

SENATE BILL NO. 255

April 11, 2023, Introduced by Senators RUNESTAD, IRWIN, WOJNO, POLEHANKI, CHANG, CAVANAGH and BAYER and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5106, 5310, 5313, and 5409 (MCL 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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5106. (1) Subject to subsections (2) and (3), the court
2 may appoint or approve a professional guardian or professional
3 conservator, as appropriate, as a guardian or conservator under

1 this act, or as a plenary guardian or partial guardian as those
2 terms are defined in section 600 of the mental health code, 1974 PA
3 258, MCL 330.1600.

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

7 (a) The appointment of the professional guardian or
8 professional conservator is in the ward's, developmentally disabled
9 individual's, incapacitated individual's, or protected individual's
10 best interests.

11 (b) There is no other person that is competent, suitable, and
12 willing to serve in that fiduciary capacity in accordance with
13 section 5212, 5313, or 5409.

14 (3) The court shall not appoint a **person as a** professional
15 guardian or professional conservator as authorized under subsection
16 (1) unless ~~the~~ **both of the following conditions are met:**

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

21 (b) **The person will serve as professional guardian or**
22 **professional conservator, or both, for not more than 12 wards or**
23 **protected individuals.**

24 (4) A professional guardian or professional conservator
25 appointed under this section shall not receive as a result of that
26 appointment a benefit beyond compensation specifically authorized
27 for that type of fiduciary by this act or the mental health code,
28 1974 PA 258, MCL 330.1001 to 330.2106. This subsection does not
29 prevent a person from providing compensation or other benefits,

1 from a source other than the estate of the ward, developmentally
2 disabled individual, incapacitated individual, or protected
3 individual, to a professional guardian or professional conservator
4 appointed or approved under this section. If a professional
5 guardian or professional conservator appointed or approved under
6 this section receives or is to receive compensation or other
7 benefits as a result of that appointment from a person other than
8 this state, a political subdivision of this state, or a trust
9 created under section 5407(2), the professional guardian or
10 professional conservator shall file with the appointing or
11 approving court a written statement of the compensation or other
12 benefit received or to be received, including the source of the
13 compensation or other benefit, in a form and in a manner prescribed
14 by the Michigan court rules. The professional guardian or
15 professional conservator shall serve a copy of the form described
16 in this subsection to the ward, developmentally disabled
17 individual, incapacitated individual, or protected individual and
18 to interested persons.

19 (5) A professional guardian appointed under this section shall
20 establish and maintain a schedule of visitation so that an
21 individual associated with the professional guardian who is
22 responsible for the ward's care visits the ward within 3 months
23 after the professional guardian's appointment and not less than
24 once within 3 months after each previous visit.

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

1 (7) For the purposes of the statutory authorization required
2 by section 1105(2) (e) of the banking code of 1999, 1999 PA 276, MCL
3 487.11105, to act as a fiduciary in this state, if the court
4 appoints a for-profit or nonprofit, nonbanking corporation
5 organized under the laws of this state to serve in a fiduciary
6 capacity that is listed in subsection (1), the nonbanking
7 corporation is authorized to act in that fiduciary capacity. The
8 authorization under this subsection confers the fiduciary capacity
9 only to the extent necessary in the particular matter of each
10 appointment and is not a general grant of fiduciary authority. A
11 nonbanking corporation is not authorized to act in any other
12 fiduciary capacity.

13 **(8) By April 1 of each year, the court shall submit a report**
14 **to the state court administrative office that includes the**
15 **following information:**

16 **(a) For each professional guardian appointed in the preceding**
17 **calendar year, all of the following:**

18 **(i) The name of the professional guardian.**

19 **(ii) The name of the ward.**

20 **(iii) The date of appointment.**

21 **(iv) The case number.**

22 **(b) For each professional conservator appointed in the**
23 **preceding calendar year, all of the following:**

24 **(i) The name of the professional conservator.**

25 **(ii) The name of the protected individual.**

26 **(iii) The date of appointment.**

27 **(iv) The case number.**

28 Sec. 5310. (1) On petition of the guardian and subject to the
29 filing and approval of a report prepared as required by section

1 5314, the court shall accept the guardian's resignation and make
2 any other order that is appropriate.

3 (2) The ward or a person interested in the ward's welfare may
4 petition for an order removing the guardian, appointing a successor
5 guardian, modifying the guardianship's terms, or terminating the
6 guardianship. A request for this order may be made by informal
7 letter to the court or judge. A person who knowingly interferes
8 with the transmission of this kind of request to the court or judge
9 is subject to a finding of contempt of court. **A petition for an
10 order appointing a successor guardian under this subsection is
11 subject to the priority of appointment under section 5313.**

12 (3) Except as otherwise provided in the order finding
13 incapacity, upon receiving a petition or request under this
14 section, the court shall set a date for a hearing to be held within
15 28 days after the receipt of the petition or request. An order
16 finding incapacity may specify a minimum period, not exceeding 182
17 days, during which a petition or request for a finding that a ward
18 is no longer an incapacitated individual, or for an order removing
19 the guardian, modifying the guardianship's terms, or terminating
20 the guardianship, shall not be filed without special leave of the
21 court.

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

29 Sec. 5313. (1) The court may appoint a competent person as

1 guardian of a legally incapacitated individual. The court shall not
2 appoint as a guardian an agency, public or private, that
3 financially benefits from directly providing housing, medical,
4 mental health, or social services to the legally incapacitated
5 individual. If the court determines that the ward's property needs
6 protection, the court shall order the guardian to furnish a bond or
7 shall include restrictions in the letters of guardianship as
8 necessary to protect the property.

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

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

15 (b) A person the individual subject to the petition chooses to
16 serve as guardian.

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

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

22 (3) If there is no person chosen, nominated, or named under
23 subsection (2), or if none of the persons listed in subsection (2)
24 are suitable or willing to serve, the court ~~may~~**shall** appoint as a
25 guardian an individual who is related to the individual who is the
26 subject of the petition **or an individual who has an established**
27 **relationship with the individual who is the subject of the**
28 **petition, if suitable under subsection (5) and willing to serve,** in
29 the following order of preference:

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

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

5 (c) A parent of the legally incapacitated individual. This
6 subdivision ~~shall~~**must** be considered to include a person nominated
7 by will or other writing signed by a deceased parent.

8 (d) A relative of the legally incapacitated individual with
9 whom the individual has resided for more than 6 months before the
10 filing of the petition.

11 (e) A person nominated by a person who is caring for the
12 legally incapacitated individual or paying benefits to the legally
13 incapacitated individual.

14 **(f) A person with an established relationship with the legally**
15 **incapacitated individual.**

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

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

27 (a) The person's availability to the individual subject to the
28 guardianship.

29 (b) The person's history and relationship with the individual

1 subject to the guardianship.

2 (c) The person's criminal history that is relevant to the
3 care, custody, and control of the individual subject to the
4 guardianship.

5 (d) The person's financial history, including, but not limited
6 to, employment, training, skills, and stability, that will
7 facilitate fulfillment of duties.

8 (e) The person's character.

9 (6) In deciding between 2 persons with equal priority under
10 this section, the court shall hold a separate hearing within 28
11 days after the hearing under section 5303. In the separate hearing
12 under this subsection, the court must weigh the factors under
13 subsection (5) with specific findings on the record.

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

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

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

27 (c) The protected individual's spouse.

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

29 (e) A parent of the protected individual or a person nominated

1 by the will of a deceased parent.

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

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

6 **(h) A person with an established relationship with the**
7 **protected individual.**

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

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

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

25 (a) The person's availability to the individual subject to the
26 conservatorship.

27 (b) The person's history and relationship with the individual
28 subject to the conservatorship.

29 (c) The person's criminal history that is relevant to the role

1 of a conservator.

2 (d) The person's financial history, including, but not limited
3 to, employment, training, skills, and stability, that will
4 facilitate fulfillment of duties.

5 (e) The person's character.

6 (4) In deciding between 2 persons with equal priority under
7 this section, the court shall hold a separate hearing within 28
8 days after the hearing under section 5401. In the separate hearing
9 under this subsection, the court must weigh the factors under
10 subsection (3) with specific findings on the record.