

# SENATE BILL No. 959

October 28, 2009, Introduced by Senators GEORGE, BIRKHOLZ, BASHAM, KAHN, PAPPAGEORGE and HARDIMAN and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5404, 5405, 5406, 5407, and 5427 (MCL 700.5404, 700.5405, 700.5406, 700.5407, and 700.5427), section 5406 as amended by 2000 PA 464 and section 5407 as amended by 2009 PA 46.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        Sec. 5404. (1) ~~The~~ **ONE OR MORE OF THE FOLLOWING MAY PETITION**  
 2        **FOR THE APPOINTMENT OF A CONSERVATOR OR FOR ANOTHER APPROPRIATE**  
 3        **PROTECTIVE ORDER:**

4        (A) **THE** individual to be protected. ~~—a~~

5        (B) **A** person who is interested in the individual's estate,  
 6        affairs, or welfare, including a parent, guardian, or custodian, or  
 7        a person who would be adversely affected by lack of effective  
 8        management of the individual's property and business affairs. ~~may~~

~~petition for a conservator's appointment or for another appropriate protective order.~~

(C) IF THE PETITION IS FOR AN EX PARTE PRELIMINARY PROTECTIVE ORDER UNDER SECTION 5407(2)(A), A LOCAL LAW ENFORCEMENT OFFICER OR THE DIRECTOR OF THE COUNTY OFFICE OF THE DEPARTMENT OF HUMAN SERVICES.

(2) The petition must set forth to the extent known the petitioner's interest; the name, age, residence, and address of the individual to be protected; the name and address of the guardian, if any; the name and address of the nearest relative known to the petitioner; a general statement of the individual's property **KNOWN TO THE PETITIONER** with an estimate of the value of the property, including compensation, insurance, a pension, or an allowance to which the individual is entitled; and the reason why a conservator's appointment or another protective order is necessary. If a conservator's appointment is requested, the petition shall also set forth the name and address of the person whose appointment is sought and the basis of the claim to priority for appointment.

(3) A PETITION UNDER SUBSECTION (1)(C) SHALL CONTAIN A STATEMENT THAT THE PETITIONER HAS A GOOD FAITH BELIEF THAT THERE IS AN IMMEDIATE RISK THAT THE PROPERTY OF THE INDIVIDUAL TO BE PROTECTED WILL BE DISSIPATED IF A PROTECTIVE ORDER IS NOT ISSUED IMMEDIATELY WITHOUT A HEARING AND WITHOUT NOTICE AND STATE THE FACTS THAT SUPPORT THAT BELIEF.

Sec. 5405. (1) On a petition for a conservator's appointment or another protective order, the requirements for notice described in section 5311 apply, subject to the following:

1 (a) If the individual to be protected has disappeared or is  
2 otherwise situated so as to make personal service of notice  
3 impracticable, notice to the individual shall be given by mail or  
4 publication as provided in section 1401.

5 (b) If the individual to be protected is a minor, section  
6 5213(1) also applies.

7 **(C) SERVICE OF NOTICE OF A PETITION UNDER SECTION 5404(1)(C)**  
8 **IS NOT REQUIRED BEFORE ENTRY OF AN ORDER UNDER SECTION 5407(2)(A) .**

9 (2) Notice of a hearing on a petition for an order after a  
10 conservator's appointment or another protective order must be given  
11 to the protected individual, a conservator of the protected  
12 individual's estate, and any other person as ordered by the court  
13 or as provided by court rule.

14 **(3) IF AN ORDER IS ENTERED UNDER SECTION 5407(2)(A), NOTICE OF**  
15 **THE PETITION AND ENTRY OF THE ORDER SHALL BE GIVEN UNDER SUBSECTION**  
16 **(1) .**

17 Sec. 5406. (1) Upon receipt of a petition for a conservator's  
18 appointment or another protective order because of minority, the  
19 court shall set a date for hearing. If ~~at~~ at any time in the  
20 proceeding ~~the~~ the court determines that the minor's interests are or  
21 may be inadequately represented, the court may appoint an attorney  
22 to represent the minor, giving consideration to the minor's choice  
23 if **THE MINOR IS** 14 years of age or older. An attorney appointed by  
24 the court to represent a minor has the powers and duties of a  
25 guardian ad litem.

26 (2) Upon receipt of a petition for a conservator's appointment  
27 or another protective order for a reason other than minority, the

1 court shall set a date for hearing. Unless the individual to be  
2 protected has chosen counsel, or is mentally competent but aged or  
3 physically infirm, the court shall appoint a guardian ad litem to  
4 represent the person in the proceeding. If the alleged disability  
5 is mental illness, mental deficiency, physical illness or  
6 disability, chronic use of drugs, or chronic intoxication, the  
7 court may direct that the individual alleged to need protection be  
8 examined by a physician or mental health professional appointed by  
9 the court, preferably a physician or mental health professional who  
10 is not connected with an institution in which the individual is a  
11 patient or is detained. The individual alleged to need protection  
12 has the right to secure an independent evaluation at his or her own  
13 expense. The court may send a visitor to interview the individual  
14 to be protected. The visitor may be a guardian ad litem or a court  
15 officer or employee.

16 (3) AFTER ENTRY OF AN ORDER UNDER SECTION 5407(2)(A), A PERSON  
17 WHO COULD PETITION FOR THE APPOINTMENT OF A CONSERVATOR FOR THE  
18 PROTECTED INDIVIDUAL MAY REQUEST A HEARING. THE COURT SHALL SET A  
19 DATE FOR AND HOLD A HEARING UNDER THIS SUBSECTION WITHIN 14 DAYS  
20 AFTER THE REQUEST FOR A HEARING.

21 (4) ~~(3)~~—The court may utilize, as an additional visitor UNDER  
22 THIS SECTION, the service of a public or charitable agency to  
23 evaluate the condition of the individual to be protected and make  
24 appropriate recommendations to the court.

25 (5) ~~(4)~~—A guardian ad litem, physician, mental health  
26 professional, or visitor appointed under this section who meets  
27 with, examines, or evaluates an individual who is the subject of a

1 petition in a protective proceeding shall do all of the following:

2 (a) Consider whether there is an appropriate alternative to a  
3 conservatorship.

4 (b) If a conservatorship is appropriate, consider the  
5 desirability of limiting the scope and duration of the  
6 conservator's authority.

7 (c) Report to the court based on the considerations required  
8 in subdivisions (a) and (b).

9 (6) ~~(5)~~—The individual to be protected is entitled to be  
10 present at ~~the~~ **A hearing HELD UNDER THIS SECTION** in person. If the  
11 individual wishes to be present at the hearing, all practical steps  
12 must be taken to ensure the individual's presence including, if  
13 necessary, moving the site of the hearing. The individual is  
14 entitled to be represented by counsel, to present evidence, to  
15 cross-examine witnesses, including a court-appointed physician or  
16 other qualified person and a visitor, and to trial by jury. The  
17 issue may be determined at a closed hearing or without a jury if  
18 the individual to be protected or counsel for the individual so  
19 requests.

20 (7) ~~(6)~~—Any person may request ~~for~~ permission to participate  
21 in the proceeding, and the court may grant the request, with or  
22 without hearing, upon determining that the best interest of the  
23 individual to be protected will be served by granting the request.  
24 The court may attach appropriate conditions to the permission.

25 (8) ~~(7)~~—After hearing, upon finding that a basis for a  
26 conservator's appointment or another protective order is  
27 established by clear and convincing evidence, the court shall make

1 the appointment or other appropriate protective order.

2       Sec. 5407. (1) The court shall exercise the authority  
3 conferred in this part to encourage the development of maximum  
4 self-reliance and independence of a protected individual and shall  
5 make protective orders only to the extent necessitated by the  
6 protected individual's mental and adaptive limitations and other  
7 conditions warranting the procedure. Accordingly, the court may  
8 authorize a protected individual to function without the consent or  
9 supervision of the individual's conservator in handling part of his  
10 or her money or property, including authorizing the individual to  
11 maintain an account with a financial institution. To the extent the  
12 individual is authorized to function autonomously, a person may  
13 deal with the individual as though the individual is mentally  
14 competent.

15       (2) The court has the following powers that may be exercised  
16 directly or through a conservator in respect to a protected  
17 individual's estate and business affairs:

18       **(A) ON PETITION BY AN INDIVIDUAL UNDER SECTION 5404(1)(C), IF**  
19 **THE COURT DETERMINES THAT THERE IS AN IMMEDIATE RISK THAT THE**  
20 **PROPERTY OF THE PERSON TO BE PROTECTED WILL BE DISSIPATED IF A**  
21 **PROTECTIVE ORDER IS NOT ISSUED IMMEDIATELY WITHOUT A HEARING AND**  
22 **NOTICE TO OTHERS, THE POWER TO ENTER A PROTECTIVE ORDER TO PRESERVE**  
23 **PROPERTY OF THE INDIVIDUAL TO BE PROTECTED WITHOUT A HEARING AND**  
24 **WITHOUT NOTICE TO OTHERS.**

25       **(B)** ~~(a)~~ While a petition for a conservator's appointment or  
26 another protective order is pending and after preliminary hearing  
27 and without notice to others, the court has the power to preserve

1 and apply property of the individual to be protected as may be  
2 required for the support of the individual or the individual's  
3 dependents.

4 (C) ~~(b)~~ After hearing and upon determining that a basis for an  
5 appointment or other protective order exists with respect to a  
6 minor without other disability, the court has all those powers over  
7 the minor's estate and business affairs that are or may be  
8 necessary for the best interests of the minor and members of the  
9 minor's immediate family.

10 (D) ~~(e)~~ After hearing and upon determining that a basis for an  
11 appointment or other protective order exists with respect to an  
12 individual for a reason other than minority, the court, for the  
13 benefit of the individual and members of the individual's immediate  
14 family, has all the powers over the estate and business affairs  
15 that the individual could exercise if present and not under  
16 disability, except the power to make a will. Those powers include,  
17 but are not limited to, all of the following:

18 (i) To make gifts.

19 (ii) To convey or release a contingent or expectant interest in  
20 property including marital property rights and a right of  
21 survivorship incident to joint tenancy or tenancy by the entirety.

22 (iii) To exercise or release a power held by the protected  
23 individual as personal representative, custodian for a minor,  
24 conservator, or donee of a power of appointment **OR, UNTIL APRIL 1,**  
25 **2010, A POWER HELD BY THE PROTECTED INDIVIDUAL AS TRUSTEE.**

26 (iv) To enter into a contract.

27 (v) To create a revocable or irrevocable trust of estate

1 property that may extend beyond the disability or life of the  
2 protected individual.

3 (vi) To exercise an option of the protected individual to  
4 purchase securities or other property.

5 (vii) To exercise a right to elect an option and change a  
6 beneficiary under an insurance or annuity policy and to surrender  
7 the policy for its cash value.

8 (viii) To exercise a right to an elective share in the estate of  
9 the individual's deceased spouse.

10 (ix) To renounce or disclaim an interest by testate or  
11 intestate succession or by inter vivos transfer.

12 (3) The court may exercise or direct the exercise of the  
13 following powers only if satisfied, after the notice and hearing,  
14 that it is in the protected individual's best interests and that  
15 the individual either is incapable of consenting or has consented  
16 to the proposed exercise of the power:

17 (a) To exercise or release a power of appointment of which the  
18 protected individual is donee.

19 (b) To renounce or disclaim an interest.

20 (c) To make a gift in trust or otherwise exceeding 20% of a  
21 year's income of the estate.

22 (d) To change a beneficiary under an insurance and annuity  
23 policy.

24 (4) A determination that a basis for a conservator's  
25 appointment or another protective order exists has no effect on the  
26 protected individual's capacity.

27 Sec. 5427. Subject to the restrictions in section 5407(3), at



1 the time of appointment or later, the court may confer on a  
2 conservator, in addition to the powers conferred by sections 5423  
3 to 5426, any power that the court itself could exercise under  
4 section ~~5407(2)(b) and (c)~~ **5407(2)(C) AND (D)**. At the time of  
5 appointment or later, the court may limit the powers of a  
6 conservator otherwise conferred by sections 5423 to 5426 or  
7 previously conferred by the court, and may at any time remove or  
8 modify a limitation. If the court limits a power conferred on the  
9 conservator by sections 5423 to 5426 or specifies, as provided in  
10 section 5419(1), that title to some, but not all, of the protected  
11 individual's property vests in the conservator, the limitation or  
12 specification of property subject to the conservatorship shall be  
13 endorsed upon the letters of appointment.