

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4912**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5414, 5415, and 5423 (MCL 700.5414, 700.5415,
and 700.5423), section 5423 as amended by 2012 PA 173, and by
adding section 5312a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 5312a. (1) The court may appoint a temporary guardian**
2 **under section 5301a or this section.**

3 **(2) If a guardian has not been appointed or an appointed**
4 **guardian is not effectively performing the guardian's duties and**
5 **the court further finds that the alleged incapacitated individual**
6 **or ward's welfare requires immediate action, the court may appoint**
7 **a temporary guardian under this section for a specified period not**



1 to exceed 6 months. The court shall not appoint a temporary
 2 guardian under this subsection unless either of the following
 3 conditions is met:

4 (a) The petitioner complies with section 5311.

5 (b) The petitioner complies with the Michigan court rule that
 6 controls temporary restraining orders.

7 (3) A temporary guardian is entitled to the care and custody
 8 of the ward, and the authority of a permanent guardian previously
 9 appointed by the court is suspended while a temporary guardian has
 10 authority. A temporary guardian may be removed at any time. A
 11 temporary guardian shall make reports as the court requires. In
 12 other respects, the provisions of this act concerning guardians
 13 apply to temporary guardians.

14 (4) If a temporary guardian is appointed under section 5301a
 15 or this section, except as otherwise provided in this subsection, a
 16 trial on a permanent appointment must be scheduled using the same
 17 procedures as under section 5303(4) and (5). The trial must take
 18 place not later than 28 days after the appointment of a temporary
 19 guardian.

20 Sec. 5414. (1) The court may remove a conservator for good
 21 cause, ~~upon~~ on notice and hearing, or accept a conservator's
 22 resignation. ~~Upon~~ On the conservator's death, resignation, or
 23 removal, the court may appoint another conservator. A conservator
 24 ~~so~~ appointed under this subsection succeeds to the title and powers
 25 of the predecessor.

26 (2) The protected individual or a person interested in the
 27 protected individual's welfare may petition for an order removing
 28 the conservator, appointing a successor conservator, modifying the
 29 terms of the conservatorship, or terminating the conservatorship. A



1 request for this order under this subsection may be made by
2 informal letter to the court. A person who knowingly interferes
3 with transmission of a request described in this subsection to the
4 court is subject to a finding of contempt of court. A petition for
5 an order appointing a successor conservator under this subsection
6 is subject to the priority of appointment under section 5409.

7 Sec. 5415. (1) A person interested in the welfare of an
8 individual for whom a conservator is appointed may file a petition
9 in the appointing court for an order to do any of the following:

10 (a) Require bond or security or additional bond or security,
11 or reduce bond.

12 (b) Require an accounting for the administration of the trust.

13 (c) Direct distribution.

14 (d) Remove the conservator and appoint a temporary or
15 successor conservator.

16 (e) Grant other appropriate relief.

17 (2) A conservator may petition the appointing court for
18 instructions concerning fiduciary responsibility. ~~Upon~~ On notice
19 and hearing, the court may give appropriate instructions or make an
20 appropriate order.

21 (3) A petition for an order appointing a successor conservator
22 under subsection (1) is subject to the priority of appointment
23 under section 5409.

24 Sec. 5423. (1) Subject to a limitation imposed under section
25 5427, a conservator has all of the powers conferred in this section
26 and the additional powers conferred by law on trustees in this
27 state. In addition, a conservator of the estate of an unmarried
28 minor, as to whom no one has parental rights, has the powers,
29 responsibilities, and duties of a guardian described in section



1 5215 until the individual is no longer a minor or marries. The
2 parental rights conferred on a conservator by this section do not
3 preclude a guardian's appointment as provided in part 2 **of this**
4 **article.**

5 (2) Acting reasonably in an effort to accomplish the purpose
6 of the appointment and without court authorization or confirmation,
7 a conservator may do any of the following:

8 (a) Collect, hold, or retain estate property, including land
9 in another state, until the conservator determines that disposition
10 of the property should be made. Property may be retained even
11 though it includes property in which the conservator is personally
12 interested.

13 (b) Receive an addition to the estate.

14 (c) Continue or participate in the operation of a business or
15 other enterprise.

16 (d) Acquire an undivided interest in estate property in which
17 the conservator, in a fiduciary capacity, holds an undivided
18 interest.

19 (e) Invest or reinvest estate property. If the conservator
20 exercises the power conferred by this subdivision, the conservator
21 must invest or reinvest the property in accordance with the
22 Michigan prudent investor rule.

23 (f) Deposit estate money in a state or federally insured
24 financial institution including one operated by the conservator.

25 (g) Except as provided in subsection (3), acquire or dispose
26 of estate property, including land in another state, for cash or on
27 credit, at public or private sale, or manage, develop, improve,
28 exchange, partition, change the character of, or abandon estate
29 property.



1 (h) Make an ordinary or extraordinary repair or alteration in
2 a building or other structure, demolish an improvement, or raze an
3 existing or erect a new party wall or building.

4 (i) Subdivide, develop, or dedicate land to public use; make
5 or obtain the vacation of a plat or adjust a boundary; adjust a
6 difference in valuation on exchange or partition by giving or
7 receiving consideration; or dedicate an easement to public use
8 without consideration.

9 (j) Enter for any purpose into a lease as lessor or lessee
10 with or without option to purchase or renew for a term within or
11 extending beyond the term of the conservatorship.

12 (k) Enter into a lease or arrangement for exploration and
13 removal of a mineral or other natural resource or enter into a
14 pooling or unitization agreement.

15 (l) Grant an option involving disposition of estate property or
16 take an option for the acquisition of property.

17 (m) Vote a security, in person or by general or limited proxy.

18 (n) Pay a call, assessment, or other amount chargeable or
19 accruing against or on account of a security.

20 (o) Sell or exercise stock subscription or conversion rights.

21 (p) Consent, directly or through a committee or other agent,
22 to the reorganization, consolidation, merger, dissolution, or
23 liquidation of a corporation or other business enterprise.

24 (q) Hold a security in the name of a nominee or in other form
25 without disclosure of the conservatorship so that title to the
26 security may pass by delivery. However, the conservator is liable
27 for an act of the nominee in connection with the stock so held.

28 (r) Insure the estate property against damage or loss or the
29 conservator against liability with respect to third persons.



1 (s) Borrow money to be repaid from estate property or
2 otherwise.

3 (t) Advance money for the protection of the estate or the
4 protected individual, and for all expense, loss, or liability
5 sustained in the estate's administration or because of the holding
6 or ownership of estate property. The conservator has a lien on the
7 estate as against the protected individual for such an advance.

8 (u) Pay or contest a claim; settle a claim by or against the
9 estate or the protected individual by compromise, arbitration, or
10 otherwise; and release, in whole or in part, a claim belonging to
11 the estate to the extent that the claim is uncollectible.

12 (v) Pay a tax, assessment, conservator's compensation, or
13 other expense incurred in the estate's collection, care,
14 administration, and protection.

15 (w) Allocate an item of income or expense to either estate
16 income or principal, as provided by law, including creation of a
17 reserve out of income for depreciation, obsolescence, or
18 amortization, or for depletion in mineral or timber property.

19 (x) Pay money distributable to a protected individual or the
20 protected individual's dependent by paying the money to the
21 distributee or by paying the money for the use of the distributee
22 to the distributee's guardian, or if none, to a relative or other
23 person having custody of the distributee.

24 (y) Employ a person, including an auditor, investment advisor,
25 or agent, even though the person is associated with the
26 conservator, to advise or assist in the performance of an
27 administrative duty; act upon the person's recommendation without
28 independent investigation; and, instead of acting personally,
29 employ an agent to perform an act of administration, whether or not



1 discretionary.

2 (z) Employ an attorney to perform necessary legal services or
3 to advise or assist the conservator in the performance of the
4 conservator's administrative duties, even if the attorney is
5 associated with the conservator, and act without independent
6 investigation upon the attorney's recommendation. An attorney
7 employed under this subdivision ~~shall~~**must** receive reasonable
8 compensation for ~~his or her~~**the attorney's** employment.

9 (aa) Prosecute or defend an action, claim, or proceeding in
10 any jurisdiction for the protection of estate property and of the
11 conservator in the performance of a fiduciary duty.

12 (bb) Execute and deliver an instrument that will accomplish or
13 facilitate the exercise of a power vested in the conservator.

14 (cc) Respond to an environmental concern or hazard affecting
15 property as provided in section 5424.

16 (3) A conservator shall not sell or otherwise dispose of the
17 protected individual's principal dwelling, real property, or
18 interest in real property or mortgage, pledge, or cause a lien to
19 be placed on any such property without approval of the court. The
20 court shall only approve the sale, disposal, mortgage, or pledge of
21 or lien against the principal dwelling, real property, or interest
22 in real property if, after a hearing with notice to interested
23 persons as specified in the Michigan court rules, the court
24 considers evidence of the value of the property and otherwise
25 determines that the sale, disposal, mortgage, pledge, or lien is in
26 the protected individual's best interest. **The court shall state on**
27 **the record why the sale is in the best interest of the ward.**

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



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

4 (a) House Bill No. 4909.

5 (b) House Bill No. 4910.

6 (c) House Bill No. 4911.

