

HOUSE BILL No. 5186

September 7, 2007, Introduced by Reps. Rick Jones, Steil, Stahl, Rocca, Coulouris, Wenke, Green, David Law, Stakoe, Moore, Moolenaar, Bieda, Emmons, Meadows and Dean and referred to the Committee on Judiciary.

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
9 limited to, the right to contest the petition, to request limits on

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

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

7 (e) Making determinations, and informing the court of those
8 determinations, on all of the following:

9 (i) Whether there are 1 or more appropriate alternatives to the
10 appointment of a full guardian. Before informing the court of his
11 or her determination under this subparagraph, the guardian ad litem
12 shall consider the appropriateness of at least each of the
13 following alternatives:

14 (A) Appointment of a limited guardian, including the specific
15 powers and limitation on those powers the guardian ad litem
16 believes appropriate.

17 (B) Appointment of a conservator or another protective order
18 under part 4 of this article.

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

22 (ii) Whether a disagreement or dispute related to the
23 guardianship petition might be resolved through court ordered
24 mediation.

25 (iii) Whether the individual wishes to be present at the
26 hearing.

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

1 (v) Whether the individual wishes limits placed on the
2 guardian's powers.

3 (vi) Whether the individual objects to a particular person
4 being appointed guardian.

5 **(F) REPORTING TO THE COURT THE AMOUNT OF CASH AND PROPERTY**
6 **READILY CONVERTIBLE INTO CASH THAT IS IN THE INDIVIDUAL'S ESTATE.**

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

11 (3) If the individual alleged to be incapacitated wishes to
12 contest the petition, to have limits placed on the guardian's
13 powers, or to object to a particular person being appointed
14 guardian and if legal counsel has not been secured, the court shall
15 appoint legal counsel to represent the individual alleged to be
16 incapacitated. If the individual alleged to be incapacitated is
17 indigent, the state shall bear the expense of legal counsel.

18 (4) If the individual alleged to be incapacitated requests
19 legal counsel or the guardian ad litem determines it is in the
20 individual's best interest to have legal counsel, and if legal
21 counsel has not been secured, the court shall appoint legal
22 counsel. If the individual alleged to be incapacitated is indigent,
23 the state shall bear the expense of legal counsel.

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

27 **SEC. 5319. (1) IF A COURT DETERMINES THAT THE TOTAL AMOUNT OF**

1 CASH AND PROPERTY THAT IS READILY CONVERTIBLE INTO CASH IN A WARD'S
2 ESTATE EXCEEDS THE LIMIT FOR ADMINISTERING A DECEDENT'S ESTATE
3 UNDER SECTION 3982, ADJUSTED IN THE MANNER PROVIDED UNDER SECTION
4 1210 FOR THE YEAR IN WHICH THE GUARDIAN IS APPOINTED, THE COURT MAY
5 ORDER THE GUARDIAN TO PETITION FOR THE APPOINTMENT OF A CONSERVATOR
6 FOR THE WARD'S ESTATE.

7 (2) IF A CONSERVATOR HAS NOT BEEN APPOINTED FOR THE WARD'S
8 ESTATE AND THE GUARDIAN DETERMINES THAT THERE IS MORE CASH OR
9 PROPERTY THAT IS READILY CONVERTIBLE INTO CASH IN THE WARD'S ESTATE
10 THAN WAS REPORTED BY THE GUARDIAN AD LITEM UNDER SECTION
11 5305(1)(F), THE GUARDIAN SHALL REPORT THE AMOUNT OF THE ADDITIONAL
12 CASH OR PROPERTY TO THE COURT.

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

16 (a) Senate Bill No.____ or House Bill No. 5187(request no.
17 01779'07 **).

18 (b) Senate Bill No.____ or House Bill No. 5188(request no.
19 01780'07 ***).