

Legislative Analysis



PROFESSIONAL GUARDIANS OR CONSERVATORS: PROCESS AND BENEFITS

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Senate Bill 49 as enacted
Public Act 136 of 2017
Sponsor: Sen. Darwin L. Booher
House Committee: Judiciary
Senate Committee: Judiciary
Complete to 4-12-19

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 49 amends the Estates and Protected Individuals Code (EPIC) to clarify the process of appointing a professional guardian or conservator and to specify what benefits a professional guardian or conservator is prohibited from receiving as a result of that appointment.

The code states that a professional guardian or conservator appointed under EPIC cannot receive, because of that appointment, a benefit beyond compensation specifically authorized for that type of fiduciary by EPIC or the Mental Health Code. The bill, however, specifies that a person is not prevented from providing compensation or other benefits to a professional conservator or guardian from a source other than the estate of the ward, developmentally disabled individual, incapacitated individual, or protected individual.

If a professional conservator or guardian receives compensation or benefits from a person other than this state, a political subdivision of this state, or a trust created under section 5407(2) of EPIC, the professional conservator or guardian must file a written statement of the compensation or benefit, including its source, in a form and manner prescribed by the Michigan Court Rules. This statement must be filed with the court that made the appointment or approval, and a copy must be served to the ward, developmentally disabled individual, incapacitated individual, or protected individual and to interested persons.

The bill took effect January 24, 2018.

MCL 700.5106

BRIEF DISCUSSION:

Professional conservators and guardians are utilized frequently in Michigan and have key roles in maintaining an individual's trusts and assets. This kind of conservatorship is commonly called a public guardian, where the person or entity maintains the trusts or assets of more than one person to whom they are not related. To protect wards, developmentally disabled individuals, incapacitated individuals, or protected individuals from being taken advantage of, the rules in EPIC set stringent guidelines against conflicts of interest. However, these current rules hinder a professional conservator or guardian from being

properly compensated, which negatively affects their ability to properly maintain the trusts or assets.

The bill provides the ability for such a conservator or guardian to receive proper payments from third parties while also maintaining transparency by requiring them to file statements with the courts and give notice to the ward, developmentally disabled individual, incapacitated individual, or protected individual, and to other interested persons.

FISCAL IMPACT:

The bill would have no fiscal impact on the state or on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.