

HOUSE BILL NO. 4172

March 02, 2023, Introduced by Reps. Wozniak, VanderWall, Prestin, Rheingans, Thompson, Green and Bezotte and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending the title and sections 5106, 5108a, 5313, and 5409 (MCL 700.5106, 700.5108a, 700.5313, and 700.5409), section 5106 as amended by 2017 PA 136, section 5108a as amended by 2020 PA 338, section 5313 as amended by 2012 PA 545, and section 5409 as amended by 2000 PA 463, and by adding sections 5106a and 5106b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to codify, revise, consolidate, and classify aspects of

1 the law relating to wills and intestacy, relating to the
2 administration and distribution of estates of certain individuals,
3 relating to trusts, and relating to the affairs of certain
4 individuals under legal incapacity; to provide for the powers and
5 procedures of the court that has jurisdiction over these matters;
6 to provide for the validity and effect of certain transfers,
7 contracts, and deposits that relate to death; to provide procedures
8 to facilitate enforcement of certain trusts; **to provide for the**
9 **certification of certain individuals; to provide for the powers and**
10 **duties of certain state governmental officers and entities; to**
11 **prescribe penalties;** and to repeal acts and parts of acts.

12 Sec. 5106. (1) Subject to subsections (2), ~~and (3)~~, **and (4)**,
13 the court may appoint or approve a professional guardian or
14 professional conservator, as appropriate, as a guardian or
15 conservator under this act, or as a plenary guardian or partial
16 guardian as those terms are defined in section 600 of the mental
17 health code, 1974 PA 258, MCL 330.1600.

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

21 (a) The appointment of the professional guardian or
22 professional conservator is in the ward's, developmentally disabled
23 individual's, incapacitated individual's, or protected individual's
24 best interests.

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

28 (3) The court shall not appoint a professional guardian or
29 professional conservator as authorized under subsection (1) unless

1 the professional guardian or professional conservator files a bond
 2 in an amount and with the conditions as determined by the court.
 3 For a professional conservator, the sureties and liabilities of the
 4 bond are subject to sections 5410 and 5411.

5 **(4) Beginning 2 years after the effective date of the**
 6 **amendatory act that added section 5106a, except as otherwise**
 7 **provided in section 5313 or 5409, as applicable, the court shall**
 8 **not appoint an individual as a professional guardian or**
 9 **professional conservator unless the individual is certified under**
 10 **section 5106a.**

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

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

6 (6) ~~(5)~~—A professional guardian appointed under this section
7 shall 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 (7) ~~(6)~~—**Subject to subsection (8),** a professional guardian
13 appointed under this section shall ensure that there are a
14 sufficient number of employees assigned to the care of wards for
15 the purpose of performing the necessary duties associated with
16 ensuring that proper and appropriate care is provided.

17 (8) **Beginning 2 years after the effective date of the**
18 **amendatory act that added section 5106a, an employee of a**
19 **professional guardian described in section 5313(3)(f) or of a**
20 **professional conservator described in section 5409(1)(h) shall not**
21 **make medical, psychological, financial, legal, or housing decisions**
22 **on behalf of a ward or protected individual, as applicable, unless**
23 **the employee is certified under section 5106a.**

24 (9) ~~(7)~~—For the purposes of the statutory authorization
25 required by section 1105(2)(e) of the banking code of 1999, 1999 PA
26 276, MCL 487.11105, to act as a fiduciary in this state, if the
27 court appoints a for-profit or nonprofit, nonbanking corporation
28 organized under the laws of this state to serve in a fiduciary
29 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 **Sec. 5106a. (1) Beginning 2 years after the effective date of**
8 **the amendatory act that added this section, the department shall**
9 **certify an individual as a professional guardian or professional**
10 **conservator who meets all of the following requirements:**

11 (a) Submits a completed application to the department on a
12 form prescribed by the department.

13 (b) Pays an initial application fee of \$250.00 or renewal
14 application fee of \$100.00, as applicable.

15 (c) Is 21 years of age or older.

16 (d) Submits a criminal background check under section 5106b.

17 (e) Has not been convicted of a crime listed in section
18 5106b(1).

19 (f) Has not been found liable in a civil action that involved
20 fraud, misrepresentation, material omission, misappropriation,
21 theft, exploitation, abuse, or conversion.

22 (g) Has not been removed as a guardian or conservator by the
23 court for an action involving fraud, misrepresentation, material
24 omission, misappropriation, theft, exploitation, abuse, or
25 conversion.

26 (h) Has not been relieved of the responsibilities of a
27 guardian or conservator by an employer or client for an action
28 involving fraud, misrepresentation, material omission,
29 misappropriation, theft, exploitation, abuse, or conversion.

1 (i) Has not been found liable in a subrogation action by an
2 insurance or bonding agent.

3 (j) Has graduated from an accredited high school or comparable
4 school or educational institution or passed the general educational
5 development test or other graduate equivalency examination.

6 (k) Passes and submits proof to the department of passage of
7 the Center for Guardianship Certification National Certified
8 Guardian Examination.

9 (l) Submits proof to the department of completion of other
10 educational requirements required by the Center for Guardianship
11 Certification, including a minimum of 12 hours of continuing
12 education units in the 24 months preceding the submission of the
13 application, as offered by a state or national trade association
14 dedicated to the advancement of the guardianship profession.

15 (m) Submits proof to the department of coverage by
16 professional liability insurance, as the named insured or employee
17 of the named insured.

18 (2) The department shall issue a unique certification number
19 to an individual certified under this section.

20 (3) Only an individual certified under this section may
21 advertise that he or she is a certified professional guardian or
22 certified professional conservator.

23 (4) An individual certified under this section who has been
24 found civilly liable or criminally convicted in an action that
25 involves fraud, misrepresentation, material omission,
26 misappropriation, theft, exploitation, abuse, or conversion shall
27 report this finding or conviction to the department and each
28 probate court in which he or she is currently serving as a
29 professional guardian or professional conservator within 30 days

1 after conviction or finding of civil liability.

2 (5) The department shall revoke the certification of an
3 individual who does not meet the requirements under subsection (1).

4 (6) An individual denied certification or whose certification
5 has been revoked by the department based on a criminal history
6 check conducted under section 5106b may appeal to the department if
7 he or she believes that the criminal history report is inaccurate,
8 and the appeal must be conducted as a contested case under the
9 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
10 24.328.

11 (7) The department shall post on its website a list of
12 certified professional guardians and certified professional
13 conservators, and if applicable, their employer. The department
14 shall update the list each month.

15 (8) As used in this section, "department" means the department
16 of licensing and regulatory affairs.

17 Sec. 5106b. (1) Except as otherwise provided in subsection
18 (2), a professional guardian or professional conservator shall not
19 employ or independently contract with an individual who regularly
20 has direct access to or provides direct services to incapacitated
21 or protected individuals served by the professional guardian or
22 professional conservator, if the individual has been convicted of
23 any of the following:

24 (a) A relevant crime described under 42 USC 1320a-7(a).

25 (b) Any of the following felonies or misdemeanors, an attempt
26 or conspiracy to commit any of those felonies or misdemeanors, or
27 any other state or federal crime that is similar to the felonies or
28 misdemeanors described in this subdivision:

29 (i) A felony or misdemeanor that involves the intent to cause

1 death or serious impairment of a body function, that results in
2 death or serious impairment of a body function, that involves the
3 use of force or violence, or that involves the threat of the use of
4 force or violence.

5 (ii) A felony or misdemeanor involving cruelty or torture.

6 (iii) A felony or misdemeanor under chapter XXA of the Michigan
7 penal code, 1931 PA 328, MCL 750.145m to 750.145r.

8 (iv) A felony or misdemeanor involving criminal sexual conduct.

9 (v) A felony or misdemeanor involving abuse or neglect.

10 (vi) A felony or misdemeanor involving the use of a firearm or
11 dangerous weapon.

12 (vii) A felony or misdemeanor involving the diversion or
13 adulteration of a prescription drug or other medications.

14 (viii) A felony or misdemeanor involving fraud,
15 misrepresentation, material omission, misappropriation, theft,
16 exploitation, or conversion.

17 (ix) A felony or misdemeanor involving home invasion.

18 (x) A felony or misdemeanor involving embezzlement.

19 (xi) A felony or misdemeanor involving negligent homicide or a
20 violation of section 601d(1) of the Michigan vehicle code, 1949 PA
21 300, MCL 257.601d.

22 (xii) A felony or misdemeanor involving larceny.

23 (xiii) Any other misdemeanor involving assault, fraud, theft, or
24 the possession or delivery of a controlled substance.

25 (2) Except as otherwise provided in this subsection or
26 subsection (5), a professional guardian or professional conservator
27 shall not employ or independently contract with an individual who
28 regularly has direct access to or provides direct services to

1 incapacitated or protected individuals served by the professional
2 guardian or professional conservator and an individual applicant
3 must not be certified as a professional guardian or professional
4 conservator until the professional guardian, professional
5 conservator, or the individual applicant for certification has a
6 criminal history check conducted in compliance with this section or
7 has received criminal history record information in compliance with
8 subsections (3) and (10). This subsection and subsection (1) do not
9 apply to an individual who is under an independent contract with a
10 professional guardian or professional conservator if he or she is
11 not under the professional guardian's or professional conservator's
12 control and the services for which he or she is contracted are not
13 directly related to the provision of services to an incapacitated
14 or protected individual or if the services for which he or she is
15 contracted allow for direct access to the incapacitated or
16 protected individuals but are not performed on an ongoing basis.
17 This exception includes, but is not limited to, an individual who
18 is under an independent contract with the professional guardian or
19 professional conservator to provide utility, maintenance,
20 construction, or communications services.

21 (3) An individual who applies for certification as a
22 professional guardian or professional conservator or employment
23 either as an employee or as an independent contractor for a
24 professional guardian or professional conservator and who has not
25 been the subject of a criminal history check conducted in
26 compliance with this section shall give written consent at the time
27 of application for the department of state police to conduct a
28 criminal history check under this section, along with
29 identification acceptable to the department of state police. If the

1 applicant has been the subject of a criminal history check
2 conducted in compliance with this section, the applicant shall give
3 written consent at the time of application for the professional
4 guardian or professional conservator to obtain the criminal history
5 record information as prescribed in subsection (4) from the
6 department and for the department of state police to conduct a
7 criminal history check under this section if the requirements of
8 subsection (10) are not met and a request to the Federal Bureau of
9 Investigation to make a determination of the existence of any
10 national criminal history pertaining to the applicant is necessary,
11 along with identification acceptable to the department of state
12 police. On receipt of the written consent to obtain the criminal
13 history record information and identification required under this
14 subsection, the professional guardian or professional conservator
15 that has made a good-faith offer of employment or an independent
16 contract to the applicant shall request the criminal history record
17 information from the department and shall make a request regarding
18 the applicant to the department to conduct a check of all relevant
19 registries in the manner required in subsection (4). If the
20 requirements of subsection (10) are not met and a request to the
21 Federal Bureau of Investigation to make a subsequent determination
22 of the existence of any national criminal history pertaining to the
23 applicant is necessary, the professional guardian or professional
24 conservator shall proceed in the manner required in subsection (4).

25 (4) On receipt of the written consent to conduct a criminal
26 history check and identification required under subsection (3), the
27 professional guardian employer, professional conservator employer,
28 or the applicant for certification as a professional guardian or
29 professional conservator shall make a request to the department of

1 state police to conduct a criminal history check on the applicant,
2 to input the applicant's fingerprints into the automated
3 fingerprint identification system database, and to forward the
4 applicant's fingerprints to the Federal Bureau of Investigation.
5 The department of state police shall request the Federal Bureau of
6 Investigation to make a determination of the existence of any
7 national criminal history pertaining to the applicant. The
8 applicant shall provide the department of state police with a set
9 of fingerprints. The request must be made in a manner prescribed by
10 the department of state police. The professional guardian or
11 professional conservator shall make the written consent and
12 identification available to the department of state police. The
13 professional guardian or professional conservator shall make a
14 request regarding that applicant to the relevant licensing or
15 regulatory department to conduct a check of all relevant registries
16 established according to federal and state law and regulations for
17 any substantiated findings of abuse, neglect, or misappropriation
18 of property. If the department of state police or the Federal
19 Bureau of Investigation charges a fee for conducting the criminal
20 history check, the professional guardian employer, professional
21 conservator employer, or applicant for certification as a
22 professional guardian or professional conservator shall pay the
23 cost of the charge. The department of state police shall conduct a
24 criminal history check on the applicant named in the request. The
25 department of state police shall provide the department with a
26 written report of the criminal history check conducted under this
27 subsection. The report must contain any criminal history record
28 information on the applicant maintained by the department of state
29 police. The department of state police shall provide the results of

1 the Federal Bureau of Investigation determination to the department
2 within 30 days after the request is made. If criminal history
3 record information is disclosed on the written report of the
4 criminal history check or the Federal Bureau of Investigation
5 determination that resulted in a conviction, the department shall
6 notify the professional guardian employer, professional conservator
7 employer, or applicant for certification as a professional guardian
8 or professional conservator in writing of the type of crime
9 disclosed on the written report of the criminal history check or
10 the Federal Bureau of Investigation determination without
11 disclosing the details of the crime. Any charges imposed by the
12 department of state police or the Federal Bureau of Investigation
13 for conducting a criminal history check or making a determination
14 under this subsection must be paid in the manner required under
15 this subsection.

16 (5) If a professional guardian or professional conservator
17 determines it necessary to employ an applicant before receiving the
18 results of the applicant's criminal history check or criminal
19 history record information under this section, the professional
20 guardian or professional conservator may conditionally employ the
21 individual if all of the following apply:

22 (a) The professional guardian or professional conservator
23 requests the criminal history check or criminal history record
24 information under this section on conditionally employing the
25 individual.

26 (b) The individual signs a statement in writing that indicates
27 all of the following:

28 (i) That he or she has not been convicted of 1 or more of the
29 crimes that are described in subsection (1) (a) and (b).

1 (ii) That he or she agrees that, if the information in the
2 criminal history check conducted under this section does not
3 confirm the individual's statement under subparagraph (i), his or
4 her employment will be terminated by the professional guardian or
5 professional conservator as required under subsection (1).

6 (iii) That he or she understands that the conditions described
7 in subparagraphs (i) and (ii) may result in the termination of his or
8 her employment and that those conditions are good cause for
9 termination.

10 (c) Except as otherwise provided in this subdivision, the
11 professional guardian or professional conservator does not permit
12 the individual to have regular direct access to or provide direct
13 services to incapacitated individuals or protected individuals
14 served by the professional guardian or professional conservator
15 without supervision until the criminal history check or criminal
16 history record information is obtained and the individual is
17 eligible for that employment. If required under this subdivision,
18 the professional guardian or professional conservator shall provide
19 on-site supervision of an individual served by the professional
20 guardian or professional conservator on a conditional basis under
21 this subsection by an individual who has undergone a criminal
22 history check conducted in compliance with this section. A
23 professional guardian or professional conservator may permit an
24 individual in the professional guardian's or professional
25 conservator's employment on a conditional basis under this
26 subsection to have regular direct access to or provide direct
27 services to incapacitated or protected individuals in the
28 professional guardian's or professional conservator's care without
29 supervision if all of the following conditions are met:

1 (i) The professional guardian or professional conservator, at
2 its own expense and before the individual has direct access to or
3 provides direct services to incapacitated individuals or protected
4 individuals of the professional guardian or professional
5 conservator, conducts a search of public records on that individual
6 through the internet criminal history access tool maintained by the
7 department of state police and the results of that search do not
8 uncover any information that would indicate that the individual is
9 not eligible to have regular direct access to or provide direct
10 services to incapacitated individuals or protected individuals
11 under this section.

12 (ii) Before the individual has direct access to or provides
13 direct services to incapacitated or protected individuals of the
14 professional guardian or professional conservator, the individual
15 signs a statement in writing that he or she has resided in this
16 state without interruption for at least the immediately preceding
17 12-month period.

18 (iii) If applicable, the individual provides to the department
19 of state police a set of fingerprints on or before the expiration
20 of 10 business days following the date the individual was
21 conditionally employed under this subsection.

22 (6) The department shall develop and distribute a model form
23 for the statements required under subsection (5) (b) and (c). The
24 department shall make the model form available to professional
25 guardians and professional conservators on request at no charge.

26 (7) If an individual is employed as a conditional employee
27 under subsection (5), and the information under subsection (3) or
28 report under subsection (4) does not confirm the individual's
29 statement under subsection (5) (b), the professional guardian or

1 professional conservator shall terminate the individual's
2 employment as required by subsection (1).

3 (8) An individual who knowingly provides false information
4 regarding his or her identity, criminal convictions, or
5 substantiated findings on a statement described in subsection
6 (5) (b) is guilty of a misdemeanor punishable by imprisonment for
7 not more than 93 days or a fine of not more than \$500.00, or both.

8 (9) A professional guardian or professional conservator shall
9 use criminal history record information obtained under subsection
10 (3) or (4) for only the purpose of evaluating an applicant's
11 qualifications for employment or an independent contract, in the
12 position for which he or she has applied and for the purposes of
13 subsections (5) and (7). A professional guardian employer or
14 professional conservator employer shall not disclose criminal
15 history record information obtained under subsection (3) or (4) to
16 a person who is not directly involved in evaluating the applicant's
17 qualifications for employment or an independent contract. An
18 individual who knowingly uses or disseminates the criminal history
19 record information obtained under subsection (3) or (4) in
20 violation of this subsection is guilty of a misdemeanor punishable
21 by imprisonment for not more than 93 days or a fine of not more
22 than \$1,000.00, or both. Except for a knowing or intentional
23 release of false information, a professional guardian employer or
24 professional conservator employer does not have liability in
25 connection with a criminal history check conducted in compliance
26 with this section or the release of criminal history record
27 information under this subsection.

28 (10) On consent of an applicant as required in subsection (3)
29 and on request from a professional guardian employer or

1 professional conservator employer that has made a good-faith offer
2 of employment or an independent contract to the applicant, the
3 department shall review the criminal history record information, if
4 any, and notify the requesting professional guardian employer or
5 professional conservator employer of the information in the manner
6 prescribed in subsection (4). Until the department of state police
7 can participate with the Federal Bureau of Investigation's
8 automatic notification system similar to the system required of the
9 state police under subsection (13) and federal regulations allow
10 the federal criminal record to be used for subsequent authorized
11 uses, as determined in an order issued by the department, a
12 professional guardian or professional conservator may rely on the
13 criminal history record information provided by the department
14 under this subsection and a request to the Federal Bureau of
15 Investigation to make a subsequent determination of the existence
16 of any national criminal history pertaining to the applicant is not
17 necessary if all of the following requirements are met:

18 (a) The criminal history check was conducted during the
19 immediately preceding 12-month period.

20 (b) The applicant has been continuously employed by the
21 professional guardian or professional conservator since the
22 criminal history check was conducted in compliance with this
23 section or meets the continuous employment requirement of this
24 subdivision other than being on layoff status for less than 1 year
25 from a professional guardian or professional conservator.

26 (c) The applicant can provide evidence acceptable to the
27 department that he or she has been a resident of this state for the
28 immediately preceding 12-month period.

29 (11) As a condition of continued employment, each employee,

1 independent contractor, or individual shall do each of the
2 following:

3 (a) Agree in writing to report to the professional guardian or
4 professional conservator immediately on being arraigned for 1 or
5 more of the criminal offenses listed in subsection (1)(a) and (b),
6 and on being convicted of 1 or more of the criminal offenses listed
7 in subsection (1)(a) and (b). Reporting of an arraignment under
8 this subdivision is not cause for termination or denial of
9 employment.

10 (b) If a set of fingerprints is not already on file with the
11 department of state police, provide the department of state police
12 with a set of fingerprints.

13 (12) The department of state police and the Federal Bureau of
14 Investigation shall store and retain all fingerprints submitted
15 under this section and provide for an automatic notification if
16 subsequent criminal information submitted into the system matches a
17 set of fingerprints previously submitted under this section. On
18 notification under this subsection, the department of state police
19 shall immediately notify the department and the department shall
20 immediately contact each respective professional guardian employer
21 or professional conservator with which that individual is
22 associated. Information in the database established under this
23 subsection is confidential, is not subject to disclosure under the
24 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
25 must not be disclosed to any person except for purposes of this act
26 or for law enforcement purposes.

27 (13) The department shall maintain an electronic web-based
28 system to assist professional guardian employers and professional
29 conservator employers and applicants for certification as a

1 professional guardian or professional conservator required to check
2 relevant registries and conduct criminal history checks of its
3 employees and independent contractors, and to provide for an
4 automated notice to those professional guardian employers or
5 professional conservator employers for those individuals inputted
6 in the system who, since the initial criminal history check, have
7 been convicted of a disqualifying offense or have been the subject
8 of a substantiated finding of abuse, neglect, or misappropriation
9 of property. The department may charge a professional guardian or
10 professional conservator a 1-time set-up fee of up to \$100.00 for
11 access to the electronic web-based system under this section.

12 (14) As used in this section:

13 (a) "Convicted" means either of the following:

14 (i) For a crime that is not a relevant crime, a final
15 conviction, the payment of a fine, a plea of guilty or nolo
16 contendere if accepted by the court, or a finding of guilt for a
17 criminal law violation or a juvenile adjudication or disposition by
18 the juvenile division of probate court or family division of
19 circuit court for a violation that if committed by an adult would
20 be a crime.

21 (ii) For a relevant crime described under 42 USC 1320a-7(a),
22 convicted means that term as defined in 42 USC 1320a-7.

23 (b) "Criminal history check conducted in compliance with this
24 section" means a criminal history check conducted under this
25 section.

26 (c) "Department" means the department of licensing and
27 regulatory affairs.

28 (d) "Direct access" means access to an incapacitated
29 individual's or protected individual's financial information,

1 medical records, treatment information, or any other identifying
2 information.

3 (e) "Independent contract" means a contract entered into by a
4 professional guardian or professional conservator with an
5 individual who provides the contracted services independently for
6 the professional guardian or professional conservator.

7 (f) "Under the professional guardian's or professional
8 conservator's control" means an individual employed by or under
9 independent contract with a professional guardian or professional
10 conservator for whom the professional guardian or professional
11 conservator does both of the following:

12 (i) Determines whether the individual who has access to
13 incapacitated individuals or protected individuals may provide
14 care, treatment, or other similar support service functions to
15 incapacitated individuals or protected individuals served by the
16 professional guardian or professional conservator.

17 (ii) Directs or oversees 1 or more of the following:

18 (A) The policy or procedures the individual must follow in
19 performing his or her duties.

20 (B) The tasks performed by the individual.

21 (C) The individual's work schedule.

22 (D) The supervision or evaluation of the individual's work or
23 job performance, including imposing discipline or granting
24 performance awards.

25 (E) The compensation the individual receives for performing
26 his or her duties.

27 (F) The conditions under which the individual performs his or
28 her duties.

29 Sec. 5108a. ~~(1)~~—Beginning April 30, 2020, a guardian, guardian

1 ad litem, or visitor may satisfy any requirement concerning a visit
2 with an individual, including, but not limited to, a visit in the
3 physical presence of a person under this act by instead conferring
4 with the individual via 2-way real-time audiovisual technology that
5 allows direct, contemporaneous interaction by sight and sound
6 between the individual being visited and the guardian, guardian ad
7 litem, or visitor.

8 ~~(2) This section does not apply after June 30, 2021.~~

9 Sec. 5313. (1) The court may appoint a competent person as
10 guardian of a legally incapacitated individual. The court shall not
11 appoint as a guardian an agency, public or private, that
12 financially benefits from directly providing housing, medical,
13 mental health, or social services to the legally incapacitated
14 individual. If the court determines that the ward's property needs
15 protection, the court shall order the guardian to furnish a bond or
16 shall include restrictions in the letters of guardianship as
17 necessary to protect the property.

18 (2) In appointing a guardian under this section, the court
19 shall appoint a person, if suitable and willing to serve, in the
20 following order of priority:

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

24 (b) A person the individual subject to the petition chooses to
25 serve as guardian.

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

29 (d) A person named by the individual as a patient advocate or

1 attorney in fact in a durable power of attorney.

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

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

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

11 (c) A parent of the legally incapacitated individual. This
12 subdivision ~~shall~~**must** be considered to include a person nominated
13 by will or other writing signed by a deceased parent.

14 (d) A relative of the legally incapacitated individual with
15 whom the individual has resided for more than 6 months before the
16 filing of the petition.

17 (e) A person nominated by a person who is caring for the
18 legally incapacitated individual or paying benefits to the legally
19 incapacitated individual.

20 **(f) A person, other than an individual, that is a professional**
21 **guardian or an individual professional guardian who is certified**
22 **under section 5106a.**

23 (4) If none of the persons as designated or listed in
24 subsection (2) or (3) are suitable or willing to serve, the court
25 may appoint any competent person who is suitable and willing to
26 serve, including a professional guardian **who is not certified under**
27 **section 5106a** as provided in section 5106.

28 Sec. 5409. (1) The court may appoint an individual, a
29 corporation authorized to exercise fiduciary powers, or a

1 professional conservator described in section 5106 to serve as
 2 conservator of a protected individual's estate. The following are
 3 entitled to consideration for appointment in the following order of
 4 priority:

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

8 (b) An individual or corporation nominated by the protected
 9 individual if he or she is 14 years of age or older and of
 10 sufficient mental capacity to make an intelligent choice, including
 11 a nomination made in a durable power of attorney.

12 (c) The protected individual's spouse.

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

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

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

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

20 **(h) A person, other than an individual, that is a professional**
 21 **conservator or an individual professional conservator who is**
 22 **certified under section 5106a.**

23 (i) ~~(h)~~—If none of the persons listed in subdivisions (a) to
 24 ~~(g)~~ **(h)** are suitable and willing to serve, any person that the
 25 court determines is suitable and willing to serve.

26 (2) A person named in subsection (1)(a), (c), (d), (e), or (f)
 27 may designate in writing a substitute to serve instead, and that
 28 designation transfers the priority to the substitute. If persons
 29 have equal priority, the court shall select the person the court

1 considers best qualified to serve. Acting in the protected
2 individual's best interest, the court may pass over a person having
3 priority and appoint a person having a lower priority or no
4 priority.

5 Enacting section 1. This amendatory act does not take effect
6 unless Senate Bill No.____ or House Bill No. 4171 (request no.
7 01483'23) of the 102nd Legislature is enacted into law.