



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 713 (Substitute S-2 as reported by the Committee of the Whole)
Sponsor: Senator Jim Marleau
Committee: Judiciary

CONTENT

The bill would add Part 6 (Protective Arrangements for Vulnerable Adults) to Article 5 of the Estates and Protected Individuals Code to do the following:

- Allow an individual who was 18 years of age or older and who believed his or her right to communicate or visit with a person of his or her choice had been denied to petition the court for a protective arrangement for communication or visitation, or both.
- Allow an individual who was at least 18 and who was interested in the welfare of an allegedly vulnerable adult to petition the court for a finding that the adult was a vulnerable adult and for a protective arrangement.
- Prescribe the information that would have to be included in a petition.
- Allow the court, after a petition was filed, to order the parties to engage in mediation, request the county department of social services to investigate the dispute, appoint a guardian ad litem for the allegedly vulnerable adult, or order the allegedly vulnerable adult to be examined by a licensed physician, psychologist, or social worker.
- State a presumption that it was in the best interest of an allegedly vulnerable adult to communicate or visit with a person with whom he or she had an existing relationship.
- Allow the respondent (the person who allegedly denied visitation or communication between the adult and the petitioner) to rebut the presumption with evidence that the petitioner had abused the allegedly vulnerable adult or that communication or visitation would be harmful to him or her.
- Allow the court to enter an order establishing reasonable times and methods for a petitioner to communicate with or visit a vulnerable adult or requiring the respondent or whomever had custody of the vulnerable adult to notify the petitioner of a change in the adult's residence or his or her admission to a hospital or skilled nursing facility, if the court found that the respondent had denied communication or visitation between the vulnerable adult and the petitioner.
- Specify that if an allegedly vulnerable adult objected to a petitioner's visitation, the petitioner would have to demonstrate that the objection resulted from the respondent's undue influence over the allegedly vulnerable adult.
- Allow the court to assess costs and reasonable attorney fees if a petition were granted, or if the court found that the petitioner had filed the petition in bad faith.

The bill would amend Article 5 (Protection of an Individual under Disability and His or Her Property) to do the following:

- Allow a court to appoint a guardian ad litem for a vulnerable adult at any point in a formal proceeding involving the vulnerable adult's estate.
- Require a guardian ad litem appointed for an incapacitated individual to make determinations as to with whom the incapacitated individual wished to communicate or visit, and whether that communication or visitation would be likely to place the individual

at serious risk for harm and whether a form of restriction or supervision would be appropriate.

- Require a court to design a guardianship to promote an incapacitated individual's social well-being.
- Specify that an individual for whom a guardian was sought or had been appointed would have the right to visit or communicate with individuals of his or her choice, or if he or she were unable to express his or her preferences, with individuals with whom he or she had existing relationships.
- Allow the court to remove a guardian, appoint a successor guardian, modify the guardianship's terms, or terminate the guardianship if the court found by a preponderance of the evidence that the guardian failed to implement the court's design of the guardianship, failed to enforce the ward's rights, or failed to satisfy his or her duties, or any other grounds that demonstrated that the guardian was no longer suitable to serve.
- Allow a person interested in the welfare of a ward to petition the court for a finding that the ward was a vulnerable adult and for an order of visitation or communication, or for an order that required the guardian to notify the petitioner of a change in the ward's residence or his or her admission to a hospital or skilled nursing facility.

MCL 700.1108 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill could have a negative fiscal impact on the State. The bill is not expected to have a fiscal impact on local units of government.

The bill would have an uncertain but potentially significant fiscal impact on the Michigan Department of Health and Human Services (DHHS) local offices, which are staffed by State employees. Pursuant to the bill and upon receipt of a petition, courts could order local DHHS offices to investigate disputes before a hearing. It is not known to what degree this could increase labor costs, but if local DHHS offices received many requests to investigate disputes, they would require additional staff resources.

No fiscal impact on local court systems is expected as a result of the bill. The bill would allow courts to assess costs against respondents when granting petitions and to assess costs against petitioners when a petition was determined to be filed in bad faith. This would offset any costs to courts as a result of any possible increase in petitions or filings.

Date Completed: 6-11-18

Fiscal Analyst: John Maxwell
Michael Siracuse