

# HOUSE BILL No. 5367

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

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending sections 3709 and 3715 (MCL 700.3709 and 700.3715),  
section 3715 as amended by 2009 PA 46, and by adding sections 3715a  
and 3723.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 3709. (1) Except as otherwise provided by a decedent's  
2 will or by this section, a personal representative has a right to ~~7~~  
3 and, if necessary for purposes of administration, shall take  
4 possession or control of ~~7~~the decedent's property, **OTHER THAN**  
5 **DIGITAL PROPERTY SUBJECT TO SUBSECTION (2)**, except that real  
6 property or tangible personal property may be left with or  
7 surrendered to the person presumptively entitled to that property  
8 unless or until, in the personal representative's judgment,  
9 possession of the property will be necessary for purposes of

1 administration. A personal representative's request for delivery of  
2 property possessed by an heir or devisee is conclusive evidence, in  
3 an action against the heir or devisee for possession of that  
4 property, that the possession of the property by the personal  
5 representative is necessary for purposes of administration. The  
6 personal representative shall pay taxes on, and take all steps  
7 reasonably necessary for the management, protection, and  
8 preservation of, the estate in the personal representative's  
9 possession. The personal representative may maintain an action to  
10 recover possession of, or to determine the title to, property.

11 (2) EXCEPT AS OTHERWISE PROVIDED BY A DECEDENT'S WILL, AND  
12 SUBJECT TO APPLICABLE LAW AND A TERMS-OF-SERVICE AGREEMENT, WITH  
13 RESPECT TO A DECEDENT'S DIGITAL PROPERTY, A PERSONAL REPRESENTATIVE  
14 HAS THE LAWFUL CONSENT OF THE DECEDENT AND IS AN AUTHORIZED USER  
15 UNDER ALL APPLICABLE STATE AND FEDERAL STATUTES. A PERSONAL  
16 REPRESENTATIVE HAS THE RIGHT TO, AND IF NECESSARY FOR PURPOSES OF  
17 ADMINISTRATION SHALL, EXERCISE CONTROL OVER THE DECEDENT'S DIGITAL  
18 PROPERTY. A PERSONAL REPRESENTATIVE'S WRITTEN REQUEST FOR ACCESS  
19 TO, OR CONTROL OF, DIGITAL PROPERTY IS CONCLUSIVE EVIDENCE IN ANY  
20 ACTION THAT THE ACCESS TO, EXERCISE OF CONTROL OF, OR BOTH, DIGITAL  
21 PROPERTY BY THE PERSONAL REPRESENTATIVE IS NECESSARY FOR PURPOSES  
22 OF ADMINISTRATION. THE PERSONAL REPRESENTATIVE MAY MAINTAIN AN  
23 ACTION TO GAIN ACCESS TO, EXERCISE CONTROL OF, OR BOTH, DIGITAL  
24 PROPERTY IN ACCORDANCE WITH SECTION 3715A.

25 Sec. 3715. Except as restricted or otherwise provided by the  
26 will or by an order in a formal proceeding, and subject to the  
27 priorities stated in section 3902, a personal representative,

1 acting reasonably for the benefit of interested persons, may  
2 properly do any of the following:

3 (a) Retain property owned by the decedent pending distribution  
4 or liquidation, including property in which the personal  
5 representative is personally interested or that is otherwise  
6 improper for trust investment.

7 (b) Receive property from a fiduciary or another source.

8 (c) Perform, compromise, or refuse performance of a contract  
9 of the decedent that continues as an estate obligation, as the  
10 personal representative determines under the circumstances. If the  
11 contract is for a conveyance of land and requires the giving of  
12 warranties, the personal representative shall include in the deed  
13 or other instrument of conveyance the required warranties. The  
14 warranties are binding on the estate as though the decedent made  
15 them but do not bind the personal representative except in a  
16 fiduciary capacity. In performing an enforceable contract by the  
17 decedent to convey or lease land, the personal representative,  
18 among other possible courses of action, may do any of the  
19 following:

20 (i) Execute and deliver a deed of conveyance for cash payment  
21 of the amount remaining due or for the purchaser's note for the  
22 amount remaining due secured by a mortgage on the land.

23 (ii) Deliver a deed in escrow with directions that the  
24 proceeds, when paid in accordance with the escrow agreement, be  
25 paid to the decedent's successors, as designated in the escrow  
26 agreement.

27 (d) If, in the judgment of the personal representative, the

1 decedent would have wanted the pledge satisfied under the  
2 circumstances, satisfy a written charitable pledge of the decedent  
3 irrespective of whether the pledge constitutes a binding obligation  
4 of the decedent or is properly presented as a claim.

5 (e) If ~~funds are~~ **MONEY IS** not needed to meet a debt or  
6 expenses currently payable and ~~are~~ **IS** not immediately  
7 distributable, deposit or invest liquid assets of the estate,  
8 including ~~funds~~ **MONEY** received from the sale of other property, in  
9 accordance with the Michigan prudent investor rule.

10 (f) Acquire or dispose of property, including land in this or  
11 another state, for cash or on credit, at public or private sale;  
12 and manage, develop, improve, exchange, partition, change the  
13 character of, or abandon estate property.

14 (g) Make an ordinary or extraordinary repair or alteration in  
15 a building or other structure, demolish an improvement, or raze an  
16 existing or erect a new party wall or building.

17 (h) Subdivide, develop, or dedicate land to public use, make  
18 or obtain the vacation of a plat or adjust a boundary, adjust a  
19 difference in valuation on exchange or partition by giving or  
20 receiving consideration, or dedicate an easement to public use  
21 without consideration.

22 (i) Enter into a lease as lessor or lessee for any purpose,  
23 with or without an option to purchase or renew, for a term within  
24 or extending beyond the period of administration.

25 (j) Enter into a lease or arrangement for exploration and  
26 removal of minerals or another natural resource, or enter into a  
27 pooling or unitization agreement.

1 (k) Abandon property ~~when~~, **IF**, in the opinion of the personal  
2 representative, it is valueless, or is so encumbered or in such a  
3 condition as to be of no benefit to the estate.

4 (l) Vote stocks or another security in person or by general or  
5 limited proxy.

6 (m) Pay a call, assessment, or other amount chargeable or  
7 accruing against or on account of a security, unless barred by a  
8 provision relating to claims.

9 (n) Hold a security in the name of a nominee or in other form  
10 without disclosure of the estate's interest. However, the personal  
11 representative is liable for an act of the nominee in connection  
12 with the security so held.

13 (o) Insure the estate property against damage, loss, and  
14 liability and insure the personal representative against liability  
15 as to third persons.

16 (p) Borrow property with or without security to be repaid from  
17 the estate property or otherwise, and advance money for the  
18 estate's protection.

19 (q) Effect a fair and reasonable compromise with a debtor or  
20 obligor, or extend, renew, or in any manner modify the terms of an  
21 obligation owing to the estate. If the personal representative  
22 holds a mortgage, pledge, or other lien ~~upon~~ **ON** another person's  
23 property, the personal representative may, in lieu of foreclosure,  
24 accept a conveyance or transfer of encumbered property from the  
25 property's owner in satisfaction of the indebtedness secured by  
26 lien.

27 (r) Pay a tax, an assessment, the personal representative's

1 compensation, or another expense incident to the estate's  
2 administration.

3 (s) Sell or exercise a stock subscription or conversion right.

4 (t) Consent, directly or through a committee or other agent,  
5 to the reorganization, consolidation, merger, dissolution, or  
6 liquidation of a corporation or other business enterprise.

7 (u) Allocate items of income or expense to either estate  
8 income or principal, as permitted or provided by law.

9 (v) Employ, and pay reasonable compensation for reasonably  
10 necessary services performed by, a person, including, but not  
11 limited to, an auditor, investment advisor, or agent, even if the  
12 person is associated with the personal representative, to advise or  
13 assist the personal representative in the performance of  
14 administrative duties; act on such a person's recommendations  
15 without independent investigation; and, instead of acting  
16 personally, employ 1 or more agents to perform an act of  
17 administration, whether or not discretionary.

18 (w) Employ an attorney to perform necessary legal services or  
19 to advise or assist the personal representative in the performance  
20 of the personal representative's administrative duties, even if the  
21 attorney is associated with the personal representative, and act  
22 without independent investigation ~~upon~~ **ON** the attorney's  
23 recommendation. An attorney employed under this subdivision shall  
24 receive reasonable compensation for his or her employment.

25 (x) Prosecute or defend a claim or proceeding in any  
26 jurisdiction for the protection of the estate and of the personal  
27 representative in the performance of the personal representative's

1 duties.

2 (y) Sell, mortgage, or lease estate property or an interest in  
3 estate property for cash, credit, or part cash and part credit, and  
4 with or without security for unpaid balances.

5 (z) Continue a business or venture in which the decedent was  
6 engaged at the time of death as a sole proprietor or a general  
7 partner, including continuation as a general partner by a personal  
8 representative that is a corporation, in any of the following  
9 manners:

10 (i) In the same business form for a period of not more than 4  
11 months after the date of appointment of a general personal  
12 representative if continuation is a reasonable means of preserving  
13 the value of the business, including goodwill.

14 (ii) In the same business form for an additional period of time  
15 if approved by court order in a formal proceeding to which the  
16 persons interested in the estate are parties.

17 (iii) Throughout the period of administration if the personal  
18 representative incorporates the business or converts the business  
19 to a limited liability company and if none of the probable  
20 distributees of the business who are competent adults object to its  
21 incorporation or conversion and its retention in the estate.

22 (aa) Change the form of a business or venture in which the  
23 decedent was engaged at the time of death through incorporation or  
24 formation as a limited liability company or other entity offering  
25 protection against or limiting exposure to liabilities.

26 (bb) Provide for the personal representative's exoneration  
27 from personal liability in a contract entered into on the estate's

1   behalf.

2           (cc) Respond to an environmental concern or hazard affecting  
3   estate property as provided in section 3722.

4           (dd) Satisfy and settle claims and distribute the estate as  
5   provided in this act.

6           (ee) Make, revise, or revoke an available allocation, consent,  
7   or election in connection with a tax matter as appropriate in order  
8   to carry out the decedent's estate planning objectives and to  
9   reduce the overall burden of taxation, both in the present and in  
10   the future. This authority includes, but is not limited to, all of  
11   the following:

12           (i) Electing to take expenses as estate tax or income tax  
13   deductions.

14           (ii) Electing to allocate the exemption from the tax on  
15   generation skipping transfers among transfers subject to estate or  
16   gift tax.

17           (iii) Electing to have all or a portion of a transfer for a  
18   spouse's benefit qualify for the marital deduction.

19           (iv) Electing the date of death or an alternate valuation date  
20   for federal estate tax purposes.

21           (v) Excluding or including property from the gross estate for  
22   federal estate tax purposes.

23           (vi) Valuing property for federal estate tax purposes.

24           (vii) Joining with the surviving spouse or the surviving  
25   spouse's personal representative in the execution and filing of a  
26   joint income tax return and consenting to a gift tax return filed  
27   by the surviving spouse or the surviving spouse's personal



1 representative.

2 (ff) Divide portions of the estate, including portions to be  
3 allocated into trust, into 2 or more separate portions or trusts  
4 with substantially identical terms and conditions, and allocate  
5 property between them, in order to simplify administration for  
6 generation skipping transfer tax purposes, to segregate property  
7 for management purposes, or to meet another estate or trust  
8 objective.

9 (GG) SUBJECT TO THE APPLICABLE TERMS-OF-SERVICE AGREEMENT,  
10 EXERCISE CONTROL OVER THE DECEDENT'S DIGITAL PROPERTY.

11 SEC. 3715A. (1) ON RECEIPT OF A PERSONAL REPRESENTATIVE'S  
12 WRITTEN REQUEST UNDER THIS SUBSECTION FOR ACCESS TO DIGITAL  
13 PROPERTY, OWNERSHIP OF DIGITAL PROPERTY, OR A COPY OF A DIGITAL  
14 ASSET, A DIGITAL CUSTODIAN SHALL PROVIDE THE PERSONAL  
15 REPRESENTATIVE WITH THE REQUESTED ACCESS, OWNERSHIP, OR COPY, AS  
16 APPLICABLE. A PERSONAL REPRESENTATIVE'S WRITTEN REQUEST UNDER THIS  
17 SUBSECTION MUST BE ACCOMPANIED BY A CERTIFIED COPY OF LETTERS  
18 ISSUED TO THE PERSONAL REPRESENTATIVE.

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

27 (3) A DIGITAL CUSTODIAN IS NOT LIABLE FOR AN ACTION DONE IN

1 COMPLIANCE WITH THIS SECTION.

2 SEC. 3723. (1) A PERSON INTERESTED IN THE ESTATE MAY FILE A  
3 PETITION IN THE COURT FOR AN ORDER TO LIMIT OR ELIMINATE A PERSONAL  
4 REPRESENTATIVE'S POWER OVER DIGITAL PROPERTY.

5 (2) ON RECEIPT OF A PETITION UNDER THIS SECTION, THE COURT  
6 SHALL SET A DATE FOR A HEARING ON THE PETITION. THE HEARING DATE  
7 SHALL BE NOT LESS THAN 14 DAYS AND NOT MORE THAN 56 DAYS AFTER THE  
8 DATE THE PETITION IS FILED.

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

12 (a) Senate Bill No. \_\_\_\_ or House Bill No. 5368 (request no.  
13 01198'13).

14 (b) Senate Bill No. \_\_\_\_ or House Bill No. 5366 (request no.  
15 04551'13).

16 (c) Senate Bill No. \_\_\_\_ or House Bill No. 5369 (request no.  
17 04552'13).

18 (d) Senate Bill No. \_\_\_\_ or House Bill No. 5370 (request no.  
19 04553'13).