

**SENATE BILL NO. 1287**

September 16, 1998, Introduced by Senators HART, CHERRY and CONROY and referred to the Committee on Judiciary.

A bill to amend 1978 PA 642, entitled "Revised probate code," by amending sections 454 and 501a (MCL 700.454 and 700.501a), section 454 as amended by 1988 PA 398 and section 501a as added by 1994 PA 327.

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

1       Sec. 454. (1) ~~Any~~ THE COURT MAY APPOINT ANY competent  
2 person ~~may be appointed~~ AS guardian of a legally incapacitated  
3 person. The court shall not appoint as guardian ~~any~~ AN agency,  
4 public or private, ~~which~~ THAT financially benefits from  
5 directly providing housing, medical, or social services to the  
6 legally incapacitated person. A GUARDIAN SHALL NOT OFFER, GIVE,  
7 SOLICIT, OR ACCEPT A KICKBACK TO OR FROM A PUBLIC OFFICIAL OR  
8 EMPLOYEE OR ANOTHER INDIVIDUAL OR TO OR FROM A PERSON THAT  
9 PROVIDES A PRODUCT OR SERVICE FOR THE GUARDIAN'S WARD.

1           (2) In appointing a guardian under this section, the court  
2 shall appoint a person, if suitable and willing to serve, desig-  
3 nated by the ~~person who is the subject of the petition~~ LEGALLY  
4 INCAPACITATED PERSON. If a specific designation is not made or a  
5 person designated is not suitable or willing to serve, the court  
6 may appoint as guardian a person named as attorney in fact  
7 through a durable power of attorney.

8           (3) If a person is not designated under subsection (2) or a  
9 person designated under subsection (2) is not suitable or willing  
10 to serve, the court may appoint as a guardian a person who is  
11 related to the ~~subject of the petition~~ LEGALLY INCAPACITATED  
12 PERSON, in the following order of preference:

13           (a) The ~~spouse of the~~ legally incapacitated ~~person~~  
14 PERSON'S SPOUSE, including a person nominated by will or other  
15 writing signed by a deceased spouse.

16           (b) An adult child of the legally incapacitated person.

17           (c) A parent of the legally incapacitated person, including  
18 a person nominated by will or other writing signed by a deceased  
19 parent.

20           (d) A relative of the legally incapacitated person with whom  
21 the LEGALLY INCAPACITATED person has resided for more than 6  
22 months before the filing of the petition.

23           (e) A person nominated by ~~the~~ A person who is caring for  
24 the LEGALLY INCAPACITATED person or paying benefits to the  
25 LEGALLY INCAPACITATED person.

1 (4) If none of the persons listed in subsection (3) is  
2 suitable or willing to serve, the court may appoint any competent  
3 person who is suitable and willing to serve.

4 Sec. 501a. (1) Subject to subsections (2) and (3), the  
5 court may appoint or approve as a guardian, limited or temporary  
6 guardian, or conservator under this act, or as a plenary or par-  
7 tial guardian as those terms are defined in section 600 of the  
8 mental health code, ~~Act No. 258 of the Public Acts of 1974,~~  
9 ~~being section 330.1600 of the Michigan Compiled Laws~~ 1974 PA  
10 258, MCL 330.1600, a nonprofit corporation incorporated under the  
11 nonprofit incorporation act, ~~Act No. 162 of the Public Acts of~~  
12 ~~1982, being sections 450.2101 to 450.3192 of the Michigan~~  
13 ~~Compiled Laws~~ 1982 PA 162, MCL 450.2101 TO 450.3192, which  
14 corporation's primary function is to provide fiduciary services  
15 in the same manner as ~~other~~ fiduciaries under this act WHO ARE  
16 INDIVIDUALS. This section shall not be construed to make a  
17 person that is not a nonprofit corporation described in this sub-  
18 section ineligible to be appointed or approved as a ~~fiduciary~~  
19 CONSERVATOR AS PROVIDED IN SECTION 470.

20 (2) The court shall only appoint a NONPROFIT corporation as  
21 authorized under subsection (1) if the court finds on the record  
22 ~~both~~ ALL of the following:

23 (a) The appointment of the nonprofit corporation is in the  
24 ward's or developmentally disabled person's best interests.

25 (b) ~~Another~~ A qualified, suitable ~~person~~ INDIVIDUAL has  
26 not come before the court and expressed a willingness to serve in  
27 that fiduciary capacity.

1 (C) THE NONPROFIT CORPORATION HAS NOT LESS THAN 1 EMPLOYEE  
2 ASSIGNED TO THE CARE OF WARDS FOR EACH 25 INDIVIDUALS WHO ARE THE  
3 CORPORATION'S WARDS. FOR THE PURPOSE OF THE FINDING UNDER THIS  
4 SUBDIVISION, THE COURT SHALL NOT INCLUDE AN EMPLOYEE UNLESS THE  
5 EMPLOYEE'S SOLE DUTY IS THE CARE OF WARDS.

6 (D) THE NONPROFIT CORPORATION ESTABLISHES AND MAINTAINS A  
7 SCHEDULE OF VISITATION SO THAT AN EMPLOYEE RESPONSIBLE FOR THE  
8 WARD'S CARE VISITS THE WARD NOT LESS THAN ONCE EACH CALENDAR  
9 MONTH.

10 (3) The court shall not appoint a NONPROFIT corporation as  
11 authorized under subsection (1) unless the corporation ~~files~~  
12 HAS FILED a bond in an amount ~~and with the conditions as deter-~~  
13 ~~mined by the court~~ THAT IS NOT LESS THAN THE TOTAL AMOUNT OF ALL  
14 ASSETS FOR WHICH THE NONPROFIT CORPORATION HAS A FIDUCIARY  
15 RESPONSIBILITY UNDER ALL OF ITS GUARDIANSHIPS. THE COURT MAY  
16 ORDER THE NONPROFIT CORPORATION TO INCLUDE FURTHER CONDITIONS ON  
17 THE BOND, AS THE COURT CONSIDERS NECESSARY.

18 (4) A NONPROFIT CORPORATION ELIGIBLE TO BE APPOINTED UNDER  
19 THIS SECTION AS A FIDUCIARY SHALL NOT PETITION FOR THE APPOINT-  
20 MENT OF A GUARDIAN OR CONSERVATOR FOR AN INDIVIDUAL.

21 (5) The court shall not appoint a NONPROFIT corporation  
22 described in subsection (1) as a personal representative or  
23 trustee.

24 (6) ~~(4)~~ A NONPROFIT corporation appointed under this sec-  
25 tion shall not receive as a result of that appointment a benefit  
26 beyond compensation specifically authorized for that type of  
27 fiduciary by this act or the mental health code, ~~Act No. 258 of~~

1 ~~the Public Acts of 1974, being sections 330.1001 to 330.2106 of~~  
2 ~~the Michigan Compiled Laws~~ 1974 PA 258, MCL 330.1001 TO  
3 330.2106.