

SUBSTITUTE FOR
HOUSE BILL NO. 5186

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 5305 (MCL 700.5305), as amended by 2000 PA 464,
and by adding section 5319.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5305. (1) The duties of a guardian ad litem appointed for
2 an individual alleged to be incapacitated include all of the
3 following:

4 (a) Personally visiting the individual.

5 (b) Explaining to the individual the nature, purpose, and
6 legal effects of a guardian's appointment.

7 (c) Explaining to the individual the hearing procedure and the
8 individual's rights in the hearing procedure, including, but not

1 limited to, the right to contest the petition, to request limits on
2 the guardian's powers, to object to a particular person being
3 appointed guardian, to be present at the hearing, to be represented
4 by legal counsel, and to have legal counsel appointed for the
5 individual if he or she is unable to afford legal counsel.

6 (d) Informing the individual of the name of each person known
7 to be seeking appointment as guardian.

8 **(E) ASKING THE INDIVIDUAL AND THE PETITIONER ABOUT THE AMOUNT**
9 **OF CASH AND PROPERTY READILY CONVERTIBLE INTO CASH THAT IS IN THE**
10 **INDIVIDUAL'S ESTATE.**

11 **(F) ~~(e)~~**—Making determinations, and informing the court of
12 those determinations, on all of the following:

13 (i) Whether there are 1 or more appropriate alternatives to the
14 appointment of a full guardian **OR WHETHER 1 OR MORE ACTIONS SHOULD**
15 **BE TAKEN IN ADDITION TO THE APPOINTMENT OF A GUARDIAN.** Before
16 informing the court of his or her determination under this
17 subparagraph, the guardian ad litem shall consider the
18 appropriateness of at least each of the following **AS** alternatives
19 **OR ADDITIONAL ACTIONS:**

20 (A) Appointment of a limited guardian, including the specific
21 powers and limitation on those powers the guardian ad litem
22 believes appropriate.

23 (B) Appointment of a conservator or another protective order
24 under part 4 of this article. **IN THE REPORT INFORMING THE COURT OF**
25 **THE DETERMINATIONS UNDER THIS SUBDIVISION, THE GUARDIAN AD LITEM**
26 **SHALL INCLUDE AN ESTIMATE OF THE AMOUNT OF CASH AND PROPERTY**
27 **READILY CONVERTIBLE INTO CASH THAT IS IN THE INDIVIDUAL'S ESTATE.**

1 (C) Execution of a patient advocate designation, do-not-
2 resuscitate declaration, or durable power of attorney with or
3 without limitations on purpose, authority, or duration.

4 (ii) Whether a disagreement or dispute related to the
5 guardianship petition might be resolved through court ordered
6 mediation.

7 (iii) Whether the individual wishes to be present at the
8 hearing.

9 (iv) Whether the individual wishes to contest the petition.

10 (v) Whether the individual wishes limits placed on the
11 guardian's powers.

12 (vi) Whether the individual objects to a particular person
13 being appointed guardian.

14 (2) The court shall not order compensation of the guardian ad
15 litem unless the guardian ad litem states on the record or in the
16 guardian ad litem's written report that he or she has complied with
17 subsection (1).

18 (3) If the individual alleged to be incapacitated wishes to
19 contest the petition, to have limits placed on the guardian's
20 powers, or to object to a particular person being appointed
21 guardian and if legal counsel has not been secured, the court shall
22 appoint legal counsel to represent the individual alleged to be
23 incapacitated. If the individual alleged to be incapacitated is
24 indigent, the state shall bear the expense of legal counsel.

25 (4) If the individual alleged to be incapacitated requests
26 legal counsel or the guardian ad litem determines it is in the
27 individual's best interest to have legal counsel, and if legal

1 counsel has not been secured, the court shall appoint legal
2 counsel. If the individual alleged to be incapacitated is indigent,
3 the state shall bear the expense of legal counsel.

4 (5) If the individual alleged to be incapacitated has legal
5 counsel appointed under subsection (3) or (4), the appointment of a
6 guardian ad litem terminates.

7 SEC. 5319. (1) IF A COURT DETERMINES THAT THE TOTAL AMOUNT OF
8 CASH AND PROPERTY THAT IS READILY CONVERTIBLE INTO CASH IN A WARD'S
9 ESTATE EXCEEDS THE LIMIT FOR ADMINISTERING A DECEDENT'S ESTATE
10 UNDER SECTION 3982, ADJUSTED IN THE MANNER PROVIDED UNDER SECTION
11 1210 FOR THE YEAR IN WHICH THE GUARDIAN IS APPOINTED, OR IF THE
12 COURT DETERMINES THAT FINANCIAL PROTECTION IS REQUIRED FOR THE WARD
13 FOR ANOTHER REASON, THE COURT MAY ORDER THE GUARDIAN TO PETITION
14 FOR THE APPOINTMENT OF A CONSERVATOR OR FOR ANOTHER PROTECTIVE
15 ORDER FOR THE WARD'S ESTATE.

16 (2) IF A CONSERVATOR HAS NOT BEEN APPOINTED FOR A WARD'S
17 ESTATE AND THE GUARDIAN DETERMINES THAT THERE IS MORE CASH OR
18 PROPERTY THAT IS READILY CONVERTIBLE INTO CASH IN THE WARD'S ESTATE
19 THAN WAS REPORTED BY THE GUARDIAN AD LITEM UNDER SECTION
20 5305(1)(F), THE GUARDIAN SHALL REPORT THE AMOUNT OF THE ADDITIONAL
21 CASH OR PROPERTY TO THE COURT.

22 Enacting section 1. This amendatory act does not take effect
23 unless all of the following bills of the 94th Legislature are
24 enacted into law:

25 (a) House Bill No. 5187.

26 (b) House Bill No. 5188.