

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 863**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1106, 5106, 5212, 5313, and 5409
(MCL 700.1106, 700.5106, 700.5212, 700.5313, and 700.5409),
section 1106 as amended by 2000 PA 54 and section 5313 as amended
by 2000 PA 312.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1106. As used in this act:

2 (a) "Mental health professional" means an individual who is
3 trained and experienced in the area of mental illness or develop-
4 mental disabilities and who is 1 of the following:

5 (i) A physician who is licensed to practice medicine or
6 osteopathic medicine and surgery in this state under article 15
7 of the public health code, 1978 PA 368, MCL 333.16101 to
8 333.18838.

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1 (ii) A psychologist licensed to practice in this state under
2 article 15 of the public health code, 1978 PA 368, MCL 333.16101
3 to 333.18838.

4 (iii) A registered professional nurse licensed to practice
5 in this state under article 15 of the public health code, 1978
6 PA 368, MCL 333.16101 to 333.18838.

7 (iv) A social worker registered as a certified social worker
8 under article ~~16 of the occupational code, 1980 PA 299,~~
9 ~~MCL 339.1601 to 339.1610~~ 15 OF THE PUBLIC HEALTH CODE, 1978
10 PA 368, MCL 333.16101 TO 333.18838.

11 (v) A physician's assistant licensed to practice in this
12 state under article 15 of the public health code, 1978 PA 368,
13 MCL 333.16101 ~~TO~~ to 333.18838.

14 (b) "Michigan prudent investor rule" means the fiduciary
15 investment and management rule prescribed by part 5 of this
16 article.

17 (c) "Minor" means an individual who is less than 18 years of
18 age.

19 (d) "Minor ward" means a minor for whom a guardian is
20 appointed solely because of minority.

21 (e) "Money" means legal tender or a note, draft, certificate
22 of deposit, stock, bond, check, or credit card.

23 (f) "Mortgage" means a conveyance, agreement, or arrangement
24 in which property is encumbered or used as security.

25 (g) "Nonresident decedent" means a decedent who was domi-
26 ciled in another jurisdiction at the time of his or her death.

1 (h) "Organization" means a corporation, business trust,
2 estate, trust, partnership, joint venture, association, limited
3 liability company, government, governmental subdivision or
4 agency, or another legal or commercial entity.

5 (i) "Parent" includes, but is not limited to, an individual
6 entitled to take, or who would be entitled to take, as a parent
7 under this act by intestate succession from a child who dies
8 without a will and whose relationship is in question. Parent
9 does not include an individual who is only a stepparent, foster
10 parent, or grandparent.

11 (j) "Patient advocate" means an individual designated to
12 exercise powers concerning another individual's care, custody,
13 and medical treatment as provided in section 5506.

14 (k) "Patient advocate designation" means the written docu-
15 ment executed and with the effect as described in sections 5506
16 to 5512.

17 (l) "Payor" means a trustee, insurer, business entity,
18 employer, government, governmental subdivision or agency, or
19 other person authorized or obligated by law or a governing
20 instrument to make payments.

21 (m) "Person" means an individual or an organization.

22 (n) "Personal representative" includes, but is not limited
23 to, an executor, administrator, successor personal representa-
24 tive, and special personal representative, and any other person
25 who performs substantially the same function under the law gov-
26 erning that person's status.

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1 (o) "Petition" means a written request to the court for an
2 order after notice.

3 (p) "Proceeding" includes an application and a petition, and
4 may be an action at law or a suit in equity. A proceeding may be
5 denominated a civil action under court rules.

6 (Q) "PROFESSIONAL CONSERVATOR" MEANS A PERSON THAT PROVIDES
7 CONSERVATORSHIP SERVICES FOR A FEE. PROFESSIONAL CONSERVATOR DOES
8 NOT INCLUDE A PERSON WHO IS AN INDIVIDUAL WHO IS RELATED TO ALL
9 BUT 2 OF THE PROTECTED INDIVIDUALS FOR WHOM HE OR SHE IS
10 APPOINTED AS CONSERVATOR.

11 (R) "PROFESSIONAL GUARDIAN" MEANS A PERSON THAT PROVIDES
12 GUARDIANSHIP SERVICES FOR A FEE. PROFESSIONAL GUARDIAN DOES NOT
13 INCLUDE A PERSON WHO IS AN INDIVIDUAL WHO IS RELATED TO ALL BUT 2
14 OF THE WARDS FOR WHOM HE OR SHE IS APPOINTED AS GUARDIAN.

15 (S) ~~-(q)-~~ "Property" means anything that may be the subject
16 of ownership, and includes both real and personal property or an
17 interest in real or personal property.

18 (T) ~~-(r)-~~ "Protected individual" means a minor or other
19 individual for whom a conservator has been appointed or other
20 protective order has been made as provided in part 4 of
21 article V.

22 (U) ~~-(s)-~~ "Protective proceeding" means a proceeding under
23 the provisions of part 4 of article V.

24 Sec. 5106. (1) Subject to ~~subsections (2) and (3)~~ THE
25 OTHER PROVISIONS OF THIS SECTION, the court may appoint or
26 approve A PROFESSIONAL GUARDIAN OR PROFESSIONAL CONSERVATOR, AS
27 APPROPRIATE, as a guardian ~~, limited or temporary guardian,~~ or

1 conservator under this act, or as a plenary guardian or partial
2 guardian as those terms are defined in section 600 of the mental
3 health code, 1974 PA 258, MCL 330.1600. ~~, a nonprofit corpora-~~
4 ~~tion incorporated under the nonprofit corporation act, 1982~~
5 ~~PA 162, MCL 450.2101 to 450.3192, which corporation's primary~~
6 ~~function is to provide fiduciary services in the same manner as~~
7 ~~other fiduciaries under this act. This section shall not be con-~~
8 ~~strued to make a person that is not a nonprofit corporation~~
9 ~~described in this subsection ineligible to be appointed or~~
10 ~~approved as a fiduciary.~~

11 (2) The court shall only appoint a ~~corporation~~
12 PROFESSIONAL GUARDIAN OR PROFESSIONAL CONSERVATOR as authorized
13 under subsection (1) if the court finds on the record ~~both~~ ALL
14 of the following:

15 (a) The appointment of the ~~nonprofit corporation~~
16 PROFESSIONAL GUARDIAN OR PROFESSIONAL CONSERVATOR is in the
17 ward's, ~~or~~ developmentally disabled individual's, INCAPACITATED
18 INDIVIDUAL'S, OR PROTECTED INDIVIDUAL'S best interests.

19 (b) ~~Another qualified, suitable person has not come before~~
20 ~~the court and expressed a willingness~~ THERE IS NO OTHER PERSON
21 THAT IS COMPETENT, SUITABLE, AND WILLING to serve in that fidu-
22 ciary capacity IN ACCORDANCE WITH SECTION 5212, 5313, OR 5409.

23 (3) The court shall not appoint a ~~corporation~~ PROFESSIONAL
24 GUARDIAN OR PROFESSIONAL CONSERVATOR as authorized under
25 subsection (1) unless the ~~corporation~~ PROFESSIONAL GUARDIAN OR
26 PROFESSIONAL CONSERVATOR files a bond in an amount and with the
27 conditions as determined by the court. ~~The~~ FOR A PROFESSIONAL

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1 CONSERVATOR, THE sureties and liabilities of the bond shall be as
2 provided in sections 5410 and 5411. ~~The court shall not appoint~~
3 ~~a corporation described in subsection (1) as a personal represen-~~
4 ~~tative or trustee.~~

5 (4) A ~~corporation~~ PROFESSIONAL GUARDIAN OR PROFESSIONAL
6 CONSERVATOR appointed under this section shall not receive as a
7 result of that appointment a benefit beyond compensation specifi-
8 cally authorized for that type of fiduciary by this act or the
9 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

10 (5) A PROFESSIONAL GUARDIAN APPOINTED UNDER THIS SECTION
11 SHALL ESTABLISH AND MAINTAIN A SCHEDULE OF VISITATION SO THAT AN
12 INDIVIDUAL ASSOCIATED WITH THE PROFESSIONAL GUARDIAN WHO IS
13 RESPONSIBLE FOR THE WARD'S CARE VISITS THE WARD WITHIN 3 MONTHS
14 AFTER THE PROFESSIONAL GUARDIAN'S APPOINTMENT AND NOT LESS THAN
15 ONCE WITHIN 3 MONTHS AFTER EACH PREVIOUS VISIT.

16 (6) A PROFESSIONAL GUARDIAN APPOINTED UNDER THIS SECTION
17 SHALL ENSURE THAT THERE ARE A SUFFICIENT NUMBER OF EMPLOYEES
18 ASSIGNED TO THE CARE OF WARDS FOR THE PURPOSE OF PERFORMING THE
19 NECESSARY DUTIES ASSOCIATED WITH ENSURING THAT PROPER AND APPRO-
20 PRIATE CARE IS PROVIDED.

21 (7) FOR THE PURPOSES OF THE STATUTORY AUTHORIZATION REQUIRED
22 BY SECTION 1105(2)(E) OF THE BANKING CODE OF 1999, 1999 PA 276,
23 MCL 487.11105, TO ACT AS A FIDUCIARY IN THIS STATE, IF THE COURT
24 APPOINTS A FOR-PROFIT OR NONPROFIT, NONBANKING CORPORATION ORGA-
25 NIZED UNDER THE LAWS OF THIS STATE TO SERVE IN A FIDUCIARY CAPAC-
26 ITY THAT IS LISTED IN SUBSECTION (1), THE NONBANKING CORPORATION
27 IS AUTHORIZED TO ACT IN THAT FIDUCIARY CAPACITY. THE

1 AUTHORIZATION UNDER THIS SUBSECTION CONFERS THE FIDUCIARY
2 CAPACITY ONLY TO THE EXTENT NECESSARY IN THE PARTICULAR MATTER OF
3 EACH APPOINTMENT AND IS NOT A GENERAL GRANT OF FIDUCIARY
4 AUTHORITY. A NONBANKING CORPORATION IS NOT AUTHORIZED TO ACT IN
5 ANY OTHER FIDUCIARY CAPACITY.

6 Sec. 5212. The court may appoint as guardian a person whose
7 appointment serves the minor's welfare, including a ~~nonprofit~~
8 ~~corporation~~ PROFESSIONAL GUARDIAN described in section 5106. If
9 the minor is 14 years of age or older, the court shall appoint a
10 person nominated by the minor, unless the court finds the
11 appointment contrary to the minor's welfare.

12 Sec. 5313. (1) The court may appoint a competent person ~~—~~
13 ~~including a nonprofit corporation described in section 5106,~~ as
14 guardian of a legally incapacitated individual. The court shall
15 not appoint as a guardian an agency, public or private, that
16 financially benefits from directly providing housing, medical,
17 mental health, or social services to the legally incapacitated
18 individual. If the court determines that the ward's property
19 needs protection, the court shall order the guardian to furnish a
20 bond or shall include restrictions in the letters of guardianship
21 as necessary to protect the property.

22 (2) In appointing a guardian under this section, the court
23 shall appoint a person, if suitable and willing to serve, desig-
24 nated by the individual who is the subject of the petition,
25 including a designation made in a durable power of attorney. If
26 a specific designation is not made or a person designated is not
27 suitable or willing to serve, the court may appoint as a guardian

1 a person named as attorney-in-fact through a durable power of
2 attorney.

3 (3) If a person is not designated under subsection (2) or a
4 person designated under subsection (2) is not suitable or willing
5 to serve, the court may appoint as a guardian an individual who
6 is related to THE INDIVIDUAL WHO IS the subject of the petition
7 in the following order of preference:

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

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

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

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

18 (e) A person nominated by ~~the~~ A person who is caring for
19 the LEGALLY INCAPACITATED individual or paying benefits to the
20 LEGALLY INCAPACITATED individual.

21 (4) If none of the persons AS DESIGNATED OR listed in
22 subsection (2) OR (3) is suitable or willing to serve, the court
23 may appoint any competent person who is suitable and willing to
24 serve, INCLUDING A PROFESSIONAL GUARDIAN AS PROVIDED IN SECTION
25 5106.

26 Sec. 5409. (1) The court may appoint an individual, a
27 corporation authorized to exercise fiduciary powers, or a

1 ~~nonprofit corporation~~ PROFESSIONAL CONSERVATOR described in
2 section 5106 to serve as conservator of a protected individual's
3 estate. The following are entitled to consideration for appoint-
4 ment in the following order of priority:

5 (a) A conservator, guardian of property, or similar fidu-
6 ciary appointed or recognized by the appropriate court of another
7 jurisdiction in which the protected individual resides.

8 (b) An individual or corporation nominated by the protected
9 individual if he or she is 14 years of age or older and of suffi-
10 cient mental capacity to make an intelligent choice, including a
11 nomination made in a durable power of attorney.

12 (c) The protected individual's spouse.

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

14 (e) A parent of the protected individual or a person nomi-
15 nated by the will of a deceased parent.

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

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

21 (h) If none of the persons listed in subdivisions (a) to (g)
22 are suitable and willing to serve, any person that the court
23 determines is suitable and willing to serve.

24 (2) A person named in subsection (1)(a), (c), (d), (e), or
25 (f) may designate in writing a substitute to serve instead, and
26 that designation transfers the priority to the substitute. If
27 persons have equal priority, the court shall select the person

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1 the court considers best qualified to serve. Acting in the
2 protected individual's best interest, the court may pass over a
3 person having priority and appoint a person having a lower prior-
4 ity or no priority.

5 Enacting section 1. This amendatory act takes effect
6 June 1, 2001.