

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 49

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 5106 (MCL 700.5106), as amended by 2000 PA 463.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5106. (1) Subject to ~~the other provisions of this~~
2 ~~section,~~ **SUBSECTIONS (2) AND (3)**, the court may appoint or approve
3 a professional guardian or professional conservator, as
4 appropriate, as a guardian or conservator under this act, or as a
5 plenary guardian or partial guardian as those terms are defined in
6 section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

7 (2) The court shall only appoint a professional guardian or
8 professional conservator as authorized under subsection (1) if the
9 court finds on the record all of the following:

1 (a) The appointment of the professional guardian or
2 professional conservator is in the ward's, developmentally disabled
3 individual's, incapacitated individual's, or protected individual's
4 best interests.

5 (b) There is no other person that is competent, suitable, and
6 willing to serve in that fiduciary capacity in accordance with
7 section 5212, 5313, or 5409.

8 (3) The court shall not appoint a professional guardian or
9 professional conservator as authorized under subsection (1) unless
10 the professional guardian or professional conservator files a bond
11 in an amount and with the conditions as determined by the court.
12 For a professional conservator, the sureties and liabilities of the
13 bond ~~shall be as provided in~~ **ARE SUBJECT TO** sections 5410 and 5411.

14 (4) A professional guardian or professional conservator
15 appointed under this section shall not receive as a result of that
16 appointment a benefit beyond compensation specifically authorized
17 for that type of fiduciary by this act or the mental health code,
18 1974 PA 258, MCL 330.1001 to 330.2106. **THIS SUBSECTION DOES NOT**
19 **PREVENT A PERSON FROM PROVIDING COMPENSATION OR OTHER BENEFITS,**
20 **FROM A SOURCE OTHER THAN THE ESTATE OF THE WARD, DEVELOPMENTALLY**
21 **DISABLED INDIVIDUAL, INCAPACITATED INDIVIDUAL, OR PROTECTED**
22 **INDIVIDUAL, TO A PROFESSIONAL GUARDIAN OR PROFESSIONAL CONSERVATOR**
23 **APPOINTED OR APPROVED UNDER THIS SECTION. IF A PROFESSIONAL**
24 **GUARDIAN OR PROFESSIONAL CONSERVATOR APPOINTED OR APPROVED UNDER**
25 **THIS SECTION RECEIVES OR IS TO RECEIVE COMPENSATION OR OTHER**
26 **BENEFITS AS A RESULT OF THAT APPOINTMENT FROM A PERSON OTHER THAN**
27 **THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE, OR A TRUST**

1 CREATED UNDER SECTION 5407(2), THE PROFESSIONAL GUARDIAN OR
2 PROFESSIONAL CONSERVATOR SHALL FILE WITH THE APPOINTING OR
3 APPROVING COURT A WRITTEN STATEMENT OF THE COMPENSATION OR OTHER
4 BENEFIT RECEIVED OR TO BE RECEIVED, INCLUDING THE SOURCE OF THE
5 COMPENSATION OR OTHER BENEFIT, IN A FORM AND IN A MANNER PRESCRIBED
6 BY THE MICHIGAN COURT RULES. THE PROFESSIONAL GUARDIAN OR
7 PROFESSIONAL CONSERVATOR SHALL SERVE A COPY OF THE FORM DESCRIBED
8 IN THIS SUBSECTION TO THE WARD, DEVELOPMENTALLY DISABLED
9 INDIVIDUAL, INCAPACITATED INDIVIDUAL, OR PROTECTED INDIVIDUAL AND
10 TO INTERESTED PERSONS.

11 (5) A professional guardian appointed under this section shall
12 establish and maintain a schedule of visitation so that an
13 individual associated with the professional guardian who is
14 responsible for the ward's care visits the ward within 3 months
15 after the professional guardian's appointment and not less than
16 once within 3 months after each previous visit.

17 (6) A professional guardian appointed under this section shall
18 ensure that there are a sufficient number of employees assigned to
19 the care of wards for the purpose of performing the necessary
20 duties associated with ensuring that proper and appropriate care is
21 provided.

22 (7) For the purposes of the statutory authorization required
23 by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL
24 487.11105, to act as a fiduciary in this state, if the court
25 appoints a for-profit or nonprofit, nonbanking corporation
26 organized under the laws of this state to serve in a fiduciary
27 capacity that is listed in subsection (1), the nonbanking

1 corporation is authorized to act in that fiduciary capacity. The
2 authorization under this subsection confers the fiduciary capacity
3 only to the extent necessary in the particular matter of each
4 appointment and is not a general grant of fiduciary authority. A
5 nonbanking corporation is not authorized to act in any other
6 fiduciary capacity.

7 Enacting section 1. This amendatory act takes effect 90 days
8 after the date it is enacted into law.