

HOUSE BILL NO. 4911

July 18, 2023, Introduced by Reps. Filler, Breen, Morse, Tsernoglou, Hope, McFall, Conlin, Young, Scott, Price, Paiz, Hood, Rogers, Fitzgerald, Borton, Rheingans, Kunse, Schmaltz, MacDonell, Wozniak, Andrews, Dievendorf, Steckloff, Coffia, Koleszar, Haadsma, Mentzer, McKinney, Byrnes, Farhat, Hoskins, Brabec, Liberati, Neeley, Edwards, Miller, Coleman, Wegela, Outman, Tyrone Carter, Snyder, Brixie, Wilson, Grant, Glanville, Churches, Aiyash, Whitsett, Morgan, Hill, Puri and Meerman and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5303, 5304, 5306, 5306a, 5312, and 5416 (MCL 700.5303, 700.5304, 700.5306, 700.5306a, 700.5312, and 700.5416), section 5303 as amended by 2017 PA 155, section 5306 as amended by 2019 PA 170, section 5306a as added by 2012 PA 173, and section 5312 as amended by 2000 PA 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5303. (1) An individual in his or her own behalf, or any
2 person interested in the individual's welfare, may petition for a
3 finding of incapacity and appointment of a guardian. The petition

1 must contain specific facts about the individual's condition and
2 specific examples of the individual's recent conduct that
3 demonstrate the need for a guardian's appointment.

4 (2) Before a petition is filed under this section, the court
5 shall provide the person intending to file the petition with
6 written information that sets forth alternatives to appointment of
7 a full guardian, including, but not limited to, a limited guardian,
8 conservator, patient advocate designation, do-not-resuscitate
9 order, physician orders for scope of treatment form, or durable
10 power of attorney with or without limitations on purpose,
11 authority, or time period, and an explanation of each alternative.

12 (3) ~~Upon~~**On** the filing of a petition under subsection (1), the
13 court shall set a date for **initial** hearing. ~~on the issue of~~
14 ~~incapacity.~~ Unless the allegedly incapacitated individual has legal
15 counsel of his or her own choice, the court shall appoint a
16 guardian ad litem ~~to represent the person in the proceeding.~~**for the**
17 **initial hearing. The court may enter a final order on the petition**
18 **at the initial hearing if the court does not set a trial date under**
19 **subsection (4).**

20 (4) At the initial hearing under subsection (3), the court
21 shall set a trial date at least 7 days after the initial hearing
22 for the petition under subsection (1) if any of the following
23 apply:

24 (a) The guardian ad litem requests that the proceeding be set
25 for trial.

26 (b) The allegedly incapacitated individual or his or her legal
27 counsel requests the matter be set for trial.

28 (c) Any reason as justice requires.

29 (5) If the court sets a trial date at the initial hearing

1 under subsection (4), the court shall do both of the following:

2 (a) Enter a scheduling order to the extent necessary.

3 (b) Enter an order that provides, to the extent practicable,
4 for the attendance of the allegedly incapacitated individual at the
5 trial if the allegedly incapacitated individual wishes to attend.
6 An order entered under this subdivision may order any interested
7 person over whom the court has jurisdiction to facilitate
8 attendance or move the hearing site under section 5304.

9 Sec. 5304. (1) If necessary, the court may order that an
10 individual alleged to be incapacitated be examined by a physician
11 or mental health professional appointed by the court who shall
12 submit a report in writing to the court at least 5 days before the
13 hearing set under section 5303. A report prepared as provided in
14 this subsection ~~shall~~**must** not be made a part of the proceeding's
15 public record, but ~~shall~~**must** be available to the court or an
16 appellate court in which the proceeding is subject to review, to
17 the alleged incapacitated individual, to the petitioner, to their
18 respective legal counsels, and to other persons as the court
19 directs. The report may be used as provided in the Michigan rules
20 of evidence.

21 (2) The alleged incapacitated individual has the right to
22 secure an independent evaluation, at his or her own expense or, if
23 indigent, at the expense of ~~the~~**this** state. **An independent**
24 **evaluation performed at the expense of this state must be performed**
25 **by a physician or mental health professional.** Compensation for an
26 independent evaluation at public expense ~~shall~~**must** be in an amount
27 that, based ~~upon~~**on** time and expense, the court approves as
28 reasonable.

29 (3) A report prepared under this section ~~shall~~**must** contain

1 all of the following:

2 (a) A detailed description of the individual's ~~physical or~~
3 ~~psychological infirmities.~~ **cognitive and functional abilities and**
4 **limitations.**

5 (b) An explanation of how and to what extent ~~each infirmity~~
6 ~~interferes with the individual's ability to receive or evaluate~~
7 ~~information in making decisions.~~ **the individual is able to receive,**
8 **understand, participate in, and evaluate information in making**
9 **decisions.**

10 (c) ~~A~~ **If the report is being completed by a physician or**
11 **mental health professional, a** listing of all medications the
12 individual is receiving, the dosage of each medication, and a
13 description of the effects each medication has ~~upon~~ **on** the
14 individual's behavior.

15 (d) ~~A~~ **If the report is being completed by a physician or**
16 **mental health professional, a** prognosis for improvement in the
17 individual's condition, **including whether it is a permanent or**
18 **temporary condition,** and a recommendation for the most appropriate
19 rehabilitation plan.

20 (e) The signatures **and printed names** of all individuals who
21 performed the evaluations, ~~upon which the report is based.~~ **where**
22 **they are employed, the date of examination on which the report is**
23 **based, the length of time they have known the individual, and the**
24 **length of time they met with the individual.**

25 (f) **Whether the individual has the capacity to assign or**
26 **delegate responsibilities to ensure his or her well-being.**

27 (g) **Whether the individual has executed a document directing**
28 **care or naming an agent to act on his or her behalf, including, but**
29 **not limited to, a power of attorney, patient advocate designation,**

1 or do-not-resuscitate order.

2 (h) If the report is being completed by a visitor, it must
 3 also include, at a minimum, an assessment of the existence of
 4 current formal and informal supports, the ability of supportive
 5 services and benefits to meet any unmet needs, the identification
 6 of any existing concerns regarding the individual's well-being, and
 7 the individual's ability to address those existing concerns.

8 (4) If the court finds that the report prepared under this
 9 section does not substantially comply with the requirements of this
 10 section, the court shall not consider the evaluation.

11 (5) ~~(4)~~—The individual alleged to be incapacitated is entitled
 12 to be present at the hearing in person, and to see or hear all
 13 evidence bearing ~~upon~~**on** the individual's condition. If the
 14 individual wishes to be present at the hearing, all practical steps
 15 ~~shall~~**must** be taken to ensure his or her presence, including, if
 16 necessary, moving the hearing site.

17 (6) ~~(5)~~—The individual **alleged to be incapacitated** is entitled
 18 to be represented by legal counsel, to present evidence, to cross-
 19 examine witnesses, including the court-appointed physician or
 20 mental health professional and the visitor, and to trial by jury.

21 (7) ~~(6)~~—The issue of incapacity may be determined at a closed
 22 hearing without a jury if requested by the individual alleged to be
 23 incapacitated or that individual's legal counsel.

24 Sec. 5306. (1) The court may appoint a guardian if the court
 25 finds by clear and convincing evidence both that the individual for
 26 whom a guardian is sought is an incapacitated individual and that
 27 the appointment is necessary as a means of providing continuing
 28 care and supervision of the incapacitated individual, with each
 29 finding supported separately on the record. ~~Alternately, the court~~

1 ~~may dismiss the proceeding or enter another appropriate order.~~

2 (2) The court shall dismiss the proceeding under subsection
3 (1) if the court cannot be shown both of the following by clear and
4 convincing evidence:

5 (a) That the individual for whom a guardian is sought is an
6 incapacitated individual.

7 (b) That the appointment is necessary as a means of providing
8 continuing care and supervision of the individual.

9 (3) At any time during the proceedings under subsection (1),
10 the court may stay the guardianship proceedings for a reasonable
11 period of time, based on the needs of the individual, to allow the
12 individual the opportunity to explore the alternatives to
13 appointment of a guardian. If the individual properly names a
14 patient advocate under a patient advocate designation, an attorney
15 in fact under a power of attorney, or a representative payee under
16 a governmental benefit during the stay under this subsection and
17 provides evidence of naming the patient advocate, attorney in fact,
18 or representative payee to the court, the court may dismiss the
19 petition with or without a hearing. This subsection does not
20 prevent the court from ordering a temporary guardianship under
21 section 5312a if the temporary guardianship is limited in scope and
22 the court explicitly finds that the individual has the capacity to
23 execute a power of attorney, patient advocate designation, or
24 designate a representative payee.

25 (4) ~~(2)~~—The court shall grant a guardian only those powers and
26 only for that period of time as is necessary to provide for the
27 demonstrated need of the incapacitated individual. The court shall
28 design the guardianship to encourage the development of maximum
29 self-reliance and independence in the individual. If the court is

1 aware that an individual has executed a patient advocate
2 designation under section 5506, the court shall not grant a
3 guardian any of the same powers that are held by the patient
4 advocate. A court order establishing a guardianship shall specify
5 any limitations on the guardian's powers and any time limits on the
6 guardianship.

7 (5) ~~(3)~~—If the court finds by clear and convincing evidence
8 that an individual is incapacitated and lacks the capacity to do
9 some, but not all, of the tasks necessary to care for himself or
10 herself, the court may appoint a limited guardian to provide
11 guardianship services to the individual, but the court shall not
12 appoint a full guardian.

13 (6) ~~(4)~~—If the court finds by clear and convincing evidence
14 that the individual is incapacitated and is totally without
15 capacity to care for himself or herself, the court shall specify
16 that finding of fact in an order and may appoint a full guardian.

17 (7) ~~(5)~~—If an individual executed a patient advocate
18 designation under section 5506 before the time the court determines
19 that he or she became a legally incapacitated individual, a
20 guardian does not have and shall not exercise the power or duty of
21 making medical or mental health treatment decisions that the
22 patient advocate is designated to make. If, however, a petition for
23 guardianship or for modification under section 5310 alleges and the
24 court finds that the patient advocate designation was not executed
25 in compliance with section 5506, that the patient advocate is not
26 complying with the terms of the designation or with the applicable
27 provisions of sections 5506 to 5515, or that the patient advocate
28 is not acting consistent with the ward's best interests, the court
29 may modify the guardianship's terms to grant those powers to the

1 guardian.

2 **(8)** ~~(6)~~—If the court finds by clear and convincing evidence
3 that the individual is incapacitated, that the person that has the
4 care and custody of the incapacitated individual denied another
5 person access to the incapacitated individual, and that the
6 incapacitated individual desires contact with the other person or
7 that contact with the other person is in the incapacitated
8 individual's best interest, the court may appoint a limited
9 guardian to supervise access with the other person.

10 Sec. 5306a. (1) An individual for whom a guardian is sought or
11 has been appointed under section 5306 has all of the following
12 rights:

13 (a) To object to the appointment of a successor guardian by
14 will or other writing, as provided in section 5301.

15 (b) To have the guardianship proceeding commenced and
16 conducted in the place where the individual resides or is present
17 or, if the individual is admitted to an institution by a court, in
18 the county in which the court is located, as provided in section
19 5302.

20 (c) To petition on his or her own behalf for the appointment
21 of a guardian, as provided in section 5303.

22 (d) To have legal counsel of his or her own choice represent
23 him or her on ~~the~~ **either of the following:**

24 **(i)** The petition to appoint a guardian, as provided in sections
25 5303, 5304, and 5305.

26 **(ii)** If applicable, a professional guardian's petition to
27 permanently remove the individual from the individual's permanent
28 residence, as provided in section 5314a.

29 (e) If he or she is not represented by legal counsel, to the

1 appointment of a guardian ad litem, ~~to represent the individual on~~
2 ~~the petition to appoint a guardian,~~ as provided in section 5303.

3 (f) To an independent evaluation of his or her capacity by a
4 physician or mental health professional, at public expense if he or
5 she is indigent, as provided in section 5304.

6 (g) To be present at the hearing on the petition to appoint a
7 guardian and to have all practical steps taken to ensure this,
8 including, if necessary, moving the hearing site, as provided by
9 section 5304.

10 (h) To see or hear all the evidence presented in the hearing
11 on the petition to appoint a guardian, as provided in section 5304.

12 (i) To present evidence and cross-examine witnesses in the
13 hearing on the petition to appoint a guardian, as provided in
14 section 5304.

15 (j) To a trial by jury on the petition to appoint a guardian,
16 as provided in section 5304.

17 (k) To a closed hearing on the petition to appoint a guardian,
18 as provided in section 5304.

19 (l) If a guardian ad litem is appointed, to be personally
20 visited by the guardian ad litem, as provided in section 5305.

21 (m) If a guardian ad litem is appointed, to an explanation by
22 the guardian ad litem of the nature, purpose, and legal effects of
23 a guardian's appointment, as provided in section 5305.

24 (n) If a guardian ad litem is appointed, to an explanation by
25 the guardian ad litem of the individual's rights in the hearing
26 procedure, as provided in section 5305.

27 (o) If a guardian ad litem is appointed, to be informed by the
28 guardian ad litem of the right to contest the petition, to request
29 limits on the guardian's powers, to object to a particular person

1 being appointed guardian, to be present at the hearing, to be
2 represented by legal counsel, and to have legal counsel appointed
3 if the individual is unable to afford legal counsel, as provided in
4 section 5305.

5 (p) To be informed of the name of each person known to be
6 seeking appointment as guardian, including, if a guardian ad litem
7 is appointed, to be informed of the names by the guardian ad litem
8 as provided in section 5305.

9 (q) To require that proof of incapacity and the need for a
10 guardian be proven by clear and convincing evidence, as provided in
11 section 5306.

12 (r) To the limitation of the powers and period of time of a
13 guardianship to only the amount and time that is necessary, as
14 provided in section 5306.

15 (s) To a guardianship designed to encourage the development of
16 maximum self-reliance and independence as provided in section 5306.

17 (t) To prevent the grant of powers to a guardian if those
18 powers are already held by a valid patient advocate, as provided in
19 section 5306.

20 (u) To periodic review of the guardianship by the court,
21 including the right to a hearing and the appointment of an attorney
22 if issues arise upon the review of the guardianship, as provided in
23 section 5309.

24 (v) To, at any time, seek modification or termination of the
25 guardianship by informal letter to the judge, as provided in
26 section 5310.

27 (w) To a hearing within 28 days of requesting a review,
28 modification, or termination of the guardianship, as provided in
29 section 5310.

1 (x) To the same rights on a petition for modification or
2 termination of the guardianship including the appointment of a
3 visitor as apply to a petition for appointment of a guardian, as
4 provided in section 5310.

5 (y) To personal notice of a petition for appointment or
6 removal of a guardian, as provided in section 5311.

7 (z) To written notice of the nature, purpose, and legal
8 effects of the appointment of a guardian, as provided in section
9 5311.

10 (aa) To choose the person who will serve as guardian, if the
11 chosen person is suitable and willing to serve, as provided in
12 section 5313.

13 (bb) To consult with the guardian about major decisions
14 affecting the individual, if meaningful conversation is possible,
15 as provided in section 5314.

16 (cc) To ~~quarterly~~ visits by the guardian, as provided in
17 section 5314.

18 (dd) ~~To have the guardian notify the court within 14 days of a~~
19 ~~change in the individual's residence, as provided in section 5314.~~

20 **If the guardian is not a professional guardian, to have the**
21 **guardian notify the court within 14 days after a change in the**
22 **individual's permanent residence, as provided in section 5314a.**

23 **(ee) If the guardian is a professional guardian, to have the**
24 **court consider a separate petition, as provided in section 5314a,**
25 **if a professional guardian seeks to move the individual to a new**
26 **permanent residence.**

27 **(ff) ~~(ee)~~To have the guardian secure services to restore the**
28 **individual to the best possible state of mental and physical well-**
29 **being so that the individual can return to self-management at the**

1 earliest possible time, as provided in section 5314.

2 (gg) ~~(ff)~~ To have the guardian take reasonable care of the
3 individual's clothing, furniture, vehicles, and other personal
4 effects, as provided in section 5314.

5 (2) A guardian ad litem shall inform the ward in writing of
6 his or her rights enumerated in this section. The state court
7 administrative office and the ~~office of services to the aging~~
8 ~~created in section 5 of the older Michiganians act, 1981 PA 180,~~
9 ~~MCL 400.585, aging and adult services agency created under~~
10 **Executive Reorganization Order No. 2015-1, MCL 400.227**, shall
11 promulgate a form to be used to give the written notice under this
12 section, which ~~shall~~ **must** include space for the court to include
13 information on how to contact the court or other relevant personnel
14 with respect to the rights enumerated in this section.

15 Sec. 5312. ~~(1) If an individual does not have a guardian, an~~
16 ~~emergency exists, and no other person appears to have authority to~~
17 ~~act in the circumstances, the court shall provide notice to the~~
18 ~~individual alleged to be incapacitated and shall hold a hearing.~~
19 ~~Upon a showing that the individual is an incapacitated individual,~~
20 ~~the court may exercise the power of a guardian, or appoint a~~
21 ~~temporary guardian with only the powers and for the period of time~~
22 ~~as ordered by the court. A hearing with notice as provided in~~
23 ~~section 5311 shall be held within 28 days after the court has acted~~
24 ~~under this subsection.~~

25 ~~(2) If an appointed guardian is not effectively performing the~~
26 ~~guardian's duties and the court further finds that the legally~~
27 ~~incapacitated individual's welfare requires immediate action, the~~
28 ~~court may appoint, with or without notice, a temporary guardian for~~
29 ~~the legally incapacitated individual for a specified period not to~~

1 ~~exceed 6 months.~~

2 ~~(3) A temporary guardian is entitled to the care and custody~~
3 ~~of the ward, and the authority of a permanent guardian previously~~
4 ~~appointed by the court is suspended as long as a temporary guardian~~
5 ~~has authority. A temporary guardian may be removed at any time. A~~
6 ~~temporary guardian shall make reports as the court requires. In~~
7 ~~other respects, the provisions of this act concerning guardians~~
8 ~~apply to temporary guardians.~~

9 (1) An interested person may file a petition to appoint an
10 emergency guardian for an allegedly incapacitated individual under
11 this subsection. If a petition is filed under this subsection, the
12 petitioner shall give notice, except as otherwise provided in
13 subsection (2), as provided by section 5311, and the court shall
14 appoint a guardian ad litem under section 5305. The court shall
15 conduct a hearing on a petition under this subsection as soon as
16 possible and not later than 7 days after the court receives the
17 petition. Except as otherwise provided in subsection (2), following
18 the hearing under this subsection, the court may appoint an
19 emergency guardian if the court finds by a preponderance of the
20 evidence that all of the following apply:

21 (a) An emergency exists that is likely to result in
22 substantial harm to the allegedly incapacitated individual's
23 physical health, safety, or welfare.

24 (b) No other person appears to have authority to act in the
25 circumstances.

26 (c) There is a basis that both the individual is an
27 incapacitated individual and appointment of an emergency guardian
28 is necessary as a means of providing continuing care and
29 supervision of the individual.

1 (2) On the filing of a petition to appoint an emergency
2 guardian under subsection (1), the court may appoint an emergency
3 guardian for an allegedly incapacitated individual without notice
4 to the allegedly incapacitated individual only if the court
5 determines from an affidavit showing, by clear and convincing
6 evidence, that all of the following apply:

7 (a) An emergency exists that is likely to result in imminent
8 and substantial harm to the allegedly incapacitated individual's
9 physical health, safety, or welfare.

10 (b) No other person appears to have authority to act in the
11 circumstances.

12 (c) There is a basis that both the individual is an
13 incapacitated individual and appointment of an emergency guardian
14 is necessary as a means of providing continuing care and
15 supervision of the individual.

16 (3) If the court appoints an emergency guardian under
17 subsection (2), the court shall do all of the following:

18 (a) Appoint a guardian ad litem for the allegedly
19 incapacitated individual under section 5305.

20 (b) Within 48 hours after the appointment of an emergency
21 guardian under this subsection, order the petitioner to give notice
22 by personal service of the appointment to the allegedly
23 incapacitated individual and service as required by court rule to
24 all interested persons.

25 (c) Within 7 days after the appointment of an emergency
26 guardian under this subsection, hold a hearing on whether the
27 conditions for the appointment of the emergency guardian exist.

28 (4) If the court finds conditions exist for the appointment of
29 the emergency guardian at a hearing under this section, and the

1 individual wishes to contest the appointment, the court must set a
2 date for a hearing and enter an order consistent with section 5306.

3 (5) An order appointing an emergency guardian under this
4 section expires 28 days after the appointment. However, the court
5 may extend an order appointing an emergency guardian under this
6 section once for an additional 28 days if the court finds by a
7 preponderance of the evidence, upon an affidavit by the appointed
8 emergency guardian or following a hearing set at the discretion of
9 the court, that the conditions that led to the appointment of the
10 emergency guardian still exist.

11 (6) An emergency guardian may exercise only the powers
12 specified by the court.

13 (7) The court may remove an emergency guardian at any time.

14 (8) An appointment of an emergency guardian under this section
15 is not a determination that a basis exists for an appointment of a
16 guardian under section 5306(1).

17 Sec. 5416. (1) In relation to powers conferred by this part or
18 implicit in the title acquired by virtue of the proceeding, a
19 conservator shall act as a fiduciary and observe the standard of
20 care applicable to a trustee.

21 (2) A conservator for an individual that is subject to a
22 conservatorship for a reason other than minority has the duty to
23 take all steps within the scope of the conservator's authority to
24 ensure the individual attends any hearing concerning the
25 individual's conservatorship if the individual wishes to attend the
26 hearing in a manner as provided in section 5406.

27 Enacting section 1. This amendatory act takes effect 180 days
28 after the date it is enacted into law.

29 Enacting section 2. This amendatory act does not take effect

1 unless all of the following bills of the 102nd Legislature are
2 enacted into law:

3 (a) Senate Bill No. _____ or House Bill No. 4909 (request no.
4 01149'23).

5 (b) Senate Bill No. _____ or House Bill No. 4910 (request no.
6 01150'23).

7 (c) Senate Bill No. _____ or House Bill No. 4912 (request no.
8 01152'23).