

HOUSE BILL NO. 4909

July 18, 2023, Introduced by Reps. Breen, Tsernoglou, Morse, Hope, McFall, Conlin, Young, Scott, Price, Paiz, Hood, Rogers, Fitzgerald, Mentzer, Rheingans, Filler, Borton, Schmaltz, MacDonell, Wozniak, Andrews, Dievendorf, Steckloff, Coffia, Koleszar, Haadsma, Farhat, Byrnes, McKinney, Hoskins, Brabec, Liberati, O'Neal, Neeley, Edwards, Miller, Wegela, Outman, Tyrone Carter, Snyder, Brixie, Coleman, Wilson, Grant, Glanville, Churches, Johnsen, Morgan, Aiyash, Whitsett, 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 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

1 proceeding subsequent to the appointment of a guardian under
 2 section ~~5312~~, **5312a**, or in a protective proceeding under section
 3 5401 must file a request for notice with the register of the court
 4 in which the proceeding is pending and with the attorney of record
 5 of the guardian or conservator or, if none, with the guardian or
 6 conservator, if any. A request is not effective unless it contains
 7 a statement showing the interest of the person making it and the
 8 address of that person or an attorney to whom notice is to be
 9 given. The request is effective only as to a proceeding that occurs
 10 after the filing. If a guardianship or protective proceeding is not
 11 pending at the time a person files a request for notice as
 12 authorized by this subsection, the person shall pay a fee for
 13 filing the request, which fee ~~shall~~**must** be in the same amount as,
 14 but is separate from, the fee required to commence such a
 15 proceeding.

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

19 Sec. 5106. (1) Subject to subsections (2) and (3), the court
 20 may appoint or approve a professional guardian or professional
 21 conservator, as appropriate, as a guardian or conservator under
 22 this act, or as a plenary guardian or partial guardian as those
 23 terms are defined in section 600 of the mental health code, 1974 PA
 24 258, MCL 330.1600.

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

28 (a) The appointment of the professional guardian or
 29 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, **5312a**, 5313, or 5409.

6 (3) The court shall not appoint a **person as a** professional
7 guardian or professional conservator as authorized under subsection
8 (1) unless the professional guardian or professional conservator
9 files a bond in an amount and with the conditions as determined by
10 the court. For a professional conservator, the sureties and
11 liabilities of the bond are subject to 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 a benefit beyond compensation specifically authorized
15 for that type of fiduciary by this act or the mental health code,
16 1974 PA 258, MCL 330.1001 to 330.2106. This subsection does not
17 prevent a person from providing compensation or other benefits,
18 from a source other than the estate of the ward, developmentally
19 disabled individual, incapacitated individual, or protected
20 individual, to a professional guardian or professional conservator
21 appointed or approved under this section. If a professional
22 guardian or professional conservator appointed or approved under
23 this section receives or is to receive compensation or other
24 benefits as a result of that appointment from a person other than
25 this state, a political subdivision of this state, or a trust
26 created under section 5407(2), the professional guardian or
27 professional conservator shall file with the appointing or
28 approving court a written statement of the compensation or other
29 benefit received or to be received, including the source of the

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

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

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

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

1 decisions requiring informed consent, including, but not limited
2 to, medical, mental health, placement, or care planning decisions
3 unless the support staff, professional, or other person has
4 obtained certification as described in section 5106a.

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

17 **Sec. 5106a. (1) The court shall not appoint a person as a**
18 **guardian of a legally incapacitated individual or conservator of a**
19 **protected individual who is not a minor, or both, under this**
20 **article unless the person has obtained certification as set forth**
21 **by administrative order of the supreme court. This section does not**
22 **apply until both of the following occur:**

23 (a) The legislature appropriates money for the certification
24 process.

25 (b) The supreme court establishes the certification process.

26 (2) The guardian and conservator certification advisory
27 council is created within the state court administrative office.
28 The advisory council shall recommend to the supreme court criteria
29 for guardian and conservator certification under subsection (1).

1 The advisory council consists of the following members:

2 (a) The attorney general or his or her designee.

3 (b) The state court administrator or his or her designee.

4 (c) The following members appointed by the governor:

5 (i) One member representing the Michigan Guardianship
6 Association.

7 (ii) One member representing the Michigan Elder Justice
8 Initiative.

9 (iii) One member representing the Elder Law and Disability
10 Rights Section of the State Bar of Michigan.

11 (iv) One member representing the Probate and Estate Planning
12 Section of the State Bar of Michigan.

13 (v) One member representing the Michigan Probate Judges
14 Association.

15 (vi) One member representing the Michigan Probate and Juvenile
16 Registers Association.

17 (vii) One member from a county guardianship office.

18 (viii) One member from a list of 3 or more individuals
19 recommended by the senate majority leader.

20 (ix) One member from a list of 3 or more individuals
21 recommended by the speaker of the house of representatives.

22 (x) One member from a list of 3 or more individuals
23 recommended by the house minority leader.

24 (xi) One member from a list of 3 or more individuals
25 recommended by the senate minority leader.

26 (3) The guardian and conservator certification advisory
27 council is dissolved after 2 years after the effective date of the
28 amendatory act that added this section.

29 (4) This section does not apply to a financial institution

1 **appointed as a professional conservator.**

2 Sec. 5310. (1) On petition of the guardian and subject to the
3 filing and approval of a report prepared as required by section
4 5314, the court shall accept the guardian's resignation and make
5 any other order that is appropriate.

6 (2) The ward or a person interested in the ward's welfare may
7 petition for an order removing the guardian, appointing a successor
8 guardian, modifying the guardianship's terms, or terminating the
9 guardianship. A request for this order may be made by informal
10 letter to the court or judge. A person who knowingly interferes
11 with the transmission of this kind of request to the court or judge
12 is subject to a finding of contempt of court. **A petition for an
13 order appointing a successor guardian under this subsection is
14 subject to the priority of appointment under section 5313.**

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

25 (4) Before removing a guardian, appointing a successor
26 guardian, modifying the guardianship's terms, or terminating a
27 guardianship, and following the same procedures to safeguard the
28 ward's rights as apply to a petition for a guardian's appointment,
29 the court may send a visitor to the present guardian's residence

1 and to the place where the ward resides or is detained to observe
2 conditions and report in writing to the court.

3 Sec. 5313. (1) ~~The~~ **Subject to sections 5106 and 5106a, the**
4 court may appoint a competent person as guardian of a legally
5 incapacitated individual. The court shall not appoint as a guardian
6 an agency, public or private, that financially benefits from
7 ~~directly~~ providing housing, medical, mental health, **caregiving**, or
8 social services to the legally incapacitated individual. If the
9 court determines that the ward's property needs protection, the
10 court shall order the guardian to furnish a bond or shall include
11 restrictions in the letters of guardianship as necessary to protect
12 the property.

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

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

19 (b) A person the individual subject to the petition chooses to
20 serve as guardian.

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

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

26 (3) If there is no person chosen, nominated, or named under
27 subsection (2), or if none of the persons listed in subsection (2)
28 are suitable **under subsection (5)** or willing to serve, the court
29 may appoint as a guardian an individual who is related to the

1 individual who is the subject of the petition in the following
2 order of preference:

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

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

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

10 (d) A relative of the legally incapacitated individual with
11 whom the individual has resided for more than 6 months before the
12 filing of the petition.

13 (e) A person nominated by a person who is caring for the
14 legally incapacitated individual or paying benefits to the legally
15 incapacitated individual.

16 (4) If none of the persons as designated or listed in
17 subsection (2) or (3) are suitable **under subsection (5)** or willing
18 to serve, the court may appoint any competent person who is
19 suitable **under subsection (5)** and willing to serve, including a
20 professional guardian as provided in section 5106. **If the court**
21 **appoints a professional guardian that employs 2 or more employees**
22 **who have obtained certification under section 5106a, the**
23 **professional guardian shall designate a certified employee who must**
24 **be the decision maker for the ward. The professional guardian shall**
25 **notify the ward and interested persons in writing of the name and**
26 **contact information of the designated decision maker within 7 days**
27 **after the court appoints the professional guardian and, if there is**
28 **a permanent change in the designated decision maker, within 7 days**
29 **after the permanent change. The professional guardian shall make**

1 the name and contact information of the designated decision maker
2 available on request to the court, the ward's caregivers, medical
3 and service providers, advocates, law enforcement, and any other
4 person who requests the name and contact information to address a
5 concern regarding the ward's health, safety, or welfare.

6 (5) The court shall appoint a person with priority guardian of
7 a legally incapacitated individual unless specific findings on the
8 record indicate that the person is not suitable as set forth in
9 this subsection or is not willing to serve. A person is suitable to
10 serve on a determination of specific findings of the court,
11 including, but not limited to, all of the following factors:

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

14 (b) The person's availability to the individual subject to the
15 guardianship.

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

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

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

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

1 other person is able to fulfill the duties.

2 (g) The person's ability to meet the requirements of section
3 5410, if applicable.

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

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

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

22 Sec. 5409. (1) The court may appoint an individual, a
23 corporation authorized to exercise fiduciary powers, or a
24 professional conservator described in section 5106 to serve as
25 conservator of a protected individual's estate. The following are
26 entitled to consideration for appointment in the following order of
27 priority:

28 (a) A conservator, guardian of property, or similar fiduciary
29 appointed or recognized by the appropriate court of another

1 jurisdiction in which the protected individual resides.

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

6 (c) The protected individual's spouse.

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

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

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

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

14 (h) If none of the persons listed in subdivisions (a) to (g)
15 are suitable **under subsection (3)** and willing to serve, any person
16 that the court determines is suitable **under subsection (3)** and
17 willing to serve.

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

26 (3) **The court shall appoint a person with priority to serve as**
27 **conservator of a protected individual's estate unless specific**
28 **findings on the record indicate the person is not suitable as set**
29 **forth in this subsection or is not willing to serve. A person is**

1 suitable to serve on a determination of specific findings by the
2 court, including, but not limited to, all of the following factors:

3 (a) Preference of the individual subject to the
4 conservatorship, including who should serve and not serve as
5 conservator.

6 (b) Availability to the individual subject to the
7 conservatorship.

8 (c) History and relationship with the individual subject to
9 the conservatorship.

10 (d) Criminal history that is relevant to the role of a
11 conservator.

12 (e) Personal history, including, but not limited to,
13 employment, training, skills, and stability that will facilitate
14 fulfillment of duties.

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

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

23 (4) In deciding between 2 persons with equal priority, the
24 court shall weigh the factors in subsection (3) with specific
25 findings on the record. The court may appoint not more than 2
26 persons to serve as coconservators. Unless the order of appointment
27 and letters of conservatorship otherwise state, coconservators must
28 act jointly.

29 (5) Letters of conservatorship must expire not later than 15

1 months after the date of appointment. The expiration date must be
2 printed on the letters of conservatorship. Letters of
3 conservatorship must not be reissued to a conservator that fails to
4 account to the court as required under section 5418. The probate
5 register may reissue letters of conservatorship under this
6 subsection without a hearing.

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

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

12 (a) Senate Bill No. ____ or House Bill No. 4910 (request no.
13 01150'23).

14 (b) Senate Bill No. ____ or House Bill No. 4911 (request no.
15 01151'23).

16 (c) Senate Bill No. ____ or House Bill No. 4912 (request no.
17 01152'23).