

HOUSE BILL No. 6088

September 16, 1998, Introduced by Rep. Martinez and referred to the Committee on Judiciary.

A bill to amend 1978 PA 642, entitled
"Revised probate code,"
by amending sections 6, 9, and 11 (MCL 700.6, 700.9, and 700.11)
and by adding section 496a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6. (1) "Foreign personal representative" means a per-
2 sonal representative of a jurisdiction other than this state.

3 (2) "Guardian" means a person appointed by the court or des-
4 ignated as such in a will as provided in article 4, to exercise
5 powers over the person of a minor or of a legally incapacitated
6 person. Guardian does not include a guardian ad litem.

7 (3) "HEALTH CARE DECISION" MEANS A DECISION REGARDING AN
8 INDIVIDUAL'S HEALTH CARE MADE BY THE INDIVIDUAL OR THE
9 INDIVIDUAL'S GUARDIAN, THE INDIVIDUAL'S PATIENT ADVOCATE AS
10 DESIGNATED UNDER SECTION 496, THE INDIVIDUAL'S AGENT UNDER

1 ANOTHER ADVANCE DIRECTIVE FOR HEALTH CARE, OR THE INDIVIDUAL'S
2 HEALTH CARE SURROGATE. THIS TERM INCLUDES DECISIONS REGARDING
3 THE SELECTION OR DISCHARGE OF A HEALTH CARE PROVIDER OR INSTITU-
4 TION, AND APPROVAL OR DISAPPROVAL OF A DIAGNOSTIC TEST, SURGICAL
5 PROCEDURE, OR OTHER MEDICAL TREATMENT, OF THE ADMINISTRATION OF
6 MEDICATION, AND OF THE USE OF A MEDICAL DEVICE.

7 (4) "HEALTH CARE SURROGATE" MEANS A PERSON, OTHER THAN A
8 PATIENT'S GUARDIAN, PATIENT ADVOCATE UNDER SECTION 496, OR HEALTH
9 CARE AGENT UNDER ANOTHER ADVANCE DIRECTIVE, WHO IS AUTHORIZED
10 UNDER SECTION 496A TO MAKE A HEALTH CARE DECISION FOR THE
11 PATIENT.

12 (5) ~~-(3)-~~ "Heirs" means those persons, including the surviv-
13 ing spouse, who are entitled to the property of a decedent under
14 the statutes of intestate succession.

15 Sec. 9. (1) "Parent", for inheritance purposes, includes a
16 person entitled to take, or who would be entitled to take if the
17 child died without a will, as a parent under this act by intes-
18 tate succession from the child whose relationship is in question
19 and excludes any person who is only a stepparent, a foster
20 parent, or a grandparent who is not so entitled to inherit.

21 (2) "Person" includes an individual or other legal entity.

22 (3) "Personal representative" includes AN executor, adminis-
23 trator, administrator with will annexed, administrator de bonis
24 non, ~~-a-~~ AND temporary or successor personal representative, and
25 a person who performs substantially the same functions in respect
26 to the estate of a decedent under the law governing their
27 status.

1 (4) "PHYSICIAN" MEANS AN INDIVIDUAL LICENSED UNDER
2 ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101
3 TO 333.18838, TO ENGAGE IN THE PRACTICE OF MEDICINE OR THE PRAC-
4 TICE OF OSTEOPATHIC MEDICINE AND SURGERY.

5 (5) "PRIMARY PHYSICIAN" MEANS A PHYSICIAN DESIGNATED TO HAVE
6 PRIMARY RESPONSIBILITY FOR AN INDIVIDUAL'S HEALTH CARE OR, IN THE
7 ABSENCE OF A DESIGNATION OR IF THE DESIGNATED PHYSICIAN IS NOT
8 REASONABLY AVAILABLE, A PHYSICIAN WHO UNDERTAKES THAT
9 RESPONSIBILITY. DESIGNATION OF A PRIMARY PHYSICIAN MAY BE MADE
10 BY THE INDIVIDUAL OR BY THE INDIVIDUAL'S GUARDIAN, PATIENT ADVO-
11 CATE AS DESIGNATED UNDER SECTION 496, HEALTH CARE AGENT UNDER
12 ANOTHER ADVANCE DIRECTIVE, OR HEALTH CARE SURROGATE.

13 (6) ~~-(4)-~~ "Property" includes both real and personal prop-
14 erty and means anything that may be the subject of ownership.

15 (7) ~~-(5)-~~ "Protected person" means a minor or other person
16 for whom a conservator is appointed or other protective order is
17 made pursuant to sections 461 to 491.

18 (8) ~~-(6)-~~ "Protective proceeding" means a proceeding under
19 the provisions of section 461 to determine that a person cannot
20 effectively manage or apply the person's estate to necessary
21 ends, because the person lacks the ability or is otherwise incon-
22 venienced, or because the person is a minor, and to secure admin-
23 istration of his or her estate by a conservator or other appro-
24 priate relief.

25 (9) "PSYCHOLOGIST" MEANS AN INDIVIDUAL LICENSED UNDER
26 ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101
27 TO 333.18838, TO ENGAGE IN THE PRACTICE OF PSYCHOLOGY.

1 (10) ~~-(7)-~~ "Registered mail" includes certified mail, return
2 receipt requested.

3 Sec. 11. (1) "Testator" includes testatrix.

4 (2) "Trust" means an express trust, private or charitable,
5 with additions ~~thereto, where created and whether~~ TO THE TRUST,
6 IF created by will or other than by will. It includes a trust
7 created by judgment or decree under which the trust is to be
8 administered in the manner of an express trust. Trust excludes
9 other constructive trusts, and ~~it~~ excludes resulting trusts,
10 business trusts providing for certificates to be issued to bene-
11 ficiaries, investment trusts, common trust funds, voting trusts,
12 security arrangements, liquidation trusts, and trusts created for
13 the primary purpose of paying debts, dividends, interest, sala-
14 ries, wages, profits, pensions, or employee benefits of any kind,
15 and any arrangement under which a person is nominee or escrowee
16 for another.

17 (3) "UNABLE TO PARTICIPATE IN HEALTH CARE DECISIONS" MEANS
18 AN INABILITY TO UNDERSTAND THE POSSIBLE BENEFITS AND RISKS OF
19 ALTERNATIVE HEALTH CARE CHOICES OR AN INABILITY TO COMMUNICATE A
20 HEALTH CARE DECISION.

21 SEC. 496A. (1) IF AN INDIVIDUAL AGED 18 OR OLDER IS UNABLE
22 TO PARTICIPATE IN A HEALTH CARE DECISION, A HEALTH CARE SURROGATE
23 MAY MAKE THE HEALTH CARE DECISION IF ALL OF THE FOLLOWING CONDI-
24 TIONS ARE MET:

25 (A) THE INDIVIDUAL DOES NOT HAVE A GUARDIAN, OR A PATIENT
26 ADVOCATE DESIGNATED UNDER SECTION 496 OR HEALTH CARE AGENT

1 DESIGNATED UNDER ANOTHER ADVANCE DIRECTIVE, WITH AUTHORITY TO ACT
2 REGARDING THE HEALTH CARE DECISION.

3 (B) THE INDIVIDUAL'S PRIMARY PHYSICIAN AND 1 OTHER PHYSICIAN
4 OR PSYCHOLOGIST HAVE DETERMINED THAT THE INDIVIDUAL IS UNABLE TO
5 PARTICIPATE IN HEALTH CARE DECISIONS. THE DETERMINATION SHALL BE
6 ENTERED INTO THE INDIVIDUAL'S MEDICAL RECORD.

7 (C) THE PRIMARY PHYSICIAN HAS ATTEMPTED TO COMMUNICATE TO
8 THE PATIENT THAT ANOTHER PERSON WILL BE MAKING HEALTH CARE DECISIONS FOR THE PATIENT AND THE NAME OF THAT PERSON, AND THE
9 PATIENT HAS NOT OBJECTED. IF THE PATIENT OBJECTS AND THE PRIMARY
10 PHYSICIAN IS AWARE OF THE OBJECTION, THE OTHER PERSON SHALL NOT
11 MAKE A HEALTH CARE DECISION FOR THAT PATIENT WITHOUT AN ORDER BY
12 THE PROBATE COURT.

14 (2) IF A DISPUTE ARISES REGARDING WHETHER AN INDIVIDUAL IS
15 UNABLE TO PARTICIPATE IN A HEALTH CARE TREATMENT DECISION, A
16 COURT SHALL MAKE THAT DETERMINATION IN THE SAME MANNER AND WITHIN
17 THE SAME TIME AS SUCH A DETERMINATION IS MADE UNDER
18 SECTION 496(8).

19 (3) SUBJECT TO SUBSECTION (1), AND IN DESCENDING ORDER OF
20 PRIORITY, A PERSON CONNECTED TO AN INDIVIDUAL IN THE MANNER
21 LISTED BELOW MAY ACT AS THE INDIVIDUAL'S HEALTH CARE SURROGATE:

22 (A) THE SPOUSE, UNLESS ESTRANGED FROM THE INDIVIDUAL.

23 (B) AN ADULT CHILD.

24 (C) A PARENT.

25 (D) AN ADULT BROTHER OR SISTER.

26 (4) IF NONE OF THE PERSONS DESCRIBED IN SUBSECTION (3) ARE
27 WILLING AND AVAILABLE TO ACT, AN ADULT WHO HAS EXHIBITED SPECIAL

1 CARE AND CONCERN FOR THE PATIENT, WHO IS FAMILIAR WITH THE
2 PATIENT'S PERSONAL VALUES, AND WHO IS WILLING AND AVAILABLE TO
3 ACT MAY ACT AS THE PATIENT'S HEALTH CARE SURROGATE.

4 (5) THE PATIENT AT ANY TIME MAY DISQUALIFY A PERSON, INCLUD-
5 ING A MEMBER OF THE PATIENT'S FAMILY, FROM ACTING AS THE
6 PATIENT'S HEALTH CARE SURROGATE BY A SIGNED WRITING OR BY PERSON-
7 ALLY INFORMING THE PRIMARY PHYSICIAN OF THE DISQUALIFICATION.

8 (6) A HEALTH CARE SURROGATE SHALL MAKE REASONABLE EFFORTS TO
9 IMMEDIATELY COMMUNICATE HIS OR HER ASSUMPTION OF AUTHORITY TO THE
10 PERSONS DESCRIBED IN SUBSECTION (3) OR (4) WHO ARE PROVIDED
11 HIGHER OR EQUAL PRIORITY THAN THE HEALTH CARE SURROGATE BY
12 SUBSECTION (3) OR (4).

13 (7) A PRIMARY PHYSICIAN MAY REQUIRE THAT A PERSON CLAIMING
14 THE RIGHT TO ACT AS HEALTH CARE SURROGATE FOR A PATIENT PROVIDE A
15 WRITTEN DECLARATION UNDER PENALTY OF PERJURY STATING FACTS AND
16 CIRCUMSTANCES REASONABLY SUFFICIENT UNDER THIS ACT TO ESTABLISH
17 THE CLAIMED AUTHORITY.

18 (8) A HEALTH CARE SURROGATE AUTHORIZED TO MAKE HEALTH CARE
19 DECISIONS FOR THE PATIENT UNDER THIS SECTION MAY REVIEW THE
20 PATIENT'S MEDICAL RECORDS, AND THE PRIMARY PHYSICIAN SHALL FULLY
21 INFORM THE HEALTH CARE SURROGATE OF THE PATIENT'S MEDICAL CONDI-
22 TION, TREATMENT OPTIONS, AND PROSPECTS FOR RECOVERY.

23 (9) A HEALTH CARE SURROGATE SHALL MAKE A HEALTH CARE DECI-
24 SION IN ACCORDANCE WITH THE PATIENT'S INDIVIDUAL INSTRUCTIONS, IF
25 ANY, AND OTHER WISHES TO THE EXTENT KNOWN TO THE HEALTH CARE
26 SURROGATE. OTHERWISE, THE HEALTH CARE SURROGATE SHALL MAKE THE
27 DECISION IN ACCORDANCE WITH THE PATIENT'S BEST INTEREST. IN

1 DETERMINING THE PATIENT'S BEST INTEREST, THE HEALTH CARE
2 SURROGATE SHALL CONSIDER THE PATIENT'S PERSONAL VALUES TO THE
3 EXTENT KNOWN TO THE HEALTH CARE SURROGATE.

4 (10) A HEALTH CARE SURROGATE'S HEALTH CARE DECISION IS GOV-
5 ERNED BY ALL OF THE FOLLOWING:

6 (A) EXCEPT AS PROVIDED IN SUBDIVISION (C), A MEMBER OF A
7 CLASS THAT HAS LOWER PRIORITY UNDER SUBSECTION (3) OR (4) SHALL
8 NOT OVERTURN THE HEALTH CARE DECISION OF A MEMBER OF A CLASS WITH
9 HIGHER PRIORITY UNDER SUBSECTION (3) OR (4) WHO HAS ASSUMED
10 RESPONSIBILITY AS THE PATIENT'S HEALTH CARE SURROGATE.

11 (B) IF MORE THAN 1 MEMBER OF THE SAME PRIORITY CLASS
12 DESCRIBED IN SUBSECTION (3) OR (4) ASSUMES AUTHORITY TO ACT AS
13 HEALTH CARE SURROGATE AND ALL OF THOSE MEMBERS DO NOT AGREE ON A
14 HEALTH CARE DECISION, A PETITION MAY BE FILED WITH THE PROBATE
15 COURT FOR THE COUNTY WHERE THE PATIENT IS LOCATED OR RESIDES FOR
16 A DETERMINATION OF THAT FACT AND AN APPROPRIATE ORDER.

17 (C) IF A MEMBER OF A CLASS DESCRIBED IN SUBSECTION (3) OR
18 (4) BELIEVES THAT A HEALTH CARE SURROGATE IS IN ANY WAY NOT COM-
19 PLYING WITH THIS ACT, THAT PERSON MAY NOTIFY THE PRIMARY PHYSI-
20 CIAN OF THAT PERSON'S CONCERNS AND MAY PETITION THE PROBATE COURT
21 FOR THE COUNTY WHERE THE PATIENT IS LOCATED OR RESIDES FOR A
22 DETERMINATION OF THAT FACT AND AN APPROPRIATE ORDER.

23 (11) THE PRIMARY PHYSICIAN SHALL ATTEMPT TO COMMUNICATE THE
24 HEALTH CARE DECISION TO THE PATIENT. THE PRIMARY PHYSICIAN SHALL
25 NOT IMPLEMENT THE HEALTH CARE DECISION IF THE PATIENT OBJECTS OR
26 IF THE PRIMARY PHYSICIAN KNOWS THE HEALTH CARE DECISION IS
27 CONTRARY TO THE PATIENT'S PREVIOUSLY EXPRESSED WISHES.

1 (12) A HEALTH CARE DECISION MADE BY A HEALTH CARE SURROGATE
2 FOR A PATIENT IS EFFECTIVE WITHOUT JUDICIAL APPROVAL.

3 (13) THE PRIMARY PHYSICIAN SHALL RECORD THE HEALTH CARE
4 DECISION AND THE NAME OF THE PERSON MAKING THE HEALTH CARE DECI-
5 SION IN THE PATIENT'S MEDICAL RECORD. THE PRIMARY PHYSICIAN MAY
6 REQUIRE THE PERSON MAKING THE HEALTH CARE DECISION TO SIGN AN
7 ACKNOWLEDGMENT AND AN ACCEPTANCE OF HIS OR HER ROLE AS HEALTH
8 CARE SURROGATE UNDER THIS SECTION.