

HOUSE SUBSTITUTE FOR

SENATE BILL NO. 539

(As amended December 11, 2012)

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5313 and 5433 (MCL 700.5313 and 700.5433),
section 5313 as amended by 2000 PA 463, and by adding sections
5202a and 5301a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 5202A. (1) IF A GUARDIAN HAS NOT BEEN APPOINTED IN THIS
2 STATE AND A PETITION FOR THE APPOINTMENT OF A GUARDIAN IS NOT
3 PENDING IN THIS STATE, A GUARDIAN APPOINTED, QUALIFIED, AND SERVING
4 IN GOOD STANDING IN ANOTHER [STATE] MAY BE APPOINTED
5 IMMEDIATELY AS TEMPORARY GUARDIAN IN THIS STATE ON FILING WITH A
6 COURT IN THIS STATE AN APPLICATION FOR APPOINTMENT, AN
7 AUTHENTICATED COPY OF THE GUARDIAN'S APPOINTMENT IN THE OTHER
8 [STATE,] AND AN ACCEPTANCE OF APPOINTMENT. LETTERS OF

Senate Bill No. 539 (H-1) as amended December 11, 2012

1 GUARDIANSHIP FOR THE TEMPORARY GUARDIAN EXPIRE 28 DAYS AFTER THE
2 DATE OF APPOINTMENT.

3 (2) WITHIN 14 DAYS AFTER APPOINTMENT AS TEMPORARY GUARDIAN
4 UNDER SUBSECTION (1), THE GUARDIAN SHALL GIVE NOTICE TO ALL
5 INTERESTED PERSONS OF HIS OR HER APPOINTMENT AND THE RIGHT TO
6 OBJECT TO THE APPOINTMENT. ON FILING PROOF OF SERVICE OF THE NOTICE
7 WITH THE COURT, THE TEMPORARY GUARDIAN SHALL BE APPOINTED FULL
8 GUARDIAN AND THE COURT SHALL ISSUE LETTERS OF GUARDIANSHIP
9 ACCORDINGLY.

10 (3) IF AN OBJECTION IS FILED TO A GUARDIANSHIP UNDER THIS
11 SECTION, THE GUARDIANSHIP CONTINUES UNLESS A COURT IN THIS STATE
12 ENTERS AN ORDER REMOVING THE GUARDIAN.

13 SEC. 5301A. (1) IF A GUARDIAN HAS NOT BEEN APPOINTED IN THIS
14 STATE AND A PETITION FOR THE APPOINTMENT OF A GUARDIAN IS NOT
15 PENDING IN THIS STATE, A GUARDIAN APPOINTED, QUALIFIED, AND SERVING
16 IN GOOD STANDING IN ANOTHER [STATE] MAY BE APPOINTED
17 IMMEDIATELY AS TEMPORARY GUARDIAN IN THIS STATE ON FILING WITH A
18 COURT IN THIS STATE AN APPLICATION FOR APPOINTMENT, AN
19 AUTHENTICATED COPY OF THE GUARDIAN'S APPOINTMENT IN THE OTHER
20 [STATE,] AND AN ACCEPTANCE OF APPOINTMENT. LETTERS OF
21 GUARDIANSHIP FOR THE TEMPORARY GUARDIAN EXPIRE 28 DAYS AFTER THE
22 DATE OF APPOINTMENT.

23 (2) WITHIN 14 DAYS AFTER APPOINTMENT AS TEMPORARY GUARDIAN
24 UNDER SUBSECTION (1), THE GUARDIAN SHALL GIVE NOTICE TO ALL
25 INTERESTED PERSONS OF HIS OR HER APPOINTMENT AND THE RIGHT TO
26 OBJECT TO THE APPOINTMENT. ON FILING PROOF OF SERVICE OF THE NOTICE
27 WITH THE COURT, THE TEMPORARY GUARDIAN SHALL BE APPOINTED FULL

Senate Bill No. 539 (H-1) as amended December 11, 2012

1 GUARDIAN AND THE COURT SHALL ISSUE LETTERS OF GUARDIANSHIP
2 ACCORDINGLY.

3 (3) IF AN OBJECTION IS FILED TO A GUARDIANSHIP UNDER THIS
4 SECTION, THE GUARDIANSHIP CONTINUES UNLESS A COURT IN THIS STATE
5 ENTERS AN ORDER REMOVING THE GUARDIAN.

6 Sec. 5313. (1) The court may appoint a competent person as
7 guardian of a legally incapacitated individual. The court shall not
8 appoint as a guardian an agency, public or private, that
9 financially benefits from directly providing housing, medical,
10 mental health, or social services to the legally incapacitated
11 individual. If the court determines that the ward's property needs
12 protection, the court shall order the guardian to furnish a bond or
13 shall include restrictions in the letters of guardianship as
14 necessary to protect the property.

15 (2) In appointing a guardian under this section, the court
16 shall appoint a person, if suitable and willing to serve,
17 ~~designated by the individual who is the subject of the petition,~~
18 ~~including a designation made in a durable power of attorney. If a~~
19 ~~specific designation is not made or a person designated is not~~
20 ~~suitable or willing to serve, the court may appoint as a guardian a~~
21 ~~person named as attorney in fact through a durable power of~~
22 ~~attorney.~~ IN THE FOLLOWING ORDER OF PRIORITY:

23 (A) A PERSON PREVIOUSLY APPOINTED, QUALIFIED, AND SERVING IN
24 GOOD STANDING AS GUARDIAN FOR THE LEGALLY INCAPACITATED INDIVIDUAL
25 IN ANOTHER [STATE].

26 (B) A PERSON THE INDIVIDUAL SUBJECT TO THE PETITION CHOOSES TO
27 SERVE AS GUARDIAN.

1 (C) A PERSON NOMINATED AS GUARDIAN IN A DURABLE POWER OF
2 ATTORNEY OR OTHER WRITING BY THE INDIVIDUAL SUBJECT TO THE
3 PETITION.

4 (D) A PERSON NAMED BY THE INDIVIDUAL AS A PATIENT ADVOCATE OR
5 ATTORNEY IN FACT IN A DURABLE POWER OF ATTORNEY.

6 ~~(3) If a person is not designated under subsection (2) or a~~
7 ~~person designated under subsection (2) is not suitable or willing~~
8 ~~to serve, the~~ IF THERE IS NO PERSON CHOSEN, NOMINATED, OR NAMED
9 UNDER SUBSECTION (2), OR IF NONE OF THE PERSONS LISTED IN
10 SUBSECTION (2) ARE SUITABLE OR WILLING TO SERVE, THE court may
11 appoint as a guardian an individual who is related to the
12 individual who is the subject of the petition in the following
13 order of preference:

14 (a) The legally incapacitated individual's spouse. This
15 subdivision shall be considered to include a person nominated by
16 will or other writing signed by a deceased spouse.

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

18 (c) A parent of the legally incapacitated individual. This
19 subdivision shall be considered to include a person nominated by
20 will or other writing signed by a deceased parent.

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

24 (e) A person nominated by a person who is caring for the
25 legally incapacitated individual or paying benefits to the legally
26 incapacitated individual.

27 (4) If none of the persons as designated or listed in

Senate Bill No. 539 (H-1) as amended December 11, 2012

1 subsection (2) or (3) ~~is~~ **ARE** suitable or willing to serve, the
 2 court may appoint any competent person who is suitable and willing
 3 to serve, including a professional guardian as provided in section
 4 5106.

5 Sec. 5433. (1) If a conservator has not been appointed in this
 6 state and a petition in a protective proceeding is not pending in
 7 this state, a conservator appointed, ~~in the state in which the~~
 8 ~~protected individual resides may file in a court of this state, in~~
 9 ~~a county in which property belonging to the protected individual is~~
 10 ~~located,~~ **QUALIFIED, AND SERVING IN GOOD STANDING IN ANOTHER**
 11 **[STATE] MAY BE APPOINTED IMMEDIATELY AS TEMPORARY CONSERVATOR**
 12 **IN THIS STATE ON FILING WITH A COURT IN THIS STATE AN APPLICATION**
 13 **FOR APPOINTMENT,** an authenticated copy of letters of appointment
 14 ~~and of any bond. After the filing, the domiciliary foreign~~
 15 ~~conservator may exercise as to property in this state all the~~
 16 ~~powers of a conservator appointed in this state and may maintain an~~
 17 ~~action or proceeding in this state subject to any conditions~~
 18 ~~imposed upon nonresident parties generally.~~ **IN THE OTHER**
 19 **[STATE,] AND AN ACCEPTANCE OF APPOINTMENT. LETTERS OF**
 20 **CONSERVATORSHIP FOR THE TEMPORARY CONSERVATOR EXPIRE 28 DAYS AFTER**
 21 **THE DATE OF APPOINTMENT.**

22 (2) **WITHIN 14 DAYS AFTER APPOINTMENT AS TEMPORARY CONSERVATOR**
 23 **UNDER SUBSECTION (1), THE CONSERVATOR SHALL GIVE NOTICE TO ALL**
 24 **INTERESTED PERSONS OF HIS OR HER APPOINTMENT AND THE RIGHT TO**
 25 **OBJECT TO THE APPOINTMENT. ON FILING PROOF OF SERVICE OF THE NOTICE**
 26 **WITH THE COURT, THE TEMPORARY CONSERVATOR SHALL BE APPOINTED FULL**
 27 **CONSERVATOR AND THE COURT SHALL ISSUE LETTERS OF CONSERVATORSHIP**

1 ACCORDINGLY.

2 (3) IF AN OBJECTION IS FILED TO A CONSERVATORSHIP UNDER THIS
3 SECTION, THE CONSERVATORSHIP CONTINUES UNLESS A COURT IN THIS STATE
4 ENTERS AN ORDER REMOVING THE CONSERVATOR.