

Legislative Analysis



APPOINTMENT OF OUT-OF-STATE GUARDIAN/CONSERVATOR

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Senate Bill 539 (Substitute H-1)
Sponsor: Sen. Tonya Schuitmaker
House Committee: Judiciary
Senate Committee: Judiciary

Complete to 12-2-12

A SUMMARY OF SENATE BILL 539 AS REPORTED BY HOUSE COMMITTEE

The bill would establish a mechanism by which an out-of-state guardian or conservator could be appointed to manage the affairs of a minor or legally incapacitated adult/protected individual residing in Michigan. The bill would also make changes to the order of preference of individuals who could be appointed as a guardian of a legally incapacitated individual.

Generally speaking, a guardian is concerned with the individual (minor or adult) and that individual's needs, for example, medical decisions. An adult under a guardianship is referred to as a "legally incapacitated person." A conservator is appointed to handle an individual's financial matters and is empowered to make decisions regarding property and assets owned by the adult or minor subject to the conservatorship, who is referred to as a "legally protected individual."

Senate Bill 539 would amend Sections 5313 and 5433 of the Estates and Protected Individuals Code (EPIC) and add two new sections.

Guardians

The bill would create a mechanism by which a guardian in another state who had been appointed and was serving in good standing could be appointed as a temporary guardian in this state for up to 28 days. Within 14 days of the appointment, the out-of-state temporary guardian would have to notify all interested persons of the appointment. Upon filing proof of service of the notifications with the court, the temporary guardian would be appointed full guardian. If an objection was filed, the guardianship would continue unless a Michigan court ordered the removal of the guardian. This provision would only apply if a guardian for a minor or legally incapacitated individual had not been appointed, or was not pending in the state.

Currently, a court may appoint a competent person as guardian of a legally incapacitated individual, with some restrictions as to who is qualified for appointment. A person who is the subject of a guardianship petition can request that a specific person be appointed, and the court is then required to appoint that person; this provision would be eliminated.

In addition, the statute allows a court to appoint as a guardian a person who is related to the individual named in the guardianship petition and sets up an order of preference that the court is required to follow (spouse or person nominated by will by a deceased spouse, adult child, parent or person nominated by will by deceased parent, relative with whom the legally incapacitated adult has resided for more than six months prior to the petition's filing, and lastly, a person nominated by a person providing care for or paying benefits to the legally incapacitated individual).

The list and order cited in the paragraph above would be preserved, but would now be considered after the court first considered appointing the following, in the order presented:

- A person previously appointed, qualified, and serving in good standing as guardian for the legally incapacitated individual in another jurisdiction.
- A person that the individual subject to the petition chooses to serve as guardian.
- A person nominated as guardian in a durable power of attorney or other writing by the individual subject to the petition.
- A person named by the individual named as a patient advocate or attorney in fact in a durable power of attorney.

Conservator

Similarly to guardians, the bill would allow a conservator who is qualified and serving in good standing in another state to be immediately appointed as a temporary conservator on filing the required documents. Letters for temporary conservatorship would expire 28 days after appointment; the temporary conservator would have to notify interested persons within 14 days of the appointment; and the temporary conservator would be appointed full conservator upon filing proof of service of the notifications. If an objection were filed, the conservatorship would continue unless a state court entered an order removing the conservator. The provision would apply only if a conservator had not been appointed in the state and a petition in a protective proceeding was not pending.

FISCAL IMPACT:

The bill would have an indeterminate, but likely minimal, fiscal impact on probate courts. To the extent that the bill affects the practices of local probate courts, they may see an increase in administrative workload. The cost of these changes is not known, but would not likely be a significant portion of the probate court's operating costs.

BACKGROUND INFORMATION:

According to written information submitted to the House Judiciary Committee, Michigan is the only state that does not have a statutory process by which a guardianship or conservatorship authorized in a different state can be transferred to Michigan when the subject of the guardianship or conservatorship relocates to this state. Currently, the foreign guardian or conservator must petition and participate in a hearing in order to be

appointed in Michigan—a process which duplicates the petition and hearing process of the appointing state. The bill would address this situation.

Under the bill, a foreign guardian or conservator who is both qualified and in good standing with the appointing state would receive priority in being appointed by a Michigan court. The bill provides a temporary period of guardianship or conservatorship during which notification of the appointment is issued to interested parties and during which objections can be filed. Absent objections, the foreign guardian or conservator could continue to serve the minor, legally incapacitated individual, or legally protected individual.

POSITIONS:

A representative of the Probate and Estate Planning Section of the State Bar of Michigan testified in support of the bill. (11-29-12)

The Michigan Probate Judges Association indicated support for the bill. (11-29-12)

The Long Term Care Ombudsman indicated support for the H-1 substitute. (11-29-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.