

**SUBSTITUTE FOR
SENATE BILL NO. 863**

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

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.

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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 WHO PROVIDES
7 CONSERVATORSHIP SERVICES FOR A FEE AND WHO IS APPOINTED AS A
8 CONSERVATOR FOR 3 OR MORE PROTECTED INDIVIDUALS. PROFESSIONAL
9 CONSERVATOR DOES NOT INCLUDE A PERSON WHO IS AN INDIVIDUAL WHO IS
10 RELATED TO ALL BUT 2 OF THE PROTECTED INDIVIDUALS FOR WHOM HE OR SHE
IS APPOINTED AS CONSERVATOR.

(R) "PROFESSIONAL GUARDIAN" MEANS A PERSON WHO PROVIDES
GUARDIANSHIP SERVICES FOR A FEE AND WHO IS APPOINTED AS A GUARDIAN
FOR 3 OR MORE WARDS. PROFESSIONAL GUARDIAN DOES NOT INCLUDE A
PERSON WHO IS AN INDIVIDUAL WHO IS RELATED TO ALL BUT 2 OF THE WARDS
FOR WHOM HE OR SHE IS APPOINTED AS GUARDIAN.

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

14 (T) ~~(r)~~ "Protected individual" means a minor or other
15 individual for whom a conservator has been appointed or other
16 protective order has been made as provided in part 4 of
17 article V.

18 (U) ~~(s)~~ "Protective proceeding" means a proceeding under
19 the provisions of part 4 of article V.

20 Sec. 5106. (1) Subject to ~~subsections (2) and (3)~~ THE
21 OTHER PROVISIONS OF THIS SECTION, the court may appoint or
22 approve A PROFESSIONAL GUARDIAN OR PROFESSIONAL CONSERVATOR, AS
23 APPROPRIATE, as a guardian, limited or tempo-
24 rary guardian, or conservator under this act, or as a plenary
25 guardian or partial guardian as those terms are defined in sec-
26 tion 600 of the mental health code, 1974 PA 258, MCL 330.1600. ~~—~~
27 ~~a nonprofit corporation incorporated under the nonprofit~~
~~corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, which~~

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1 ~~corporation's primary function is to provide fiduciary services~~
2 ~~in the same manner as other fiduciaries under this act. This~~
3 ~~section shall not be construed to make a person that is not a~~
4 ~~nonprofit corporation described in this subsection ineligible to~~
5 ~~be appointed or approved as a fiduciary.~~

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

9 (a) The appointment of the ~~nonprofit corporation~~
10 PROFESSIONAL GUARDIAN OR PROFESSIONAL CONSERVATOR is in the ~~ward's~~
11 ~~or developmentally disabled~~ INCAPACITATED individual's OR PROTECTED INDIVIDUAL'S best
12 interests.

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

17 (3) The court shall not appoint a ~~corporation~~ PROFESSIONAL
18 GUARDIAN OR PROFESSIONAL CONSERVATOR as authorized under subsection
19 (1) unless the ~~corporation~~ PROFESSIONAL GUARDIAN OR PROFESSIONAL CONSERVATOR
20 files a bond in an amount and with the conditions as determined by the court. ~~The~~ FOR A
21 PROFESSIONAL CONSERVATOR, THE sureties and liabilities of the bond shall be as
22 provided in sections 5410 and 5411. ~~The court shall not appoint~~
23 ~~a corporation described in subsection (1) as a personal represen-~~
24 ~~tative or trustee.~~

25 (4) A ~~corporation~~ PROFESSIONAL GUARDIAN OR PROFESSIONAL
26 CONSERVATOR appointed under this section shall not receive as a result of that appointment a
benefit beyond compensation specifically authorized for that type

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1 of fiduciary by this act or the mental health code, 1974 PA 258,
2 MCL 330.1001 to 330.2106.

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

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

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

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

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

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

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

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

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

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

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

Sec. 5409. (1) The court may appoint an individual, a corporation authorized to exercise fiduciary powers, or a ~~nonprofit corporation~~ PROFESSIONAL CONSERVATOR described in section 5106 to serve as conservator of a protected individual's estate. The following are entitled to consideration for appointment in the following order of priority:

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

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

(c) The protected individual's spouse.

(d) An adult child of the protected individual.

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

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

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

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

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

24 Enacting section 1. This amendatory act takes effect

25 June 1, 2001.