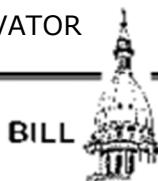




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 539 (as introduced 6-29-11)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

(as passed by the Senate)

Date Completed: 9-13-11

CONTENT

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

- **Allow a guardian appointed and serving in another jurisdiction 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.**
- **Place certain people at the beginning of the order of preference to be appointed as a guardian for an incapacitated individual.**
- **Allow a conservator appointed and serving in another jurisdiction to 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 were filed, the guardianship or conservatorship would continue unless a court removed the person appointed.**

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 would amend Part 2 and Part 3 to provide that, if a guardian had not been appointed in Michigan and a petition for the appointment of a guardian were not pending in this State, a guardian appointed, qualified, and serving in good standing in another jurisdiction could be appointed immediately as temporary guardian in Michigan. The temporary appointment could 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 jurisdiction, and an acceptance of appointment. Letters of guardianship for the temporary guardian would expire 28 days after the date of appointment.

Within 14 days after appointment as temporary guardian, the guardian would have to 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 would have to be appointed full guardian and the court would have to issue letters of guardianship accordingly.

If an objection to a guardianship were filed, the guardianship would continue unless a Michigan court entered an order removing the guardian.

Guardian Appointment: Order of Preference

Part 3 allows a court to appoint a competent person as guardian of a legally incapacitated individual, and places restrictions on that appointment. The bill would delete a provision requiring the court to appoint a person designated by the individual who is the subject of the petition, including a designation made in a durable power of attorney, if that person is suitable and willing to serve. Under that provision, if a specific designation is not made or a person designated is not suitable or willing to serve, the court may appoint as a guardian a person named as attorney in fact through a durable power of attorney.

If a person is not designated or a person designated is not suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in a specified order of preference. Under the bill, in appointing a guardian, the court could appoint an individual who was related to the individual who was the subject of the petition in an order of preference that would begin with the following:

- A person previously appointed, qualified, and serving in good standing as guardian for the legally incapacitated individual in another jurisdiction.
- A person the legally incapacitated individual nominated to serve as guardian.
- A person the legally incapacitated individual named as attorney in fact in a durable power of attorney.

The remaining order of preference would be the same as that currently prescribed (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; or a person nominated by someone who is caring for or paying benefits to the incapacitated individual).

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. Under Part 4, 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 in the state in which the protected individual lives may file in a Michigan court an authenticated copy of letters of appointment and of any bond. After the filing, the domiciliary foreign conservator may exercise as to property in Michigan all the powers of conservator appointed in Michigan and may maintain an action or proceeding in Michigan subject to any conditions imposed upon nonresident parties generally.

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

Within 14 days after appointment as temporary conservator, the conservator would have to 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 would have to be appointed full conservator and the court would have to issue letters of conservatorship accordingly.

If an objection to a conservatorship were filed, the conservatorship would continue unless a Michigan court entered an order removing the conservator.

FISCAL IMPACT

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

Fiscal Analyst: Matthew Grabowski