

SENATE BILL No. 863

October 28, 1999, Introduced by Senators HART, MURPHY and VAUGHN and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1106, 5106, and 5313 (MCL 700.1106, 700.5106, and 700.5313).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1106. As used in this act:

2 (a) "Michigan prudent investor rule" means the fiduciary
3 investment and management rule prescribed by part 5 of this
4 article.

5 (b) "Minor" means an individual who is less than 18 years of
6 age.

7 (c) "Minor ward" means a minor for whom a guardian is
8 appointed solely because of minority.

9 (d) "Mortgage" means a conveyance, agreement, or arrangement
10 in which property is encumbered or used as security.

1 (e) "Nonresident decedent" means a decedent who was
2 domiciled in another jurisdiction at the time of his or her
3 death.

4 (f) "Organization" means a corporation, business trust,
5 estate, trust, partnership, joint venture, association, limited
6 liability company, government, governmental subdivision or
7 agency, or another legal or commercial entity.

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

14 (h) "Patient advocate" means an individual designated to
15 exercise powers concerning another individual's care, custody,
16 and medical treatment as provided in section 5506.

17 (i) "Patient advocate designation" means the written docu-
18 ment executed and with the effect as described in sections 5506
19 to 5512.

20 (j) "Payor" means a trustee, insurer, business entity,
21 employer, government, governmental subdivision or agency, or
22 other person authorized or obligated by law or a governing
23 instrument to make payments.

24 (k) "Person" means an individual, partnership, corporation,
25 association, governmental entity, or other legal entity.

26 (l) "Personal representative" includes, but is not limited
27 to, an executor, administrator, successor personal

1 representative, and special personal representative, and any
 2 other person who performs substantially the same function under
 3 the law governing that person's status.

4 (m) "Petition" means a written request to the court for an
 5 order after notice.

6 (n) "Proceeding" includes an application and a petition, and
 7 may be an action at law or a suit in equity. A proceeding may be
 8 denominated a civil action under court rules.

9 (O) "PROFESSIONAL FIDUCIARY" MEANS A PERSON OR ORGANIZATION
 10 THAT PROVIDES FIDUCIARY SERVICES FOR A FEE TO 3 OR MORE UNRELATED
 11 INDIVIDUALS.

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

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

19 (R) ~~(q)~~ "Protective proceeding" means a proceeding under
 20 the provisions of part 4 of article V.

21 Sec. 5106. (1) Subject to ~~subsections (2) and (3)~~ THE
 22 OTHER PROVISIONS OF THIS SECTION, the court may appoint or
 23 approve A PROFESSIONAL FIDUCIARY 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~~

1 ~~corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, which~~
 2 ~~corporation's primary function is to provide fiduciary services~~
 3 ~~in the same manner as other fiduciaries under this act. This~~
 4 ~~section shall not be construed to make a person that is not a~~
 5 ~~nonprofit corporation described in this subsection ineligible to~~
 6 ~~be appointed or approved as a fiduciary.~~

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

10 (a) The appointment of the ~~nonprofit corporation~~
 11 PROFESSIONAL FIDUCIARY is in the ~~ward's or developmentally dis-~~
 12 ~~abled individual's~~ RESPONDENT'S best interests.

13 (b) ~~Another qualified, suitable person has not come before~~
 14 ~~the court and expressed a willingness~~ THERE IS NO SUITABLE INDI-
 15 VIDUAL WILLING to serve in that fiduciary capacity.

16 (C) THE PROFESSIONAL FIDUCIARY HAS AGREED IN WRITING TO
 17 COMPLY WITH ALL OF THE FOLLOWING AS PRESCRIBED BY STATUTE OR
 18 SUPREME COURT RULE:

19 (i) ALL STANDARDS PRESCRIBED FOR THAT CLASS OF FIDUCIARY.

20 (ii) ALL COURT REPORTING REQUIREMENTS PRESCRIBED FOR THAT
 21 CLASS OF FIDUCIARY, INCLUDING ACCURATELY AND COMPLETELY DIVULGING
 22 ALL FIDUCIARY, ATTORNEY, ACCOUNTING, AND OTHER PROFESSIONAL
 23 FEES.

24 (iii) PROVIDING AN ANNUAL REPORT TO THE STATE COURT ADMINIS-
 25 TRATIVE OFFICE THAT INCLUDES AT LEAST ALL OF THE FOLLOWING:

26 (A) THE NUMBER OF INDIVIDUALS FOR WHOM THE PROFESSIONAL
 27 FIDUCIARY SERVES AS A GUARDIAN OR CONSERVATOR.

1 (B) THE NUMBER OF EMPLOYEES PROVIDING THOSE SERVICES.

2 (C) A PROFESSIONALLY AUDITED INCOME AND EXPENSE RECORD.

3 (D) THE PROFESSIONAL FIDUCIARY HAS AGREED IN WRITING TO NOT
4 DO ANY OF THE FOLLOWING:

5 (i) PETITION A COURT FOR THE APPOINTMENT OF A GUARDIAN OR
6 CONSERVATOR.

7 (ii) COMMINGLE A WARD'S OR PROTECTED INDIVIDUAL'S MONEY WITH
8 THE PROFESSIONAL FIDUCIARY'S MONEY.

9 (iii) ENGAGE IN A TRANSACTION WITH A CONFLICT OF INTEREST,
10 INCLUDING A CONFLICT OF INTEREST IN THE SALE OF REAL PROPERTY.

11 (iv) OFFER OR GIVE A REWARD, MONETARY INCENTIVE, OR KICKBACK
12 TO A PUBLIC OFFICIAL, PUBLIC EMPLOYEE, OR OTHER PERSON IN RETURN
13 FOR BEING NOMINATED OR BEING APPOINTED AS GUARDIAN OR CONSERVATOR
14 OR FOR FAVORABLE TREATMENT BY A PUBLIC OFFICIAL, PUBLIC EMPLOYEE,
15 OR OTHER PERSON.

16 (v) SOLICIT OR ACCEPT A REWARD, MONETARY INCENTIVE, OR KICK-
17 BACK FROM A PERSON IN RETURN FOR PURCHASING PRODUCTS OR SERVICES,
18 INCLUDING, BUT NOT LIMITED TO, HEALTH CARE AND FUNERAL SERVICES,
19 FOR A WARD OR PROTECTED INDIVIDUAL.

20 (vi) HAVE AN OFFICER, EXECUTIVE, OR PRINCIPAL OF THE PROFES-
21 SIONAL FIDUCIARY GIVE A CAMPAIGN CONTRIBUTION TO A JUDGE OR JUDI-
22 CIAL CANDIDATE IN THE COUNTY OR COUNTIES IN WHICH THE PERSON
23 ACCEPTS FIDUCIARY APPOINTMENTS BY THE COURT.

24 (vii) ALLOW A PUBLIC OFFICIAL OR COURT EMPLOYEE TO HAVE AN
25 OWNERSHIP INTEREST IN THE PROFESSIONAL FIDUCIARY.

26 (3) The court shall not appoint a ~~corporation~~ PROFESSIONAL
27 FIDUCIARY as authorized under subsection (1) unless the

1 ~~corporation~~ PROFESSIONAL FIDUCIARY files a bond in an amount
2 and with the conditions as determined by the court. ~~The~~ FOR A
3 CONSERVATOR, THE sureties and liabilities of the bond shall be as
4 provided in sections 5410 and 5411. ~~The court shall not appoint~~
5 ~~a corporation described in subsection (1) as a personal represen-~~
6 ~~tative or trustee.~~

7 (4) A ~~corporation~~ PROFESSIONAL FIDUCIARY appointed under
8 this section shall not receive as a result of that appointment a
9 benefit beyond compensation specifically authorized for that type
10 of fiduciary by this act or the mental health code, 1974 PA 258,
11 MCL 330.1001 to 330.2106.

12 Sec. 5313. (1) ~~A~~ THE COURT MAY APPOINT A competent person
13 ~~, including a nonprofit corporation described in section 5106,~~
14 ~~may be appointed~~ AS guardian of an incapacitated individual.
15 The court shall not appoint as a guardian an agency, public or
16 private, that financially benefits from directly providing hous-
17 ing, medical, or social services to the incapacitated
18 individual.

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.

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

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

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

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

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

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

22 (5) THE COURT SHALL NOT FIND A PROFESSIONAL FIDUCIARY SUIT-
23 ABLE TO SERVE UNLESS ALL OF THE FOLLOWING ARE TRUE:

24 (A) THE PROFESSIONAL FIDUCIARY HAS AT LEAST 1 EMPLOYEE
25 EXCLUSIVELY ASSIGNED TO THE CARE OF WARDS FOR EACH 25 INDIVIDUALS
26 FOR WHOM IT SERVES AS GUARDIAN.

1 (B) THE PROFESSIONAL FIDUCIARY ESTABLISHES AND MAINTAINS A
2 SCHEDULE OF VISITATION SO THAT AN EMPLOYEE RESPONSIBLE FOR A
3 WARD'S CARE VISITS THE WARD AT LEAST ONCE EACH CALENDAR MONTH.

4 (C) THE PROFESSIONAL FIDUCIARY HAS FILED A BOND THAT IS NOT
5 LESS THAN THE AMOUNT OF COLLECTIVE ANNUAL INCOME WITHIN ITS CON-
6 TROL FOR ALL INDIVIDUALS FOR WHOM IT SERVES AS GUARDIAN.

7 Enacting section 1. This amendatory act takes effect April
8 1, 2000.