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BILL



ANALYSIS

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Senate Bill 539 (as enacted)  
Sponsor: Senator Tonya Schuitmaker  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACT 545 of 2012**

Date Completed: 8-20-13

**CONTENT**

**The bill amended the Estates and Protected Individuals Code (EPIC) to do all of the following:**

- **Allow a guardian appointed and serving in another state to be appointed as a guardian for a minor or incapacitated individual in Michigan.**
- **Delete a requirement that a court appoint as guardian for an incapacitated individual a person designated by the individual.**
- **Identify and prioritize the people to be appointed as a guardian for an incapacitated individual.**
- **Revise provisions under which an out-of-state conservator may be appointed as a conservator for a minor or individual under disability in Michigan.**
- **Provide that if an objection to an out-of-State guardianship or conservatorship is filed, the guardianship or conservatorship will continue unless a court removes the person appointed.**

The bill took effect on January 2, 2013.

**Appointment of Out-of-State Guardian**

Article V of EPIC deals with the protection of an individual under disability and his or her property. Part 2 of Article V addresses guardians of a minor, while Part 3 pertains to guardians of incapacitated individuals.

The bill amended Part 2 and Part 3 to provide that, if a guardian has not been appointed in Michigan and a petition for the appointment of a guardian is not pending in to serve, the court could appoint as a specified designation was not made or a person designated was not suitable or willing

this State, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in Michigan. The temporary appointment may be made on the filing with a Michigan court of an application for appointment, an authenticated copy of the guardian's appointment in the other state, and an acceptance of appointment. Letters of guardianship for the temporary guardian will expire 28 days after the date of appointment.

Within 14 days after appointment as temporary guardian, the guardian must notify all interested people of his or her appointment and their right to object to it. On filing proof of service of the notice with the court, the temporary guardian must be appointed full guardian and the court must issue letters of guardianship accordingly.

If an objection to a guardianship is filed, the guardianship continues unless a Michigan court enters an order removing the guardian.

**Guardian Appointment: Order of Preference**

Part 3 of Article V allows a court to appoint a competent person as guardian of a legally incapacitated individual, and places restrictions on that appointment.

Previously, Part 3 required the court to appoint a person designated by the individual who was the subject of the petition, including a designation made in a durable power of attorney, if that person was suitable and willing to serve. If a specific designation was not made or a person designated was not suitable or willing to serve, the court could appoint as a guardian a person named as attorney in fact through a durable power of attorney. The

bill deleted those provisions.

Under the bill, in appointing a guardian under Part 3, the court must appoint a person, if suitable and willing to serve, in the following order of priority:

- A person previously appointed, qualified, and serving in good standing as guardian for the legally incapacitated individual in another state.
- A person 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 as a patient advocate or attorney in fact in a durable power of attorney.

If there is no person chosen, nominated, or named according to the priorities listed above, or if none of those people is suitable or willing to serve, the court may appoint an individual who is related to the person who is the subject of the petition in the following order of preference:

- The incapacitated individual's spouse.
- An adult child of the incapacitated individual.
- A parent of the individual.
- A relative of the individual with whom he or she has lived for more than six months before the petition is filed.
- A person nominated by someone who is caring for or paying benefits to the incapacitated individual.

Previously, if a person was not designated or a person designated was not suitable or willing to serve, the court could appoint as a guardian an individual who was related to the person who was the subject of the petition in the order of preference specified above.

#### Appointment of Out-of-State Conservator

Part 4 of Article V provides for protection of the property of an individual under disability or of a minor.

Previously, if a conservator had not been appointed in Michigan and a petition in a protective proceeding was not pending in this State, a conservator appointed in the state in which the protected individual lived could file in a Michigan court an

authenticated copy of letters of appointment and of any bond. After the filing, the domiciliary foreign conservator was allowed to exercise as to property in Michigan all the powers of conservator appointed in Michigan and maintain an action or proceeding in Michigan subject to any conditions imposed upon nonresident parties generally.

Under the bill, instead, if a conservator has not been appointed in Michigan and a petition in a protective proceeding is not pending in this State, a conservator appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary conservator in Michigan. The temporary appointment may be made on the filing with a Michigan court of an application for appointment, an authenticated copy of letters of appointment in the other state, and an acceptance of appointment. Letters of conservatorship for the temporary guardian will expire 28 days after the date of appointment.

Within 14 days after appointment as temporary conservator, the conservator must notify all interested people of his or her appointment and their right to object to it. On filing proof of service of the notice with the court, the temporary conservator must be appointed full conservator and the court must issue letters of conservatorship accordingly.

If an objection to a conservatorship is filed, the conservatorship will continue unless a Michigan court enters an order removing the conservator.

MCL 700.5313 et al.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill will have an indeterminate, but likely negligible, fiscal impact on State and local government. To the extent that the bill increases the workload of various probate courts, local jurisdictions may incur additional administrative costs.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.