

HB 5919, As Passed Senate, October 4, 2000

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5919**

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5306, 5313, 5417, and 5418 (MCL 700.5306, 700.5313, 700.5417, and 700.5418), section 5313 as amended by 2000 PA 54, and by adding section 5520.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5306. (1) The court may appoint a guardian if ~~it is~~
2 ~~satisfied~~ THE COURT FINDS by clear and convincing evidence BOTH
3 that the individual for whom a guardian is sought is an incapaci-
4 tated individual —, and that the appointment is necessary as a
5 means of providing continuing care and supervision of the inca-
6 pacitated individual, WITH EACH FINDING SUPPORTED SEPARATELY ON
7 THE RECORD. Alternately, the court may dismiss the proceeding or
8 enter another appropriate order.

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1 OF MAKING MEDICAL TREATMENT DECISIONS THAT THE PATIENT ADVOCATE

2 IS DESIGNATED TO MAKE. IF, HOWEVER, A PETITION FOR GUARDIANSHIP OR
FOR MODIFICATION UNDER SECTION 5310 ALLEGES AND THE COURT FINDS THAT
THE PATIENT ADVOCATE DESIGNATION WAS NOT EXECUTED IN COMPLIANCE WITH
SECTION 5506. THAT THE PATIENT ADVOCATE IS NOT COMPLYING WITH THE
TERMS OF THE DESIGNATION OR OF SECTIONS 5506 TO 5512, OR THAT THE
PATIENT ADVOCATE IS NOT ACTING CONSISTENT WITH THE WARD'S BEST
INTERESTS, THE COURT MAY MODIFY THE GUARDIANSHIP'S TERMS TO GRANT
THOSE POWERS TO THE GUARDIAN.

3 Sec. 5313. (1) ~~A~~ THE COURT MAY APPOINT A competent

4 person, including a nonprofit corporation described in section

5 5106, ~~may be appointed~~ AS guardian of a legally incapacitated

6 individual. The court shall not appoint as a guardian an agency,

7 public or private, that financially benefits from directly pro-

8 viding housing, medical, MENTAL HEALTH, or social services to the
legally inca-

9 pacitated individual. IF THE COURT DETERMINES THAT THE WARD'S

10 PROPERTY NEEDS PROTECTION, THE COURT SHALL ORDER THE GUARDIAN TO

11 FURNISH A BOND OR SHALL INCLUDE RESTRICTIONS IN THE LETTERS OF

12 GUARDIANSHIP AS NECESSARY TO PROTECT THE PROPERTY.

13 (2) In appointing a guardian under this section, the court

14 shall appoint a person, if suitable and willing to serve, desig-

15 nated by the individual who is the subject of the petition,

16 including a designation made in a durable power of attorney. If

17 a specific designation is not made or a person designated is not

18 suitable or willing to serve, the court may appoint as a guardian

19 a person named as ~~attorney in fact~~ ATTORNEY-IN-FACT through a

20 durable power of attorney.

21 (3) If a person is not designated under subsection (2) or a

22 person designated under subsection (2) is not suitable or willing

23 to serve, the court may appoint as a guardian an individual who

24 is related to the subject of the petition in the following order

25 of preference:

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1 (a) The legally incapacitated individual's spouse. This
2 subdivision shall be considered to include a person nominated by
3 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 be considered to include a person nominated by
7 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 the person who is caring for the
12 individual or paying benefits to the individual.

13 (4) If none of the persons listed in subsection (3) is suit-
14 able or willing to serve, the court may appoint any competent
15 person who is suitable and willing to serve.

16 Sec. 5417. (1) Within ~~63~~ 56 days after appointment or
17 within another time period specified by court rule, a conservator
18 ~~must~~ SHALL prepare and file with the appointing court a com-
19 plete inventory of the estate subject to the conservatorship
20 together with an oath or affirmation that the inventory is
21 believed to be complete and accurate so far as information
22 permits. The conservator ~~must~~ SHALL provide a copy of the
23 inventory to the protected individual if the ~~individual~~
24 INDIVIDUAL can be located and ~~if the individual~~ is 14 years of
25 age or older and ~~has sufficient mental capacity to understand~~
26 the arrangement. ~~A copy must also be provided to a parent or~~

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1 ~~guardian with whom the protected individual resides~~ TO

2 INTERESTED PERSONS AS SPECIFIED IN THE MICHIGAN COURT RULES.

3 (2) The conservator must keep suitable records of the admin-
4 istration and exhibit those records on the request of an inter-
5 ested person.

6 Sec. 5418. (1) A conservator shall account to the court for
7 administration of the trust not less than annually unless the
8 court directs otherwise, upon resignation or removal, and at
9 other times as the court directs. On termination of the pro-
10 tected individual's minority or disability, a conservator shall
11 account to the court or to the formerly protected individual or
12 that individual's successors. Subject to appeal or vacation
13 within the time permitted, an order, after notice and hearing,
14 allowing an intermediate account of a conservator adjudicates as
15 to liabilities concerning the matters considered in connection
16 with the accounts, and an order, after notice and hearing, allow-
17 ing a final account adjudicates as to all previously unsettled
18 liabilities of the conservator to the protected individual or the
19 protected individual's successors relating to the
20 conservatorship. In connection with any account, the court may
21 require a conservator to submit to a physical check of the estate
22 to be made in any manner the court specifies.

23 (2) THE CONSERVATOR SHALL PROVIDE A COPY OF AN ACCOUNT TO
24 THE PROTECTED INDIVIDUAL IF THE INDIVIDUAL CAN BE LOCATED AND IS
25 14 YEARS OF AGE OR OLDER AND TO INTERESTED PERSONS AS SPECIFIED
26 IN THE MICHIGAN COURT RULES.

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1 SEC. 5520. A LEGALLY INCAPACITATED INDIVIDUAL WHO HAS
2 A GUARDIAN WITH RESPONSIBILITY FOR MAKING MEDICAL TREATMENT
3 DECISIONS CANNOT THEN DESIGNATE ANOTHER INDIVIDUAL TO MAKE MEDICAL
4 TREATMENT DECISIONS FOR THE LEGALLY INCAPACITATED INDIVIDUAL.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Enacting section 1. This amendatory act takes effect
23 January 1, 2001.