



PROBATE & ESTATE PLANNING SECTION

Supplemental Attachment for

Saturday, October 14, 2023

Meeting of Committee on Special Projects (CSP)

and

Meeting of the Council of the Probate and Estate Planning Section

at Interlochen Center for the Arts
4000 J. Maddy Parkway, Interlochen, MI 49643

Or *via* Zoom

**Probate & Estate Planning Section of the
State Bar of Michigan**

You are invited to the October meetings of the Committee on Special Projects (CSP) and
the Council of the Probate & Estate Planning Section:

Saturday, October 14, beginning at 9 AM
at Interlochen Center for the Arts
4000 J. Maddy Parkway, Interlochen, MI 49643

Remote participation by Zoom will be available. So, you are also invited . . .

to a Zoom meeting.

When: Oct 14, 2023, 09:00 AM Eastern Time (US and Canada)

Register in advance for this meeting:

<https://us02web.zoom.us/meeting/register/tZAscuCvqzwtHdbirRqZfT-5L6BsW-7oRGai>

After registering, you will receive a confirmation email containing information about joining the meeting.

If you are calling in by phone, email your name and phone number to Angela Hentkowski

ahentkowski@stewardsheridan.com, we will put your name in a zoom user list that

will identify you by name when you call in.

Please note that the Zoom feature of these meetings entails that they will be recorded.

This will be a regular in person and remote meetings of the Council of the Probate & Estate Planning Section. The Council meeting will be preceded by a meeting of the Council's Committee on Special Projects (CSP), which will begin at 9:00 AM. The CSP meeting will end at about 10:15 AM, and the Council meeting will begin shortly thereafter. The agenda and meeting materials will be posted on the Probate & Estate Planning Section page of the SBM website. Once those things are posted, you should be able to download them from: <http://connect.michbar.org/probate/events/schedule>.

Richard C. Mills
Section Secretary

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Supplemental Council Meeting Materials

Supplemental Attachment 1

Legislative Monitoring and Analysis Committee

**Legislation Monitoring and Analysis Committee to
the Probate and Estate Planning Council - 10/14/2023 Meeting**

Introduction:

HB 4654 regarding electronic wills has zero safeguards regarding execution, authenticity, tamper prevention, etc. The bill should be opposed.

This matter does not appear urgent as the bill has been sitting since its introduction. HB 4654 was introduced 5/24/2023 in the House by Representatives Fink (R, 35th district), Breen (D, 21st district), and Meerman (R, 89th district). Representative Breen, co-sponsor, is Chair of the House Committee on the Judiciary, where the bill has been sitting.

Although it is longer, HB 4654 bears substantial similarity to HB 5795 of 2019, which did not pass but came dangerously close, *despite opposition from PEPS and ELDRS*. HB 5795 passed the house and was voted out of Senate committee in December of 2020. It was not taken to a floor vote before the session ended.

The Legislative Monitoring and Analysis Committee recommends that Council review and adopt the following public policy position, which has been adapted from Nathan Piwowarski's written testimony regarding HB 5795 of 2019 (attached). Substantive additions to Mr. Piwowarski's testimony are explanation sections 1, 4, and 12(a).

Additional materials:

Exhibit A – HB 4654 of 2023

Exhibit B – HB 5795 of 2019

Exhibit C – Testimony of Nathan Piwowarski (PEPS) regarding HB 5795 of 2019

Exhibit D – Testimony of Howard Collens (ELDRS) regarding HB 5795 of 2019

Motion for Public Policy Position:

After a favorable vote of the Legislative Monitoring and Analysis Committee, the Committee chair, Michael D. Shelton, moves that Council adopt the following public policy position (no second is required for this Motion): **Oppose HB 4654 of 2023.**

Explanation:

1. The Section supports the concept of electronic wills with appropriate safeguards.
2. HB 4654 would impose significant financial burdens on State and local government by substantially increasing the volume of litigated matters before the probate courts and appellate courts of this State.
3. HB 4654 would increase litigation, uncertainty, and expense in the probate process.
4. Electronic wills of the type contemplated in this bill are already permissible in Michigan; however, such wills are subject to a heightened standard of probate court review, because of their susceptibility to fraud. See MCL 700.2503. See *In re Estate of Horton*, 325 Mich App 325, 925 NW2d 207 (2018). This bill subverts the reasoned opinion of Michigan's legislature and the Courts that such wills require additional scrutiny.

5. This bill would recognize any of the following as an e-will: an email, text message, Microsoft Word file, or MS Paint file.
6. This bill does not set standards for signatures to ensure that the testator and witnesses are in fact the people who signed the e-will.
7. This bill's lack of encryption or audit-trail standards would invite tampering, forgery, and fraud.
8. The bill does not require any evidence that a computer file was actually was a person's will.
9. The bill does not set technological standards to prevent tampering after an electronic will has been signed. Because the bill does not require that an e-will be "fixed" and un-editable after it is signed, it would call into question whether a document is a draft, a true will, or a codicil (amendment) to a will.
10. The bill does not create procedural requirements to make clear to a person when she or he is creating, amending, or revoking a will.
11. Other states have enacted statutes related to electronic wills that offer better safeguards; there is nothing in this bill requiring them.
12. If enacted, this bill would:
 - a. Impose financial burdens on State and local government, including a likely need for additional probate judges and staff.
 - b. Force families to use higher-cost options like "formal probate," in order to get electronic wills admitted.
 - c. Create more litigation over whether a file on a person's computer or phone was intended to be a will.
 - d. Increase the risk that Michiganders' wills are lost through the accidental file deletion and corruption.
 - e. Make legal disputes more expensive, when parties have to use technology experts to resolve whether someone tampered with an electronic will.
 - f. Cause a flurry of appellate litigation, since the bill does not specify what makes an electronic will "tamper-evident." Since the bill does not create that definition, trial and appellate judges will be forced to do so.

The Probate and Estate Planning Section encourages the bill's sponsor to develop robust standards to protect the public from the litigation, uncertainty, and expense that would arise from this bill. Until those standards have been developed, the Section respectfully opposes House Bill 4654.



2023 Bill Text MI H.B. 4654

Introduced, May 24, 2023

Reporter

2023 Bill Text MI H.B. 4654

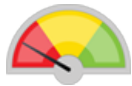
Notice

Added: Text highlighted in green

Deleted: ~~Red text with a strikethrough~~

THE STATE OF MICHIGAN BILL TEXT > MICHIGAN 102ND LEGISLATURE - FIRST REGULAR SESSION > HOUSE BILL 4654

Progress



Low chance to pass next stage | [Legislative Outlook in detail](#)



Synopsis

A bill to amend 1998 PA 386, entitled

"Estates and protected individuals code,"

by amending sections 1104, 1107, 1108, 2502, 2503, 2504, 2506, 2507, 2513, 2519, 2953, 2955, 3206, 5501, and 5506 (MCL 700.1104, 700.1107, 700.1108, 700.2502, 700.2503, 700.2504, 700.2506, 700.2507, 700.2513, 700.2519, 700.2953, 700.2955, 700.3206, 700.5501, and 700.5506), section 1104 as amended by 2016 PA 57, sections 1107 and 2504 as amended by 2009 PA 46, sections 2502, 5501, and 5506 as amended by 2020 PA 246, section 2513 as amended by 2000 PA 54, section 2519 as amended by

2010 PA 325, and section 3206 as amended by 2022 PA 157, and by adding section 2502a; and to repeal acts and parts of acts.

Text

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1104. As used in this act:

(A)

"ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(B)

"ELECTRONIC PRESENCE" MEANS THE RELATIONSHIP OF 2 OR MORE INDIVIDUALS IN DIFFERENT LOCATIONS COMMUNICATING IN REAL TIME BY ELECTRONIC MEANS TO THE SAME EXTENT AS IF THE INDIVIDUALS WERE PHYSICALLY PRESENT IN THE SAME LOCATION.

(C)

"ELECTRONIC WILL" MEANS A WILL EXECUTED ELECTRONICALLY IN COMPLIANCE WITH THIS ACT.

(D) (a)

"Environmental law" means a federal, state, or local law, rule, regulation, or ordinance that relates to the protection of the environment or human health.

(E) (b)

"Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this act as the property is originally constituted and as it exists throughout administration. Estate also includes the rights described in sections 3805, 3922, and 7606 to collect from others amounts necessary to pay claims, allowances, and taxes.

(F) (c)

"Exempt property" means property of a decedent's estate that is described in section 2404.

(G) (d)

"Family allowance" means the allowance prescribed in section 2403.

(H) (e)

"Fiduciary" includes, but is not limited to, a personal representative, funeral representative, guardian, conservator, trustee, plenary guardian, partial guardian, and successor fiduciary.

(I) (f)

"Financial institution" means an organization authorized to do business under state or federal laws relating to a financial institution and includes, but is not limited to, a bank, trust company, savings bank, building and loan association, savings and loan company or association, credit

union, insurance company, and entity that offers mutual fund, securities brokerage, money market, or retail investment accounts.

(J) (g)

"Foreign personal representative" means a personal representative appointed by another jurisdiction.

(K) (h)

"Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(L) (i)

"Funeral establishment" means that term as defined in section 1801 of the occupational code, 1980 PA 299, MCL 339.1801, and the owners, employees, and agents of the funeral establishment.

(M) (j)

"Funeral representative" means an individual designated to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to possess cremated remains of the decedent as provided in section 3206.

(N) (k)

"Funeral representative designation" means a written document executed and with the effect as described in sections 3206 to 3206b.

(O) (l)

"General personal representative" means a personal representative other than a special personal representative.

(P) (m)

"Governing instrument" means a deed; will; trust; funeral representative designation; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(Q) (n)

"Guardian" means a person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental or spousal nomination or a court appointment and includes a limited guardian as described in sections 5205, 5206, and 5306. Guardian does not include a guardian ad litem.

(R) (o)

"Hazardous substance" means a substance defined as hazardous or toxic or otherwise regulated by an environmental law.

(S) (p)

"Heir" means, except as controlled by section 2720, a person, including the surviving spouse or the state, that is entitled under the statutes of intestate succession to a decedent's property.

(T) (q)

"Homestead allowance" means the allowance prescribed in section 2402.

Sec. 1107. As used in this act:

(A)

"RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(B) (a)

"Register" or "probate register" means the official of the court designated to perform the functions of register as provided in section 1304.

(C) (b)

"Revised judicature act of 1961" means the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(D) (c)

"Security" includes, but is not limited to, a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, or interest in a regulated investment company or other entity generally referred to as a mutual fund or, in general, an interest or instrument commonly known as a security, or a certificate of interest or participation for, a temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the items listed in this subdivision.

(E) (d)

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

(F)

"SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD, ANY OF THE FOLLOWING:

(I)

TO EXECUTE OR ADOPT A TANGIBLE SYMBOL.

(II)

TO AFFIX OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SYMBOL OR PROCESS.

(G) (e)

"Special personal representative" means a personal representative as described by sections 3614 to 3618.

(H) (f)

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, **THE UNITED STATES VIRGIN ISLANDS**, or a territory or insular possession

subject to the jurisdiction of the United States. **STATE INCLUDES A FEDERALLY RECOGNIZED INDIAN TRIBE.**

(I) (g)

"Successor" means a person, other than a creditor, ~~who~~ **THAT** is entitled to property of a decedent under the decedent's will or this act.

(J) (h)

"Successor personal representative" means a personal representative, other than a special personal representative, ~~who~~ **THAT** is appointed to succeed a previously appointed personal representative.

(K) (i)

"Supervised administration" means the proceedings described in part 5 of article III.

(L) (j)

"Survive" means that an individual neither predeceases an event, including the death of another individual, nor is considered to predecease an event under section 2104 or 2702.

(M) (k)

"Terms of a trust" or "terms of the trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(N) (l)

"Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(O) (m)

"Testator" includes an individual of either gender.

(P) (n)

"Trust" includes, but is not limited to, an express trust, private or charitable, with additions to the trust, wherever and however created. Trust includes, but is not limited to, a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust does not include a constructive trust or a resulting trust, conservatorship, personal representative, custodial arrangement under the Michigan uniform transfers to minors act, 1998 PA 433, MCL 554.521 to 554.552, business trust providing for a certificate to be issued to a beneficiary, common trust fund, voting trust, security arrangement, liquidation trust, or trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or another arrangement under which a person is a nominee or escrowee for another.

(Q) (o)

"Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by the court.

Sec. 1108. As used in this act:

(a)

"Ward" means an individual for whom a guardian is appointed.

(b)

"Will" includes, but is not limited to, **AN ELECTRONIC WILL**, a codicil, and a testamentary instrument that appoints a personal representative, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to the decedent's property that is passing by intestate succession.

Sec. 2502.

(1)

~~Subject to section 1202, and except~~ **EXCEPT** as provided in subsection (2) and in sections 2503, 2506, and 2513, a will is valid only if it is all of the following:

(a)

~~In writing.~~ **A RECORD THAT IS READABLE AS TEXT AT THE TIME OF SIGNING.**

(b)

Signed by the testator or in the testator's name by some other individual in the testator's conscious **PHYSICAL OR ELECTRONIC** presence and by the testator's direction.

(c)

Signed by at least 2 individuals, each of whom **IS IN THE PHYSICAL OR ELECTRONIC PRESENCE OF THE TESTATOR AT THE TIME OF SIGNING AND** signed within a reasonable time after ~~he or she witnessed~~ **WITNESSING** either the signing of the will as described in subdivision (b) or the testator's acknowledgment of that signature or acknowledgment of the will.

(2)

A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if it is dated, and if the testator's signature and the ~~document's~~ **RECORD'S** material portions are in the testator's handwriting, **WHICH MAY BE IN ELECTRONIC FORM BUT NOT ELECTRONICALLY GENERATED.**

(3)

Intent that the ~~document~~ **RECORD** constitutes a testator's will can be established by extrinsic evidence, including, for a holographic will, portions of the ~~document~~ **RECORD** that are not in the testator's handwriting.

SEC. 2502A.

(1)

AN ELECTRONIC WILL IS A WILL FOR ALL PURPOSES OF THE LAW OF THIS STATE. THE LAW OF THIS STATE APPLICABLE TO WILLS AND PRINCIPLES OF EQUITY APPLY TO AN ELECTRONIC WILL, EXCEPT AS MODIFIED BY THIS ACT.

(2)

AN INDIVIDUAL MAY CREATE A CERTIFIED PAPER COPY OF AN ELECTRONIC WILL BY AFFIRMING UNDER PENALTY OF PERJURY THAT A PAPER COPY OF THE ELECTRONIC WILL IS A COMPLETE, TRUE, AND ACCURATE COPY OF THE ELECTRONIC WILL. IF THE ELECTRONIC WILL IS MADE SELF-PROVING, THE CERTIFIED PAPER COPY OF THE WILL MUST INCLUDE THE SELF-PROVING AFFIDAVITS.

Sec. 2503.

(1)

Although a document or writing added upon on a document was not executed in compliance with section 2502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute any of the following:

(a)

The decedent's will.

(b)

A partial or complete revocation of the decedent's will.

(c)

An addition to or an alteration of the decedent's will.

(d)

A partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the decedent's will.

(2)

THIS SECTION APPLIES TO A WILL EXECUTED ELECTRONICALLY.

Sec. 2504.

(1)

A will may be simultaneously executed, attested, and made self-proved by acknowledgment of the will by the testator and 2 witnesses' sworn statements, each made ~~before~~ **IN THE PHYSICAL OR ELECTRONIC PRESENCE OF** an officer authorized to administer oaths under the laws of the state in which ~~execution occurs~~ **THE OFFICER IS PHYSICALLY LOCATED, WHERE THE TESTATOR IS PHYSICALLY LOCATED, OR IN THIS STATE** and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this document on _____, _____. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this will; that I am 18 years of age or older and under no constraint or undue influence; and that I have sufficient mental capacity to make this will.

(Signature) Testator

We, _____ and _____, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as ~~his or her~~ **THE TESTATOR'S** will, signs it willingly or willingly directs another to sign for ~~him or her~~,

THE TESTATOR, and executes it as ~~his or her~~ THE TESTATOR'S voluntary act for the purposes expressed in this will; each of us, in the testator's PHYSICAL OR ELECTRONIC presence, signs this will as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, is under no constraint or undue influence, and has sufficient mental capacity to make this will.

(Signature) Witness

(Signature) Witness

The State of _____

County of _____

Sworn to and signed in my PHYSICAL OR ELECTRONIC presence by _____, the testator, and sworn to and signed in my PHYSICAL OR ELECTRONIC presence by _____ and _____, witnesses, on

_____, _____.
month/day year

(SEAL)

Signed

(official capacity of officer)

(2)

An attested will may be made self-proved at any time after its execution by the acknowledgment of the will by the testator and the sworn statements of the witnesses to the will, each made ~~before~~ IN THE PHYSICAL OR ELECTRONIC PRESENCE OF an officer authorized to administer oaths under the laws of the state in which the acknowledgment ~~occurs~~ IS TAKEN, WHERE THE TESTATOR IS PHYSICALLY LOCATED, OR IN THIS STATE and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

The State of _____

County of _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached will, sign this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the will's testator executed the will as ~~his or her~~ THE TESTATOR'S will, signed it willingly or willingly directed another to sign for ~~him or her,~~ THE TESTATOR, and executed it as ~~his or her~~ THE TESTATOR'S voluntary act for the purposes expressed in the will; each witness, in the testator's PHYSICAL OR ELECTRONIC presence, signed the will as witness to the testator's signing; and, to the best of the witnesses' knowledge, the testator, at the time of the will's execution, was 18 years of age or older, was under no constraint or undue influence, and had sufficient mental capacity to make this will.

(Signature) Testator

(Signature) Witness

(Signature) Witness

Sworn to and signed in my **PHYSICAL OR ELECTRONIC** presence by _____, the testator, and sworn to and signed in my **PHYSICAL OR ELECTRONIC** presence by _____ and _____, witnesses, on

_____, _____.
month/day year

(SEAL)
Signed

(official capacity of officer)

(3)

A codicil to a will may be simultaneously executed and attested, and both the codicil and the original will made self-proved, by acknowledgment of the codicil by the testator and by witnesses' sworn statements, each made ~~before~~ **IN THE PHYSICAL OR ELECTRONIC PRESENCE OF** an officer authorized to administer oaths under the laws of the state in which ~~execution occurs~~ **THE OFFICER IS PHYSICALLY LOCATED, WHERE THE TESTATOR IS PHYSICALLY LOCATED, OR IN THIS STATE** and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this document on _____, _____. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is a codicil to my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this codicil; ~~and~~ that I am 18 years of age or older, and under no constraint or undue influence; and that I have sufficient mental capacity to make this codicil.

(Signature) Testator

We, _____ and _____, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as a codicil to ~~his or her~~ **THE TESTATOR'S** will, signs it willingly or willingly directs another to sign for ~~him or her,~~ **THE TESTATOR,** and executes it as ~~his or her~~ **THE TESTATOR'S** voluntary act for the purposes expressed in this codicil; each of us, in the testator's **PHYSICAL OR ELECTRONIC** presence, signs this codicil as witness to the testator's signing; and, to the best of our knowledge, the testator is 18

years of age or older, is under no constraint or undue influence, and has sufficient mental capacity to make this codicil.

(Signature) Witness

(Signature) Witness

The State of _____

County of _____

Sworn to and signed in my **PHYSICAL OR ELECTRONIC** presence by _____, the testator, and sworn to and signed in my **PHYSICAL OR ELECTRONIC** presence by _____ and _____, witnesses, on

_____, _____.

month/day year

(SEAL)

Signed

(official capacity of officer)

(4)

If necessary to prove the will's due execution, a signature affixed to a self-proving sworn statement attached to a will is considered a signature affixed to the will.

(5)

Instead of the testator and witnesses each making a sworn statement ~~before~~ **IN THE PHYSICAL OR ELECTRONIC PRESENCE OF** an officer authorized to administer oaths as prescribed in subsections (1) to (3), a will or codicil may be made self-proved by a ~~written~~ statement that is not a sworn statement **AND THAT IS A RECORD READABLE AS TEXT AT THE TIME OF SIGNING.** This ~~statement shall~~ **RECORD MUST** state, or incorporate by reference to an attestation clause, the facts regarding the testator and the formalities observed at the signing of the will or codicil as prescribed in subsections (1) to (3). The testator and witnesses shall sign **PHYSICALLY OR ELECTRONICALLY** the ~~statement, RECORD,~~ which must include its execution date and must begin with substantially the following language: "I certify (or declare) under penalty for perjury under the law **OF THE JURISDICTION WHERE THE TESTATOR WAS PHYSICALLY LOCATED OR** of the state of Michigan that...".

Sec. 2506.

(1)

A ~~written~~ will is valid if executed in compliance with section 2502 or 2503, with the law at the time of execution of the place where the will is executed, or with the law of the place where, at the time of execution or at the time of death, the testator is domiciled, has a place of abode, or is a national.

(2)

A WILL EXECUTED ELECTRONICALLY BUT NOT IN COMPLIANCE WITH SUBSECTION (1) IS AN ELECTRONIC WILL UNDER THIS ACT IF IT IS EXECUTED IN COMPLIANCE WITH 1 OF THE FOLLOWING:

(A)

THE JURISDICTION WHERE THE TESTATOR IS PHYSICALLY LOCATED WHEN THE WILL IS SIGNED.

(B)

THE JURISDICTION WHERE THE TESTATOR IS DOMICILED OR RESIDES WHEN THE WILL IS SIGNED OR WHEN THE TESTATOR DIES.

Sec. 2507.

(1)

A will or a part of a will is revoked by either of the following acts:

(a)

Execution of a subsequent will that revokes the previous will or a part of the will expressly or by inconsistency.

(b)

Performance of a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or a part of the will or if another individual performed the act in the testator's conscious PHYSICAL OR ELECTRONIC presence and by the testator's direction; THE EVIDENCE TO SHOW THE TESTATOR'S INTENT AND PURPOSE MUST BE CLEAR AND CONVINCING. For purposes of this subdivision, "revocatory act on the will" includes burning, tearing, canceling, obliterating, DELETING, or destroying the will or a part of the will. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touches any of the words on the will.

(2)

If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3)

The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked, and only the subsequent will is operative on the testator's death.

(4)

The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will, and each will is fully operative on the testator's death to the extent they are not inconsistent.

Sec. 2513. Whether or not the provisions relating to a holographic will apply, a will may refer to a written statement or list , WHICH MAY BE IN ELECTRONIC FORM, to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing , LIST, OR ELECTRONIC RECORD must be either in the testator's handwriting or signed by the testator at the end, and must describe the items and the devisees with reasonable certainty. The writing , LIST, OR ELECTRONIC RECORD may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing , LIST, OR ELECTRONIC RECORD that has no significance apart from its effect on the dispositions made by the will.

Sec. 2519.

(1)

A will executed in the form prescribed by subsection (2) and otherwise in compliance with the terms of the Michigan statutory will form is a valid will. A person printing and distributing the Michigan statutory will shall print and distribute the form verbatim as it appears in subsection (2). The notice provisions ~~shall~~ MUST be printed in 10-point boldfaced type.

(2)

The form of the Michigan statutory will is as follows:

MICHIGAN STATUTORY WILL NOTICE

1.

An individual age 18 or older who has sufficient mental capacity may make a will.

2.

There are several kinds of wills. If you choose to complete this form, you will have a Michigan statutory will. If this will does not meet your wishes in any way, you should talk with a lawyer before choosing a Michigan statutory will.

3.

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

4.

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

5.

This will is not designed to reduce estate taxes.

6.

This will treats adopted children and children born outside of wedlock who would inherit if their parent died without a will the same way as children born or conceived during marriage.

7.

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

8.

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

INSTRUCTIONS:

1.

To have a Michigan statutory will, you must complete the blanks on the will form. You may do this yourself, or direct someone to do it for you. You must either sign the will or direct someone else to sign it in your name and in your **PHYSICAL OR ELECTRONIC** presence.

2.

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

MICHIGAN STATUTORY WILL OF _____

(Print or type your full name)

ARTICLE 1. DECLARATIONS

This is my will and I revoke any prior wills and codicils. I live in _____ County, Michigan.

My spouse is _____.

(Insert spouse's name or write "none")

My children now living are:

(Insert names or write "none")

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1

CASH GIFTS TO PERSONS OR CHARITIES.

(Optional)

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

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

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

(Name only 1 person or charity):

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

2.2

PERSONAL AND HOUSEHOLD ITEMS.

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

I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on such a separate list or statement. If I am not married at the time I sign this will or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

2.3

ALL OTHER ASSETS.

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

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

(Select only 1)

(a)

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

(Your signature)

(b)

All to be distributed to my heirs as if I did not have a will.

(Your signature)

ARTICLE 3. NOMINATIONS OF PERSONAL

REPRESENTATIVE, GUARDIAN, AND CONSERVATOR

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

3.1

PERSONAL REPRESENTATIVE.

(Name at least 1)

I nominate _____

(Insert name of person or eligible financial institution)

of _____ to serve as personal representative.

(Insert address)

If my first choice does not serve, I nominate _____

(Insert name of person or eligible financial institution)

of _____ to serve as personal representative.

(Insert address)

3.2

GUARDIAN AND CONSERVATOR.

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

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

(Insert name of individual)

of _____ as guardian and

(Insert address)

(Insert name of individual or eligible financial institution)

of _____ to serve as conservator.

(Insert address)

If my first choice cannot serve, I nominate

(Insert name of individual)

of _____ as guardian and

(Insert address)

(Insert name of individual or eligible financial institution)

of _____ to serve as conservator.

(Insert address)

3.3

BOND.

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

(a)

My personal representative and any conservator I have named shall serve with bond.

(Your signature)

(b)

My personal representative and any conservator I have named shall serve without bond.

(Your signature)

3.4

DEFINITIONS AND ADDITIONAL CLAUSES.

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

I sign my name to this Michigan statutory will on _____, 20____.

(Your signature)

NOTICE REGARDING WITNESSES

You must use 2 adults as witnesses. It is preferable to have 3 adult witnesses. All the witnesses must observe you sign the will, have you tell them you signed the will, or have you tell them the will was signed at your direction in your PHYSICAL OR ELECTRONIC presence.

STATEMENT OF WITNESSES

We sign below as witnesses, declaring that the individual who is making this will appears to have sufficient mental capacity to make this will and appears to be making this will freely, without duress, fraud, or undue influence, and that the individual making this will acknowledges that ~~he or she~~ THE INDIVIDUAL has read the will, or has had it read to ~~him or her~~, THE INDIVIDUAL, and understands the contents of this will.

(Print Name)

(Signature of witness)

(Address)

(Print name)

(Signature of witness)

(Address)

(Print name)

(Signature of witness)

(Address)

DEFINITIONS

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

- (a) "Assets" means all types of property you can own, such as real estate, stocks and bonds, bank accounts, business interests, furniture, and automobiles.
- (b) "Descendants" means your children, grandchildren, and their descendants.
- (c) "Descendants" or "children" includes individuals born or conceived during marriage, individuals legally adopted, and individuals born out of wedlock who would inherit if their parent died without a will.
- (d) "Jointly held assets" means those assets to which ownership is transferred automatically ~~upon~~ **ON** the death of 1 of the owners to the remaining owner or owners.
- (e)

"Spouse" means your husband or wife at the time you sign this will.

(f)

Whenever a distribution under a Michigan statutory will is to be made to an individual's descendants, the assets are to be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave living descendants. Each living descendant of the nearest degree ~~shall~~ **MUST** receive 1 share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the descendant. In this manner, all descendants who are in the same generation will take an equal share.

(g)

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

(h)

"Person" includes individuals and institutions.

(i)

Plural and singular words include each other, where appropriate.

(j)

If a Michigan statutory will states that a person shall perform an act, the person is required to perform that act. If a Michigan statutory will states that a person may do an act, the person's decision to do or not to do the act ~~shall~~ **MUST** be made in ~~good faith~~ **GOOD-FAITH** exercise of the person's powers.

ADDITIONAL CLAUSES

Powers of personal representative

1.

A personal representative has all powers of administration given by Michigan law to personal representatives and, to the extent ~~funds are~~ **MONEY IS** not needed to meet debts and expenses currently payable and are not immediately distributable, the power to invest and reinvest the estate from time to time in accordance with the Michigan prudent investor rule. In dividing and distributing the estate, the personal representative may distribute partially or totally in kind, may determine the value of distributions in kind without reference to income tax bases, and may make non-pro rata distributions.

2.

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

POWERS OF GUARDIAN AND CONSERVATOR

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

Sec. 2953. To comply with this part as a valid international will, a will ~~shall~~ **MUST** meet all of the following requirements regarding form and procedure:

(a)

The will ~~shall~~ **MUST** be ~~made in writing,~~ **CREATED AS A RECORD THAT IS READABLE AS TEXT AT THE TIME OF SIGNING,** but does not need to be written created by the testator personally. The will may be written in any language and may be written by hand or by any other means.

(b)

The testator ~~shall~~ **MUST** declare in the **PHYSICAL OR ELECTRONIC** presence of 2 witnesses and an authorized individual that the document is the testator's will and that he or she knows its contents. The testator **DOES NOT** need ~~not~~ **TO** inform the witnesses or the authorized person of the will's contents.

(c)

In the witnesses' and the authorized individual's **PHYSICAL OR ELECTRONIC** presence, the testator ~~shall~~ **MUST** sign the will or, if the testator has previously signed the will, ~~shall~~ **MUST** acknowledge ~~his or her~~ **THE TESTATOR'S** signature.

(d)

If the testator is unable to sign the international will, the absence of the testator's signature does not affect the will's validity if the testator indicates the reason for the inability and the authorized individual makes note of the reason on the will. In such a case, it is permissible, but not required, for another individual **PHYSICALLY OR ELECTRONICALLY** present, including a witness or the authorized individual, to sign the testator's name at the testator's direction, which act the authorized individual ~~shall~~ **MUST** also note on the will.

(e)

The witnesses and the authorized individual ~~shall~~ **MUST** there and then attest the will by signing in the **PHYSICAL OR ELECTRONIC** presence of the testator.

Sec. 2955. The authorized individual shall attach to the will a certificate signed by the authorized individual establishing that the will complies with the requirements of this part for valid execution of an international will. The authorized individual shall keep a copy of the certificate and deliver another to the testator. The certificate must be in substantially the following form, except the provisions of the form that are optional provisions need only be included if the circumstances of the will render them applicable:

CERTIFICATE

(Convention of October 26, 1973)

1.

I, _____,
(Name, address and capacity)

a person authorized to act in connection with international wills

2.

Certify that on _____ at _____

(Date)

(Place)

3.

(Testator) _____

(Name, address, date and place of birth)

in my **PHYSICAL OR ELECTRONIC** presence and that of the witnesses

4.

(a)

(Name, address, date and place of birth)

(b)

(Name, address, date and place of birth)

has declared that the attached document is his (or her) will and that he (or she) knows the contents thereof.

5.

I furthermore certify that:

6.

(a)

In my **PHYSICAL OR ELECTRONIC** presence and in that of the witnesses (1) the testator has signed the will or has acknowledged his (or her) signature previously affixed. * following a declaration of the testator stating that he (or she) (2) was unable to sign his (or her) will for the following reason _____, I have mentioned this declaration on the will * and the signature has been affixed by

(Name and address)

7.

(b)

The witnesses and I have signed the will;

8.

*(c)

Each page of the will has been signed by _____ and numbered;

9.

(d)

I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10.

(e)

The witnesses have met the conditions requisite to act as such according to the law under which I am acting;

11.

*(f)

The testator has requested me to include the following statement concerning the safekeeping of his (or her) will:

12.

PLACE OF EXECUTION

13.

DATE

14.

SIGNATURE and, if necessary, SEAL

* to be completed if appropriate.

Sec. 3206.

(1)

Subject to 1953 PA 181, MCL 52.201 to 52.216, part 28 and article 10 of the public health code, 1978 PA 368, MCL 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection (12), a funeral representative designated under subsection (2), a person with priority under subsections (3) to (5) or a person acting under subsection (6), (7), (8), or (9) is presumed to have the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation, and the right to retrieve from the funeral establishment and possess cremated remains of the decedent immediately after cremation. The handling, disposition, or disinterment of a body must be under the supervision of a person licensed to practice mortuary science in this state.

(2)

~~Subject to section 1202, and except~~ EXCEPT as otherwise provided in this subsection and subject to the priority in subsection (3), an individual 18 years of age or older who is of sound mind at the time a funeral representative designation is made may designate in ~~writing~~ A RECORD THAT IS READABLE AS TEXT AT THE TIME OF SIGNING another individual who is 18 years of age or older and who is of sound mind to have the rights and powers under subsection (1). All of the following apply to a funeral representative designation under this subsection:

(a)

For purposes of this section and sections 3206a and 3206b, an individual who is named in a funeral representative designation to have the rights and powers described in subsection (1)

is known as a funeral representative and an individual who makes a funeral representative designation is known as a declarant.

(b)

A funeral representative designation under this subsection must be in ~~writing~~, **A RECORD THAT IS READABLE AS TEXT AT THE TIME OF SIGNING**, dated, and signed voluntarily by the declarant **PHYSICALLY OR ELECTRONICALLY** or signed by a notary public on the declarant's behalf under section 33 of the Michigan law on notarial acts, 2003 PA 238, MCL 55.293. A funeral representative designation may be included in the declarant's will, patient advocate designation, or other writing. If a funeral representative designation is contained in an individual's will, the will is not required to be admitted to probate for the funeral representative designation to be valid. A funeral representative designation must be 1 or both of the following:

(i)

Signed in the **PHYSICAL OR ELECTRONIC** presence of and signed by 2 witnesses. A witness under this section may not be the funeral representative or an individual described in subdivision (c)(ii) to (iv). A witness shall not sign the funeral representative designation unless the declarant appears to be of sound mind and under no duress, fraud, or undue influence.

(ii)

Acknowledged by the declarant ~~before~~ **IN THE PHYSICAL OR ELECTRONIC PRESENCE OF** a notary public, who endorses on the funeral representative designation a certificate of the acknowledgment and the true date of taking the acknowledgment.

(c)

The following individuals may not act as a funeral representative for the declarant unless the individual is the surviving spouse or is a relative of the declarant:

(i)

An officer, partner, member, shareholder, owner, representative, or employee of a funeral establishment that will provide services to the declarant.

(ii)

A health professional, or an employee of or volunteer at a health facility or veterans facility, who provided medical treatment or nursing care to the declarant during the final illness or immediately before the declarant's death, or a partner, member, shareholder, owner, or representative of the health facility where medical treatment or nursing care was provided.

(iii)

An officer, partner, member, shareholder, owner, representative, or employee of a cemetery at which the declarant's body will be interred, entombed, or inurned.

(iv)

An officer, partner, member, shareholder, owner, representative, or employee of a crematory that will provide the declarant's cremation services.

(3)

The following have the rights and powers under subsection (1) in the following order of priority:

(a)

If the decedent was a service member at the time of the decedent's death, a person designated to direct the disposition of the service member's remains according to a statute of the United States or regulation, policy, directive, or instruction of the Department of Defense.

(b)

A funeral representative designated under subsection (2).

(c)

The surviving spouse.

(d)

The individual or individuals 18 years of age or older in the following order of priority:

(i)

The decedent's children.

(ii)

The decedent's grandchildren.

(iii)

The decedent's parents.

(iv)

The decedent's grandparents.

(v)

The decedent's siblings.

(vi)

A descendant of the decedent's parents who first notifies the funeral establishment in possession of the decedent's body of the descendant's decision to exercise his or her rights under subsection (1).

(vii)

A descendant of the decedent's grandparents who first notifies the funeral establishment in possession of the decedent's body of the descendant's decision to exercise his or her rights under subsection (1).

(4)

If the individual or individuals with the highest priority as determined under subsection (3) cannot be located after a reasonable effort to contact and inform them of the decedent's death within 72 hours after the pronouncement of the decedent's death under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, affirmatively decline to exercise their rights or powers under subsection (1), or fail to exercise their rights or powers under subsection (1) within 72 hours after the pronouncement of the decedent's death under the

determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, the rights and powers under subsection (1) may be exercised by the individual or individuals in the same order of priority under subsection (3). If the individual or each of the individuals in an order of priority as determined under this subsection similarly affirmatively declines or fails to exercise his or her rights or powers within 72 hours after the pronouncement of the decedent's death under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, or cannot be located within 72 hours after the pronouncement of the decedent's death under the determination of death act, 1992 PA 90, MCL 333.1031 to 333.1034, the rights or powers under subsection (1) pass to an individual or individuals in the next order of priority under subsection (3) who notify the funeral establishment in possession of the decedent's body of their decision to exercise their rights or powers under subsection (1). For purposes of this subsection only, "exercise their rights or powers under subsection (1)" means providing the person that holds a license under article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, in possession of the decedent's body with authorization to bury or cremate the decedent's body.

(5)

If 2 or more individuals share the rights and powers described in subsection (1) as determined under subsection (3) or (4), the rights and powers must be exercised as decided by a majority of the individuals who can be located after reasonable efforts. If a majority cannot agree, any of the individuals may file a petition under section 3207.

(6)

If no individual described in subsections (3) and (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (10), and if subsection (7) does not apply, then the personal representative or nominated personal representative may exercise the rights and powers under subsection (1), either before or after his or her appointment.

(7)

If no individual described in subsections (3) and (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (10), and if the decedent was under a guardianship at the time of death, the guardian may exercise the rights and powers under subsection (1) and may make a claim for the reimbursement of burial expenses as provided in section 5216 or 5315, as applicable.

(8)

If no individual described in subsections (3) and (4) exists, exercises the rights or powers under subsection (1), or can be located after a sufficient attempt as described in subsection (10), if the decedent died intestate, and if subsection (7) does not apply, a special fiduciary appointed under section 1309 or a special personal representative appointed under section 3614(c) may exercise the rights and powers under subsection (1).

(9)

If there is no person under subsections (3) to (8) to exercise the rights and powers under subsection (1), or if there is a person under subsections (3) to (8) to exercise the rights and powers under subsection (1) and the person fails to exercise the rights and powers under subsection (1) within 14 days after the decedent's death, 1 of the following, as applicable, shall exercise the rights and powers under subsection (1):

- (a)
Unless subdivision (b) applies, the medical examiner for the county where the decedent was domiciled at the time of his or her death.
- (b)
If the decedent was incarcerated in a state correctional facility at the time of his or her death, the director of the department of corrections or the designee of the director.
- (10)
An attempt to locate a person described in subsection (3) or (4) is sufficient if a reasonable attempt is made in good faith by any of the following to contact the person at his or her last known address, telephone number, or email address:
- (a)
A family member, personal representative, or nominated personal representative of the decedent.
- (b)
A health facility or veteran's facility that provided medical treatment to the decedent during the final illness or immediately before the decedent's death.
- (11)
This section does not void or otherwise affect an anatomical gift made under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.
- (12)
An individual who has been criminally charged with the intentional killing of the decedent shall not exercise a right under subsection (1) while the charges are pending.
- (13)
Except as otherwise provided in this subsection, a person who has the rights and powers under subsection (1) and who exercises the right over the disposition of the decedent's body must ensure payment for the costs of the disposition through a trust, insurance, a commitment by another person, a prepaid contract under the prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, or other effective and binding means. To the extent payment is not ensured under this subsection, the person described in this subsection is liable for the costs of the disposition. This subsection does not apply to a person who exercises the rights and powers under subsection (1) as provided in subsection (8) or (9).
- (14)
As used in this section:
- (a)
"Armed forces" means the Army, Air Force, Navy, Marine Corps, Coast Guard, or other military force designated by Congress as part of the Armed Forces of the United States.
- (b)
"Health facility" means that term as defined in section 5653 of the public health code, 1978 PA 368, MCL 333.5653.
- (c)

"Health professional" means that term as defined in section 5883 of the public health code, 1978 PA 368, MCL 333.5883.

(d)

"Medical treatment" means that term as defined in section 5653 of the public health code, 1978 PA 368, MCL 333.5653.

(e)

"Michigan National Guard" means that term as defined in section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

(f)

"Nominated personal representative" means a person nominated to act as personal representative in a will that the nominated person reasonably believes to be the valid will of the decedent.

(g)

"Service member" means a member of the armed forces, a reserve branch of the armed forces, or the Michigan National Guard.

Sec. 5501.

(1)

A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney-in-fact in a writing that contains the words "This power of attorney is not affected by the principal's subsequent disability or incapacity, or by the lapse of time", or "This power of attorney is effective ~~upon~~ **ON** the disability or incapacity of the principal", or similar words showing the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity and, unless the power states a termination time, notwithstanding the lapse of time since the execution of the instrument.

(2)

~~Subject to section 1202, a~~ **A** durable power of attorney under this section must be dated and signed voluntarily by the principal or signed by a notary public on the principal's behalf under section 33 of the Michigan law on notarial acts, 2003 PA 238, MCL 55.293. The durable power of attorney must be 1 or both of the following:

(a)

Signed in the **PHYSICAL OR ELECTRONIC** presence of 2 witnesses, neither of whom is the attorney-in-fact, and both of whom also sign the durable power of attorney.

(b)

Acknowledged by the principal ~~before~~ **IN THE PHYSICAL OR ELECTRONIC PRESENCE OF** a notary public, who endorses on the durable power of attorney a certificate of that acknowledgment and the true date of taking the acknowledgment.

(3)

An attorney-in-fact designated and acting under a durable power of attorney has the authority, rights, responsibilities, and limitations as provided by law with respect to a durable power of attorney, including, but not limited to, all of the following:

- (a)
Except as provided in the durable power of attorney, the attorney-in-fact shall act in accordance with the standards of care applicable to fiduciaries exercising powers under a durable power of attorney.
- (b)
The attorney-in-fact shall take reasonable steps to follow the instructions of the principal.
- (c)
~~Upon~~ **ON** request of the principal, the attorney-in-fact shall keep the principal informed of the attorney-in-fact's actions. The attorney-in-fact shall provide an accounting to the principal ~~upon~~ **ON** request of the principal, to a conservator or guardian appointed on behalf of the principal ~~upon~~ **ON** request of the guardian or conservator, or ~~pursuant to~~ **UNDER** judicial order.
- (d)
The attorney-in-fact shall not make a gift of all or any part of the principal's assets, unless provided for in the durable power of attorney or by judicial order.
- (e)
Unless provided in the durable power of attorney or by judicial order, the attorney-in-fact, while acting as attorney-in-fact, shall not create an account or other asset in joint tenancy between the principal and the attorney-in-fact.
- (f)
The attorney-in-fact shall maintain records of the attorney-in-fact's actions on behalf of the principal, including transactions, receipts, disbursements, and investments.
- (g)
The attorney-in-fact may be liable for any damage or loss to the principal, and may be subject to any other available remedy, for breach of fiduciary duty owed to the principal. In the durable power of attorney, the principal may exonerate the attorney-in-fact of any liability to the principal for breach of fiduciary duty except for actions committed by the attorney-in-fact in bad faith or with reckless indifference. An exoneration clause is not enforceable if inserted as the result of an abuse by the attorney-in-fact of a fiduciary or confidential relationship to the principal.
- (h)
The attorney-in-fact may receive reasonable compensation for the attorney-in-fact's services if provided for in the durable power of attorney.
- (4)
Before exercising authority under a durable power of attorney, an attorney-in-fact shall execute an acknowledgment of the attorney-in-fact's responsibilities that contains all of the substantive statements in substantially the following form:
I, _____, have been appointed as attorney-in-fact for _____, the principal, under a durable power of attorney dated _____. By signing this document, I acknowledge that if and when I act as attorney-in-fact, all of the following apply:

(a)

Except as provided in the durable power of attorney, I must act in accordance with the standards of care applicable to fiduciaries acting under durable powers of attorney.

(b)

I must take reasonable steps to follow the instructions of the principal.

(c)

~~Upon~~ **ON** request of the principal, I must keep the principal informed of my actions. I must provide an accounting to the principal ~~upon~~ **ON** request of the principal, to a guardian or conservator appointed on behalf of the principal ~~upon~~ **ON** the request of that guardian or conservator, or ~~pursuant to~~ **UNDER** judicial order.

(d)

I cannot make a gift from the principal's property, unless provided for in the durable power of attorney or by judicial order.

(e)

Unless provided in the durable power of attorney or by judicial order, I, while acting as attorney-in-fact, cannot create an account or other asset in joint tenancy between the principal and me.

(f)

I must maintain records of my transactions as attorney-in-fact, including receipts, disbursements, and investments.

(g)

I may be liable for any damage or loss to the principal, and may be subject to any other available remedy, for breach of fiduciary duty owed to the principal. In the durable power of attorney, the principal may exonerate me of any liability to the principal for breach of fiduciary duty except for actions committed by me in bad faith or with reckless indifference. An exoneration clause is not enforceable if inserted as the result of my abuse of a fiduciary or confidential relationship to the principal.

(h)

I may be subject to civil or criminal penalties if I violate my duties to the principal.

Signature: _____ Date: _____

(5)

A third party is not liable to the principal or any other person because the third party has complied in good faith with instructions from an attorney-in-fact named in a durable power of attorney whether or not the attorney-in-fact has executed an acknowledgment that complies with subsection (4). A third party is not liable to the principal or any other person if the third party requires an attorney-in-fact named in a durable power of attorney to execute an acknowledgment that complies with subsection (4) before recognizing the durable power of attorney.

(6)

An attorney-in-fact's failure to comply with subsection (4) does not affect the attorney-in-fact's authority to act for the principal as provided for in the durable power of attorney and does not affect the attorney-in-fact's responsibilities or potential liability to the principal.

(7)

Subsections (2) to (6) do not apply to any of the following:

(a)

A durable power of attorney executed before October 1, 2012.

(b)

A delegation under section 5103 or a similar power of attorney created by a parent or guardian regarding the care, custody, or property of a minor child or ward.

(c)

A patient advocate designation or a similar power of attorney relating to the principal's health care.

(d)

A durable power of attorney that is coupled with an interest in the subject matter of the power.

(e)

A durable power of attorney that is contained in or is part of a loan agreement, security agreement, pledge agreement, escrow agreement, or other similar transaction.

(f)

A durable power of attorney in connection with a transaction with a joint venture, limited liability company, partnership, limited partnership, limited liability partnership, corporation, condominium, condominium association, condominium trust, or similar entity, including, without limitation, a voting agreement, voting trust, joint venture agreement, royalty agreement, license agreement, proxy, shareholder's agreement, operating agreement, partnership agreement, management agreement, subscription agreement, certification of incorporation, bylaws, or other agreement that primarily relates to such an entity.

(g)

A power of attorney given primarily for a business or a commercial purpose.

(h)

A power of attorney created on a form prescribed by a government or a governmental subdivision, agency, or instrumentality for a governmental purpose.

Sec. 5506.

(1)

An individual 18 years of age or older who is of sound mind at the time a patient advocate designation is made may designate in ~~writing~~ **A RECORD THAT IS READABLE AS TEXT AT THE TIME OF SIGNING** another individual who is 18 years of age or older to exercise powers concerning care, custody, and medical or mental health treatment decisions for the individual making the patient advocate designation. An individual making a patient advocate

designation under this subsection may include in the patient advocate designation the authority for the designated individual to make an anatomical gift of all or part of the individual's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The authority regarding an anatomical gift under this subsection may include the authority to resolve a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift.

(2)

For purposes of this section and sections 5507 to 5515, an individual who is named in a patient advocate designation to exercise powers concerning care, custody, and medical or mental health treatment decisions is known as a patient advocate and an individual who makes a patient advocate designation is known as a patient.

(3)

~~Subject to section 1202, a~~ **A** patient advocate designation under this section must be ~~in writing,~~ **A RECORD THAT IS READABLE AS TEXT AT THE TIME OF SIGNING,** signed, witnessed as provided in subsection (4), dated, executed voluntarily, and, before its implementation, made part of the patient's medical record with, as applicable, the patient's attending physician, the mental health professional providing treatment to the patient, the facility where the patient is located, or the community mental health services program or hospital that is providing mental health services to the patient. The patient advocate designation must include a statement that the authority conferred under this section is exercisable only when the patient is unable to participate in medical or mental health treatment decisions, as applicable, and, in the case of the authority to make an anatomical gift as described in subsection (1), a statement that the authority remains exercisable after the patient's death.

(4)

~~Subject to section 1202, a~~ **A** patient advocate designation under this section must be executed in the **PHYSICAL OR ELECTRONIC** presence of and signed by 2 witnesses. A witness under this section ~~shall~~ **MUST** not be the patient's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or patient advocate or an employee of a life or health insurance provider for the patient, of a health facility that is treating the patient, or of a home for the aged as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106, where the patient resides, or of a community mental health services program or hospital that is providing mental health services to the patient. A witness shall not sign the patient advocate designation unless the patient appears to be of sound mind and under no duress, fraud, or undue influence.

(5)

As used in this section, "community mental health services program or hospital" means a community mental health services program as that term is defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a hospital as that term is defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

Enacting section 1. Section 1202 of the estates and protected individuals code, 1998 PA 386, MCL 700.1202, is repealed.

History

HOUSE BILL NO. 4654

MAY 24, 2023, INTRODUCED BY REPS. FINK, BREEN AND MEERMAN AND REFERRED TO THE COMMITTEE ON JUDICIARY.

Sponsor(s)

Fink

Classification

Subject: CONSERVATION (59%); ELECTROMAGNETISM (59%); LEGISLATION (59%); TRUST ARRANGEMENTS (59%)

Load-Date: May 26, 2023

THE STATE OF MICHIGAN BILL TEXT
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2019 Bill Text MI H.B. 5795

Reprint, June 24, 2020

Reporter

2019 Bill Text MI H.B. 5795

Notice

Added: Text highlighted in green

Deleted: ~~Red text with a strikethrough~~

THE STATE OF MICHIGAN BILL TEXT > MICHIGAN 100TH LEGISLATURE - FIRST REGULAR SESSION > HOUSE BILL 5795

Progress



FAILED | [Legislative Outlook in detail](#)

Introduced

Passed 1st
Committee

Passed 1st
Chamber

Passed 2nd
Committee

Passed 2nd
Chamber

Enacted



Synopsis

A bill to amend 1998 PA 386, entitled

"Estates and protected individuals code,"

by amending section 2502 (MCL 700.2502) and by adding section 2504a.

Text

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2502.

(1)

Except as provided in subsection (2) and in sections 2503, 2506, and 2513, a will is valid only if it is all of the following:

(A)

EITHER OF THE FOLLOWING:

(I) (a)

In writing.

(II)

A RECORD THAT IS READABLE AS TEXT AT THE TIME OF THE SIGNING UNDER SUBDIVISION (B).

(b)

Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.

(c)

Signed by at least 2 individuals, EITHER IN PERSON OR IN ELECTRONIC PRESENCE, each of whom signed within a reasonable time after he or she witnessed either the signing of the will as described in subdivision (b) or the testator's acknowledgment of that signature or acknowledgment of the will.

(2)

A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if it is dated, and if the testator's signature and the document's material portions are in the testator's handwriting.

(3)

Intent that the document constitutes a testator's will can be established by extrinsic evidence, including, for a holographic will, portions of the document that are not in the testator's handwriting.

(4)

AS USED IN THIS SECTION:

(A)

"ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(B)

"ELECTRONIC PRESENCE" MEANS THE RELATIONSHIP OF 2 OR MORE INDIVIDUALS IN DIFFERENT LOCATIONS COMMUNICATING IN REAL TIME TO THE SAME EXTENT AS IF THE INDIVIDUALS WERE PHYSICALLY PRESENT IN THE SAME LOCATION.

(C)

"RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(D)

"SIGN" MEANS WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD TO DO EITHER OF THE FOLLOWING:

(I)

EXECUTE OR ADOPT A TANGIBLE SYMBOL.

(II)

AFFIX TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SYMBOL OR PROCESS.

SEC. 2504A. AN INDIVIDUAL MAY CREATE A CERTIFIED PAPER COPY OF AN ELECTRONIC WILL BY AFFIRMING UNDER PENALTY OF PERJURY THAT A PAPER COPY OF THE ELECTRONIC WILL IS A COMPLETE, TRUE, AND ACCURATE COPY OF THE ELECTRONIC WILL. IF THE ELECTRONIC WILL IS MADE SELF-PROVING, THE CERTIFIED PAPER COPY OF THE WILL MUST INCLUDE THE SELF-PROVING AFFIDAVITS. AS USED IN THIS SECTION, "ELECTRONIC WILL" MEANS A WILL THAT IS BOTH OF THE FOLLOWING:

(A)

READABLE UNDER SECTION 2502(1)(A)(II).

(B)

SIGNED UNDER SECTION 2502(4)(D)(II).

History

HB-5795, AS PASSED HOUSE, JUNE 24, 2020 SUBSTITUTE FOR HOUSE BILL NO. 5795

Sponsor(s)

Filler

Load-Date: June 25, 2020

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TESTIMONY

From: Testimony of Nathan Piwowski on behalf of the
Probate and Estate Planning Section of the State Bar of Michigan
To: Senate Judiciary Committee
Re: House Bill 5795
Date: December 1, 2020

Good afternoon, Mr. Chairman and Committee Members. My name is Nathan Piwowski. I practice in the fields of probate and elder law with the law firm of McCurdy, Wotila, and Porteous, in Cadillac, Michigan. I authored the chapter regarding will and trust contests in the treatise, *Michigan Probate Litigation*. I offer the following perspective on behalf of the State Bar's Probate and Estate Planning Section.

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,360 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed here is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. The State Bar of Michigan has taken a public policy position on this item. It opposes the bill as drafted.

The Probate & Estate Planning Section has a public policy decision-making body with 19 members. On June 5, 2020, the Section adopted its position after a discussion and vote at a scheduled meeting: 19 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, and 0 members did not vote.

The Section opposes House Bill 5795 because electronic wills – as defined by this bill – would increase uncertainty, expense, and litigation:

1. The bill does not require adequate evidence that a computer file was actually was a person's will. This bill would recognize any of the following as an e-will: an email, text message, Microsoft Word file, or MS Paint file. It does not set standards for signatures to ensure that the testator and witnesses are in fact the people who signed the e-will.
2. The bill does not set technological standards to prevent tampering after an electronic will has been signed. Because the bill does not require that an e-will be "fixed" and un-editable after it is signed, it would call into question whether a document is a draft, a true will, or a codicil (amendment) to a will.

3. The bill does not create procedural requirements to make clear to a person when she or he is creating, amending, or revoking a will.
4. This bill's lack of encryption- or audit trail-like standards would invite tampering, forgery, and fraud.

While *some* electronic wills would offer better safeguards, there is nothing in this bill *requiring* them. My Section's Council concluded that the bill, if enacted, would:

1. Force families to use higher-cost options like "formal probate," in order to get electronic wills admitted.
2. Create more litigation over whether a file on a person's computer or phone was intended to be a will.
3. Increase the risk that Michiganders' wills are lost through the accidental file deletion and corruption.
4. Make legal disputes more expensive, when parties have to use technology experts to resolve whether someone tampered with an electronic will.
5. Cause a flurry of appellate litigation, since the bill does not specify what makes an electronic will "tamper-evident." Since the bill does not create that definition, trial and appellate judges will be forced to do so.

The Probate and Estate Planning Section has encouraged the bill's sponsor to develop robust standards to protect the public from this uncertainty and expense. Until those standards have been developed, the Section respectfully opposes House Bill 5795.

Thank you for your consideration.

Exhibit D – Testimony of Howard Collens (ELDRS) regarding HB 5795 of 2019

House Bill 5795

Electronic Signing of Wills

Senate Judiciary Committee

Testimony of Howard H. Collens, Esq.

December 1, 2020

The Elder Law & Disability Rights Section is a voluntary membership section of the State Bar of Michigan, comprised of 1,163 members. The Elder Law & Disability Rights Section is not the State Bar of Michigan and the position expressed herein is that of the Elder Law & Disability Rights Section only and not the State Bar of Michigan. The State Bar of Michigan has taken a public policy position on this item. It opposes the bill as drafted. The Elder Law & Disability Rights Section has a public policy decision-making body with 20 members. On June 6, 2020, the Section adopted its position after a discussion and vote at a scheduled meeting. 18 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 2 members did not vote.

Good afternoon Mr. Chairman and Members of the Committee. My name is Howard Collens. I appear before you as a council member of the Elder Law and Disability (ELDR) Section of the State Bar of Michigan and a member of its Legislative Committee. I am a member of the law firm of Galloway and Collens, PLLC located in Huntington Woods, Michigan.

The ELDR Section expresses its opposition to House Bill 5795 regarding the electronic signing of wills.

A Last Will and Testament plays a central role in a well-planned estate plan. It is a foundational document that allows the testator (the person signing a will) to express in writing the testator's intent regarding who is going to manage the probate estate and to whom the testator's assets are to be distributed after death. People have been preparing wills for centuries to ensure the orderly administration and passing of assets after death.

The law recognizes that the person who is central for expressing the intent contained in the Last Will and Testament will not be available at the crucial time of the will's use – after the testator has died. Both statute and case law require certain formalities to make sure that a person's will is properly in place so that it carries out the intent of the deceased. To raise the awareness of the importance of the document for the testator and to ensure that it is likely to stand up to scrutiny after the testator's death, the statutes give greatest preference for wills signed in the presence of witnesses.

Michigan recognizes the importance of people planning their estates whether their estate is large or modest. The Michigan Statutory will offers a good template for preparing a basic Last Will and

Testament. Many Legislators offer the Planning for Your ... Peace of Mind ¹document that contains the Michigan Statutory Will (along with other important planning documents) to constituents for their use without the need to hire an attorney.

Looking at the Michigan Statutory Will provides the following as part of the Will itself:

NOTICE REGARDING WITNESSES You must use 2 adults as witnesses. It is preferable to have 3 adult witnesses. All the witnesses must observe you sign the Will, have you tell them you signed the Will, or have you tell them the Will was signed at your direction in your presence.

STATEMENT OF WITNESSES **We sign below as witnesses, declaring that the individual who is making this Will appears to have sufficient mental capacity to make this Will and appears to be making this Will freely, without duress, fraud, or undue influence, and that the individual making this Will acknowledges that he or she has read the Will, or has had it read to him or her, and understands the contents of this Will**

Planning for Your ... Peace of Mind, page 29 (emphasis added)

The statutory statement by the witnesses reveals the centrality of the need for the will is being signed – in the witnesses' view – with sufficient mental capacity and without duress, fraud, or undue influence and that the testator understands the contents of the will. These basic requirements are essential for the creation of a Last Will and Testament that will hold up even after the testator has passed. This statement by witnesses is also used in Last Wills prepared by attorneys that are more complex than the Michigan Statutory Will for the same reason.

HB 5795 seeks to expand the way in which a Last Will and Testament can be signed. While its promise is tempting – allow for the testator to sign a will over the internet, it should be rejected because it does not offer enough safeguards to protect wills created under its approach.

HB 5795 appears to take its inspiration from the Uniform Law Commission's Uniform Electronic Will Act. It offers an incomplete description of the kinds of services that would offer the proper protections. A comparison to the level of detail contained in the Michigan Law on Notarial Acts for an electronic notarization system² or a remote electronic notarization platform³ shows that HB 5795 is lacking.

Passage of HB 5795 into law would most certainly lead to greater litigation of Last Wills and Testament signed under its proposed process. Without proper safeguards against fraud, undue influence, coercion, forgery or perjury, the testator's survivors would increase the number of cases that the probate courts of our state would need to address due to an inadequately protected will.

There is an alternative approach that addresses the need for remote signing of legal documents – including Last Wills and Testament. Recently passed into law, Public Acts 246 through 249 begin to address the increased need for remote witnessing and remote notarization during the pandemic and beyond. We have had a six-month test of these processes. There are improvements that can and should be made to them. Since they are set to expire on December 31 of this year, the Legislature and Governor must act to extend them. Passing HB 5795 will not address the current, critical need

¹ Planning For Your ... Peace of Mind can be found here:
<https://www.legislature.mi.gov/Publications/PeaceofMind.pdf>

² MCL 55.286

³ MCL 55.286b

that these laws cover. HB 5795 will likely make the situation worse and therefore the Elder Law and Disability Rights Section of the State Bar of Michigan asks that you oppose this bill.

Thank you for your time. I would be happy to address any questions that you may have for me.