

**SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 4909**

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, sections 5310 and 5313 as amended by  
2024 PA 1, and section 5409 as amended by 2000 PA 463.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 5104. (1) An interested person who desires to be notified  
2 before an order is made in a guardianship proceeding, including a  
3 proceeding subsequent to the appointment of a guardian under  
4 section 5312 **or 5312a**, or in a protective proceeding under section  
5 5401 must file a request for notice with the register of the court  
6 in which the proceeding is pending and with the attorney of record



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

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

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

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

24 (a) The appointment of the professional guardian or  
25 professional conservator is in the ward's, developmentally disabled  
26 individual's, incapacitated individual's, or protected individual's  
27 best interests.

28 (b) There is no other person that is competent, suitable, and  
29 willing to serve in that fiduciary capacity in accordance with



1 section 5212, **5312a**, 5313, or 5409.

2 (3) The court shall not appoint a **person as a** professional  
3 guardian or professional conservator as authorized under subsection  
4 (1) unless the professional guardian or professional conservator  
5 **submits a criminal background check to the department of state**  
6 **police and** files a bond in an amount and with the conditions as  
7 determined by the court. For a professional conservator, the  
8 sureties and liabilities of the bond are subject to sections 5410  
9 and 5411.

10 (4) A professional guardian or professional conservator  
11 appointed under this section shall not receive as a result of that  
12 appointment a benefit beyond compensation specifically authorized  
13 for that type of fiduciary by this act or, **to the extent**  
14 **applicable**, the mental health code, 1974 PA 258, MCL 330.1001 to  
15 330.2106. This subsection does not prevent a person from providing  
16 compensation or other benefits, from a source other than the estate  
17 of the ward, developmentally disabled individual, incapacitated  
18 individual, or protected individual, to a professional guardian or  
19 professional conservator appointed or approved under this section.  
20 If a professional guardian or professional conservator appointed or  
21 approved under this section receives or is to receive compensation  
22 or other benefits as a result of that appointment from a person  
23 other than this state, a political subdivision of this state, or a  
24 trust created under section 5407(2), the professional guardian or  
25 professional conservator shall file with the appointing or  
26 approving court a written statement of the compensation or other  
27 benefit received or to be received, including the source of the  
28 compensation or other benefit, in a form and in a manner prescribed  
29 by the Michigan court rules. The professional guardian or



1 professional conservator shall serve a copy of the form described  
2 in this subsection to the ward, developmentally disabled  
3 individual, incapacitated individual, or protected individual and  
4 to interested persons.

5 ~~(5) A professional guardian appointed under this section shall~~  
6 ~~establish and maintain a schedule of visitation so that an~~  
7 ~~individual associated with the professional guardian who is~~  
8 ~~responsible for the ward's care visits the ward within 3 months~~  
9 ~~after the professional guardian's appointment and not less than~~  
10 ~~once within 3 months after each previous visit.~~

11 (5) ~~(6)~~ A professional guardian appointed under this section  
12 shall ensure that there are a sufficient number of employees  
13 assigned to the care of wards for the purpose of performing the  
14 necessary duties associated with ensuring that proper and  
15 appropriate care is provided.

16 (6) A professional guardian or professional conservator may  
17 use support staff and other professionals, under the professional  
18 guardian's or professional conservator's active and direct  
19 supervision, to perform office functions and client services.  
20 Support staff and professionals may be used to gather and provide  
21 necessary information to the professional guardian or professional  
22 conservator regarding a ward or protected individual and to make  
23 recommendations to the professional guardian or professional  
24 conservator based on their knowledge and expertise. The  
25 professional guardian or professional conservator shall not  
26 delegate decision-making authority to support staff, a  
27 professional, or another person regarding financial decisions or  
28 decisions requiring informed consent, including, but not limited  
29 to, medical, mental health, placement, or care planning decisions.



**1 This section does not restrict the fiduciary's power to delegate**  
**2 under section 1510 or 5103.**

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

15 Sec. 5310. (1) On petition of the guardian and subject to the  
16 filing and approval of a report prepared as required by section  
17 5314, the court shall accept the guardian's resignation and make  
18 any other order that is appropriate.

19 (2) The ward, a person appointed guardian in a will or other  
20 writing by a parent or spouse under section 5301, or any other  
21 person interested in the ward's welfare may petition for an order  
22 removing the guardian, changing the designated standby guardian,  
23 appointing a successor guardian, modifying the guardianship's  
24 terms, or terminating the guardianship. A request for this order  
25 may be made by informal letter to the court or judge. If a request  
26 under this subsection is made by the person appointed by will or  
27 other writing under section 5301, the person shall also present  
28 proof of the person's appointment by will or other writing. A  
29 person who knowingly interferes with the transmission of this kind



1 of request to the court or judge is subject to a finding of  
2 contempt of court. **A petition for an order appointing a successor**  
3 **guardian under this subsection is subject to the priority of**  
4 **appointment under section 5313.**

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

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

23 Sec. 5313. (1) ~~The~~ **Subject to section 5106, the** court may  
24 appoint a competent person as guardian of a legally incapacitated  
25 individual. The court shall not appoint as a guardian an agency,  
26 public or private, that financially benefits from ~~directly~~  
27 providing housing, medical, mental health, **caregiving**, or social  
28 services to the legally incapacitated individual. If the court  
29 determines that the ward's property needs protection, the court



1 shall order the guardian to furnish a bond or shall include  
2 restrictions in the letters of guardianship as necessary to protect  
3 the property.

4 (2) In appointing a guardian under this section, the court  
5 shall appoint a person, if suitable **under subsection (3)** and  
6 willing to serve, in the following order of priority:

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

10 (b) A person the individual subject to the petition chooses to  
11 serve as guardian.

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

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

17 (e) A person appointed by a parent or spouse of a legally  
18 incapacitated individual by will or other writing under section  
19 5301.

20 **(3) The court shall appoint a person with priority guardian of**  
21 **a legally incapacitated individual unless specific findings on the**  
22 **record indicate that the person is not suitable as set forth in**  
23 **this subsection or is not willing to serve. In determining whether**  
24 **a person is not suitable to serve, the court may consider all of**  
25 **the following:**

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

28 (b) **The person's availability to the individual subject to the**  
29 **guardianship.**



1 (c) The person's history and relationship with the individual  
2 subject to the guardianship.

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

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

9 (f) The person's ability to meet the requirements of section  
10 5410, if applicable.

11 (g) The person's ability to advocate appropriately for the  
12 best interests of the individual subject to the guardianship with  
13 health care and service providers.

14 (h) Interpersonal disputes between interested persons or  
15 others with an interest in the welfare of the individual subject to  
16 the guardianship.

17 (4) In deciding between persons with equal priority under  
18 subsection (2), the court shall weigh the factors in subsection (3)  
19 with specific findings on the record. The court may appoint 2  
20 persons to serve as coguardians. Unless the order of appointment  
21 and letters of guardianship otherwise state, coguardians must act  
22 jointly. However, a coguardian may delegate the coguardian's  
23 authority to the other coguardian under section 5103.

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





(a) The legally incapacitated individual's spouse. This subdivision is considered to include a person nominated by will or other writing signed by a deceased spouse.

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

(c) A parent of the legally incapacitated individual. This subdivision is considered to include a person nominated by will or other writing signed by a deceased parent.

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

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

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

**(7) Letters of guardianship must expire not later than 15 months after the date of appointment. The expiration date must be printed on the letters of guardianship. Letters of guardianship must not be reissued to a guardian that fails to report the condition of the ward and the ward's estate that is subject to the guardian's possession or control, as required by the court, under section 5314. The probate register may reissue letters of guardianship without a hearing.**

**Sec. 5409. (1) The court shall appoint a person with priority to serve as conservator of a protected individual's estate unless specific findings on the record indicate the person is not suitable**



1 as set forth in this subsection or is not willing to serve. A  
2 person is not suitable to serve on a determination of specific  
3 findings by the court, including, but not limited to, all of the  
4 following factors:

5 (a) Preference of the individual subject to the  
6 conservatorship, including who should serve and not serve as  
7 conservator.

8 (b) Availability to the individual subject to the  
9 conservatorship.

10 (c) History and relationship with the individual subject to  
11 the conservatorship.

12 (d) Criminal history that is relevant to the role of a  
13 conservator.

14 (e) Personal history, including, but not limited to,  
15 employment, training, skills, and stability that will facilitate  
16 fulfillment of duties.

17 (f) Ability to meet the requirements of section 5410.

18 (g) Interpersonal disputes between interested persons or  
19 others with an interest in the welfare of the individual subject to  
20 the conservatorship.

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

26 (3) ~~(1)~~—The court may appoint an individual, a corporation  
27 authorized to exercise fiduciary powers, or a professional  
28 conservator described in section 5106 to serve as conservator of a  
29 protected individual's estate. The following are entitled to



1 consideration for appointment in the following order of priority:

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

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

9 (c) The protected individual's spouse.

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

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

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

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

17 (h) If none of the persons listed in subdivisions (a) to (g)  
18 are suitable **under subsection (3)** and willing to serve, any person  
19 that the court determines is suitable **under subsection (3)** and  
20 willing to serve.

21 **(4)** ~~(2)~~ A person named in subsection ~~(1)(a)~~, **(3) (a)**, (c), (d),  
22 (e), or (f) may designate in writing a substitute to serve instead,  
23 and that designation transfers the priority to the substitute. ~~If~~  
24 ~~persons have equal priority, the court shall select the person the~~  
25 ~~court considers best qualified to serve. Acting in the protected~~  
26 ~~individual's best interest, the court may pass over a person having~~  
27 ~~priority and appoint a person having a lower priority or no~~  
28 ~~priority.~~

29 **(5) Letters of conservatorship must expire not later than 15**



1 months after the date of appointment. The expiration date must be  
2 printed on the letters of conservatorship. Letters of  
3 conservatorship must not be reissued to a conservator that fails to  
4 account to the court as required under section 5418. The probate  
5 register may reissue letters of conservatorship under this  
6 subsection without a hearing.

7 Enacting section 1. This amendatory act takes effect 365 days  
8 after the date it is enacted into law.

9 Enacting section 2. This amendatory act does not take effect  
10 unless all of the following bills of the 102nd Legislature are  
11 enacted into law:

12 (a) House Bill No. 4910.

13 (b) House Bill No. 4911.

14 (c) House Bill No. 4912.

