

Act No. 312
Public Acts of 2000
Approved by the Governor
October 17, 2000
Filed with the Secretary of State
October 17, 2000
EFFECTIVE DATE: January 1, 2001

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Reps. Richner, Woronchak, Hart, Shulman and Julian

ENROLLED HOUSE BILL No. 5919

AN ACT to amend 1998 PA 386, entitled "An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts," by amending sections 5306, 5313, 5417, and 5418 (MCL 700.5306, 700.5313, 700.5417, and 700.5418), section 5313 as amended by 2000 PA 54, and by adding section 5520.

The People of the State of Michigan enact:

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

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

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

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

(5) If an individual executed a patient advocate designation under section 5506 before the time the court determines that he or she became a legally incapacitated individual, a guardian does not have and shall not exercise the power or duty of making medical treatment decisions that the patient advocate is designated to make. If, however, a petition for guardianship or for modification under section 5310 alleges and the court finds that the patient advocate designation was not executed in compliance with section 5506, that the patient advocate is not complying with the terms of the designation or of sections 5506 to 5512, or that the patient advocate is not acting consistent with the ward's best interests, the court may modify the guardianship's terms to grant those powers to the guardian.

Sec. 5313. (1) The court may appoint a competent person, including a nonprofit corporation described in section 5106, as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward's property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, designated by the individual who is the subject of the petition, including a designation made in a durable power of attorney. 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.

(3) If a person is not designated under subsection (2) or a person designated under subsection (2) is not suitable or willing to serve, the court may appoint as a guardian an individual who is related to the subject of the petition in the following order of preference:

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

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

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

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

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

(4) If none of the persons listed in subsection (3) is suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve.

Sec. 5417. (1) Within 56 days after appointment or within another time period specified by court rule, a conservator shall prepare and file with the appointing court a complete inventory of the estate subject to the conservatorship together with an oath or affirmation that the inventory is believed to be complete and accurate so far as information permits. The conservator shall provide a copy of the inventory to the protected individual if the individual can be located and is 14 years of age or older and to interested persons as specified in the Michigan court rules.

(2) The conservator must keep suitable records of the administration and exhibit those records on the request of an interested person.

Sec. 5418. (1) A conservator shall account to the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal, and at other times as the court directs. On termination of the protected individual's minority or disability, a conservator shall account to the court or to the formerly protected individual or that individual's successors. Subject to appeal or vacation within the time permitted, an order, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection with the accounts, and an order, after notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected individual or the protected individual's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate to be made in any manner the court specifies.

(2) The conservator shall provide a copy of an account to the protected individual if the individual can be located and is 14 years of age or older and to interested persons as specified in the Michigan court rules.

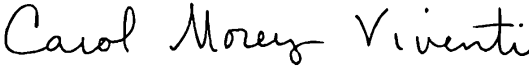
Sec. 5520. A legally incapacitated individual who has a guardian with responsibility for making medical treatment decisions cannot then designate another individual to make medical treatment decisions for the legally incapacitated individual.

Enacting section 1. This amendatory act takes effect January 1, 2001.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

Governor.