

HOUSE BILL NO. 4727

July 15, 2025, Introduced by Reps. Wilson, Pavlov, Green, Schmaltz, Thompson, Conlin, Hope, McKinney, Roth, St. Germaine, Aragona, Neyer, Prestin, Bohnak, Alexander, Markkanen, Bierlein, Kuhn, Tisdell, Outman, Rigas, MacDonell and VanderWall and referred to Committee on Families and Veterans.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5106, 5313, and 5409 (MCL 700.5106, 700.5313, and 700.5409), section 5106 as amended by 2017 PA 136, section 5313 as amended by 2024 PA 1, and section 5409 as amended by 2000 PA 463.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5106. (1) Subject to subsections (2) and (3), the court
2 may appoint or approve a professional guardian or professional
3 conservator, as appropriate, as a guardian or conservator under

1 this act, or as a plenary guardian or partial guardian as those
2 terms are defined in section 600 of the mental health code, 1974 PA
3 258, MCL 330.1600.

4 (2) The court shall only appoint a professional guardian or
5 professional conservator as authorized under subsection (1) if the
6 court finds on the record all of the following:

7 (a) The appointment of the professional guardian or
8 professional conservator is in the ward's, developmentally disabled
9 individual's, incapacitated individual's, or protected individual's
10 best interests.

11 (b) There is no other person that is competent, suitable, and
12 willing to serve in that fiduciary capacity in accordance with
13 section 5212, 5313, or 5409.

14 (3) The court shall not appoint a professional guardian or
15 professional conservator as authorized under subsection (1) unless
16 the professional guardian or professional conservator files a bond
17 in an amount and with the conditions as determined by the court.
18 For a professional conservator, the sureties and liabilities of the
19 bond are subject to sections 5410 and 5411.

20 **(4) Beginning 2 years after the effective date of the**
21 **amendatory act that added this sentence, except as otherwise**
22 **provided in section 5313 or 5409, as applicable, the court shall**
23 **not appoint a person as a professional guardian or professional**
24 **conservator unless the person is or employs an individual licensed**
25 **under article 14A of the occupational code, 1980 PA 299, MCL**
26 **339.1410 to 339.1413.**

27 (5) ~~(4)~~—A professional guardian or professional conservator
28 appointed under this section shall not receive as a result of that
29 appointment a benefit beyond compensation specifically authorized

1 for that type of fiduciary by this act or the mental health code,
2 1974 PA 258, MCL 330.1001 to 330.2106. This subsection does not
3 prevent a person from providing compensation or other benefits,
4 from a source other than the estate of the ward, developmentally
5 disabled individual, incapacitated individual, or protected
6 individual, to a professional guardian or professional conservator
7 appointed or approved under this section. If a professional
8 guardian or professional conservator appointed or approved under
9 this section receives or is to receive compensation or other
10 benefits as a result of that appointment from a person other than
11 this state, a political subdivision of this state, or a trust
12 created under section 5407(2), the professional guardian or
13 professional conservator shall file with the appointing or
14 approving court a written statement of the compensation or other
15 benefit received or to be received, including the source of the
16 compensation or other benefit, in a form and in a manner prescribed
17 by the Michigan court rules. The professional guardian or
18 professional conservator shall serve a copy of the form described
19 in this subsection to the ward, developmentally disabled
20 individual, incapacitated individual, or protected individual and
21 to interested persons.

22 (6) ~~(5)~~—A professional guardian appointed under this section
23 shall establish and maintain a schedule of visitation so that an
24 individual associated with the professional guardian who is
25 responsible for the ward's care visits the ward within 3 months
26 after the professional guardian's appointment and not less than
27 once within 3 months after each previous visit.

28 (7) ~~(6)~~—**Subject to subsection (8),** a professional guardian
29 appointed under this section shall ensure that there are a

1 sufficient number of employees assigned to the care of wards for
2 the purpose of performing the necessary duties associated with
3 ensuring that proper and appropriate care is provided.

4 **(8) Beginning 2 years after the effective date of the**
5 **amendatory act that added this sentence, an employee of a**
6 **professional guardian described in section 5313(3)(f) or an**
7 **employee of a professional conservator described in section**
8 **5409(1)(h) shall not independently make medical, psychological,**
9 **financial, legal, or housing decisions on behalf of a ward or**
10 **protected individual, as applicable, unless the employee is**
11 **licensed under article 14A of the occupational code, 1980 PA 299,**
12 **MCL 339.1410 to 339.1413.**

13 **(9) ~~(7)~~**—For the purposes of the statutory authorization
14 required by section 1105(2)(e) of the banking code of 1999, 1999 PA
15 276, MCL 487.11105, to act as a fiduciary in this state, if the
16 court appoints a for-profit or nonprofit, nonbanking corporation
17 organized under the laws of this state to serve in a fiduciary
18 capacity that is listed in subsection (1), the nonbanking
19 corporation is authorized to act in that fiduciary capacity. The
20 authorization under this subsection confers the fiduciary capacity
21 only to the extent necessary in the particular matter of each
22 appointment and is not a general grant of fiduciary authority. A
23 nonbanking corporation is not authorized to act in any other
24 fiduciary capacity.

25 Sec. 5313. (1) The court may appoint a competent person as
26 guardian of a legally incapacitated individual. The court shall not
27 appoint as a guardian an agency, public or private, that
28 financially benefits from directly providing housing, medical,
29 mental health, or social services to the legally incapacitated

1 individual. If the court determines that the ward's property needs
2 protection, the court shall order the guardian to furnish a bond or
3 shall include restrictions in the letters of guardianship as
4 necessary to protect the property.

5 (2) In appointing a guardian under this section, the court
6 shall appoint a person, if suitable and willing to serve, in the
7 following order of priority:

8 (a) A person previously appointed, qualified, and serving in
9 good standing as guardian for the legally incapacitated individual
10 in this state or another state.

11 (b) A person the individual subject to the petition chooses to
12 serve as guardian.

13 (c) A person nominated as guardian in a durable power of
14 attorney or other writing by the individual subject to the
15 petition.

16 (d) A person named by the individual as a patient advocate or
17 attorney in fact in a durable power of attorney.

18 (e) A person appointed by a parent or spouse of a legally
19 incapacitated individual by will or other writing under section
20 5301.

21 (3) If there is no person chosen, nominated, or named under
22 subsection (2), or if none of the persons listed in subsection (2)
23 are suitable or willing to serve, the court may appoint as a
24 guardian an individual who is related to the individual who is the
25 subject of the petition in the following order of preference:

26 (a) The legally incapacitated individual's spouse. This
27 subdivision is considered to include a person nominated by will or
28 other writing signed by a deceased spouse.

29 (b) An adult child of the legally incapacitated individual.

1 (c) A parent of the legally incapacitated individual. This
2 subdivision is considered to include a person nominated by will or
3 other writing signed by a deceased parent.

4 (d) A relative of the legally incapacitated individual with
5 whom the individual has resided for more than 6 months before the
6 filing of the petition.

7 (e) A person nominated by a person who is caring for the
8 legally incapacitated individual or paying benefits to the legally
9 incapacitated individual.

10 **(f) A person, other than an individual, that is a professional**
11 **guardian or an individual professional guardian who is licensed**
12 **under article 14A of the occupational code, 1980 PA 299, MCL**
13 **339.1410 to 339.1413.**

14 (4) If none of the persons as designated or listed in
15 subsection (2) or (3) are suitable or willing to serve, the court
16 may appoint any competent person who is suitable and willing to
17 serve, including a professional guardian as provided in section
18 5106.

19 Sec. 5409. (1) The court may appoint an individual, a
20 corporation authorized to exercise fiduciary powers, or a
21 professional conservator described in section 5106 to serve as
22 conservator of a protected individual's estate. The following are
23 entitled to consideration for appointment in the following order of
24 priority:

25 (a) A conservator, guardian of property, or similar fiduciary
26 appointed or recognized by the appropriate court of another
27 jurisdiction in which the protected individual resides.

28 (b) An individual or corporation nominated by the protected
29 individual if he or she is 14 years of age or older and of

sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.

(c) The protected individual's spouse.

(d) An adult child of the protected individual.

(e) A parent of the protected individual or a person nominated by the will of a deceased parent.

(f) A relative of the protected individual with whom he or she has resided for more than 6 months before the petition is filed.

(g) A person nominated by the person who is caring for or paying benefits to the protected individual.

(h) A person, other than an individual, that is a professional conservator or an individual professional conservator who is licensed under article 14A of the occupational code, 1980 PA 299, MCL 339.1410 to 339.1413.

(i) ~~(h)~~ If none of the persons listed in subdivisions (a) to ~~(g)~~ **(h)** are suitable and willing to serve, any person that the court determines is suitable and willing to serve.

(2) A person named in subsection (1)(a), (c), (d), (e), or (f) may designate in writing a substitute to serve instead, and that designation transfers the priority to the substitute. If persons have equal priority, the court shall select the person the court considers best qualified to serve. Acting in the protected individual's best interest, the court may pass over a person having priority and appoint a person having a lower priority or no priority.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4728 (request no. H01902'25) of the 103rd Legislature is enacted into law.