

Legislative Analysis



PROFESSIONAL GUARDIAN/CONSERVATORS: PROCESS AND BENEFITS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 49 (reported from House Committee as H-1)
Sponsor: Sen. Darwin L. Booher
House Committee: Judiciary
Senate Committee: Judiciary
Complete to 4-14-17

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

BRIEF SUMMARY: Senate Bill 49 would amend the Estates and Protected Individuals Code (EPIC) by clarifying the process of appointing a professional guardian or conservator, and also specifying what benefits a professional guardian or conservator is prohibited from receiving as a result of that appointment.

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

THE APPARENT PROBLEM:

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 CONTENT OF THE BILL:

The bill would amend the Estates and Protected Individuals Code (EPIC) to clarify what benefits a professional guardian or conservator can receive and what benefits he or she is prohibited from receiving. The current law 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), then the professional conservator or guardian would have to file a written statement of the compensation or benefit in the form prescribed by Supreme Court rule. This statement would be filed with the court that made the appointment or approval, and a copy given to the ward, developmentally disabled individual, incapacitated individual, or protected individual, as well as to interested persons specified in the Michigan Court Rules.

Currently under the law, a court may appoint or approve a professional guardian or conservator "subject to the other provisions of this section." The bill would replace "the other provisions of this section" with "Subsections (2) and (3)," making it clear for a court which procedures it must follow to appoint or approve a professional guardian or conservator.

HOUSE COMMITTEE ACTION:

The bill passed by the Senate said 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. The House Judiciary Committee adopted language to be inserted after this provision that requires a professional conservator or guardian to file a written statement with court detailing any compensation or benefit received from a person other than this state, a political subdivision of this state, or a trust created under Section 5407 (2).

ARGUMENTS:

For:

Recent testimony revealed that professional conservators and guardians are severely limited from receiving compensation or benefits from a third party, which can hinder services provided. However, some payments from third parties can be a conflict of interest for the professional conservator or guardian. The bill provides both the ability to receive proper payments from third parties while also maintaining transparency by filing statements with the courts and giving notice to the ward, developmentally disabled individual, incapacitated individual, or protected individual, and to other interested persons. Thus, the bill accomplishes the goals needed for proper reform.

Response:

Critics of the bill are in favor of what it tries to accomplish, but take issue with the specific language in the section that would require a professional conservator or guardian to file a written statement as "prescribed by Supreme Court rule." This is because, they say, there is currently no rule from the Michigan Supreme Court, so there is no form available for a professional conservator or guardian to file a written statement. Because there must be a rule from the Supreme Court for the provision to work, they would like the wording changed.

POSITIONS:

Representatives from the following entities indicated support for SB 49:

- Michigan Probate Judges Association. (3-28-17)
- Michigan Guardianship Association. (3-14-17)

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Robin Risko

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