

SUBSTITUTE FOR  
SENATE BILL NO. 1045

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending sections 1103, 1105, 1106, 1107, 1213, 1214, 1303, 1402,  
2114, 2202, 2203, 2205, 2504, 2519, 2702, 2718, 2807, 3102, 3204, 3301,  
3401, 3412, 3414, 3505, 3806, 3807, 3901, 3902, 3917, 3921, 3956, 5101,  
5204, 5213, 5219, 5308, 5406, 6302, 6306, 7206, 7303, 7409, 7501, and  
7507 (MCL 700.1103, 700.1105, 700.1106, 700.1107, 700.1213, 700.1214,  
700.1303, 700.1402, 700.2114, 700.2202, 700.2203, 700.2205, 700.2504,  
700.2519, 700.2702, 700.2718, 700.2807, 700.3102, 700.3204, 700.3301,  
700.3401, 700.3412, 700.3414, 700.3505, 700.3806, 700.3807, 700.3901,  
700.3902, 700.3917, 700.3921, 700.3956, 700.5101, 700.5204, 700.5213,  
700.5219, 700.5308, 700.5406, 700.6302, 700.6306, 700.7206, 700.7303,  
700.7409, 700.7501, and 700.7507); and to repeal acts and parts of  
acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1103. As used in this act:

2 (a) "Agent" includes, but is not limited to, an  
3 attorney-in-fact under a durable or nondurable power of attorney  
4 and an individual authorized to make decisions as a patient advo-  
5 cate concerning another's health care.

6 (b) "Application" means a written request to the probate  
7 register for an order of informal probate or INFORMAL appointment  
8 under part 3 of article III.

9 (C) "ATTORNEY" MEANS, IF APPOINTED TO REPRESENT A CHILD  
10 UNDER THE PROVISIONS REFERENCED IN SECTION 5213, AN ATTORNEY  
11 SERVING AS THE CHILD'S LEGAL ADVOCATE IN THE MANNER DEFINED AND  
12 DESCRIBED IN SECTION 13A OF CHAPTER XIIA OF THE PROBATE CODE OF  
13 1939, 1939 PA 288, MCL 712A.13A.

14 (D) ~~(c)~~ "Beneficiary" includes, but is not limited to, the  
15 following:

16 (i) In relation to a trust beneficiary, a person that is an  
17 interested trust beneficiary.

18 (ii) In relation to a charitable trust, a person that is  
19 entitled to enforce the trust.

20 (iii) In relation to a beneficiary of a beneficiary designa-  
21 tion, a person that is a beneficiary of an insurance or annuity  
22 policy, of an account with POD designation, of a security regis-  
23 tered in beneficiary form (TOD), of a pension, profit-sharing,  
24 retirement, or similar benefit plan, or of another nonprobate  
25 transfer at death.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

3

1           (iv) In relation to a beneficiary designated in a governing  
2 instrument, a person that is a grantee of a deed, devisee, trust  
3 beneficiary, beneficiary of a beneficiary designation, donee,  
4 appointee, taker in default of a power of appointment, or person  
5 in whose favor a power of attorney or power held in an individu-  
6 al, fiduciary, or representative capacity is exercised.

7           (E) ~~(d)~~ "Beneficiary designation" means the naming in a  
8 governing instrument of a beneficiary of an insurance or annuity  
9 policy, of an account with POD designation, of a security regis-  
10 tered in beneficiary form (TOD), of a pension, profit-sharing,  
11 retirement, or similar benefit plan, or of another nonprobate  
12 transfer at death.

13           (F) ~~(e)~~ "Child" includes, but is not limited to, an indi-  
14 vidual entitled to take as a child under this act by intestate  
15 succession from the parent whose relationship is involved. Child  
16 does not include an individual who is only a stepchild, a foster  
17 child, or a grandchild or more remote descendant.

18           (G) ~~(f)~~ "Claim" includes, but is not limited to, in  
19 respect to a decedent's or protected individual's estate, a  
20 liability of the decedent or protected individual, whether aris-  
21 ing in contract, tort, or otherwise, and a liability of the  
22 estate that arises at or after the decedent's death or after a  
23 conservator's appointment, including funeral expenses and  
24 expenses of administration. Claim does not include an estate or  
25 inheritance tax, or a demand or dispute regarding a decedent's or  
26 protected individual's title to specific property alleged to be  
27 included in the estate.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

4

1 (H) ~~(g)~~ "Conservator" means a person appointed by a court  
2 to manage a protected individual's estate.

3 (I) ~~(h)~~ "Cost-of-living adjustment factor" means ~~—~~ a  
4 fraction, the numerator of which is the United States consumer  
5 price index for the prior calendar year and the denominator of  
6 which is the United States consumer price index for 1997. As  
7 used in this subdivision, "United States consumer price index"  
8 means the annual average of the United States consumer price  
9 index for all urban consumers as defined and reported by the  
10 United States department of labor, bureau of labor statistics, or  
11 its successor agency, and as certified by the state treasurer.

12 (J) ~~(i)~~ "Court" means the probate court or, when applica-  
13 ble, the family division of the circuit court.

14 (K) ~~(j)~~ "Current trust beneficiary" means a beneficiary  
15 about which ~~—~~ EITHER of the following is true:

16 (i) The beneficiary has a current right to receive all or a  
17 portion of the income, if any, of the trust property.

18 (ii) The beneficiary is currently eligible to receive all or  
19 a portion of a mandatory or discretionary distribution of income  
20 or principal.

21 ~~(iii) The beneficiary possesses a testamentary or presently~~  
22 ~~exercisable general or special power of appointment.~~

23 (l) ~~(k)~~ "Descendant" means, in relation to an individual,  
24 all of his or her descendants of all generations, with the rela-  
25 tionship of parent and child at each generation being determined  
26 by the definitions of child and parent contained in this act.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

5

1       (M) ~~(l)~~ "Devise" means, when used as a noun, a  
2 testamentary disposition of real or personal property and, when  
3 used as a verb, to dispose of real or personal property by will.

4       (N) ~~(m)~~ "Devisee" means a person designated in a will to  
5 receive a devise. For the purposes of article II, for a devise  
6 to a trustee of an existing trust or to a trustee under a will,  
7 the trustee is a devisee and a beneficiary is not.

8       (O) ~~(n)~~ "Disability" means cause for a protective order as  
9 described in section 5401.

10       (P) ~~(o)~~ "Distributee" means a person that receives a  
11 decedent's property from the decedent's personal representative  
12 other than as a creditor or purchaser. A testamentary trustee is  
13 a distributee only to the extent that distributed property or an  
14 increment of the distributed property remains in the trustee's  
15 hands. A testamentary trust beneficiary to whom the trustee dis-  
16 tributes property received from a personal representative is a  
17 distributee of the personal representative. For the purposes of  
18 this subdivision, "testamentary trustee" includes a trustee to  
19 whom property is transferred by will to the extent of the devised  
20 property.

21       Sec. 1105. As used in this act:

22       (a) "Incapacitated individual" means an individual who is  
23 impaired by reason of mental illness, mental deficiency, physical  
24 illness or disability, chronic use of drugs, chronic intoxica-  
25 tion, or other cause, not including minority, to the extent of  
26 lacking sufficient understanding or capacity to make or  
27 communicate informed decisions.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

6

1 (b) "Informal proceedings" means proceedings for probate of  
2 a will or appointment of a personal representative conducted by  
3 the probate register without notice to interested persons.

4 (c) "Interested person" OR "PERSON INTERESTED IN AN ESTATE"  
5 includes, but is not limited to, an heir, devisee, child, spouse,  
6 creditor, and beneficiary and any other person that has a prop-  
7 erty right in or claim against a trust estate or the estate of a  
8 decedent, ward, or protected individual; a person that has prior-  
9 ity for appointment as personal representative; and a fiduciary  
10 representing an interested person. Identification of interested  
11 persons may vary from time to time and shall be determined  
12 according to the particular purposes of, and matter involved in,  
13 a proceeding, and by the supreme court rules.

14 (d) "Interested trust beneficiary" means a person that has 1  
15 or more of the following interests in a trust:

16 (i) Life estate.

17 (ii) Eligible recipient of a mandatory or discretionary dis-  
18 tribution by the trustee of income or principal.

19 (iii) Eligible recipient of a mandatory or discretionary  
20 distribution by the trustee of income or principal upon termina-  
21 tion of an interest of a person described in subparagraph (i) or  
22 (ii).

23 (iv) Presently exercisable or testamentary general or spe-  
24 cial power of appointment.

25 (e) "Issue" means an individual's descendant.

26 (f) "Joint tenants with the right of survivorship" ~~or~~  
27 ~~"community property with the right of survivorship"~~ includes,

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

7

1 but is not limited to, co-owners or ownership of property held  
2 under circumstances that entitle 1 or more to the whole of the  
3 property on the death of the other or others, but does not  
4 include forms of co-ownership registration in which the underly-  
5 ing ownership of each party is in proportion to that party's  
6 contribution.

7 (G) "LAWYER-GUARDIAN AD LITEM" MEANS AN ATTORNEY APPOINTED  
8 UNDER SECTION 5213 OR 5219 WHO HAS THE POWERS AND DUTIES REFER-  
9 ENCED BY AND PROVIDED IN SECTION 5213.

10 (H) ~~(g)~~ "Lease" includes, but is not limited to, an oil,  
11 gas, or other mineral lease.

12 (I) ~~(h)~~ "Letters" includes, but is not limited to, letters  
13 testamentary, letters of guardianship, letters of administration,  
14 and letters of conservatorship.

15 Sec. 1106. As used in this act:

16 (A) "MENTAL HEALTH PROFESSIONAL" MEANS AN INDIVIDUAL WHO IS  
17 TRAINED AND EXPERIENCED IN THE AREA OF MENTAL ILLNESS OR DEVELOP-  
18 MENTAL DISABILITIES AND WHO IS 1 OF THE FOLLOWING:

19 (i) A PHYSICIAN WHO IS LICENSED TO PRACTICE MEDICINE OR  
20 OSTEOPATHIC MEDICINE AND SURGERY IN THIS STATE UNDER ARTICLE 15  
21 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101 TO  
22 333.18838.

23 (ii) A PSYCHOLOGIST LICENSED TO PRACTICE IN THIS STATE UNDER  
24 ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101  
25 TO 333.18838.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

8

1           (iii) A REGISTERED PROFESSIONAL NURSE LICENSED TO PRACTICE  
2 IN THIS STATE UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA  
3 368, MCL 333.16101 TO 333.18838.

4           (iv) A SOCIAL WORKER REGISTERED AS A CERTIFIED SOCIAL WORKER  
5 UNDER ARTICLE 16 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL  
6 339.1601 TO 339.1610.

7           (B) ~~(a)~~ "Michigan prudent investor rule" means the fidu-  
8 ciary investment and management rule prescribed by part 5 of this  
9 article.

10          (C) ~~(b)~~ "Minor" means an individual who is less than 18  
11 years of age.

12          (D) ~~(c)~~ "Minor ward" means a minor for whom a guardian is  
13 appointed solely because of minority.

14          (E) "MONEY" MEANS LEGAL TENDER OR A NOTE, DRAFT, CERTIFICATE  
15 OF DEPOSIT, STOCK, BOND, CHECK, OR CREDIT CARD.

16          (F) ~~(d)~~ "Mortgage" means a conveyance, agreement, or  
17 arrangement in which property is encumbered or used as security.

18          (G) ~~(e)~~ "Nonresident decedent" means a decedent who was  
19 domiciled in another jurisdiction at the time of his or her  
20 death.

21          (H) ~~(f)~~ "Organization" means a corporation, business  
22 trust, estate, trust, partnership, joint venture, association,  
23 limited liability company, government, governmental subdivision  
24 or agency, or another legal or commercial entity.

25          (I) ~~(g)~~ "Parent" includes, but is not limited to, an indi-  
26 vidual entitled to take, or who would be entitled to take, as a  
27 parent under this act by intestate succession from a child who



**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

9

1 dies without a will and whose relationship is in question.

2 Parent does not include an individual who is only a stepparent,  
3 foster parent, or grandparent.

4 (J) ~~(h)~~ "Patient advocate" means an individual designated  
5 to exercise powers concerning another individual's care, custody,  
6 and medical treatment as provided in section 5506.

7 (K) ~~(i)~~ "Patient advocate designation" means the written  
8 document executed and with the effect as described in sections  
9 5506 to 5512.

10 (L) ~~(j)~~ "Payor" means a trustee, insurer, business entity,  
11 employer, government, governmental subdivision or agency, or  
12 other person authorized or obligated by law or a governing  
13 instrument to make payments.

14 (M) ~~(k)~~ "Person" means an individual ~~, partnership, cor-~~  
15 ~~poration, association, governmental entity, or other legal~~  
16 ~~entity~~ OR AN ORGANIZATION.

17 (N) ~~(l)~~ "Personal representative" includes, but is not  
18 limited to, an executor, administrator, successor personal repre-  
19 sentative, and special personal representative, and any other  
20 person who performs substantially the same function under the law  
21 governing that person's status.

22 (O) ~~(m)~~ "Petition" means a written request to the court  
23 for an order after notice.

24 (P) ~~(n)~~ "Proceeding" includes an application and a peti-  
25 tion, and may be an action at law or a suit in equity. A pro-  
26 ceeding may be denominated a civil action under court rules.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

10

1       (Q) ~~(o)~~ "Property" means anything that may be the subject  
2 of ownership, and includes both real and personal property or an  
3 interest in real or personal property.

4       (R) ~~(p)~~ "Protected individual" means a minor or other  
5 individual for whom a conservator has been appointed or other  
6 protective order has been made as provided in part 4 of article  
7 V.

8       (S) ~~(q)~~ "Protective proceeding" means a proceeding under  
9 the provisions of part 4 of article V.

10       Sec. 1107. As used in this act:

11       (a) "Register" or "probate register" means the official of  
12 the court designated to perform the functions of register as pro-  
13 vided in section 1304.

14       (b) "Revised judicature act of 1961" means the revised judi-  
15 cature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

16       (c) "Security" includes, but is not limited to, a note,  
17 stock, treasury stock, bond, debenture, evidence of indebtedness,  
18 certificate of interest or participation in an oil, gas, or  
19 mining title or lease or in payments out of production under such  
20 a title or lease, collateral trust certificate, transferable  
21 share, voting trust certificate, or interest in a regulated  
22 investment company or other entity generally referred to as a  
23 mutual fund or, in general, an interest or instrument commonly  
24 known as a security, or a certificate of interest or participa-  
25 tion for, a temporary or interim certificate, receipt, or certif-  
26 icate of deposit for, or any warrant or right to subscribe to or

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

11

1 purchase any of the ~~foregoing~~ ITEMS LISTED IN THIS  
2 SUBDIVISION.

3 (d) "Settlement" means, in reference to a decedent's estate,  
4 the full process of administration, distribution, and closing.

5 (e) "Special personal representative" means a personal rep-  
6 resentative as described by sections 3614 to 3618.

7 (f) "State" means a state of the United States, the District  
8 of Columbia, the Commonwealth of Puerto Rico, or a territory or  
9 insular possession subject to the jurisdiction of the United  
10 States.

11 (g) "Successor" means a person, other than a creditor, who  
12 is entitled to property of a decedent under the decedent's will  
13 or this act.

14 (h) "Successor personal representative" means a personal  
15 representative, other than a special personal representative, who  
16 is appointed to succeed a previously appointed personal  
17 representative.

18 (i) "Supervised administration" means the proceedings  
19 described in part 5 of article III.

20 (j) "Survive" means that an individual neither predeceases  
21 an event, including the death of another individual, nor is con-  
22 sidered to predecease an event under section 2104 or 2702.  
23 ~~Survive includes its derivatives, such as survives, survived,~~  
24 ~~survivor, and surviving.~~

25 (k) "Testacy proceeding" means a proceeding to establish a  
26 will or determine intestacy.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

12

1 (l) "Testator" includes an individual of either sex.

2 (m) "Trust" includes, but is not limited to, an express  
3 trust, private or charitable, with additions to the trust, wher-  
4 ever and however created. Trust includes, but is not limited to,  
5 a trust created or determined by judgment or decree under which  
6 the trust is to be administered in the manner of an express  
7 trust. Trust does not include a constructive trust or a result-  
8 ing trust, conservatorship, personal representative, custodial  
9 arrangement under the Michigan uniform ~~gifts to minors act, 1959~~  
10 ~~PA 172, MCL 554.451 to 554.461~~ TRANSFERS TO MINORS ACT, 1998 PA  
11 433, MCL 554.521 TO 554.552, business trust providing for a cer-  
12 tificate to be issued to a beneficiary, common trust fund, voting  
13 trust, security arrangement, liquidation trust, or trust for the  
14 primary purpose of paying debts, dividends, interest, salaries,  
15 wages, profits, pensions, or employee benefits of any kind, or  
16 another arrangement under which a person is a nominee or escrowee  
17 for another.

18 (n) "Trustee" includes an original, additional, or successor  
19 trustee, whether or not appointed or confirmed by the court.

20 Sec. 1213. If an individual includes a provision in a will,  
21 trust document, or beneficiary designation that is designed to  
22 reduce federal estate tax liability to ~~0~~ ZERO or the lowest  
23 possible amount payable by describing a portion or amount mea-  
24 sured by reference to the unified credit, the exemption equiva-  
25 lent, other credits, or other deductions, then unless specifi-  
26 cally stated otherwise, the reference to the credits, exemption,  
27 or deductions shall be considered to include a reference to the

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045 as amended March 9, 2000

13

1 family-owned business deduction available under section 2057 of  
2 the internal revenue code of 1986, 26 U.S.C. 2057, IF THAT DEDUC-  
3 TION IS ELECTED. Unless specifically stated otherwise, the ref-  
4 erence to the unified credit or exemption equivalent, or to the  
5 family-owned business deduction, shall be considered to refer to  
6 the credit, exemption, or deduction as it exists at the time of  
7 death of the individual.

Sec. 1214. Unless the governing instrument expressly authorizes such a transaction or investment, unless authorized by the court, or except as provided in section ~~185 of the banking code of 1969, 1969 PA 319, MCL 487.485~~ 4405 OF THE BANKING CODE OF 1999, 1999 PA 276, MCL 487.14405, a fiduciary in the fiduciary's personal capacity shall not engage in a transaction with the estate that the fiduciary represents and shall not invest estate money in a company, corporation, or association with which the fiduciary is affiliated, other than as a bondholder or minority stockholder. A fiduciary in the fiduciary's personal capacity shall not personally derive a profit from the purchase, sale, or transfer of the estate's property. A fiduciary's deposit of money in a bank or trust company, in which the fiduciary is interested as an officer, director, or stockholder, does not constitute a violation of this section.

8 Sec. 1303. (1) In addition to the jurisdiction conferred by  
9 section 1302 and other laws, the court has concurrent legal and  
10 equitable jurisdiction to do all of the following in regard to an  
11 estate of a decedent, protected individual, ward, or trust:

12 (a) Determine a property right or interest.

13 (b) Authorize partition of property.

14 (c) Authorize or compel specific performance of a contract  
15 in a joint or mutual will or of a contract to leave property by  
16 will.

17 (d) Ascertain if individuals have survived as provided in  
18 this act.

19 (e) Determine cy-pres or a gift, grant, bequest, or devise  
20 in trust or otherwise as provided in 1915 PA 280, MCL 554.351 to  
21 554.353.

22 (f) Hear and decide an action or proceeding against a dis-  
23 tributee of a fiduciary of the estate to enforce liability that  
24 arises because the estate was liable upon some claim or demand  
25 before distribution of the estate.

26 (g) Impose a constructive trust.



**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

14

1 (h) Hear and decide a claim by or against a fiduciary or  
2 trustee for the return of property.

3 (i) Hear and decide a contract proceeding or action by or  
4 against an estate, trust, or ward.

5 (j) Require, hear, or settle an accounting of an agent under  
6 a power of attorney.

7 (K) BAR AN INCAPACITATED OR MINOR WIFE OF HER DOWER RIGHT.

8 (2) If the probate court has concurrent jurisdiction of an  
9 action or proceeding that is pending in another court, on the  
10 motion of a party to the action or proceeding and after a finding  
11 and order on the jurisdictional issue, the other court may order  
12 removal of the action or proceeding to the probate court. If the  
13 action or proceeding is removed to the probate court, the other  
14 court shall forward to the probate court the original of all  
15 papers in the action or proceeding. After that transfer, the  
16 other court shall not hear the action or proceeding, except by  
17 appeal or review as provided by law or supreme court rule, and  
18 the action or proceeding shall be prosecuted in the probate court  
19 as a probate court proceeding.

20 (3) The underlying purpose and policy of this section is to  
21 simplify the disposition of an action or proceeding involving a  
22 decedent's, a protected individual's, a ward's, or a trust estate  
23 by consolidating the probate and other related actions or pro-  
24 ceedings in the probate court.

25 Sec. 1402. (1) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (2), A  
26 person, including a guardian ad litem, conservator, or other  
27 fiduciary, may waive notice and consent to the granting of a

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

15

1 petition by a writing signed by the person or the person's  
2 attorney and filed in the proceeding. IF EVERY PERSON AFFECTED  
3 BY THE PROCEEDING WAIVES NOTICE AND CONSENTS IN WRITING TO THE  
4 GRANTING OF A PETITION, THE COURT MAY ENTER AN APPROPRIATE ORDER  
5 ON THE PETITION WITHOUT A HEARING.

6 (2) A person for whom a guardianship or other protective  
7 order is sought, a ward, or a protected person ~~may not~~ CANNOT  
8 waive notice. A fiduciary shall not waive or consent on a peti-  
9 tion, account, or report made as the fiduciary or in a different  
10 fiduciary capacity.

11 Sec. 2114. (1) Except as provided in subsections (2), (3),  
12 and (4), for purposes of intestate succession by, through, or  
13 from an individual, an individual is the child of his or her nat-  
14 ural parents, regardless of their marital status. The parent and  
15 child relationship may be established in any of the following  
16 manners:

17 (a) If a child is born or conceived during a marriage, both  
18 spouses are presumed to be the natural parents of the child for  
19 purposes of intestate succession. A child conceived by a married  
20 woman with the consent of her husband following utilization of  
21 assisted reproductive technology is considered as their child for  
22 purposes of intestate succession. Consent of the husband is pre-  
23 sumed unless the contrary is shown by clear and convincing  
24 evidence. If a man and a woman participated in a marriage cere-  
25 mony in apparent compliance with the law before the birth of a  
26 child, even though the attempted marriage ~~is~~ MAY BE void, the



**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

16

1 child is presumed to be their child for purposes of intestate  
2 succession.

3 (b) Only the individual presumed to be the natural parent of  
4 a child under subdivision (a) may disprove a presumption that is  
5 relevant to ~~the~~ THEIR relationship, and this exclusive right to  
6 do so terminates upon the death of the presumed parent.

7 (c) If a child is born out of wedlock or if a child is born  
8 or conceived during a marriage but is not the issue of that mar-  
9 riage, a man is considered to be the CHILD'S natural father ~~of~~  
10 ~~that child~~ for purposes of intestate succession if any of the  
11 following occur:

12 (i) The man joins with the CHILD'S mother ~~of the child~~ and  
13 acknowledges that child as his child by completing an acknowledg-  
14 ment of parentage as prescribed in the acknowledgment of parent-  
15 age act, 1996 PA 305, MCL 722.1001 to 722.1013.

16 (ii) The man joins the mother in a written request for a  
17 correction of certificate of birth pertaining to the child that  
18 results in issuance of a substituted certificate recording the  
19 CHILD'S birth. ~~of the child.~~

20 (iii) The man and child have ~~borne~~ ESTABLISHED a mutually  
21 acknowledged relationship of parent and child that begins before  
22 the child becomes age 18 and continues until terminated by the  
23 death of either.

24 (iv) The man is determined to be the child's father and an  
25 order of filiation establishing that paternity is entered as pro-  
26 vided in the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

17

1           (v) REGARDLESS OF THE CHILD'S AGE OR WHETHER OR NOT THE  
2 ALLEGED FATHER HAS DIED, THE COURT WITH JURISDICTION OVER PROBATE  
3 PROCEEDINGS RELATING TO THE DECEDENT'S ESTATE DETERMINES THAT THE  
4 MAN IS THE CHILD'S FATHER, USING THE STANDARDS AND PROCEDURES  
5 ESTABLISHED UNDER THE PATERNITY ACT, 1956 PA 205, MCL 722.711 TO  
6 722.730.

7           (2) An adopted individual is the child of his or her adop-  
8 tive parent or parents and not of his or her natural parents, but  
9 adoption of a child by the spouse of either natural parent has no  
10 effect on either the relationship between the child and that nat-  
11 ural parent or, except as provided in subsection (3), the right  
12 of the child or a descendant of the child to inherit from or  
13 through the other natural parent. An individual is considered to  
14 be adopted for purposes of this subsection when a court of compe-  
15 tent jurisdiction enters an interlocutory decree of adoption that  
16 is not vacated or reversed.

17           (3) The permanent termination of parental rights of a minor  
18 child by an order of a court of competent jurisdiction; by a  
19 release for purposes of adoption given by the parent, but not a  
20 guardian, to the family independence agency or a licensed child  
21 placement agency, or before a probate or juvenile court; or by  
22 any other process recognized by the law governing the  
23 parent-child status at the time of termination, excepting termi-  
24 nation by emancipation or death, ends kinship between the parent  
25 whose rights are so terminated and the child for purposes of  
26 intestate succession by that parent from or through that child.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

18

1 (4) Inheritance from or through a child by either natural  
2 parent or his or her kindred is precluded unless that natural  
3 parent has openly treated the child as his or hers, and has not  
4 refused to support the child.

5 Sec. 2202. (1) THE SURVIVING WIDOW OF A DECEDENT WHO WAS  
6 DOMICILED IN THIS STATE AND WHO DIES INTESTATE MAY FILE WITH THE  
7 COURT AN ELECTION IN WRITING THAT SHE ELECTS TO TAKE 1 OF THE  
8 FOLLOWING:

9 (A) HER INTESTATE SHARE UNDER SECTION 2102.

10 (B) HER DOWER RIGHT UNDER SECTIONS 1 TO 29 OF 1846 RS 66,  
11 MCL 558.1 TO 558.29.

12 (2) ~~(1)~~ The surviving spouse of a decedent who was domi-  
13 ciled in this state and who dies testate may file with the court  
14 an election in writing that the spouse elects 1 of the  
15 following:

16 (a) That the spouse will abide by the terms of the will.

17 (b) That the spouse will take 1/2 of the sum or share that  
18 would have passed to the spouse had the testator died intestate,  
19 reduced by 1/2 of the value of all property derived by the spouse  
20 from the decedent by any means other than testate or intestate  
21 succession upon the decedent's death.

22 (c) If a widow, that she will take her dower right under  
23 sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

24 (3) ~~(2)~~ The surviving spouse ~~is entitled to only 1 elec-~~  
25 ~~tion choice~~ ELECTING under subsection (1) ~~unless the contrary~~  
26 ~~plainly appears by the will to be intended by the testator~~ IS  
27 LIMITED TO 1 CHOICE. UNLESS THE TESTATOR'S WILL PLAINLY SHOWS A

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

19

1 CONTRARY INTENT, THE SURVIVING SPOUSE ELECTING UNDER SUBSECTION  
2 (2) IS LIMITED TO 1 CHOICE. The right of election of the surviv-  
3 ing spouse must be exercised during the lifetime of the surviving  
4 spouse. The election must be made within 63 days after the date  
5 for presentment of claims or within 63 days after ~~the filing of~~  
6 ~~proof of~~ service of the inventory upon the surviving spouse,  
7 whichever is later.

8 (4) ~~(3)~~ Notice of right of election shall be served upon  
9 the decedent's spouse, if any, as provided in section 3705(5),  
10 and proof of that notice shall be filed with the court. An elec-  
11 tion as provided by this section may be filed instead of service  
12 of notice and filing of proof.

13 (5) ~~(4)~~ In the case of a legally incapacitated person, the  
14 right of election may be exercised only by order of the court in  
15 which a proceeding as to that person's property is pending, after  
16 finding that exercise is necessary to provide adequate support  
17 for the legally incapacitated person during that person's life  
18 expectancy.

19 (6) ~~(5)~~ The surviving spouse of a decedent who was not  
20 domiciled in this state is entitled to election AGAINST THE  
21 INTESTATE ESTATE OR against the will only as may be provided by  
22 the law of the place in which the decedent was domiciled at the  
23 time of death.

24 (7) ~~(6)~~ As used in subsection ~~(1)~~ (2), "property derived  
25 by the spouse from the decedent" includes all of the following  
26 transfers:

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

20

1 (a) A transfer made within 2 years before the decedent's  
2 death to the extent that the transfer is subject to federal gift  
3 or estate taxes.

4 (b) A transfer made before the date of death subject to a  
5 power retained by the decedent that would make the property, or a  
6 portion of the property, subject to federal estate tax.

7 (c) A transfer effectuated by the decedent's death through  
8 joint ownership, tenancy by the entireties, insurance beneficia-  
9 ry, or similar means.

10 Sec. 2203. If a surviving spouse fails to make an election  
11 within the time specified in section 2202, it is conclusively  
12 presumed that ~~the~~ AN INTESTATE DECEDENT'S WIDOW ELECTS HER  
13 INTESTATE SHARE OR THAT A TESTATE DECEDENT'S spouse elects to  
14 abide by the terms of the will, except in either of the following  
15 instances:

16 (a) If an election is not made and the principal administra-  
17 tion is closed, and if after that administration is closed it  
18 appears to the court that assets belonging to the estate are dis-  
19 covered and administration is granted, the election may be made  
20 out of the newly discovered assets only upon good cause shown at  
21 any time before that administration is closed.

22 (b) Before the estate is closed, upon petition of the spouse  
23 and after notice to all interested persons, the court may permit  
24 the spouse to make an election to which the spouse was entitled  
25 as though the spouse had done so within the time specified in  
26 section 2202, if the court considers it proper on account of  
27 litigation connected with the estate or the establishment of

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

21

1 further claims against the deceased, or for other cause. The  
2 court shall limit the time within which the spouse may make an  
3 election under this subdivision.

4       Sec. 2205. The rights of the surviving spouse to A SHARE  
5 UNDER INTESTATE SUCCESSION, homestead allowance, election, DOWER,  
6 exempt property, or family allowance may be waived, wholly or  
7 partially, before or after marriage, by a written contract,  
8 agreement, or waiver signed by the party waiving after fair  
9 disclosure. Unless it provides to the contrary, a waiver of "all  
10 rights" in the property or estate of a present or prospective  
11 spouse or a complete property settlement entered into after or in  
12 anticipation of separate maintenance is a waiver of all rights to  
13 homestead allowance, election, DOWER, exempt property, and family  
14 allowance by the spouse in the property of the other and is an  
15 irrevocable renunciation by the spouse of all benefits that would  
16 otherwise pass to the spouse from the other spouse by intestate  
17 succession or by virtue of a will executed before the waiver or  
18 property settlement.

19       Sec. 2504. (1) A will may be simultaneously executed,  
20 attested, and made self-proved by acknowledgment of the will by  
21 the testator and 2 witnesses' sworn statements, each made before  
22 an officer authorized to administer oaths under the laws of the  
23 state in which execution occurs and evidenced by the officer's  
24 certificate, under official seal, in substantially the following  
25 form:

26       I, \_\_\_\_\_, the testator, sign my name to  
27 this document on \_\_\_\_\_, \_\_\_\_\_. I have taken an oath,

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

22

1 administered by the officer whose signature and seal appear on  
2 this document, swearing that the statements in this document are  
3 true. I declare to that officer that this document is my will;  
4 that I sign it willingly or willingly direct another to sign for  
5 me; that I execute it as my voluntary act for the purposes  
6 expressed in this will; and that I am 18 years of age or older,  
7 of sound mind, and under no constraint or undue influence.

8 \_\_\_\_\_

9 (Signature) Testator

10 We, \_\_\_\_\_ and \_\_\_\_\_,  
11 the witnesses, sign our names to this document and have taken an  
12 oath, administered by the officer whose signature and seal appear  
13 on this document, to swear that all of the following statements  
14 are true: the individual signing this document as the testator  
15 executes the document as his or her will, signs it willingly or  
16 willingly directs another to sign for him or her, and executes it  
17 as his or her voluntary act for the purposes expressed in this  
18 will; each of us, in the testator's presence, signs this will as  
19 witness to the testator's signing; and, to the best of our knowl-  
20 edge, the testator is 18 years of age or older, of sound mind,  
21 and under no constraint or undue influence.

22 \_\_\_\_\_

23 (Signature) Witness

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

23

1 \_\_\_\_\_

2 (Signature) Witness

3 The State of \_\_\_\_\_

4 County of \_\_\_\_\_

5 Sworn to and signed in my presence by \_\_\_\_\_, the

6 testator, and sworn to and signed in my presence by

7 \_\_\_\_\_ and \_\_\_\_\_, witnesses, on

8 \_\_\_\_\_, \_\_\_\_\_.

9 \_\_\_\_\_ month/day \_\_\_\_\_ year

10 \_\_\_\_\_

11 (SEAL) (Signed)

12 \_\_\_\_\_

13 (official capacity of officer)

14 (2) An attested will may be made self-proved at any time  
15 after its execution by the acknowledgment of the will by the tes-  
16 tator and the sworn statements of the witnesses to the will, each  
17 made before an officer authorized to administer oaths under the  
18 laws of the state in which the acknowledgment occurs and evi-  
19 denced by the officer's certificate, under the official seal,  
20 attached or annexed to the will in substantially the following  
21 form:

22 The State of \_\_\_\_\_

23 County of \_\_\_\_\_

24 We, \_\_\_\_\_, \_\_\_\_\_, and

25 \_\_\_\_\_, the testator and the witnesses,



**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

24

1 respectively, whose names are signed to the attached will, sign  
2 this document and have taken an oath, administered by the officer  
3 whose signature and seal appear on this document, to swear that  
4 all of the following statements are true: the individual signing  
5 this document as the will's testator executed the will as his or  
6 her will, signed it willingly or willingly directed another to  
7 sign for him or her, and executed it as his or her voluntary act  
8 for the purposes expressed in the will; each witness, in the  
9 testator's presence, signed the will as witness to the testator's  
10 signing; and, to the best of the witnesses' knowledge, the testa-  
11 tor, at the time of the will's execution, was 18 years of age or  
12 older, of sound mind, and under no constraint or undue  
13 influence.

14 \_\_\_\_\_

15 (Signature) Testator

16 \_\_\_\_\_

17 (Signature) Witness

18 \_\_\_\_\_

19 (Signature) Witness

20 Sworn to and signed in my presence by \_\_\_\_\_, the  
21 testator, and sworn to and signed in my presence by  
22 \_\_\_\_\_ and \_\_\_\_\_, witnesses, on \_\_\_\_\_  
23 \_\_\_\_\_, \_\_\_\_\_.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

25

1

month/day

year

2 \_\_\_\_\_

3 (SEAL) (Signed)

4 \_\_\_\_\_

5 (official capacity of officer)

6 (3) A codicil to a will may be simultaneously executed and  
7 attested, and both the codicil and the original will made  
8 self-proved, by acknowledgment of the codicil by the testator and  
9 by witnesses' sworn statements, each made before an officer  
10 authorized to administer oaths under the laws of the state in  
11 which execution occurs and evidenced by the officer's certifi-  
12 cate, under official seal, in substantially the following form:

13 I, \_\_\_\_\_, the testator, sign my name to this docu-  
14 ment on \_\_\_\_\_, \_\_\_\_\_. I have taken an oath, administered by  
15 the officer whose signature and seal appear on this document,  
16 swearing that the statements in this document are true. I  
17 declare to that officer that this document is a codicil to my  
18 will; that I sign it willingly or willingly direct another to  
19 sign for me; that I execute it as my voluntary act for the pur-  
20 poses expressed in this codicil; and that I am 18 years of age or  
21 older, of sound mind, and under no constraint or undue  
22 influence.

23 \_\_\_\_\_

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

26

1 (Signature) Testator

2 We, \_\_\_\_\_ and \_\_\_\_\_, the witnesses, sign  
3 our names to this document and have taken an oath, administered  
4 by the officer whose signature and seal appear on this document,  
5 to swear that all of the following statements are true: the  
6 individual signing this document as the testator executes the  
7 document as a codicil to his or her will, signs it willingly or  
8 willingly directs another to sign for him or her, and executes it  
9 as his or her voluntary act for the purposes expressed in this  
10 codicil; each of us, in the testator's presence, signs this codi-  
11 cil as witness to the testator's signing; and, to the best of our  
12 knowledge, the testator is 18 years of age or older, of sound  
13 mind, and under no constraint or undue influence.

14 \_\_\_\_\_

15 (Signature) Witness

16 \_\_\_\_\_

17 (Signature) Witness

18 The State of \_\_\_\_\_

19 County of \_\_\_\_\_

20 Sworn to and signed in my presence by \_\_\_\_\_, the  
21 testator, and sworn to and signed in my presence by

22 \_\_\_\_\_ and \_\_\_\_\_, witnesses, on \_\_\_\_\_

23 \_\_\_\_\_, \_\_\_\_\_.

24 \_\_\_\_\_ month/day \_\_\_\_\_ year

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

27

1 \_\_\_\_\_

2 (SEAL) (Signed)

3 \_\_\_\_\_

4 (official capacity of officer)

5 (4) If necessary to prove the will's due execution, a signa-  
6 ture affixed to a self-proving sworn statement attached to a will  
7 is considered a signature affixed to the will.

8 (5) INSTEAD OF THE TESTATOR AND WITNESSES EACH MAKING A  
9 SWORN STATEMENT BEFORE AN OFFICER AUTHORIZED TO ADMINISTER OATHS  
10 AS PRESCRIBED IN SUBSECTIONS (1) TO (3), A WILL OR CODICIL MAY BE  
11 MADE SELF-PROVED BY A WRITTEN STATEMENT THAT IS NOT A SWORN  
12 STATEMENT. THIS STATEMENT SHALL STATE, OR INCORPORATE BY REFER-  
13 ENCE TO AN ATTESTATION CLAUSE, THE FACTS REGARDING THE TESTATOR  
14 AND THE FORMALITIES OBSERVED AT THE SIGNING OF THE WILL OR CODI-  
15 CIL AS PRESCRIBED IN SUBSECTIONS (1) TO (3). THE TESTATOR AND  
16 WITNESSES SHALL SIGN THE STATEMENT, WHICH MUST INCLUDE ITS EXECU-  
17 TION DATE AND MUST BEGIN WITH SUBSTANTIALLY THE FOLLOWING  
18 LANGUAGE: "I CERTIFY (OR DECLARE) UNDER PENALTY FOR PERJURY  
19 UNDER THE LAW OF THE STATE OF MICHIGAN THAT...".

20 Sec. 2519. (1) A will executed in the form prescribed by  
21 subsection (2) and otherwise in compliance with the terms of the  
22 Michigan statutory will form is a valid will. A person printing  
23 and distributing the Michigan statutory will shall print and dis-  
24 tribute the form verbatim as it appears in subsection (2). The  
25 notice provisions shall be printed in 10-point boldfaced type.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

28

1 (2) The form of the Michigan statutory will is as follows:

2 MICHIGAN STATUTORY WILL NOTICE

3 1. An individual age 18 or older and of sound mind may sign  
4 a will.

5 2. There are several kinds of wills. If you choose to com-  
6 plete this form, you will have a Michigan statutory will. If  
7 this will does not meet your wishes in any way, you should talk  
8 with a lawyer before choosing a Michigan statutory will.

9 3. Warning! It is strongly recommended that you do not add  
10 or cross out any words on this form except for filling in the  
11 blanks because all or part of this will may not be valid if you  
12 do so.

13 4. This will has no effect on jointly held assets, on  
14 retirement plan benefits, or on life insurance on your life if  
15 you have named a beneficiary who survives you.

16 5. This will is not designed to reduce estate taxes.

17 6. This will treats adopted children and children born out-  
18 side of wedlock who would inherit if their parent died without a  
19 will the same way as children born or conceived during marriage.

20 7. You should keep this will in your safe deposit box or  
21 other safe place. By paying a small fee, you may file this will  
22 in your county's probate court for safekeeping. You should tell  
23 your family where the will is kept.

24 8. You may make and sign a new will at any time. If you  
25 marry or divorce after you sign this will, you should make and  
26 sign a new will.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

29

1 INSTRUCTIONS:

2 1. To have a Michigan statutory will, you must complete the  
3 blanks on the will form. You may do this yourself, or direct  
4 someone to do it for you. You must either sign the will or  
5 direct someone else to sign it in your name and in your  
6 presence.

7 2. Read the entire Michigan statutory will carefully before  
8 you begin filling in the blanks. If there is anything you do not  
9 understand, you should ask a lawyer to explain it to you.

10 MICHIGAN STATUTORY WILL OF \_\_\_\_\_  
11 (Print or type your full name)

12 ARTICLE 1. DECLARATIONS

13 This is my will and I revoke any prior wills and codicils.

14 I live in \_\_\_\_\_ County, Michigan.

15 My spouse is \_\_\_\_\_.  
16 (Insert spouse's name or write "none")

17 My children now living are:

18 \_\_\_\_\_

19 \_\_\_\_\_

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

30

1 \_\_\_\_\_

2 (Insert names or write "none")

3 ARTICLE 2. DISPOSITION OF MY ASSETS

4 2.1 CASH GIFTS TO PERSONS OR CHARITIES.

5 (Optional)

6 I can leave no more than two (2) cash gifts. I make the  
7 following cash gifts to the persons or charities in the amount  
8 stated here. Any transfer tax due upon my death shall be paid  
9 from the balance of my estate and not from these gifts. Full  
10 name and address of person or charity to receive cash gift (name  
11 only 1 person or charity here):

12 \_\_\_\_\_

13 (Insert name of person or charity)

14 \_\_\_\_\_

15 (Insert address)

16 AMOUNT OF GIFT (In figures): \$ \_\_\_\_\_

17 AMOUNT OF GIFT (In words): \_\_\_\_\_ Dollars

18 \_\_\_\_\_

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

31

1 (Your signature)

2 Full name and address of person or charity to receive cash gift

3 (Name only 1 person or charity):

4 \_\_\_\_\_

5 (Insert name of person or charity)

6 \_\_\_\_\_

7 (Insert address)

8 AMOUNT OF GIFT (In figures): \$ \_\_\_\_\_

9 AMOUNT OF GIFT (In words): \_\_\_\_\_ Dollars

10 \_\_\_\_\_

11 (Your signature)

12 2.2 PERSONAL AND HOUSEHOLD ITEMS.

13 I may leave a separate list or statement ~~, either in my~~  
14 ~~handwriting or~~ signed by me ~~at the end,~~ regarding gifts of  
15 specific books, jewelry, clothing, automobiles, furniture, and  
16 other personal and household items.

17 I give my spouse all my books, jewelry, clothing, automo-  
18 biles, furniture, and other personal and household items not  
19 included on such a separate list or statement. If I am not



**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

32

1 married at the time I sign this will or if my spouse dies before  
2 me, my personal representative shall distribute those items, as  
3 equally as possible, among my children who survive me. If no  
4 children survive me, these items shall be distributed as set  
5 forth in paragraph 2.3.

6 2.3 ALL OTHER ASSETS.

7 I give everything else I own to my spouse. If I am not mar-  
8 ried at the time I sign this will or if my spouse dies before me,  
9 I give these assets to my children and the descendants of any  
10 deceased child. If no spouse, children, or descendants of chil-  
11 dren survive me, I choose 1 of the following distribution clauses  
12 by signing my name on the line after that clause. If I sign on  
13 both lines, if I fail to sign on either line, or if I am not now  
14 married, these assets will go under distribution clause (b).

15 Distribution clause, if no spouse, children, or descendants  
16 of children survive me.

17 (Select only 1)

18 (a) One-half to be distributed to my heirs as if I did not  
19 have a will, and one-half to be distributed to my spouse's heirs  
20 as if my spouse had died just after me without a will.

21 \_\_\_\_\_

22 (Your signature)

23 (b) All to be distributed to my heirs as if I did not have a  
24 will.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

33

1 \_\_\_\_\_

2 (Your signature)

3 GUARDIAN, AND CONSERVATOR

4 Personal representatives, guardians, and conservators have a  
5 great deal of responsibility. The role of a personal representa-  
6 tive is to collect your assets, pay debts and taxes from those  
7 assets, and distribute the remaining assets as directed in the  
8 will. A guardian is a person who will look after the physical  
9 well-being of a child. A conservator is a person who will manage  
10 a child's assets and make payments from those assets for the  
11 child's benefit. Select them carefully. Also, before you select  
12 them, ask them whether they are willing and able to serve.

13 3.1 PERSONAL REPRESENTATIVE.

14 (Name at least 1)

15 I nominate \_\_\_\_\_

16 (Insert name of person or eligible financial  
17 institution)

18 of \_\_\_\_\_ to serve as personal representative.

19 (Insert address)

20 If my first choice does not serve, I nominate \_\_\_\_\_

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

34

1 \_\_\_\_\_

2 (Insert name of person or eligible financial institution)

3 of \_\_\_\_\_ to serve as personal representative.

4 (Insert address)

5 3.2 GUARDIAN AND CONSERVATOR.

6 Your spouse may die before you. Therefore, if you have a  
7 child under age 18, name an individual as guardian of the child,  
8 and an individual or eligible financial institution as conserva-  
9 tor of the child's assets. The guardian and the conservator may,  
10 but need not be, the same person.

11 If a guardian or conservator is needed for a child of mine,

12 I nominate \_\_\_\_\_

13 (Insert name of individual)

14 of \_\_\_\_\_ as guardian and

15 (Insert address)

16 \_\_\_\_\_

17 (Insert name of individual or eligible financial institution)

18 of \_\_\_\_\_

19 (Insert address)

20 to serve as conservator.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

35

1 If my first choice cannot serve, I nominate

2 \_\_\_\_\_

3 (Insert name of individual)

4 of \_\_\_\_\_ as guardian and

5 (Insert address)

6 \_\_\_\_\_

7 (Insert name of individual or eligible financial institution)

8 of \_\_\_\_\_

9 (Insert address)

10 to serve as conservator.

11 **3.3 BOND.**

12 A bond is a form of insurance in case your personal repre-  
13 sentative or a conservator performs improperly and jeopardizes  
14 your assets. A bond is not required. You may choose whether you  
15 wish to require your personal representative and any conservator  
16 to serve with or without bond. Bond premiums would be paid out  
17 of your assets. (Select only 1)

18 (a) My personal representative and any conservator I have  
19 named shall serve with bond.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

36

1 \_\_\_\_\_

2 (Your signature)

3 (b) My personal representative and any conservator I have  
4 named shall serve without bond.

5 \_\_\_\_\_

6 (Your signature)

7 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

8 Definitions and additional clauses found at the end of this  
9 form are part of this will.

10 I sign my name to this Michigan statutory will on

11 \_\_\_\_\_, ~~19~~ 20\_\_\_\_\_.

12 \_\_\_\_\_

13 (Your signature)

14 NOTICE REGARDING WITNESSES

15 You must use 2 adults ~~who will not receive assets under~~  
16 ~~this will~~ as witnesses. It is preferable to have 3 adult  
17 witnesses. All the witnesses must observe you sign the will,  
18 have you tell them you signed the will, or have you tell them the  
19 will was signed at your direction in your presence.

20 STATEMENT OF WITNESSES

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

37

1 We sign below as witnesses, declaring that the individual  
2 who is making this will appears to be of sound mind and appears  
3 to be making this will freely, without duress, fraud, or undue  
4 influence, and that the individual making this will acknowledges  
5 that he or she has read the will, or has had it read to him or  
6 her, and understands the contents of this will.

7 \_\_\_\_\_

8 (Print Name)

9 \_\_\_\_\_

10 (Signature of witness)

11 \_\_\_\_\_

12 (Address)

13 \_\_\_\_\_

14 (City) (State) (Zip)

15 \_\_\_\_\_

16 (Print name)

17 \_\_\_\_\_

18 (Signature of witness)

19 \_\_\_\_\_

20 (Address)

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

38

1 \_\_\_\_\_

2 (City) (State) (Zip)

3 \_\_\_\_\_

4 (Print name)

5 \_\_\_\_\_

6 (Signature of witness)

7 \_\_\_\_\_

8 (Address)

9 \_\_\_\_\_

10 (City) (State) (Zip)

11 DEFINITIONS

12 The following definitions and rules of construction apply to  
13 this Michigan statutory will:

14 (a) "Assets" means all types of property you can own, such  
15 as real estate, stocks and bonds, bank accounts, business inter-  
16 ests, furniture, and automobiles.

17 (b) "Descendants" means your children, grandchildren, and  
18 their descendants.

19 (c) "Descendants" or "children" includes individuals born or  
20 conceived during marriage, individuals legally adopted, and indi-  
21 viduals born out of wedlock who would inherit if their parent  
22 died without a will.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

39

1 (d) "Jointly held assets" means those assets to which  
2 ownership is transferred automatically upon the death of 1 of the  
3 owners to the remaining owner or owners.

4 (e) "Spouse" means your husband or wife at the time you sign  
5 this will.

6 (f) Whenever a distribution under a Michigan statutory will  
7 is to be made to an individual's descendants, the assets are to  
8 be divided into as many equal shares as there are then living  
9 descendants of the nearest degree of living descendants and  
10 deceased descendants of that same degree who leave living  
11 descendants. Each living descendant of the nearest degree shall  
12 receive 1 share. The remaining shares, if any, are combined and  
13 then divided in the same manner among the surviving descendants  
14 of the deceased descendants as if the surviving descendants who  
15 were allocated a share and their surviving descendants had prede-  
16 ceased the descendant. In this manner, all descendants who are  
17 in the same generation will take an equal share.

18 (g) "Heirs" means those persons who would have received your  
19 assets if you had died without a will, domiciled in Michigan,  
20 under the laws that are then in effect.

21 (h) "Person" includes individuals and institutions.

22 (i) Plural and singular words include each other, where  
23 appropriate.

24 (j) If a Michigan statutory will states that a person shall  
25 perform an act, the person is required to perform that act. If a  
26 Michigan statutory will states that a person may do an act, the



1 person's decision to do or not to do the act shall be made in  
2 good faith exercise of the person's powers.

3

ADDITIONAL CLAUSES

4

Powers of personal representative

5 1. A personal representative has all powers of administra-  
6 tion given by Michigan law to personal representatives and, to  
7 the extent funds are not needed to meet debts and expenses cur-  
8 rently payable and are not immediately distributable, the power  
9 to invest and reinvest the estate from time to time in accordance  
10 with the Michigan prudent investor rule. In dividing and dis-  
11 tributing the estate, the personal representative may distribute  
12 partially or totally in kind, may determine the value of distri-  
13 butions in kind without reference to income tax bases, and may  
14 make non-pro rata distributions.

15 2. The personal representative may distribute estate assets  
16 otherwise distributable to a minor beneficiary to the minor's  
17 conservator or, in amounts not exceeding \$5,000.00 per year,  
18 either to the minor, if married; to a parent or another adult  
19 with whom the minor resides and who has the care, custody, or  
20 control of the minor; or to the guardian. The personal represen-  
21 tative is free of liability and is discharged from further  
22 accountability for distributing assets in compliance with the  
23 provisions of this paragraph.

1 POWERS OF GUARDIAN AND CONSERVATOR

2 A guardian named in this will has the same authority with  
3 respect to the child as a parent having legal custody would  
4 have. A conservator named in this will has all of the powers  
5 conferred by law.

6 Sec. 2702. (1) For the purposes of this act, except as pro-  
7 vided in subsection (4), an individual who is not established by  
8 clear and convincing evidence to have survived an event, includ-  
9 ing the death of another individual, by 120 hours is considered  
10 to have predeceased the event.

11 (2) Except as provided in subsection (4), for purposes of a  
12 provision of a governing instrument that relates to an individual  
13 surviving an event, including the death of another individual, an  
14 individual who is not established by clear and convincing evi-  
15 dence to have survived the event by 120 hours is considered to  
16 have predeceased the event.

17 (3) Except as provided in subsection (4), if it is not  
18 established by clear and convincing evidence that 1 of 2  
19 co-owners with right of survivorship survived the other co-owner  
20 by 120 hours, 1/2 of the co-owned property passes as if 1 had  
21 survived by 120 hours and 1/2 as if the other had survived by 120  
22 hours. If there are more than 2 co-owners and it is not estab-  
23 lished by clear and convincing evidence that at least 1 of them  
24 survived the others by 120 hours, the property passes in the pro-  
25 portion that 1 bears to the whole number of co-owners. For the  
26 purposes of this subsection, "co-owners with right of  
27 survivorship" includes joint tenants, tenants by the entireties,

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

42

1 and other co-owners of property or accounts held under  
2 circumstances that entitles 1 or more to the whole of the prop-  
3 erty or account on the death of the other or others.

4 (4) Survival by 120 hours is not required under any of the  
5 following circumstances:

6 (a) The governing instrument contains language dealing  
7 explicitly with simultaneous deaths or deaths in a common  
8 disaster and that language is operable under the facts of the  
9 case. LANGUAGE DEALING EXPLICITLY WITH SIMULTANEOUS DEATHS  
10 INCLUDES LANGUAGE IN A GOVERNING INSTRUMENT THAT CREATES A PRE-  
11 SUMPTION THAT APPLIES IF THE EVIDENCE IS NOT SUFFICIENT TO DETER-  
12 MINE THE ORDER OF DEATHS.

13 (b) The governing instrument expressly indicates that an  
14 individual is not required to survive an event, including the  
15 death of another individual, by any specified period or expressly  
16 requires the individual to survive the event by a specified  
17 period. Survival of the event or the specified period, however,  
18 must be established by clear and convincing evidence.

19 (c) The imposition of a 120-hour requirement of survival  
20 would cause a nonvested property interest or a power of appoint-  
21 ment to fail to qualify for validity under section 2(1)(a),  
22 (2)(a), or (3)(a) of the uniform statutory rule against perpetu-  
23 ities, 1988 PA 418, MCL 554.72, or to become invalid under  
24 section 2(1)(b), (2)(b), or (3)(b) of the uniform statutory rule  
25 against perpetuities, 1988 PA 418, MCL 554.72.

26 (d) The application of a 120-hour requirement of survival to  
27 multiple governing instruments would result in an unintended

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

43

1 failure or duplication of a disposition. Survival, however, must  
2 be established by clear and convincing evidence.

3       Sec. 2718. (1) If an applicable statute or a governing  
4 instrument calls for the property to be distributed "by  
5 representation" or "per capita at each generation", the property  
6 is divided into as many equal shares as there are surviving  
7 descendants in the generation nearest to the designated ancestor  
8 that contains 1 or more surviving descendants and deceased  
9 descendants in the same generation who left surviving descen-  
10 dants, if any. Each surviving descendant in the nearest genera-  
11 tion is allocated 1 share. The remaining shares, if any, are  
12 combined and then divided in the same manner among the surviving  
13 descendants of the deceased descendants as if the surviving  
14 descendants ~~of the deceased descendants~~ who were allocated a  
15 share and their surviving descendants had predeceased the distri-  
16 bution date. This rule of construction applies to documents  
17 originally created ~~after the effective date of this act~~ ON AND  
18 AFTER APRIL 1, 2000, and to all instruments amended ~~after the~~  
19 ~~effective date of this act~~ ON AND AFTER APRIL 1, 2000, that use  
20 the phrase "by representation" or "per capita at each  
21 generation". If an amendment uses either phrase, the rule of  
22 this section applies to the entire instrument.

23       (2) If a governing instrument calls for property to be dis-  
24 tributed "per stirpes", the property is divided into as many  
25 equal shares as there are surviving children of the designated  
26 ancestor and deceased children who left surviving descendants.  
27 Each surviving child, if any, is allocated 1 share. The share of

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

44

1 each deceased child with surviving descendants is divided in the  
2 same manner, with subdivision repeating at each succeeding gener-  
3 ation until the property is fully allocated among surviving  
4 descendants.

5 (3) For the purposes of subsections (1) and (2), a deceased  
6 individual who left no surviving descendant is disregarded, and  
7 an individual who leaves a surviving ancestor who is a descendant  
8 of the designated ancestor is not entitled to a share.

9 (4) As used in this section:

10 (a) "Deceased child" or "deceased descendant" means a child  
11 or descendant who either predeceases the distribution date or is  
12 considered to predecease the distribution date under section  
13 2702.

14 (b) "Distribution date" means, with respect to an interest,  
15 the time when the interest is to take effect in possession or  
16 enjoyment. The distribution date does not need to occur at the  
17 beginning or end of a calendar day, but can occur at a time  
18 during the course of a day.

19 (c) "Surviving ancestor", "surviving child", or "surviving  
20 descendant" means an ancestor, a child, or a descendant who does  
21 not predecease the distribution date and is not considered to  
22 have predeceased the distribution date under section 2702.

23 Sec. 2807. (1) Except as provided by the express terms of a  
24 governing instrument, court order, or contract relating to the  
25 division of the marital estate made between the divorced individ-  
26 uals before or after the marriage, divorce, or annulment, the  
27 divorce or annulment of a marriage does all of the following:

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

45

1 (a) Revokes all of the following that are revocable:

2 (i) A disposition or appointment of property made by a  
3 divorced individual to his or her former spouse in a governing  
4 instrument and a disposition or appointment created by law or in  
5 a governing instrument to a relative of the divorced individual's  
6 former spouse.

7 (ii) A provision in a governing instrument conferring a gen-  
8 eral or nongeneral power of appointment on the divorced  
9 individual's former spouse or on a relative of the divorced  
10 individual's former spouse.

11 (iii) A nomination in a governing instrument, nominating a  
12 divorced individual's former spouse or a relative of the divorced  
13 individual's former spouse to serve in a fiduciary or representa-  
14 tive capacity, including, but not limited to, a personal repre-  
15 sentative, executor, trustee, conservator, agent, or guardian.

16 (b) Severs the interests of the former spouses in property  
17 held by them at the time of the divorce or annulment as joint  
18 tenants with the right of survivorship, ~~or as community property~~  
19 ~~with the right of survivorship,~~ transforming the interests of  
20 the former spouses into tenancies in common.

21 (2) A severance under subsection (1)(b) does not affect a  
22 third-party interest in property acquired for value and in good  
23 faith reliance on an apparent title by survivorship in the survi-  
24 vor of the former spouses unless a writing declaring the sever-  
25 ance has been noted, registered, filed, or recorded in records  
26 appropriate to the kind and location of the property that are

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

46

1 relied upon, in the ordinary course of transactions involving  
2 that type of property, as evidence of ownership.

3 (3) Each provision of a governing instrument is given effect  
4 as if the former spouse and relatives of the former spouse dis-  
5 claimed all provisions revoked by this section or, in the case of  
6 a revoked nomination in a fiduciary or representative capacity,  
7 as if the former spouse and relatives of the former spouse died  
8 immediately before the divorce or annulment.

9 (4) Each provision revoked solely by this section is revived  
10 by the divorced individual's remarriage to the former spouse or  
11 by a nullification of the divorce or annulment.

12 (5) No change of circumstances other than as described in  
13 this section and in sections 2803 to 2805, 2808, and 2809  
14 ~~affects~~ CAUSES a revocation.

15 Sec. 3102. ~~To~~ EXCEPT TO COLLECT ASSETS UNDER SECTION  
16 3983, TO be effective to prove the transfer of property or to  
17 nominate a personal representative, a will must be declared valid  
18 by a register's order of informal probate or by a court's adjudi-  
19 cation of probate.

20 Sec. 3204. (1) A conservator of a protected individual's  
21 estate or, if there is no conservator, a guardian of a minor or  
22 incapacitated individual may exercise the same right to nominate,  
23 to object to another's appointment, or to participate in deter-  
24 mining the preference of a majority in interest of the devisees  
25 and heirs that the protected individual or ward would have if  
26 qualified for appointment.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

47

1           (2) ~~A~~ EXCEPT AS PROVIDED IN SECTIONS 3308(1)(F) AND 3310,  
2 A person who does not have priority, including priority resulting  
3 from renunciation or nomination determined under this section or  
4 section 3203, shall be appointed only in a formal proceeding.  
5 Before appointing a person without priority, the court shall  
6 determine that persons having priority have been notified of the  
7 proceedings and have failed to request appointment or to nominate  
8 another person for appointment, and that administration is  
9 necessary.

10           (3) A person is not qualified to serve as a personal repre-  
11 sentative if the person is either under the age of 18 or is a  
12 person whom the court finds unsuitable in formal proceedings.

13           (4) A personal representative appointed by a court of the  
14 decedent's domicile has priority over all other persons except if  
15 the decedent's will nominates different persons to be personal  
16 representatives in this state and in the state of domicile. The  
17 domiciliary personal representative may nominate another person,  
18 who THEN has the same priority as the domiciliary personal  
19 representative.

20           (5) This section and section 3203 govern priority for  
21 appointment of a successor personal representative, but do not  
22 apply to the selection of a special personal representative.

23           Sec. 3301. (1) An application for informal probate or  
24 informal appointment shall be made by an interested person and  
25 directed to the register. ~~The~~ IF AN APPLICATION IS NOT FILED  
26 WITHIN 28 DAYS AFTER THE DECEDENT'S DEATH, A PERSON THAT HAS A  
27 RIGHT OR CAUSE OF ACTION THAT CANNOT BE ENFORCED WITHOUT



**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

48

1 ADMINISTRATION OR APPOINTMENT MAY FILE AN APPLICATION. AN  
2 applicant shall swear that the application is accurate and com-  
3 plete to the best of the applicant's knowledge and belief as to  
4 all of the following information:

5 (a) In an application for informal probate of a will or for  
6 informal appointment of a personal representative, other than a  
7 special or successor representative, all of the following:

8 (i) A statement of the applicant's interest.

9 (ii) The decedent's name, date of death, and age; the  
10 decedent's county and state of domicile at the time of death; and  
11 the names and addresses of the spouse, children, devisees, and  
12 heirs with the ages of ~~any~~ THOSE who are minors so far as known  
13 or ascertainable with reasonable diligence by the applicant.

14 (iii) If the decedent was not domiciled in the state at the  
15 time of the decedent's death, a statement showing venue.

16 (iv) A statement identifying and indicating the address of a  
17 personal representative of the decedent appointed in this state  
18 or elsewhere whose appointment has not been terminated.

19 (b) In an application for informal probate of a will, in  
20 addition to the statements and information required by  
21 subdivision (a), all of the following:

22 (i) That the original of the decedent's last will is in the  
23 court's possession or accompanies the application, or that an  
24 authenticated copy of a will probated in another jurisdiction  
25 accompanies the application.

26 (ii) That, to the best of the applicant's knowledge, the  
27 will was validly executed.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

49

1       (iii) That, after the exercise of reasonable diligence, the  
2 applicant is unaware of an instrument revoking the will and that  
3 the applicant believes that the instrument that is the subject of  
4 the application is the decedent's last will.

5       (c) In an application for informal appointment of a personal  
6 representative to administer an estate under a will, all of the  
7 following:

8       (i) A description of the will by date of execution.

9       (ii) The time and place of probate or OF the pending appli-  
10 cation for probate.

11       (iii) A statement adopting the statements in the application  
12 or petition for probate.

13       (iv) The name, address, and priority for appointment of the  
14 person whose appointment is sought.

15       (d) In an application for informal appointment of a personal  
16 representative in intestacy, in addition to the statements and  
17 information required by subdivision (a), all of the following:

18       (i) That, after the exercise of reasonable diligence, the  
19 applicant is unaware of any unrevoked testamentary instrument  
20 relating to property located in this state under section 1301, or  
21 a statement why such an instrument of which the applicant is  
22 aware is not being probated.

23       (ii) The priority of the person whose appointment is sought  
24 and the names of any other persons having a prior or equal right  
25 to the appointment under section 3203.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

50

1 (e) In an application for appointment of a personal  
2 representative to succeed a personal representative appointed  
3 under a different testacy status, all of the following:

4 (i) A reference to the order in the most recent testacy  
5 proceeding.

6 (ii) The name and address of the person whose appointment is  
7 sought and of the person whose appointment will be terminated if  
8 the application is granted.

9 (iii) A description of the applicant's priority.

10 (f) In an application for appointment of a personal repre-  
11 sentative to succeed a personal representative who tenders a res-  
12 ignation as provided in section 3610 or whose appointment is ter-  
13 minated by death or removal, all of the following:

14 (i) A statement adopting the statements in the application  
15 or petition that led to the appointment of the person being suc-  
16 ceeded, except as specifically changed or corrected.

17 (ii) The name and address of the person who seeks appoint-  
18 ment as successor.

19 (iii) A description of the applicant's priority.

20 (2) By swearing to an application for informal probate or  
21 informal appointment, the applicant submits personally to the  
22 jurisdiction of the court in any proceeding for relief from fraud  
23 relating to the application or for perjury that may be instituted  
24 against the applicant.

25 Sec. 3401. (1) A formal testacy proceeding is litigation to  
26 determine whether a decedent left a valid will. An interested  
27 person OR A PERSON THAT HAS A RIGHT OR CAUSE OF ACTION THAT

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

51

1 CANNOT BE ENFORCED WITHOUT ADMINISTRATION may commence a formal  
2 testacy proceeding by filing 1 of the following:

3 (a) A petition described in section 3402(1) in which the  
4 petitioner requests that after notice and hearing, the court  
5 enter an order probating a will.

6 (b) A petition to set aside a will's informal probate or to  
7 prevent a will's informal probate that is the subject of a pend-  
8 ing application.

9 (c) A petition in accordance with section 3402(2) for an  
10 order that the decedent died intestate.

11 (2) A petitioner may seek formal probate of a will without  
12 regard to whether the same or a conflicting will has been infor-  
13 mally probated. A formal testacy proceeding may, but need not,  
14 involve a request for appointment of a personal representative.

15 (3) During the pendency of a formal testacy proceeding, the  
16 register shall not act upon an application for informal probate  
17 of a will of the decedent or an application for informal appoint-  
18 ment of a personal representative of the decedent.

19 (4) Unless a petition in a formal testacy proceeding also  
20 requests confirmation of the previous informal appointment, after  
21 receipt of notice of the commencement of a formal probate pro-  
22 ceeding, a previously appointed personal representative shall  
23 refrain from exercising the power to make any further distribu-  
24 tion of the estate during the pendency of the formal proceeding.  
25 A petitioner who seeks the appointment of a different personal  
26 representative in a formal proceeding may also request an order  
27 restraining the acting personal representative from exercising

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

52

1 that office's powers and may request the appointment of a special  
2 personal representative. In the absence of a request under this  
3 subsection or if the request is denied, the commencement of a  
4 formal proceeding has no effect on the powers and duties of a  
5 previously appointed personal representative other than those  
6 relating to distribution.

7       Sec. 3412. (1) Subject to appeal and subject to vacation as  
8 provided in this section and section 3413, a formal testacy order  
9 under sections 3409 to 3411, including an order that the decedent  
10 did not leave a valid will and that determines heirs, is final as  
11 to all persons with respect to all issues concerning the  
12 decedent's estate that the court considered or might have consid-  
13 ered incident to its rendition relevant to the question of  
14 whether the decedent left a valid will and to the determination  
15 of heirs, except that:

16       (a) The court shall entertain a petition for modification or  
17 vacation of its order and probate of another will of the decedent  
18 if it is shown that the proponents of the later-offered will were  
19 unaware of that will's existence at the time of the earlier pro-  
20 ceeding, or were unaware OF THE EARLIER PROCEEDING and were given  
21 no notice of ~~that earlier proceeding~~ IT, except by  
22 publication.

23       (b) If intestacy of all or part of the estate has been  
24 ordered, the determination of the decedent's heirs may be recon-  
25 sidered if it is shown that an individual was omitted from the  
26 determination and that the omitted individual was unaware of his  
27 or her relationship to the decedent, was unaware of the

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

53

1 decedent's death, or was not given notice of any proceeding  
2 concerning the decedent's estate, except by publication.

3 (2) A petition for vacation filed under subsection (1) shall  
4 be filed before the earlier of the following time limits:

5 (a) If a personal representative is appointed for the  
6 estate, the time of entry of an order approving final distribu-  
7 tion of the estate or, if the estate is closed by statement, 6  
8 months after the filing of the closing statement.

9 (b) One year after the entry of the order sought to be  
10 vacated.

11 (3) The order originally rendered in the testacy proceeding  
12 may be modified or vacated, if appropriate under the circum-  
13 stances, by the order of probate of the later-offered will or the  
14 order redetermining heirs.

15 (4) The finding of the fact of death is conclusive as to the  
16 alleged decedent only if notice of the hearing on the petition in  
17 the formal testacy proceeding was sent by registered or certified  
18 mail addressed to the alleged decedent at his or her last known  
19 address and the court finds that a search was made ~~under section~~  
20 ~~3403(3)~~ AS REQUIRED BY SECTION 3403.

21 (5) If the alleged decedent is not dead, even if notice was  
22 sent and the search was made, the alleged decedent may recover  
23 estate assets in the hands of the personal representative. In  
24 addition to any remedies available to the alleged decedent by  
25 reason of any fraud or intentional wrongdoing, the alleged dece-  
26 dent may recover any estate or its proceeds from distributees  
27 that is in their hands, or the value of distributions received by

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

54

1 them, to the extent that any recovery from distributees is  
2 equitable in view of all of the circumstances.

3       Sec. 3414. (1) AN INTERESTED PERSON OR A PERSON THAT HAS A  
4 RIGHT OR CAUSE OF ACTION THAT CANNOT BE ENFORCED WITHOUT APPOINT-  
5 MENT MAY FILE A PETITION FOR A FORMAL PROCEEDING REGARDING THE  
6 PRIORITY OR QUALIFICATION OF A PROSPECTIVE OR APPOINTED PERSONAL  
7 REPRESENTATIVE.

8       (2) ~~(1)~~ If an issue concerning the decedent's testacy is  
9 or may be involved, a formal proceeding for adjudication regard-  
10 ing the priority or qualification of an individual who is seeking  
11 appointment as personal representative or who was previously  
12 appointed personal representative in informal proceedings is gov-  
13 erned by this section and section 3402. In other cases, the  
14 petition must contain or adopt the statements required by section  
15 3301(1)(a) and shall describe the question relating to the per-  
16 sonal representative's priority or qualification that is to be  
17 resolved.

18       (3) ~~(2)~~ If a formal proceeding precedes the appointment of  
19 a personal representative, the formal proceeding stays an infor-  
20 mal appointment proceeding that is pending or that is commenced  
21 after the formal proceeding's commencement. If the formal pro-  
22 ceeding is commenced after the appointment of a personal repre-  
23 sentative and after the personal representative receives notice  
24 of the commencement, the personal representative shall not exer-  
25 cise a power of administration except as necessary to preserve  
26 the estate or unless the court orders otherwise.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

55

1           (4) ~~(3)~~ After notice to interested persons, including all  
2 persons interested in the administration of the estate as  
3 successors under the applicable assumption concerning testacy, a  
4 previously appointed personal representative, a person having or  
5 claiming priority for appointment as personal representative, and  
6 any other person described in section 3403(1) or (2), the court  
7 shall determine who is entitled to appointment under section  
8 3203, make a proper appointment, and, if appropriate, terminate a  
9 prior appointment found to be improper as provided in cases of  
10 removal under section 3611.

11           Sec. 3505. Unless otherwise ordered by the court, super-  
12 vised administration is terminated by an order in accordance with  
13 time restrictions, notices, and contents of orders prescribed for  
14 proceedings under section ~~3951~~ 3952. The court may issue an  
15 interim order approving or directing a partial distribution or  
16 granting other relief at any time during the pendency of a super-  
17 vised administration on the petition of the personal representa-  
18 tive or an interested person.

19           Sec. 3806. (1) If a claim is presented in the manner  
20 described in section 3804 and within the time limit prescribed in  
21 section 3803, the personal representative may deliver or mail a  
22 notice to a claimant stating that the claim has been disallowed  
23 in whole or in part. If, after allowing or disallowing a claim,  
24 the personal representative changes a decision concerning the  
25 claim, the personal representative shall notify the claimant.  
26 The personal representative shall not change a decision  
27 disallowing a claim if the time for the claimant to ~~file a~~



**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

56

1 ~~petition~~ COMMENCE A PROCEEDING for allowance ~~passes~~ EXPIRES or  
2 if the time to commence a proceeding on the claim expires and the  
3 claim is barred. A claim that the personal representative disal-  
4 lows in whole or in part is barred to the extent disallowed  
5 unless the claimant ~~files a petition for allowance in the court~~  
6 ~~or~~ commences a proceeding against the personal representative  
7 not later than 63 days after the mailing of the notice of disal-  
8 lowance or partial allowance if the notice warns the claimant of  
9 the impending bar.

10 (2) The personal representative's failure to deliver or mail  
11 to a claimant notice of action on the claim within 63 days after  
12 the time for the claim's presentation expires or within 63 days  
13 after the personal representative's appointment, whichever is  
14 later, constitutes a notice of allowance. An interested person's  
15 failure to deliver or mail to the personal representative notice  
16 of an objection to a personal representative's claim within 63  
17 days after the time the claim's original presentation expires  
18 constitutes a notice of allowance.

19 (3) After allowing or disallowing a claim, the personal rep-  
20 resentative may change the allowance or disallowance as provided  
21 in this subsection. Before payment of a claim, the personal rep-  
22 resentative may change the allowance to a disallowance in whole  
23 or in part, but not after allowance by a court order or judgment  
24 or an order directing the claim's payment. The personal repre-  
25 sentative shall notify the claimant of the change to disallow-  
26 ance, and the disallowed claim is then subject to bar as provided  
27 in subsection (1). The personal representative may change a

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

57

1 disallowance to an allowance, in whole or in part, until it is  
2 barred under subsection (1). After a claim is barred, it may be  
3 allowed and paid only if the estate is solvent and all successors  
4 whose interests would be affected consent.

5 (4) Upon the personal representative's or a claimant's  
6 ~~petition~~ COMMENCEMENT OF A PROCEEDING, the court may allow in  
7 whole or in part a claim properly presented in due time and not  
8 barred by subsection (1). Upon an interested person's petition  
9 concerning a personal representative's claim, the court may allow  
10 in whole or in part the personal representative's claim properly  
11 presented in due time and not previously allowed under subsection  
12 (1).

13 (5) A judgment in a proceeding in another court against a  
14 personal representative to enforce a claim against a decedent's  
15 estate constitutes an allowance of the claim.

16 (6) Unless otherwise provided in a judgment in another court  
17 entered against the personal representative, an allowed claim  
18 bears interest at a rate determined under section 6013 of the  
19 revised judicature act of 1961, ~~1961 PA 236,~~ MCL 600.6013, for  
20 the period commencing 63 days after the time for the claim's  
21 original presentation expires unless based on a contract provid-  
22 ing for interest, in which case the claim bears interest in  
23 accordance with the contract.

24 Sec. 3807. (1) Upon the expiration of 4 months after the  
25 publication date of the notice to creditors, and after providing  
26 FOR DOWER, for the homestead, family, and exempt property  
27 allowances, for claims already presented that have not yet been

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

58

1 allowed or whose allowance has been appealed, and for unbarred  
2 claims that may yet be presented, including costs and expenses of  
3 administration, the personal representative shall pay the claims  
4 allowed against the estate in the order of priority as provided  
5 in this act. A claimant whose claim has been allowed, but not  
6 paid as provided in this section, may petition the court to  
7 secure an order directing the personal representative to pay the  
8 claim to the extent that property of the estate is available for  
9 the payment.

10 (2) The personal representative may pay a claim that is not  
11 barred at any time, with or without formal presentation, but is  
12 individually liable to another claimant whose claim is allowed  
13 and who is injured by the payment if either of the following  
14 occurs:

15 (a) Payment is made before the expiration of the time limit  
16 stated in subsection (1) and the personal representative fails to  
17 require the payee to give adequate security for the refund of any  
18 of the payment necessary to pay another claimant.

19 (b) Payment is made, due to the negligence or willful fault  
20 of the personal representative, in a manner that deprives the  
21 injured claimant of priority.

22 (3) If a claim is allowed, but the claimant's whereabouts  
23 are unknown at the time the personal representative attempts to  
24 pay the claim, upon petition by the personal representative and  
25 after notice that the court considers advisable, the court may  
26 disallow the claim. If the court disallows a claim under this  
27 subsection, the claim is barred.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

59

1           Sec. 3901. In the absence of administration, the decedent's  
2 heirs and devisees are entitled to the estate in accordance with  
3 the terms of a probated will or the laws of intestate  
4 succession. A devisee may establish title by the probated will  
5 to devised property. An individual entitled to property by home-  
6 stead allowance, exemption, or intestacy may establish title to  
7 the property by proof of the decedent's ownership, the decedent's  
8 death, and the individual's relationship to the decedent. A suc-  
9 cessor takes subject to charges for administration, including the  
10 creditors' claims and the surviving spouse's and dependent  
11 children's allowances, and subject to the rights of others  
12 resulting from abatement, retainer, advancement, or ~~redemption~~  
13 ADEMPITION.

14           Sec. 3902. (1) Subject to ~~subsection (2) and except as~~  
15 ~~provided in connection with the share of the surviving spouse who~~  
16 ~~elects to take an elective share~~ SUBSECTIONS (2) AND (3) AND  
17 EXCEPT AS PROVIDED IN SECTION 2301(3) OR 2302(1)(B)(iv),  
18 distributees' shares abate, without a preference or priority  
19 between real and personal property, in the following order:

- 20           (a) Property not disposed of by the will.  
21           (b) Residuary devisees.  
22           (c) General devisees.  
23           (d) Specific devisees.

24           (2) For purposes of abatement, a general devise charged on  
25 specific property is a specific devise to the extent of the value  
26 of that specific property and, upon the failure or insufficiency  
27 of the property on which the devise is charged, a general devise

1 to the extent of the failure or insufficiency. Abatement within  
2 each classification is in proportion to the amount of property  
3 each beneficiary would have received if full distribution of the  
4 property had been made in accordance with the terms of the will.

5 (3) If the will expresses a different order of abatement,  
6 the will controls. If the testamentary plan or the devise's  
7 express or implied purpose would be defeated by the order of  
8 abatement stated in subsection (1), the distributees' shares  
9 abate as found necessary to give effect to the testator's  
10 intention.

11 (4) If the subject of a preferred devise is sold or used  
12 incident to administration, abatement shall be achieved by appro-  
13 priate adjustments in, or contribution from, other interests in  
14 the remaining assets.

15 Sec. 3917. (1) The county treasurer shall receive and  
16 safely keep money deposited under authority of this act in a sep-  
17 arate fund and keep a separate account for each distributee or  
18 claim. The county treasurer shall deposit the money in a county  
19 depository at the current rate of interest, shall pay out from  
20 the fund upon the order of the court, and shall turn over any  
21 surplus left in the treasurer's hands at the termination of the  
22 treasurer's term of office to the treasurer's successor.

23 (2) At the commencement of each term of office and before  
24 receiving money under authority of this act, the county treasurer  
25 shall give a bond running to the judge and the judge's successor  
26 in office, with 2 or more sufficient sureties approved by the  
27 court. The bond shall be in the amount the judge directs,

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

61

1 conditioned that the county treasurer and his or her deputy shall  
2 do all of the following:

3 (a) Pay out the money only on court order, whether the money  
4 was turned over to the treasurer by his or her predecessor in  
5 office, or deposited with the treasurer during the term that he  
6 or she is then commencing or during a prior term of office.

7 (b) At the end of each year, render to the court, and to the  
8 county board of commissioners, a true account of that money.

9 (c) Deliver over to his or her successor in office the money  
10 deposited under authority of this act and books, papers, and  
11 other records relating to that money.

12 (3) The court may at any time require the county treasurer  
13 to give new or additional bond, as the court considers necessary,  
14 conditioned as provided in subsection (2). A bond deposited by  
15 the county treasurer and his or her sureties on the bond are dis-  
16 charged from further liability under the bond upon the filing of  
17 a new bond by a successor to the office who is named on the new  
18 bond, unless the county treasurer fails to account for any money  
19 as required in this article, or fails to turn that money over to  
20 the successor in office.

21 (4) For the care of the ~~fund~~ MONEY received under author-  
22 ity of this act, the county treasurer may take 1% from the dif-  
23 ferent amounts paid out under court order unless the amount paid  
24 out to a single individual exceeds \$1,000.00, in which case the  
25 county treasurer shall take \$10.00 plus 1/2 of 1% of the excess  
26 of the amount over \$1,000.00.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

62

1 (5) A person entitled to the money may petition the court  
2 having jurisdiction for an order directing the county treasurer  
3 to pay over money that is deposited with the county treasurer.  
4 Upon receiving the petition, the court shall make an order as to  
5 notice of the hearing as the court considers proper. Upon satis-  
6 factory proof being made to the court of the claimant's right to  
7 the money, the court shall order the county treasurer to pay the  
8 money to the claimant.

9 (6) If a person WHOSE WHEREABOUTS ARE UNKNOWN OR WHO  
10 DECLINED TO ACCEPT THE MONEY does not make a claim to ~~funds~~  
11 MONEY deposited by a fiduciary before the expiration of 3 years  
12 after the deposit date, the money that would be distributed under  
13 this section to the person, if alive, less expenses, shall be  
14 distributed by court order to each person who would be entitled  
15 to the money if the person ~~were deceased~~ HAD DIED BEFORE THE  
16 DATE THAT HE OR SHE BECAME ENTITLED TO THE MONEY, and the person  
17 is forever barred from all claim or right to the money.

18 (7) An action on the bond given by the county treasurer  
19 under this section may be started in the name of the state, for  
20 the use and benefit of anyone interested, in the same manner and  
21 with the same effect as allowed by law upon fiduciary bonds.

22 Sec. 3921. (1) Unless specific directions to that effect  
23 are contained in the governing instrument under which the fidu-  
24 ciary is acting, section 3920 shall not be construed to require  
25 the personal representative or other concerned fiduciary to pay  
26 an estate, inheritance, or other death tax levied or assessed by  
27 a foreign country.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

63

1           (2) The net amount of tax attributable to the interests  
2 encompassed by subdivision (a), subdivision (b), or subdivision  
3 (c) of section 3920(1) considered separately shall be the part of  
4 the net amount of tax as finally determined, with any interest  
5 and penalties on that amount, as the value of the interests gen-  
6 erating the tax and included in the subdivision bears to the  
7 amount of the net estate. However, for an inheritance or similar  
8 tax, the tax that is imposed on each beneficiary's interest, as  
9 determined under the law of the state, country, or political sub-  
10 division then under consideration, shall be considered the tax  
11 attributable to the interest. In prorating taxes within each  
12 subdivision of section 3920(1) based on the value of those inter-  
13 ests generating the tax, each separate tax that an interest may  
14 incur shall be prorated in the same manner. In determining the  
15 proportion that each interest bears to the total value of all  
16 interests generating each tax, only interests generating that  
17 particular tax are considered. Property or interests generating  
18 a tax do not include property or interests, whether passing under  
19 a will, trust, or otherwise, to the extent the property or inter-  
20 est is exempt or is initially deductible from the gross estate,  
21 without regard to any subsequent diminution of the deduction by  
22 reason of the charge of a part of the tax to the property or  
23 interest.

24           (3) A direction in a governing instrument for tax ~~—~~ allo-  
25 cation ~~—~~ and payment in a manner different from that provided  
26 in sections 3920 to 3923 is effective to allocate and pay tax  
27 only from property whose devolution is subject to that



**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

64

1 instrument's control and with respect to which the tax is being  
2 levied. ~~However, a~~ IF THE GOVERNING INSTRUMENT WAS SIGNED ON  
3 OR AFTER SEPTEMBER 6, 1963 AND BEFORE APRIL 1, 2000 AND DIRECTS  
4 APPORTIONMENT OF TAXES BY REFERENCE TO THE UNIFORM ESTATE TAX  
5 APPORTIONMENT ACT, WHICH WAS FORMER 1963 PA 144, OR BY REFERENCE  
6 TO ANOTHER LAW OF THIS STATE THAT WAS IN EFFECT WHEN THE INSTRU-  
7 MENT WAS EXECUTED, THE APPORTIONMENT RULES PROVIDED IN THE REFER-  
8 ENCED LAW CONTROL THE APPORTIONMENT OF TAXES UNDER THAT GOVERNING  
9 INSTRUMENT.

10 (4) A direction to allocate and pay tax contained in a will  
11 is effective to allocate and pay tax even if the will does not  
12 control the devolution of property at death with respect to which  
13 the tax is being levied, including a direction in a will to allo-  
14 cate and pay tax from a trust of which the testator was the set-  
15 tlor and that was revocable by the settlor, or would have been  
16 revocable if the settlor was not incapacitated, until the  
17 settlor's death. If there is a conflict between directions in a  
18 will to allocate and pay tax and the terms of another governing  
19 instrument, the directions in the will control.

20 (5) ~~(4)~~ A tax apportionment based on the net estate under  
21 sections 3920 to 3923 shall be determined without regard to a  
22 diminution in deductions resulting from the charge of a part of  
23 the tax to a deductible interest.

24 Sec. 3956. Unless previously barred by adjudication and  
25 except as provided in the closing statement, the right of a suc-  
26 cessor or creditor whose ~~claim~~ RIGHT is not otherwise barred  
27 against the personal representative for breach of fiduciary duty

1 is barred unless a proceeding to assert the ~~claim~~ RIGHT is  
2 commenced within 6 months after the filing of the closing  
3 statement. The right barred under this section does not include  
4 the right to recover from a personal representative for fraud,  
5 misrepresentation, or inadequate disclosure related to the set-  
6 tlement of the decedent's estate.

7 Sec. 5101. As used in parts 1 to 4 of this article:

8 (a) "Best interests of the minor" means the sum total of the  
9 following factors to be considered, evaluated, and determined by  
10 the court:

11 (i) The love, affection, and other emotional ties existing  
12 between the parties involved and the child.

13 (ii) The capacity and disposition of the parties involved to  
14 give the child love, affection, and guidance and to continue edu-  
15 cating and raising the child in the child's religion or creed, if  
16 any.

17 (iii) The capacity and disposition of the parties involved  
18 to provide the child with food, clothing, medical care or other  
19 remedial care recognized and permitted under the laws of this  
20 state in place of medical care, and other material needs.

21 (iv) The length of time the child has lived in a stable,  
22 satisfactory environment, and the desirability of maintaining  
23 continuity.

24 (v) The permanence, as a family unit, of the existing or  
25 proposed custodial home.

26 (vi) The moral fitness of the parties involved.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

66

1       (vii) The mental and physical health of the parties  
2 involved.

3       (viii) The child's home, school, and community record.

4       (ix) The child's reasonable preference, if the court consid-  
5 ers the child to be of sufficient age to express a preference.

6       (x) The party's willingness and ability to facilitate and  
7 encourage a close and continuing parent-child relationship  
8 between the child and his or her parent or parents.

9       (xi) Domestic violence regardless of whether the violence is  
10 directed against or witnessed by the child.

11       (xii) Any other factor considered by the court to be rele-  
12 vant to a particular dispute regarding termination of a guardian-  
13 ship, removal of a guardian, or parenting time.

14       (b) "Claim" includes, in respect to a protected individual,  
15 a liability of the protected individual, whether arising in con-  
16 tract, tort, or otherwise, and a liability of the estate that  
17 arises at or after the appointment of a conservator, including  
18 expenses of administration.

19       (c) "Conservator" includes, but is not limited to, a limited  
20 conservator described in section 5419(1).

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

24       ~~(i) A physician who is licensed to practice medicine or~~  
25 ~~osteopathic medicine in this state.~~

26       ~~(ii) A psychologist who has been granted a full or limited~~  
27 ~~license to practice in this state.~~

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

67

1       ~~(iii) A social worker who is registered as a certified~~  
2 ~~social worker in this state.~~

3       ~~(iv) A registered nurse who is licensed to practice nursing~~  
4 ~~in this state and who is a graduate of a state-approved school of~~  
5 ~~nursing.~~

6       ~~(e) "Money" means legal tender or a note, draft, certifi-~~  
7 ~~cate of deposit, stock, bond, check, or credit card.~~

8       ~~(f) "Visitor" means an individual appointed in a~~  
9 ~~guardianship or protective proceeding who is trained in law,~~  
10 ~~nursing, or social work, is an officer, employee, or special~~  
11 ~~appointee of the court, and has no personal interest in the~~  
12 ~~proceeding.~~

13       Sec. 5204. (1) A person interested in the welfare of a  
14 minor, or a minor if 14 years of age or older, may petition for  
15 the appointment of a guardian for the minor. The court may order  
16 the family independence agency or a court employee or agent to  
17 conduct an investigation of the proposed guardianship and file a  
18 written report of the investigation.

19       (2) The court may appoint a guardian for an unmarried minor  
20 if any of the following circumstances exist:

21       (a) The parental rights of both parents or the surviving  
22 parent are terminated or suspended by prior court order, by judg-  
23 ment of divorce or separate maintenance, by death, by judicial  
24 determination of mental incompetency, by disappearance, or by  
25 confinement in a place of detention.

26       (b) The parent or parents permit the minor to reside with  
27 another person and do not provide the other person with legal

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

68

1 authority for the minor's care and maintenance, AND THE MINOR IS  
2 NOT RESIDING WITH HIS OR HER PARENT OR PARENTS WHEN THE PETITION  
3 IS FILED.

4 (c) All of the following:

5 (i) The minor's biological parents have never been married  
6 to one another.

7 (ii) The minor's parent who has custody of the minor dies or  
8 is missing and the other parent has not been granted legal cus-  
9 tody under court order.

10 (iii) The person whom the petition asks to be appointed  
11 guardian is related to the minor within the fifth degree by mar-  
12 riage, blood, or adoption.

13 (3) A minor's limited guardian may petition to be appointed  
14 a guardian for that minor, except that the petition shall not be  
15 based upon suspension of parental rights by the order that  
16 appointed that person the limited guardian for that minor.

17 (4) A guardian appointed under section 5202 whose appoint-  
18 ment is not prevented or nullified under section 5203 has prior-  
19 ity over a guardian who may be appointed by the court. The court  
20 may proceed with an appointment upon a finding that the testamen-  
21 tary guardian has failed to accept the appointment within 28 days  
22 after the notice of the guardianship proceeding.

23 (5) For the minor ward's welfare, the court may at any time  
24 order the minor ward's parents to pay reasonable support and  
25 order reasonable parenting time and contact of the minor ward  
26 with his or her parents.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

69

1       Sec. 5213. (1) The petitioner shall give notice of the time  
2 and place of hearing of a petition for the appointment of a  
3 minor's guardian to each of the following:

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

5       (b) The person who had the principal care and custody of the  
6 minor during the 63 days preceding the date of the petition.

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

9       (2) Upon hearing, if the court finds that a qualified person  
10 seeks appointment, venue is proper, the required notices have  
11 been given, the requirements of section 5204 ~~,~~ or OF sections  
12 5205 and 5206 ~~,~~ are satisfied, and the minor's welfare will be  
13 served by the requested appointment, the court shall make the  
14 appointment. In other cases, the court may dismiss the proceed-  
15 ing or make another disposition of the matter that will serve the  
16 minor's welfare.

17       (3) If necessary, the court may appoint a temporary guardian  
18 with the status of an ordinary guardian of a minor, but the tem-  
19 porary guardian's authority shall not exceed 6 months.

20       (4) If, at any time in the proceeding, the court determines  
21 that the minor's interests are or may be inadequately represent-  
22 ed, the court may appoint ~~an attorney~~ A LAWYER-GUARDIAN AD  
23 LITEM to represent the minor, giving a consideration to the pref-  
24 erence of the minor if the minor is 14 years of age or older.

25       (5) A LAWYER-GUARDIAN AD LITEM APPOINTED UNDER THIS ACT REP-  
26 RESENTS THE CHILD AND HAS POWERS AND DUTIES IN RELATION TO THAT  
27 REPRESENTATION AS SET FORTH IN SECTION 17D OF CHAPTER XIIIA OF THE

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

70

1 PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.17D. ALL PROVISIONS  
2 OF SECTION 17D OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939  
3 PA 288, MCL 712A.17D, APPLY TO A LAWYER-GUARDIAN AD LITEM  
4 APPOINTED UNDER THIS ACT. IN ADDITION, BOTH OF THE FOLLOWING  
5 APPLY UNDER THIS ACT:

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

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

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

24 Sec. 5219. (1) A person interested in a ward's welfare or,  
25 if 14 years of age or older, the ward may petition for the  
26 removal of a guardian on the ground that removal would serve the  
27 ward's welfare or for another order that would serve the ward's

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

71

1 welfare. A guardian may petition for permission to resign. A  
2 petition for removal or for permission to resign may, but need  
3 not, include a request for a successor guardian's appointment.

4 (2) Notice of a hearing on a petition for an order after a  
5 guardian's appointment must be given to the ward, the guardian,  
6 and any other person as ordered by the court or as provided by  
7 court rule.

8 (3) After notice and hearing on a petition for removal or  
9 for permission to resign, the court may terminate the guardian-  
10 ship and make further order that may be appropriate.

11 (4) If the court determines at any time in a proceeding that  
12 the ward's interest is or may be inadequately represented, the  
13 court may appoint ~~an attorney~~ A LAWYER-GUARDIAN AD LITEM to  
14 represent the minor, giving consideration to the preference of  
15 the minor if the minor is 14 years of age or older.

16 Sec. 5308. The guardian's authority and responsibility for  
17 an incapacitated individual terminates upon the death of the  
18 guardian or ward, upon the determination of incapacity of the  
19 guardian, or upon removal or resignation as provided in section  
20 5310. Testamentary appointment of a guardian under a will  
21 INFORMALLY probated under article III terminates if the will is  
22 later denied probate ~~under a supervised probate proceeding~~ IN A  
23 FORMAL TESTACY PROCEEDING.

24 Sec. 5406. (1) Upon receipt of a petition for a  
25 conservator's appointment or another protective order because of  
26 minority, the court shall set a date for hearing. If, at any  
27 time in the proceeding, the court determines that the minor's



**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

72

1 interests are or may be inadequately represented, the court may  
2 appoint an attorney to represent the minor, giving consideration  
3 to the minor's choice if 14 years of age or older. An attorney  
4 appointed by the court to represent a minor has the powers and  
5 duties of a guardian ad litem.

6 (2) Upon receipt of a petition for a conservator's appoint-  
7 ment or another protective order for a reason other than minori-  
8 ty, the court shall set a date for hearing. Unless the individ-  
9 ual to be protected has chosen counsel or is mentally competent  
10 but aged or physically infirm, the court shall appoint a guardian  
11 ad litem to represent the person in the proceeding. If the  
12 alleged disability is mental illness, mental deficiency, physical  
13 illness or disability, chronic use of drugs, or chronic intoxica-  
14 tion, the court may direct that the individual alleged to need  
15 protection be examined by a physician or mental health profes-  
16 sional appointed by the court, preferably a physician or mental  
17 health professional who is not connected with an institution in  
18 which the individual is a patient or is detained. The individual  
19 alleged to need protection has the right to secure an independent  
20 evaluation at his or her own expense. The court may send a vis-  
21 itor to interview the individual to be protected. The visitor  
22 may be a guardian ad litem or a court officer or employee.

23 (3) The court may utilize, as an additional visitor, the  
24 service of a public or charitable agency to evaluate the condi-  
25 tion of the individual to be protected and make appropriate rec-  
26 ommendations to the court.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

73

1 (4) The individual to be protected is entitled to be present  
2 at the hearing in person. ~~, and~~ IF THE INDIVIDUAL WISHES TO BE  
3 PRESENT AT THE HEARING, all practical steps must be taken to  
4 ensure the individual's presence including, if necessary, moving  
5 the site of the hearing. The individual is entitled to be repre-  
6 sented by counsel, to present evidence, to cross-examine wit-  
7 nesses, including a court-appointed physician or other qualified  
8 person and a visitor, and to trial by jury. The issue may be  
9 determined at a closed hearing or without a jury if the individ-  
10 ual to be protected or counsel for the individual so requests.

11 (5) Any person may request for permission to participate in  
12 the proceeding, and the court may grant the request, with or  
13 without hearing, upon determining that the best interest of the  
14 individual to be protected will be served by granting the  
15 request. The court may attach appropriate conditions to the  
16 permission.

17 (6) After hearing, upon finding that a basis for a  
18 conservator's appointment or another protective order is estab-  
19 lished by clear and convincing evidence, the court shall make the  
20 appointment or other appropriate protective order.

21 Sec. 6302. Only an individual whose registration of a  
22 security shows sole ownership by 1 individual or multiple owner-  
23 ship by 2 or more with right of survivorship, rather than as  
24 tenants in common, may obtain registration in beneficiary form.  
25 Multiple owners of a security registered in beneficiary form hold  
26 as joint tenants with right of survivorship ~~,~~ OR as tenants by

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045 as amended March 8, 2000 74, (Page 1 of 2)

1 the entireties, ~~or as owners of community property held in~~  
2 ~~survivorship form,~~ and not as tenants in common.

3 Sec. 6306. The designation of a TOD beneficiary on a regis-  
4 tration in beneficiary form does not ~~effect~~ AFFECT ownership  
5 until the owner's death. A registration of a security in benefi-  
6 ciary form may be canceled or changed at any time by the sole  
7 owner or all the surviving owners without the consent of the  
8 beneficiary.

9 Sec. 7206. A proceeding under section 7201 is initiated by  
10 filing a petition in the court and giving notice to interested  
11 persons as provided in section 1401. The court may order notifi-  
12 cation of additional persons. A judgment or order ~~is valid for~~  
13 BINDS each person who is given notice of the proceeding even if  
14 not all interested persons are notified.

Sec. 7303. (1) Subject to subsection (2), the trustee of a  
revocable trust shall keep the settlor reasonably informed of the trust  
and its administration. Unless otherwise provided in the trust  
instrument, the trustee of a revocable trust does not have a duty to  
inform a trust beneficiary of the trust and its administration, other  
than the settlor or, if the settlor is an incapacitated person, the  
settlor's designated agent.

(2) Unless otherwise provided in the trust instrument, if the  
trustee reasonably believes the settlor of a revocable trust is an  
incapacitated person and has no designated agent, the trustee shall  
keep each beneficiary, who, if the settlor were then deceased, would be  
a current trust beneficiary, reasonably informed of the trust and its  
administration. Notwithstanding the provisions of the trust  
instrument, upon good cause shown, the court may order the trustee to  
keep other beneficiaries reasonably informed of the trust and its  
administration.

(3) For a revocable trust, within 28 days after acceptance of  
trust or the death of the settlor, whichever is later, and for all  
other trusts, within 28 days after acceptance of the trust, the trustee  
shall inform in writing each INTERESTED TRUST beneficiary of the  
trust's existence, of the court in which the trust is registered, if it  
is registered, of the trustee's name and address, and of the INTERESTED  
TRUST beneficiary's right to request and receive both a copy of the  
trust's terms that describe or affect the INTERESTED TRUST  
beneficiary's interest and relevant information about the trust  
property. In addition, all of the following apply:

(a) Upon reasonable request, the trustee shall provide a  
beneficiary with a copy of the trust's terms that describe or affect  
the beneficiary's interest and with relevant information about the  
trust property.

(b) Unless the settlor directs or requests in the trust  
instrument that the trustee provide accounts to less than all  
interested trust beneficiaries, all of the following apply:

(i) At least annually and on termination of the trust or a  
change of the trustee, the trustee shall provide a statement of account  
to each current trust beneficiary and shall keep each current trust  
beneficiary informed of the trust and its administration.

(ii) Upon reasonable request, the trustee shall provide a  
statement of account to each interested trust beneficiary who is  
not also a current trust beneficiary and shall keep each of those  
persons reasonably informed of the trust and its administration.

(iii) The trustee shall provide a statement of account and  
other information to a beneficiary as the court directs.

Senate Bill No. 1045 as amended March 8, 2000 74, (Page 2 of 2)

**SB 1045, As Passed Senate, March 9, 2000**

(iv) In the trustee's discretion, the trustee may provide a statement of account and other information to any beneficiary.

(c) If the settlor requests or directs the trustee in the trust instrument to provide accounts and information to less than all interested trust beneficiaries, the trustee shall provide statements of account and information as provided in the trust instrument. At the court's direction, the trustee shall provide statements of account and other information to persons excluded by the settlor's request or direction to the extent and in the manner the court directs.

15 Sec. 7409. (1) A trustee may act under section

16 ~~7401(1)(gg)~~ 7401(2)(GG) by paying money or other property to 1  
17 or more of the following:

18 (a) The minor or incapacitated individual directly.

19 (b) A person or institution providing support, maintenance,  
20 education, or medical, surgical, hospital, or other institutional  
21 care for the minor or incapacitated individual in direct payment  
22 for those services.

23 (c) The legal or natural guardian of the minor or incapaci-  
24 tated individual.

25 (d) A person, whether or not appointed guardian by a court,  
26 who shall in fact have the care and custody of the minor or  
27 incapacitated individual.

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

75

1 (e) A custodian for the minor or incapacitated individual  
2 under a uniform gifts or transfers to minors act.

3 (2) If the trustee exercises due care in the selection of  
4 the person to whom a payment is made under this section, includ-  
5 ing a minor or incapacitated individual, the trustee does not  
6 have a duty to see to the payment's application. The person's  
7 receipt for the payment completely discharges the trustee.

8 Sec. 7501. (1) The property of a trust over which the set-  
9 tlor has the right WITHOUT REGARD TO THE SETTLOR'S MENTAL  
10 CAPACITY, at his or her death, either alone or in conjunction  
11 with another person, to revoke the trust and ~~reinvest~~ REVEST  
12 principal in himself or herself is subject to all of the follow-  
13 ing, but only to the extent that the settlor's property subject  
14 to probate administration is insufficient to satisfy the follow-  
15 ing expenses, claims, and allowances:

16 (a) The administration expenses of the settlor's estate.

17 (b) An enforceable and timely presented claim of a creditor  
18 of the settlor, including a claim for the settlor's funeral and  
19 burial expenses.

20 (c) Homestead, family, and exempt property allowances.

21 (2) A trust established as part of, and all payments from,  
22 an employee annuity described in section 403 of the internal rev-  
23 enue code, an individual retirement account described in section  
24 408 of the internal revenue code, a Keogh (HR-10 plan), or a  
25 retirement or other plan that is qualified under section 401 of  
26 the internal revenue code shall not be considered to be a trust  
27 described in subsection (1).

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

76

1 (3) This section does not impair a right that an individual  
2 has under a qualified domestic relations order as that term is  
3 defined in section 414(p) of the internal revenue code.

4 (4) For purposes of this section, property held or received  
5 by a trust to the extent that the property would not have been  
6 subject to a claim against the settlor's estate if it had been  
7 paid directly to a trust created under the settlor's will or  
8 other than to the settlor's estate, or property received from a  
9 trust other than a trust described in this section, shall not be  
10 considered trust property available for the payment of the admin-  
11 istration expenses, a claim against the settlor's estate, or an  
12 allowance described in subsection (1).

13 Sec. 7507. If there is no personal representative appointed  
14 for the settlor's estate and notice is given in accordance with  
15 section 7504, the allowance or disallowance of a claim presented  
16 in the manner described in section 7505(1) and within a time  
17 period described in section 7506 is governed by the following  
18 provisions:

19 (a) The trustee may deliver or mail a notice to the claimant  
20 stating that the claim has been disallowed in whole or in part.  
21 If, after allowing or disallowing a claim, the trustee changes a  
22 decision concerning the claim, the trustee shall notify the  
23 claimant. The trustee ~~may~~ SHALL not change a decision disal-  
24 lowing a claim if the time for the claimant to ~~file a petition~~  
25 COMMENCE A PROCEEDING for allowance ~~has passed~~ EXPIRES or if  
26 the time to commence a proceeding on the claim ~~has run~~ EXPIRES  
27 and the claim has been barred. A claim that is disallowed in

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

77

1 whole or in part by the trustee is barred to the extent not  
2 allowed unless the claimant ~~files a petition for allowance in~~  
3 ~~the court or~~ commences a proceeding against the trustee not  
4 later than 63 days after the mailing of the notice of disallow-  
5 ance or partial allowance if the notice warns the claimant of the  
6 impending bar. Failure by the trustee to deliver or mail to a  
7 claimant notice of action on the claim within 63 days after the  
8 time for the claim's presentation has expired constitutes a  
9 notice of allowance.

10 (b) After allowing or disallowing a claim, the trustee may  
11 change the allowance or disallowance as provided in this  
12 subdivision. Before payment, the trustee may change the allow-  
13 ance to a disallowance in whole or in part, but not after allow-  
14 ance by a court order or judgment, or an order directing payment  
15 of the claim. The trustee shall notify the claimant of the  
16 change to disallowance, and the disallowed claim is then subject  
17 to bar as provided in subdivision (a). The trustee may change a  
18 disallowance to an allowance, in whole or in part, until it is  
19 barred under subdivision (a). After a claim is barred, it may be  
20 allowed and paid only if the trust is solvent and all whose  
21 interests would be affected consent.

22 (c) Upon the trustee's or a claimant's ~~petition~~  
23 COMMENCEMENT OF A PROCEEDING, the court may allow in whole or in  
24 part a claim properly presented in due time and not barred by  
25 subdivision (a).

**SB 1045, As Passed Senate, March 9, 2000**

Senate Bill No. 1045

78

1 (d) A judgment in a proceeding in another court against a  
2 trustee to enforce a claim against a decedent's estate  
3 constitutes an allowance of the claim.

4 (e) Unless otherwise provided in a judgment in another court  
5 entered against the trustee, an allowed claim bears interest at a  
6 rate determined under section 6013 of the revised judicature act  
7 of 1961, ~~1961 PA 236,~~ MCL 600.6013, for the period commencing  
8 63 days after the time for original presentation of the claim has  
9 expired, unless based on a contract that provides for interest,  
10 in which case the claim bears interest in accordance with the  
11 contract.

12 Enacting section 1. The following acts and parts of acts  
13 are repealed:

14 (a) 1966 PA 185, MCL 555.81 to 555.84.

15 (b) 1937 PA 177, MCL 555.201 to 555.203.

16 (c) Section 3108 of the estates and protected individuals  
17 code, 1998 PA 386, MCL 700.3108.

18 (d) The uniform estate tax apportionment act, 1963 PA 144,  
19 MCL 720.11 to 720.21.

20 Enacting section 2. This amendatory act takes effect April  
21 1, 2000.