

# SENATE BILL No. 1338

October 17, 2012, Introduced by Senator HILDENBRAND and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending sections 5303 and 5306 (MCL 700.5303 and 700.5306),  
section 5303 as amended by 2000 PA 468 and section 5306 as amended  
by 2004 PA 532.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 5303. (1) An individual in his or her own behalf, or any  
2 person interested in the individual's welfare, may petition for a  
3 finding of incapacity and appointment of a guardian. **A PERSON**  
4 **INTERESTED IN THE WELFARE OF A MINOR WHO IS NOT LESS THAN 17 YEARS**  
5 **AND 6 MONTHS OF AGE MAY PETITION FOR A FINDING OF INCAPACITY AND**  
6 **APPOINTMENT OF GUARDIAN EFFECTIVE ON THE MINOR'S EIGHTEENTH**  
7 **BIRTHDAY.** The petition shall contain specific facts about the

1 individual's condition and specific examples of the individual's  
2 recent conduct that demonstrate the need for a guardian's  
3 appointment.

4 (2) Before a petition is filed under this section, the court  
5 shall provide the person intending to file the petition with  
6 written information that sets forth alternatives to appointment of  
7 a full guardian, including, but not limited to, a limited guardian,  
8 conservator, patient advocate designation, do-not-resuscitate  
9 declaration, or durable power of attorney with or without  
10 limitations on purpose, authority, or time period, and an  
11 explanation of each alternative.

12 (3) Upon the filing of a petition under subsection (1), the  
13 court shall set a date for hearing on the issue of incapacity. **IF**  
14 **THE ALLEGEDLY INCAPACITATED INDIVIDUAL IS A MINOR WHO IS NOT LESS**  
15 **THAN 17 YEARS AND 6 MONTHS OF AGE, THE COURT MAY SET A HEARING ON**  
16 **THE ISSUE OF INCAPACITY BEFORE THE MINOR'S EIGHTEENTH BIRTHDAY.**  
17 Unless the allegedly incapacitated individual has legal counsel of  
18 his or her own choice, the court shall appoint a guardian ad litem  
19 to represent the ~~person~~-**INDIVIDUAL** in the proceeding.

20 Sec. 5306. (1) The court may appoint a guardian if the court  
21 finds by clear and convincing evidence both that the individual for  
22 whom a guardian is sought is an incapacitated individual and that  
23 the appointment is necessary as a means of providing continuing  
24 care and supervision of the incapacitated individual, with each  
25 finding supported separately on the record. Alternately, the court  
26 may dismiss the proceeding or enter another appropriate order.

27 (2) The court shall grant a guardian only those powers and

1 only for that period of time as is necessary to provide for the  
2 demonstrated need of the incapacitated individual. The court shall  
3 design the guardianship to encourage the development of maximum  
4 self-reliance and independence in the individual. If the court is  
5 aware that an individual has executed a patient advocate  
6 designation under section 5506, the court shall not grant a  
7 guardian any of the same powers that are held by the patient  
8 advocate. A court order establishing a guardianship shall specify  
9 any limitations on the guardian's powers and any time limits on the  
10 guardianship.

11 (3) If the court finds by clear and convincing evidence that  
12 an individual is incapacitated and lacks the capacity to do some,  
13 but not all, of the tasks necessary to care for himself or herself,  
14 the court may appoint a limited guardian to provide guardianship  
15 services to the individual, but the court shall not appoint a full  
16 guardian.

17 (4) If the court finds by clear and convincing evidence that  
18 the individual is incapacitated and is totally without capacity to  
19 care for himself or herself, the court shall specify that finding  
20 of fact in an order and may appoint a full guardian.

21 (5) If an individual executed a patient advocate designation  
22 under section 5506 before the time the court determines that he or  
23 she became a legally incapacitated individual, a guardian does not  
24 have and shall not exercise the power or duty of making medical or  
25 mental health treatment decisions that the patient advocate is  
26 designated to make. If, however, a petition for guardianship or for  
27 modification under section 5310 alleges and the court finds that

1 the patient advocate designation was not executed in compliance  
2 with section 5506, that the patient advocate is not complying with  
3 the terms of the designation or with the applicable provisions of  
4 sections 5506 to 5515, or that the patient advocate is not acting  
5 consistent with the ward's best interests, the court may modify the  
6 guardianship's terms to grant those powers to the guardian.

7 (6) IF THE INCAPACITATED INDIVIDUAL IS A MINOR WHO IS NOT LESS  
8 THAN 17 YEARS AND 6 MONTHS OF AGE, THE COURT MAY MAKE THE  
9 APPOINTMENT OF A GUARDIAN UNDER SUBSECTION (1) EFFECTIVE ON THE  
10 MINOR'S EIGHTEENTH BIRTHDAY.