

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 955

A bill to amend 1978 PA 642, entitled
"Revised probate code,"
by amending sections 3, 8, 427, and 437 (MCL 700.3, 700.8,
700.427, and 700.437), section 3 as amended by 1988 PA 222,
section 8 as amended by 1988 PA 398, and sections 427 and 437 as
amended by 1990 PA 313, and by adding section 427a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) "ATTORNEY" MEANS, IF APPOINTED TO REPRESENT A
2 CHILD UNDER THE PROVISIONS REFERENCED IN SECTION 427A, AN ATTOR-
3 NEY SERVING AS THE CHILD'S LEGAL ADVOCATE IN THE MANNER DEFINED
4 AND DESCRIBED IN SECTION 13A OF CHAPTER XIIA OF 1939 PA 288,
5 MCL 712A.13A.

6 (2) ~~(1)~~ "Authenticated" means that the genuineness and
7 validity of the original or a copy of a public or official
8 document, instrument, or record is proved.

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1 (3) ~~-(2)-~~ "Beneficiary" as it relates to trust
2 beneficiaries, includes a beneficiary of a present or future
3 interest, vested or contingent, and the owner of an interest by
4 assignment or other transfer. Beneficiary includes a party enti-
5 tled to enforce the trust if the trust is a charitable trust.

6 (4) ~~-(3)-~~ "Child" includes a person entitled to take as a
7 child under this act by intestate succession from the parent
8 whose relationship is in question and excludes a stepchild, a
9 foster child, a grandchild, or any more remote descendant who is
10 not so entitled to inherit.

11 (5) ~~-(4)-~~ "Claim" INCLUDES, in respect to estates of dece-
12 dents and protected persons, ~~includes~~ liabilities of the dece-
13 dent or protected person whether arising in contract, in tort, or
14 otherwise, and liabilities of the estate that arise before, at,
15 or after the death of the decedent or the appointment of the con-
16 servator, including funeral and burial expenses and expenses of
17 administration. Claim does not include estate and inheritance
18 taxes, demands, or disputes regarding title of a decedent or pro-
19 tected person to specific assets alleged to be included in the
20 estate.

21 (6) ~~-(5)-~~ "Conservator" means a person appointed by the
22 court, as provided in article 4, to exercise powers over the
23 estate of a protected person.

24 (7) ~~-(6)-~~ "County public administrator" means a county
25 public administrator appointed under ~~Act No. 194 of the Public~~
26 ~~Acts of 1947, as amended, being sections 720.201 to 720.223 of~~
27 ~~the Michigan Compiled Laws~~ 1947 PA 194, MCL 720.201 TO 720.223.

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1 (8) ~~-(7)-~~ "Court" means the probate court.

2 Sec. 8. (1) "LAWYER-GUARDIAN AD LITEM" MEANS AN ATTORNEY
3 APPOINTED UNDER SECTION 427 OR 437 WHO HAS THE POWERS AND DUTIES
4 REFERENCED BY AND PROVIDED IN SECTION 427A.

5 (2) ~~-(1)-~~ "Lease" includes an oil and gas lease or other
6 mineral lease.

7 (3) ~~-(2)-~~ "Legally incapacitated person", as used in sec-
8 tions 3 to 12 and in article 4, means a person, other than a
9 minor, who is impaired by reason of mental illness, mental defi-
10 ciency, physical illness or disability, chronic use of drugs,
11 chronic intoxication, or other cause, to the extent that the
12 person lacks sufficient understanding or capacity to make or com-
13 municate informed decisions concerning his or her person. Except
14 as used in sections 3 to 12 and in article 4, "legally incapaci-
15 tated person" means a person, other than a minor, who is a
16 legally incapacitated person as defined for purposes of article 4
17 or who is a protected person.

18 (4) ~~-(3)-~~ "Limited guardian" means a guardian who possesses
19 fewer than all of the legal rights and powers of a full guardian,
20 and whose rights, powers, and duties have been specifically enu-
21 merated by court order.

22 (5) ~~-(4)-~~ "Mental health professional" means a person who is
23 trained and experienced in the area of mental illness and who is
24 any of the following:

25 (a) A physician who is licensed to practice ALLOPATHIC medi-
26 cine or osteopathic medicine in this state.

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1 (b) A psychologist who has been granted a full or limited
2 license to practice in this state.

3 (c) A social worker who is registered as a certified social
4 worker in this state.

5 (d) A registered PROFESSIONAL nurse who is licensed to prac-
6 tice nursing in this state and who is a graduate of a
7 state-approved school of nursing.

8 (6) ~~-(5)-~~ "Minor" means a person who is less than 18 years
9 of age.

10 (7) ~~-(6)-~~ "Net estate" in respect to a decedent's estate,
11 means the property of a decedent exclusive of homestead allow-
12 ance, exempt property, family allowance, enforceable claims, and
13 administration expenses against the estate.

14 (8) ~~-(7)-~~ "Nonresident decedent" means a decedent who was
15 domiciled outside of this state at the time of his or her death.

16 (9) ~~-(8)-~~ "Notice" means notice prescribed by supreme court
17 rule, unless otherwise prescribed by law.

18 Sec. 427. (1) ~~Notice~~ THE PETITIONER SHALL GIVE NOTICE of
19 the time and place of hearing of a petition for the appointment
20 of a guardian of a minor ~~shall be given by the petitioner~~ to
21 each of the following:

22 (a) The minor, if 14 years of age or older.

23 (b) The person who had the principal care and custody of the
24 minor during the 60 days preceding the date of the petition.

25 (c) Each living parent of the minor or, if neither of them
26 is living, the adult nearest of kin to the minor.

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1 (2) Upon hearing OF A PETITION TO APPOINT A GUARDIAN, if the
2 court finds that a qualified person seeks appointment, venue is
3 proper, the required notices have been given, the requirements of
4 section 424 or 424a are satisfied, and the MINOR'S welfare ~~of~~
5 ~~the minor~~ will be served by the requested appointment, ~~it~~ THE
6 COURT shall make the appointment. In other cases, the court may
7 dismiss the proceedings or make any other disposition of the
8 matter that will serve the MINOR'S welfare. ~~of the minor.~~

9 (3) If necessary, the court may appoint a temporary guardian
10 with the status of an ordinary guardian of a minor, but the
11 TEMPORARY GUARDIAN'S authority ~~of a temporary guardian~~ shall
12 not exceed 6 months.

13 (4) If, at any time in the proceeding, the court determines
14 that the MINOR'S interests ~~of the minor~~ are ~~or may be~~ inade-
15 quately represented, the court may appoint ~~an attorney~~ A
16 LAWYER-GUARDIAN AD LITEM to represent the minor, giving consider-
17 ation to the MINOR'S preference ~~of the minor~~ if the minor is 14
18 years of age or older. IN ADDITION TO ANY OTHER POWERS AND
19 DUTIES, A LAWYER-GUARDIAN AD LITEM'S POWERS AND DUTIES INCLUDE
20 THOSE PRESCRIBED IN SECTION 427A.

21 (5) TO ASSIST THE COURT IN DETERMINING A CHILD'S BEST INTER-
22 ESTS, THE COURT MAY APPOINT A GUARDIAN AD LITEM FOR A CHILD
23 INVOLVED IN A PROCEEDING UNDER THIS SECTION.

24 SEC. 427A. (1) A LAWYER-GUARDIAN AD LITEM REPRESENTS THE
25 CHILD AND HAS POWERS AND DUTIES IN RELATION TO THAT REPRESENTA-
26 TION AS SET FORTH IN SECTION 17D OF CHAPTER XIIIA OF 1939 PA 288,
27 MCL 712A.17D. ALL PROVISIONS OF SECTION 17D OF CHAPTER XIIIA OF

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1 1939 PA 288, MCL 712A.17D, APPLY TO A LAWYER-GUARDIAN AD LITEM
2 APPOINTED UNDER THIS ACT.

3 (2) IN A PROCEEDING IN WHICH A LAWYER-GUARDIAN AD LITEM REP-
4 RESENTS A CHILD, HE OR SHE MAY FILE A WRITTEN REPORT AND
5 RECOMMENDATION. THE COURT MAY READ THE REPORT AND
6 RECOMMENDATION. THE COURT SHALL NOT, HOWEVER, ADMIT THE REPORT
7 AND RECOMMENDATION INTO EVIDENCE UNLESS ALL PARTIES STIPULATE THE
8 ADMISSION. THE PARTIES MAY MAKE USE OF THE REPORT AND RECOMMEN-
9 DATION FOR PURPOSES OF A SETTLEMENT CONFERENCE.

10 (3) AFTER A DETERMINATION OF ABILITY TO PAY, THE COURT MAY
11 ASSESS ALL OR PART OF THE COSTS AND REASONABLE FEES OF A
12 LAWYER-GUARDIAN AD LITEM AGAINST 1 OR MORE OF THE PARTIES
13 INVOLVED IN THE PROCEEDINGS OR AGAINST THE MONEY ALLOCATED FROM
14 MARRIAGE LICENSE FEES FOR FAMILY COUNSELING SERVICES UNDER SEC-
15 TION 3 OF 1887 PA 128, MCL 551.103. A LAWYER-GUARDIAN AD LITEM
16 SHALL NOT BE PAID A FEE UNLESS THE COURT FIRST RECEIVES AND
17 APPROVES THE FEE.

18 Sec. 437. (1) A person interested in ~~the~~ A WARD'S welfare
19 ~~of a ward~~ or the ward, if 14 or more years of age, may petition
20 for A GUARDIAN'S removal ~~of a guardian~~ on the ground that
21 removal would serve the WARD'S welfare. ~~of the ward.~~ A guardian
22 may petition for permission to resign. A petition for removal or
23 for permission to resign may include a request for A SUCCESSOR
24 GUARDIAN'S appointment. ~~of a successor guardian.~~

25 (2) After notice and hearing on a petition for removal or
26 for permission to resign, the court may terminate the
27 guardianship and make any further order that may be appropriate.

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1 (3) If, at any time in the proceeding, the court determines
2 that the WARD'S interests ~~of the ward~~ are, or may be, inade-
3 quately represented, ~~it may~~ THE COURT SHALL appoint ~~an~~
4 ~~attorney~~ A LAWYER-GUARDIAN AD LITEM to represent the minor,
5 giving consideration to the MINOR'S preference ~~of the minor~~ if
6 the minor is 14 or more years of age.

7 Enacting section 1. This amendatory act takes effect
8 March 1, 1999.