

HOUSE BILL NO. 4847

May 18, 2021, Introduced by Rep. Filler and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5104, 5106, 5310, 5313, and 5409 (MCL
700.5104, 700.5106, 700.5310, 700.5313, and 700.5409), section 5106
as amended by 2017 PA 136, section 5310 as amended by 2000 PA 54,
section 5313 as amended by 2012 PA 545, and section 5409 as amended
by 2000 PA 463, and by adding section 5106a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5104. (1) An interested person who desires to be notified

1 before an order is made in a guardianship proceeding, including a
2 proceeding subsequent to the appointment of a guardian under
3 section ~~5312~~, **5312a**, or in a protective proceeding under section
4 5401 must file a request for notice with the register of the court
5 in which the proceeding is pending and with the attorney of record
6 of the guardian or conservator or, if none, with the guardian or
7 conservator, if any. A request is not effective unless it contains
8 a statement showing the interest of the person making it and the
9 address of that person or an attorney to whom notice is to be
10 given. The request is effective only as to a proceeding that occurs
11 after the filing. If a guardianship or protective proceeding is not
12 pending at the time a person files a request for notice as
13 authorized by this subsection, the person shall pay a fee for
14 filing the request, which fee ~~shall~~ **must** be in the same amount as,
15 but is separate from, the fee required to commence such a
16 proceeding.

17 (2) A governmental agency paying benefits to the individual to
18 be protected or before whom an application for benefits is pending
19 is an interested person in a protective proceeding.

20 Sec. 5106. (1) Subject to subsections (2) and (3), the court
21 may appoint or approve a professional guardian or professional
22 conservator, as appropriate, as a guardian or conservator under
23 this act, or as a plenary guardian or partial guardian as those
24 terms are defined in section 600 of the mental health code, 1974 PA
25 258, MCL 330.1600.

26 (2) The court shall only appoint a professional guardian or
27 professional conservator as authorized under subsection (1) if the
28 court finds on the record all of the following:

29 (a) The appointment of the professional guardian or

1 professional conservator is in the ward's, developmentally disabled
2 individual's, incapacitated individual's, or protected individual's
3 best interests.

4 (b) There is no other person that is competent, suitable, and
5 willing to serve in that fiduciary capacity in accordance with
6 section 5212, **5312a**, 5313, or 5409.

7 (3) The court shall not appoint a **person as a** professional
8 guardian or professional conservator as authorized under subsection
9 (1) unless ~~the~~ **all of the following conditions are met:**

10 (a) **The** professional guardian or professional conservator
11 files a bond in an amount and with the conditions as determined by
12 the court. For a professional conservator, the sureties and
13 liabilities of the bond are subject to sections 5410 and 5411.

14 (b) **Either of the following conditions is met:**

15 (i) **Any of the following conditions are met:**

16 (A) **The person has obtained certification as set forth by**
17 **administrative order of the supreme court.**

18 (B) **The person will serve as professional guardian or**
19 **professional conservator, or both, for no more than 2 wards or**
20 **protected individuals.**

21 (C) **For an individual, the individual is licensed and in good**
22 **standing with the State Bar of Michigan and will serve as guardian**
23 **or conservator, or both, for no more than 3 wards or protected**
24 **individuals.**

25 (ii) **The person is a financial institution.**

26 (4) A professional guardian or professional conservator
27 appointed under this section shall not receive as a result of that
28 appointment a benefit beyond compensation specifically authorized
29 for that type of fiduciary by this act or the mental health code,

1 1974 PA 258, MCL 330.1001 to 330.2106. This subsection does not
 2 prevent a person from providing compensation or other benefits,
 3 from a source other than the estate of the ward, developmentally
 4 disabled individual, incapacitated individual, or protected
 5 individual, to a professional guardian or professional conservator
 6 appointed or approved under this section. If a professional
 7 guardian or professional conservator appointed or approved under
 8 this section receives or is to receive compensation or other
 9 benefits as a result of that appointment from a person other than
 10 this state, a political subdivision of this state, or a trust
 11 created under section 5407(2), the professional guardian or
 12 professional conservator shall file with the appointing or
 13 approving court a written statement of the compensation or other
 14 benefit received or to be received, including the source of the
 15 compensation or other benefit, in a form and in a manner prescribed
 16 by the Michigan court rules. The professional guardian or
 17 professional conservator shall serve a copy of the form described
 18 in this subsection to the ward, developmentally disabled
 19 individual, incapacitated individual, or protected individual and
 20 to interested persons.

21 (5) A professional guardian appointed under this section shall
 22 ~~establish and maintain a schedule of visitation so that an~~
 23 ~~individual associated with the professional guardian who is~~
 24 ~~responsible for the ward's care visits~~ **visit** the ward ~~within 3~~
 25 ~~months after the professional guardian's appointment and not less~~
 26 ~~than once within 3 months~~ **a month** after each previous visit. **A**
 27 **professional guardian that has obtained certification as described**
 28 **in subsection (3) (b) (i) (A) shall not delegate required visitation**
 29 **under this subsection to another person unless the other person has**

1 **obtained certification as described in subsection (3) (b) (i) (A) .**

2 (6) A professional guardian appointed under this section shall
3 ensure that there are a sufficient number of employees assigned to
4 the care of wards for the purpose of performing the necessary
5 duties associated with ensuring that proper and appropriate care is
6 provided.

7 (7) A professional guardian or professional conservator may
8 use support staff and other professionals, under the professional
9 guardian's or professional conservator's active and direct
10 supervision, to perform office functions and client services.
11 Support staff and professionals may be used to gather and provide
12 necessary information to the professional guardian or professional
13 conservator regarding a ward or protected individual and to make
14 recommendations to the professional guardian or professional
15 conservator based on their knowledge and expertise. The
16 professional guardian or professional conservator shall not
17 delegate decision-making authority to support staff, professionals,
18 or other persons regarding execution of contracts or informed
19 consent decisions, including, but not limited to, medical, mental
20 health, placement, or care planning decisions.

21 (8) ~~(7)~~For the purposes of the statutory authorization
22 required by section 1105(2) (e) of the banking code of 1999, 1999 PA
23 276, MCL 487.11105, to act as a fiduciary in this state, if the
24 court appoints a for-profit or nonprofit, nonbanking corporation
25 organized under the laws of this state to serve in a fiduciary
26 capacity that is listed in subsection (1), the nonbanking
27 corporation is authorized to act in that fiduciary capacity. The
28 authorization under this subsection confers the fiduciary capacity
29 only to the extent necessary in the particular matter of each

1 appointment and is not a general grant of fiduciary authority. A
2 nonbanking corporation is not authorized to act in any other
3 fiduciary capacity.

4 **Sec. 5106a. (1) Subject to subsection (2), the court shall not**
5 **appoint an individual as a guardian of a legally incapacitated**
6 **individual or conservator of a protected individual who is not a**
7 **minor, or both, under this article unless 1 of the following**
8 **conditions is met:**

9 **(a) The individual has obtained certification as set forth by**
10 **administrative order of the supreme court.**

11 **(b) The individual will serve as guardian or conservator, or**
12 **both, for no more than 2 legally incapacitated individuals or**
13 **protected individuals and receives no compensation for providing**
14 **those services.**

15 **(c) The individual is related to the legally incapacitated**
16 **individual or protected individual by blood, adoption, or marriage,**
17 **including step- or half-relations.**

18 **(d) The individual is licensed and in good standing with the**
19 **State Bar of Michigan and will serve as guardian or conservator, or**
20 **both, for no more than 3 legally incapacitated individuals or**
21 **protected individuals.**

22 **(2) This section does not apply to a professional guardian or**
23 **professional conservator.**

24 **Sec. 5310. (1) On petition of the guardian and subject to the**
25 **filing and approval of a report prepared as required by section**
26 **5314, the court shall accept the guardian's resignation and make**
27 **any other order that is appropriate.**

28 **(2) The ward or a person interested in the ward's welfare may**
29 **petition for an order removing the guardian, appointing a successor**

guardian, modifying the guardianship's terms, or terminating the guardianship. A request for this order may be made by informal letter to the court or judge. A person who knowingly interferes with the transmission of this kind of request to the court or judge is subject to a finding of contempt of court. **A petition for an order appointing a successor guardian under this subsection is subject to the priority of appointment under section 5313.**

(3) Except as otherwise provided in the order finding incapacity, ~~upon~~**on** receiving a petition or request under this section, the court shall set a date for a hearing to be held within 28 days after the receipt of the petition or request. An order finding incapacity may specify a minimum period, not exceeding 182 days, during which a petition or request for a finding that a ward is no longer an incapacitated individual, or for an order removing the guardian, modifying the guardianship's terms, or terminating the guardianship, ~~shall~~**must** not be filed without special leave of the court.

(4) Before removing a guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating a guardianship, and following the same procedures to safeguard the ward's rights as apply to a petition for a guardian's appointment, the court may send a visitor to the present guardian's residence and to the place where the ward resides or is detained to observe conditions and report in writing to the court.

Sec. 5313. (1) ~~The~~**Subject to section 5106a, the** court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from ~~directly~~ providing housing, medical, mental health, **caregiving**, or social

1 services to the legally incapacitated individual. If the court
2 determines that the ward's property needs protection, the court
3 shall order the guardian to furnish a bond or shall include
4 restrictions in the letters of guardianship as necessary to protect
5 the property.

6 (2) In appointing a guardian under this section, the court
7 shall appoint a person, if suitable **under subsection (5)** and
8 willing to serve, in the following order of priority:

9 (a) A person previously appointed, qualified, and serving in
10 good standing as guardian for the legally incapacitated individual
11 in another state.

12 (b) A person the individual subject to the petition chooses to
13 serve as guardian.

14 (c) A person nominated as guardian in a durable power of
15 attorney or other writing by the individual subject to the
16 petition.

17 (d) A person named by the individual as a patient advocate or
18 attorney in fact in a durable power of attorney.

19 (3) If there is no person chosen, nominated, or named under
20 subsection (2), or if none of the persons listed in subsection (2)
21 are suitable **under subsection (5)** or willing to serve, the court
22 may appoint as a guardian an individual who is related to the
23 individual who is the subject of the petition in the following
24 order of preference:

25 (a) The legally incapacitated individual's spouse. This
26 subdivision ~~shall~~**must** be considered to include a person nominated
27 by will or other writing signed by a deceased spouse.

28 (b) An adult child of the legally incapacitated individual.

29 (c) A parent of the legally incapacitated individual. This

1 subdivision ~~shall~~**must** be considered to include a person nominated
2 by will or other writing signed by a deceased parent.

3 (d) A relative of the legally incapacitated individual with
4 whom the individual has resided for more than 6 months before the
5 filing of the petition.

6 (e) A person nominated by a person who is caring for the
7 legally incapacitated individual or paying benefits to the legally
8 incapacitated individual.

9 (4) If none of the persons as designated or listed in
10 subsection (2) or (3) are suitable **under subsection (5)** or willing
11 to serve, the court may appoint any competent person who is
12 suitable **under subsection (5)** and willing to serve, including a
13 professional guardian as provided in section 5106.

14 (5) **The court shall appoint a person with priority guardian of**
15 **a legally incapacitated individual unless specific findings on the**
16 **record indicate that the person is not suitable as set forth in**
17 **this subsection or is not willing to serve. A person is suitable to**
18 **serve on a determination of specific findings of the court,**
19 **including, but not limited to, all of the following factors:**

20 (a) **The preference of the individual subject to the**
21 **guardianship, including who should serve and not serve as guardian.**

22 (b) **The person's availability to the individual subject to the**
23 **guardianship.**

24 (c) **The person's history and relationship with the individual**
25 **subject to the guardianship.**

26 (d) **The person's criminal history that is relevant to the**
27 **care, custody, and control of the individual subject to the**
28 **guardianship.**

29 (e) **The person's personal history, including, but not limited**

1 to, employment, training, skills, and stability, that will
2 facilitate fulfillment of duties.

3 (f) The person's ability to fulfill duties regardless of
4 interpersonal disputes between interested persons or others with an
5 interest in the welfare of the individual subject to guardianship.
6 Interpersonal disputes alone must not be the basis for finding a
7 person with priority, under subsection (2) or (3), is unsuitable.

8 (g) The person's ability to meet the requirements of section
9 5410.

10 (6) In deciding between 2 persons with equal priority under
11 subsection (2), the court shall weigh the factors in subsection (5)
12 with specific findings on the record. The court may appoint 2
13 persons to serve as coguardians. Unless the order of appointment
14 and letters of guardianship otherwise state, coguardians must act
15 jointly. However, a coguardian may delegate the coguardian's
16 authority to the other coguardian under section 5103.

17 Sec. 5409. (1) The court may appoint an individual, a
18 corporation authorized to exercise fiduciary powers, or a
19 professional conservator described in section 5106 to serve as
20 conservator of a protected individual's estate. The following are
21 entitled to consideration for appointment in the following order of
22 priority:

23 (a) A conservator, guardian of property, or similar fiduciary
24 appointed or recognized by the appropriate court of another
25 jurisdiction in which the protected individual resides.

26 (b) ~~An individual or corporation~~ **A person** nominated by the
27 protected individual if he or she is 14 years of age or older and
28 of sufficient mental capacity to make an intelligent choice,
29 including a nomination made in a durable power of attorney.

1 (c) The protected individual's spouse.

2 (d) An adult child of the protected individual.

3 (e) A parent of the protected individual or a person nominated
4 by the will of a deceased parent.

5 (f) A relative of the protected individual with whom he or she
6 has resided for more than 6 months before the petition is filed.

7 (g) A person nominated by the person who is caring for or
8 paying benefits to the protected individual.

9 (h) If none of the persons listed in subdivisions (a) to (g)
10 are suitable **under subsection (3)** and willing to serve, any person
11 that the court determines is suitable **under subsection (3)** and
12 willing to serve.

13 (2) A person named in subsection (1)(a), (c), (d), (e), or (f)
14 may designate in writing a substitute to serve instead, and that
15 designation transfers the priority to the substitute. ~~If persons~~
16 ~~have equal priority, the court shall select the person the court~~
17 ~~considers best qualified to serve. Acting in the protected~~
18 ~~individual's best interest, the court may pass over a person having~~
19 ~~priority and appoint a person having a lower priority or no~~
20 ~~priority.~~

21 (3) The court shall appoint a person with priority to serve as
22 conservator of a protected individual's estate unless specific
23 findings on the record indicate the person is not suitable as set
24 forth in this subsection or is not willing to serve. A person is
25 suitable to serve on a determination of specific findings by the
26 court, including, but not limited to, all of the following factors:

27 (a) Preference of the individual subject to the
28 conservatorship, including who should serve and not serve as
29 conservator.

1 (b) Availability to the individual subject to the
2 conservatorship.

3 (c) History and relationship with the individual subject to
4 the conservatorship.

5 (d) Criminal history that is relevant to the role of a
6 conservator.

7 (e) Personal history, including, but not limited to,
8 employment, training, skills, and stability that will facilitate
9 fulfillment of duties.

10 (f) Ability to fulfill duties regardless of interpersonal
11 disputes between interested parties or others with an interest in
12 the welfare of the individual subject to conservatorship.
13 Interpersonal disputes alone must not be the basis for finding a
14 person with priority is unsuitable.

15 (g) Ability to meet the requirements of section 5410.

16 (4) In deciding between 2 persons with equal priority, the
17 court shall weigh the factors in subsection (3) with specific
18 findings on the record. The court may appoint not more than 2
19 persons to serve as coconservators. Unless the order of appointment
20 and letters of conservatorship otherwise state, coconservators must
21 act jointly.

22 Enacting section 1. This amendatory act does not take effect
23 unless all of the following bills of the 101st Legislature are
24 enacted into law:

25 (a) Senate Bill No. ____ or House Bill No. 4848 (request no.
26 02581'21).

27 (b) Senate Bill No. ____ or House Bill No. 4849 (request no.
28 02582'21).

29 (c) Senate Bill No. ____ or House Bill No. 4850 (request no.

1 02583'21) .