

SENATE BILL No. 49

January 18, 2017, Introduced by Senator BOOHER and referred to the Committee on
Judiciary.

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:

10 (a) The appointment of the professional guardian or
11 professional conservator is in the ward's, developmentally disabled

1 individual's, incapacitated individual's, or protected individual's
2 best interests.

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

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

12 (4) A professional guardian or professional conservator
13 appointed under this section shall not receive as a result of that
14 appointment **FROM THE ESTATE OF THE WARD, DEVELOPMENTALLY DISABLED**
15 **INDIVIDUAL, INCAPACITATED INDIVIDUAL, OR PROTECTED INDIVIDUAL** a
16 benefit beyond compensation specifically authorized for that type
17 of fiduciary by this act or the mental health code, 1974 PA 258,
18 MCL 330.1001 to 330.2106, **UNLESS SPECIFICALLY ALLOWED BY THE COURT.**

19 (5) A professional guardian appointed under this section shall
20 establish and maintain a schedule of visitation so that an
21 individual associated with the professional guardian who is
22 responsible for the ward's care visits the ward within 3 months
23 after the professional guardian's appointment and not less than
24 once within 3 months after each previous visit.

25 (6) A professional guardian appointed under this section shall
26 ensure that there are a sufficient number of employees assigned to
27 the care of wards for the purpose of performing the necessary

1 duties associated with ensuring that proper and appropriate care is
2 provided.

3 (7) For the purposes of the statutory authorization required
4 by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL
5 487.11105, to act as a fiduciary in this state, if the court
6 appoints a for-profit or nonprofit, nonbanking corporation
7 organized under the laws of this state to serve in a fiduciary
8 capacity that is listed in subsection (1), the nonbanking
9 corporation is authorized to act in that fiduciary capacity. The
10 authorization under this subsection confers the fiduciary capacity
11 only to the extent necessary in the particular matter of each
12 appointment and is not a general grant of fiduciary authority. A
13 nonbanking corporation is not authorized to act in any other
14 fiduciary capacity.

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