduce bond.

27 (b) Require an accounting for the administration of the trust.

1 (c) Direct distribution.

2 (d) Remove the conservator and appoint a temporary or
3 successor conservator.

4 (E) LIMIT OR ELIMINATE THE CONSERVATOR'S POWER OVER DIGITAL
5 PROPERTY.

6 (F) ~~(e)~~—Grant other appropriate relief.

7 (2) ON RECEIPT OF A PETITION UNDER SUBSECTION (1)(E), THE
8 COURT SHALL SET A DATE FOR A HEARING ON THE PETITION. THE HEARING
9 DATE SHALL BE NOT LESS THAN 14 DAYS AND NOT MORE THAN 56 DAYS AFTER
10 THE DATE THE PETITION IS FILED.

11 (3) ~~(2)~~—A conservator may petition the appointing court for
12 instructions concerning fiduciary responsibility. Upon notice and
13 hearing, the court may give appropriate instructions or make an
14 appropriate order.

15 SEC. 5423A. (1) ON RECEIPT OF A CONSERVATOR'S WRITTEN REQUEST
16 UNDER THIS SUBSECTION FOR ACCESS TO DIGITAL PROPERTY, OWNERSHIP OF
17 DIGITAL PROPERTY, OR A COPY OF A DIGITAL ASSET, A DIGITAL CUSTODIAN
18 SHALL PROVIDE THE CONSERVATOR WITH THE REQUESTED ACCESS, OWNERSHIP,
19 OR COPY, AS APPLICABLE. A CONSERVATOR'S WRITTEN REQUEST UNDER THIS
20 SUBSECTION MUST BE ACCOMPANIED BY A CERTIFIED COPY OF THE COURT
21 ORDER THAT GIVES THE CONSERVATOR POWER OVER THE DIGITAL PROPERTY.

22 (2) A DIGITAL CUSTODIAN SHALL COMPLY NOT LATER THAN 56 DAYS
23 AFTER RECEIPT OF A REQUEST MADE UNDER SUBSECTION (1). IF THE
24 DIGITAL CUSTODIAN FAILS TO COMPLY, THE CONSERVATOR MAY PETITION THE
25 COURT FOR AN ORDER DIRECTING COMPLIANCE. IF, NOT LATER THAN 56 DAYS
26 AFTER RECEIVING A REQUEST MADE UNDER SUBSECTION (1), THE DIGITAL
27 CUSTODIAN FAILS TO COMPLY WITH THE REQUEST OR ORDER, THE

1 CONSERVATOR MAY PETITION THE COURT FOR AN ORDER DIRECTING
2 COMPLIANCE.

3 (3) A DIGITAL CUSTODIAN IS NOT LIABLE FOR AN ACTION DONE IN
4 COMPLIANCE WITH THIS SECTION.

5 Enacting section 1. This amendatory act does not take effect
6 unless all of the following bills of the 97th Legislature are
7 enacted into law:

8 (a) Senate Bill No.____ or House Bill No. 5368 (request no.
9 01198'13).

10 (b) Senate Bill No.____ or House Bill No. 5367 (request no.
11 04550'13).

12 (c) Senate Bill No.____ or House Bill No. 5369 (request no.
13 04552'13).

14 (d) Senate Bill No.____ or House Bill No. 5370 (request no.
15 04553'13).