

**SUBSTITUTE FOR
HOUSE BILL NO. 4909**

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5104, 5106, 5310, 5313, and 5409 (MCL 700.5104, 700.5106, 700.5310, 700.5313, and 700.5409), section 5106 as amended by 2017 PA 136, section 5310 as amended by 2000 PA 54, section 5313 as amended by 2012 PA 545, and section 5409 as amended by 2000 PA 463, and by adding section 5106a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5104. (1) An interested person who desires to be notified
2 before an order is made in a guardianship proceeding, including a
3 proceeding subsequent to the appointment of a guardian under
4 section 5312, **or 5312a**, or in a protective proceeding under section
5 5401 must file a request for notice with the register of the court

1 in which the proceeding is pending and with the attorney of record
2 of the guardian or conservator or, if none, with the guardian or
3 conservator, if any. A request is not effective unless it contains
4 a statement showing the interest of the person making it and the
5 address of that person or an attorney to whom notice is to be
6 given. The request is effective only as to a proceeding that occurs
7 after the filing. If a guardianship or protective proceeding is not
8 pending at the time a person files a request for notice as
9 authorized by this subsection, the person shall pay a fee for
10 filing the request, which fee ~~shall~~**must** be in the same amount as,
11 but is separate from, the fee required to commence such a
12 proceeding.

13 (2) A governmental agency paying benefits to the individual to
14 be protected or before whom an application for benefits is pending
15 is an interested person in a protective proceeding.

16 Sec. 5106. (1) Subject to subsections (2) and (3) **and part 5A**
17 **of this article**, the court may appoint or approve a professional
18 guardian or professional conservator, as appropriate, as a guardian
19 or conservator under this act, or as a plenary guardian or partial
20 guardian as those terms are defined in section 600 of the mental
21 health code, 1974 PA 258, MCL 330.1600.

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

25 (a) The appointment of the professional guardian or
26 professional conservator is in the ward's, developmentally disabled
27 individual's, incapacitated individual's, or protected individual's
28 best interests.

29 (b) There is no other person that is competent, suitable, and

1 willing to serve in that fiduciary capacity in accordance with
2 section 5212, **5312a**, 5313, or 5409.

3 (3) ~~The~~ **Subject to section 5106a, the** court shall not appoint
4 a **person as a** professional guardian or professional conservator as
5 authorized under subsection (1) unless the professional guardian or
6 professional conservator files a bond in an amount and with the
7 conditions as determined by the court. For a professional
8 conservator, the sureties and liabilities of the bond are subject
9 to sections 5410 and 5411.

10 (4) A professional guardian or professional conservator
11 appointed under this section shall not receive as a result of that
12 appointment a benefit beyond compensation specifically authorized
13 for that type of fiduciary by this act, **including, to the extent**
14 **applicable, the fee limitations imposed under part 5A of this**
15 **article, or, to the extent applicable,** the mental health code, 1974
16 PA 258, MCL 330.1001 to 330.2106. This subsection does not prevent
17 a person from providing compensation or other benefits, from a
18 source other than the estate of the ward, developmentally disabled
19 individual, incapacitated individual, or protected individual, to a
20 professional guardian or professional conservator appointed or
21 approved under this section. If a professional guardian or
22 professional conservator appointed or approved under this section
23 receives or is to receive compensation or other benefits as a
24 result of that appointment from a person other than this state, a
25 political subdivision of this state, or a trust created under
26 section 5407(2), the professional guardian or professional
27 conservator shall file with the appointing or approving court a
28 written statement of the compensation or other benefit received or
29 to be received, including the source of the compensation or other

1 benefit, in a form and in a manner prescribed by the Michigan court
2 rules. The professional guardian or professional conservator shall
3 serve a copy of the form described in this subsection to the ward,
4 developmentally disabled individual, incapacitated individual, or
5 protected individual and to interested persons.

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

12 **(5) (6)** A professional guardian appointed under this section
13 shall ensure that there are a sufficient number of employees
14 assigned to the care of wards for the purpose of performing the
15 necessary duties associated with ensuring that proper and
16 appropriate care is provided.

17 **(6)** A professional guardian or professional conservator may
18 use support staff and other professionals, under the professional
19 guardian's or professional conservator's active and direct
20 supervision, to perform office functions and client services.
21 Support staff and professionals may be used to gather and provide
22 necessary information to the professional guardian or professional
23 conservator regarding a ward or protected individual and to make
24 recommendations to the professional guardian or professional
25 conservator based on their knowledge and expertise. The
26 professional guardian or professional conservator shall not
27 delegate decision-making authority to support staff, a
28 professional, or another person regarding financial decisions or
29 decisions requiring informed consent, including, but not limited

1 to, medical, mental health, placement, or care planning decisions
2 unless the support staff, professional, or other person holds a
3 license issued under part 5A of this article.

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

16 **Sec. 5106a. (1) Beginning October 1, 2025, the court shall not**
17 **appoint a person as a professional guardian of a legally**
18 **incapacitated individual or professional conservator of a protected**
19 **individual who is not a minor, or both, under this article unless**
20 **the person holds a license issued under part 5A of this article.**

21 **(2) This section does not apply to a financial institution**
22 **appointed as a professional conservator.**

23 Sec. 5310. (1) On petition of the guardian and subject to the
24 filing and approval of a report prepared as required by section
25 5314, the court shall accept the guardian's resignation and make
26 any other order that is appropriate.

27 (2) The ward or a person interested in the ward's welfare may
28 petition for an order removing the guardian, appointing a successor
29 guardian, modifying the guardianship's terms, or terminating the

1 guardianship. A request for this order may be made by informal
 2 letter to the court or judge. A person who knowingly interferes
 3 with the transmission of this kind of request to the court or judge
 4 is subject to a finding of contempt of court. **A petition for an**
 5 **order appointing a successor guardian under this subsection is**
 6 **subject to the priority of appointment under section 5313.**

7 (3) Except as otherwise provided in the order finding
 8 incapacity **or as provided by court rule**, ~~upon~~ on receiving a
 9 petition or request under this section, the court shall set a date
 10 for a hearing to be held ~~within~~ **not later than** 28 days after the
 11 receipt of the petition or request. ~~An order finding incapacity may~~
 12 ~~specify a minimum period, not exceeding 182 days, during which a~~
 13 ~~petition or request for a finding that a ward is no longer an~~
 14 ~~incapacitated individual, or for an order removing the guardian,~~
 15 ~~modifying the guardianship's terms, or terminating the~~
 16 ~~guardianship, shall not be filed without special leave of the~~
 17 ~~court.~~

18 (4) Before removing a guardian, appointing a successor
 19 guardian, modifying the guardianship's terms, or terminating a
 20 guardianship, and following the same procedures to safeguard the
 21 ward's rights as apply to a petition for a guardian's appointment,
 22 the court may send a visitor to the present guardian's residence
 23 and to the place where the ward resides or is detained to observe
 24 conditions and report in writing to the court.

25 Sec. 5313. (1) ~~The~~ **Subject to sections 5106 and 5106a and part**
 26 **5A of this article, the** court may appoint a competent person as
 27 guardian of a legally incapacitated individual. The court shall not
 28 appoint as a guardian an agency, public or private, that
 29 financially benefits from ~~directly~~ providing housing, medical,

1 mental health, **caregiving**, or social services to the legally
2 incapacitated individual. If the court determines that the ward's
3 property needs protection, the court shall order the guardian to
4 furnish a bond or shall include restrictions in the letters of
5 guardianship as necessary to protect the property.

6 (2) In appointing a guardian under this section, the court
7 shall appoint a person, if suitable **under subsection (5)** and
8 willing to serve, in the following order of priority:

9 (a) A person previously appointed, qualified, and serving in
10 good standing as guardian for the legally incapacitated individual
11 in another state.

12 (b) A person the individual subject to the petition chooses to
13 serve as guardian.

14 (c) A person nominated as guardian in a durable power of
15 attorney or other writing by the individual subject to the
16 petition.

17 (d) A person named by the individual as a patient advocate or
18 attorney in fact in a durable power of attorney.

19 (3) If there is no person chosen, nominated, or named under
20 subsection (2), or if none of the persons listed in subsection (2)
21 are suitable **under subsection (5)** or willing to serve, the court
22 may appoint as a guardian an individual who is related to the
23 individual who is the subject of the petition in the following
24 order of preference:

25 (a) The legally incapacitated individual's spouse. This
26 subdivision ~~shall~~**must** be considered to include a person nominated
27 by will or other writing signed by a deceased spouse.

28 (b) An adult child of the legally incapacitated individual.

29 (c) A parent of the legally incapacitated individual. This

1 subdivision ~~shall~~**must** be considered to include a person nominated
2 by will or other writing signed by a deceased parent.

3 (d) A relative of the legally incapacitated individual with
4 whom the individual has resided for more than 6 months before the
5 filing of the petition.

6 (e) A person nominated by a person who is caring for the
7 legally incapacitated individual or paying benefits to the legally
8 incapacitated individual.

9 (4) If none of the persons as designated or listed in
10 subsection (2) or (3) are suitable **under subsection (5)** or willing
11 to serve, the court may appoint any competent person who is
12 suitable **under subsection (5)** and willing to serve, including a
13 professional guardian as provided in section 5106. **If the court**
14 **appoints a professional guardian that employs 2 or more employees**
15 **who hold a license issued under part 5A of this article, the**
16 **professional guardian shall designate a licensed employee who must**
17 **be the decision maker for the ward. The professional guardian shall**
18 **notify the ward and interested persons in writing of the name and**
19 **contact information of the designated decision maker not later than**
20 **7 days after the court appoints the professional guardian and, if**
21 **there is a permanent change in the designated decision maker, not**
22 **later than 7 days after the permanent change. The professional**
23 **guardian shall make the name and contact information of the**
24 **designated decision maker available on request to the court, the**
25 **ward's caregivers, medical and service providers, advocates, law**
26 **enforcement, and any other person who requests the name and contact**
27 **information to address a concern regarding the ward's health,**
28 **safety, or welfare.**

29 (5) The court shall appoint a person with priority guardian of

1 a legally incapacitated individual unless specific findings on the
2 record indicate that the person is not suitable as set forth in
3 this subsection or is not willing to serve. A person is suitable to
4 serve on a determination of specific findings of the court,
5 including, but not limited to, all of the following factors:

6 (a) The preference of the individual subject to the
7 guardianship, including who should serve and not serve as guardian.

8 (b) The person's availability to the individual subject to the
9 guardianship.

10 (c) The person's history and relationship with the individual
11 subject to the guardianship.

12 (d) The person's criminal history that is relevant to the
13 care, custody, and control of the individual subject to the
14 guardianship.

15 (e) The person's personal history, including, but not limited
16 to, employment, training, skills, and stability, that will
17 facilitate fulfillment of duties.

18 (f) The person's ability to fulfill duties regardless of
19 interpersonal disputes between interested persons or others with an
20 interest in the welfare of the individual subject to guardianship.
21 Interpersonal disputes alone must not be the basis for finding a
22 person with priority, under subsection (2) or (3), is unsuitable
23 unless the court finds by clear and convincing evidence that no
24 other person is able to fulfill the duties.

25 (g) The person's ability to meet the requirements of section
26 5410, if applicable.

27 (h) The person's ability to advocate appropriately for the
28 best interests of the individual subject to the guardianship with
29 health care and service providers.

1 (6) In deciding between 2 persons with equal priority under
 2 subsection (2), the court shall weigh the factors in subsection (5)
 3 with specific findings on the record. The court may appoint 2
 4 persons to serve as coguardians. Unless the order of appointment
 5 and letters of guardianship otherwise state, coguardians must act
 6 jointly. However, a coguardian may delegate the coguardian's
 7 authority to the other coguardian under section 5103.

8 (7) Letters of guardianship must expire not later than 15
 9 months after the date of appointment. The expiration date must be
 10 printed on the letters of guardianship. Letters of guardianship
 11 must not be reissued to a guardian that fails to report the
 12 condition of the ward and the ward's estate that is subject to the
 13 guardian's possession or control, as required by the court, under
 14 section 5314. The probate register may reissue letters of
 15 guardianship under this subsection without a hearing.

16 Sec. 5409. (1) The court may appoint an individual, a
 17 corporation authorized to exercise fiduciary powers, or a
 18 professional conservator described in section 5106 to serve as
 19 conservator of a protected individual's estate. The following are
 20 entitled to consideration for appointment in the following order of
 21 priority:

22 (a) A conservator, guardian of property, or similar fiduciary
 23 appointed or recognized by the appropriate court of another
 24 jurisdiction in which the protected individual resides.

25 (b) ~~An individual or corporation~~ **A person** nominated by the
 26 protected individual if he or she is 14 years of age or older and
 27 of sufficient mental capacity to make an intelligent choice,
 28 including a nomination made in a durable power of attorney.

29 (c) The protected individual's spouse.

1 (d) An adult child of the protected individual.

2 (e) A parent of the protected individual or a person nominated
3 by the will of a deceased parent.

4 (f) A relative of the protected individual with whom he or she
5 has resided for more than 6 months before the petition is filed.

6 (g) A person nominated by the person who is caring for or
7 paying benefits to the protected individual.

8 (h) If none of the persons listed in subdivisions (a) to (g)
9 are suitable **under subsection (3)** and willing to serve, any person
10 that the court determines is suitable **under subsection (3)** and
11 willing to serve.

12 (2) A person named in subsection (1)(a), (c), (d), (e), or (f)
13 may designate in writing a substitute to serve instead, and that
14 designation transfers the priority to the substitute. ~~If persons~~
15 ~~have equal priority, the court shall select the person the court~~
16 ~~considers best qualified to serve. Acting in the protected~~
17 ~~individual's best interest, the court may pass over a person having~~
18 ~~priority and appoint a person having a lower priority or no~~
19 ~~priority.~~

20 (3) **The court shall appoint a person with priority to serve as**
21 **conservator of a protected individual's estate unless specific**
22 **findings on the record indicate the person is not suitable as set**
23 **forth in this subsection or is not willing to serve. A person is**
24 **suitable to serve on a determination of specific findings by the**
25 **court, including, but not limited to, all of the following factors:**

26 (a) **Preference of the individual subject to the**
27 **conservatorship, including who should serve and not serve as**
28 **conservator.**

29 (b) **Availability to the individual subject to the**

1 conservatorship.

2 (c) History and relationship with the individual subject to
3 the conservatorship.

4 (d) Criminal history that is relevant to the role of a
5 conservator.

6 (e) Personal history, including, but not limited to,
7 employment, training, skills, and stability that will facilitate
8 fulfillment of duties.

9 (f) Ability to fulfill duties regardless of interpersonal
10 disputes between interested persons or others with an interest in
11 the welfare of the individual subject to conservatorship.
12 Interpersonal disputes alone must not be the basis for finding a
13 person with priority is unsuitable unless the court finds by clear
14 and convincing evidence that no person with priority can fulfill
15 the duties.

16 (g) Ability to meet the requirements of section 5410.

17 (4) In deciding between 2 persons with equal priority, the
18 court shall weigh the factors in subsection (3) with specific
19 findings on the record. The court may appoint not more than 2
20 persons to serve as coconservators. Unless the order of appointment
21 and letters of conservatorship otherwise state, coconservators must
22 act jointly.

23 (5) Letters of conservatorship must expire not later than 15
24 months after the date of appointment. The expiration date must be
25 printed on the letters of conservatorship. Letters of
26 conservatorship must not be reissued to a conservator that fails to
27 account to the court as required under section 5418. The probate
28 register may reissue letters of conservatorship under this
29 subsection without a hearing.

1 Enacting section 1. This amendatory act takes effect January
2 1, 2025.

3 Enacting section 2. This amendatory act does not take effect
4 unless all of the following bills of the 102nd Legislature are
5 enacted into law:

6 (a) House Bill No. 4910.

7 (b) House Bill No. 4911.

8 (c) House Bill No. 4912.

9 (d) House Bill No. 5047.