

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 1385 (Substitute S-3 as reported by the Committee of the Whole)

Senate Bill 1386 (Substitute S-1 as reported)

Senate Bill 1387 (Substitute S-1 as reported)

Senate Bill 1388 (Substitute S-1 as reported)

Senate Bill 1389 (Substitute S-1 as reported)

Senate Bill 1390 (Substitute S-1 as reported)

Sponsor: Senator Joel D. Gougeon (Senate Bill 1385)

Senator Mike Goschka (Senate Bill 1386)

Senator Mike Rogers (Senate Bill 1387)

Senator Bev Hammerstrom (Senate Bill 1388)

Senator Shirley Johnson (Senate Bill 1389)

Senator Glenn D. Steil (Senate Bill 1390)

Committee: Families, Mental Health and Human Services

CONTENT

The bills would amend guardianship and conservatorship provisions of the Estates and Protected Individuals Code (EPIC) to do the following:

- Require that a guardian ad litem appointed for an allegedly incapacitated individual consider alternatives to guardianship.
- Prohibit a person who commenced a guardianship or conservatorship proceeding from choosing or indicating a preference as to a particular person for appointment as guardian ad litem.
- Require a legally incapacitated individual's guardian to consult with him or her regarding major decisions, and require a ward's guardian to visit the ward at least every three months.
- Require that a guardian's scheduled report to the court also be provided to each "interested person".
- Require that, when a guardianship petition was filed, the court give the petitioner information regarding alternatives to guardianship.
- Regulate a guardian's or conservator's sale or other disposition of real property.

The bills would take effect on June 1, 2001.

Senate Bill 1385 (S-3) would require a guardian ad litem appointed for an individual alleged to be incapacitated, to determine whether there were one or more appropriate alternatives to the appointment of a full guardian. Before informing the court of his or her determination, the guardian ad litem would have to consider the appropriateness of, at least, the appointment of a limited guardian, including the specific powers and limitation on the powers that the guardian ad litem believed appropriate; appointment of a conservator or another protective order under EPIC; and execution of a patient advocate designation, do-not-resuscitate declaration, or durable power of attorney with or without limitations on purpose, authority, or duration. The guardian ad litem also would have to determine and inform the court whether a disagreement or dispute related to the guardianship petition could be resolved through court-ordered mediation.

The bill would require a guardian ad litem, physician or mental health professional, or visitor appointed under EPIC's conservatorship provisions, who met with, examined, or evaluated an individual who was the subject of a petition in a protective proceeding, to consider whether there was an appropriate alternative to a conservatorship; consider the desirability of limiting the scope and duration of the conservator's authority, if a conservatorship were appropriate; and report to the court based on those considerations.

Senate Bill 1386 (S-1) provides that a person who commenced an action or procedure under Article V of EPIC (Protection of an Individual Under Disability and His or Her Property) or who made a motion for, or in another manner requested, the appointment of a guardian ad litem under Article V, could not choose or indicate in any manner the person's preference as to a particular person for appointment as guardian ad litem.

Senate Bill 1387 (S-1) would require a court to find that protection was necessary to obtain or provide money, when appointing a conservator or making another protective order. The Code specifies that, upon petition and after notice and hearing, the court may appoint a conservator or make another protective order for cause in relation to an individual's estate and affairs if the court determines that the individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance, and that the individual has property that will be wasted or dissipated unless proper management is provided, or that money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and protection is "necessary or desirable" to obtain or provide money. The bill would remove "or desirable" from that criterion.

Senate Bill 1388 (S-1) would mandate that a guardian consult with a legally incapacitated individual before making a major decision affecting that individual. (Currently, whenever meaningful communication is possible, a legally incapacitated individual's guardian "should" consult with the individual.) The bill also would require that a ward's guardian visit the ward within three months after the guardian's appointment and at least once within three months after each previous visit.

Under EPIC, a guardian must report the condition of a ward and the ward's estate that is subject to the guardian's possession or control, as required by the court, at least annually. The bill would require that a guardian provide a copy of the report to the ward and to each "interested person" as specified in the Michigan Court Rules. (Under EPIC, "interested person" includes, but is not limited to, an heir, devisee, child, spouse, creditor, and beneficiary and any other person who has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual; a person who has priority for appointment as personal representative; and a fiduciary representing an interested person. Identification of interested persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, a proceeding, and by the Supreme Court rules.)

Senate Bill 1389 (S-1) would require that, before a guardianship petition was filed, the court provide the person intending to file the petition with written information that set forth alternatives to the appointment of a full guardian. Possible alternatives would have to include a limited guardian, conservator, patient advocate designation, do-not-resuscitate declaration, or durable power of attorney with or without limitations on purpose, authority, or time period. The information would have to include an explanation of each alternative.

Senate Bill 1390 (S-1) would prohibit a conservator from selling real property without court approval. The court could approve the sale only if, after a hearing with notice to interested persons as specified in the Michigan Court Rules, the court considered evidence of the value of the real property and otherwise determined the sale to be in the protected individual's best interest. Under EPIC, a guardian must take reasonable care of a ward's personal effects and commence a protective proceeding if necessary to protect the ward's other property. The bill specifies that, if a guardian commenced a protective proceeding because he or she believed that it was in the ward's best interest to sell or otherwise dispose of the ward's real property or interest in real property, the court could appoint the guardian as special conservator and authorize the special conservator to proceed. A guardian could not otherwise sell the ward's real property or interest in real property.

Under EPIC, a conservator acting reasonably in an effort to accomplish the purpose of his or her appointment, without court authorization or confirmation, may acquire or dispose of estate property, including land in another state, for cash or on credit, at public or private sale, or may manage, develop, improve, exchange, partition, change the character of, or abandon estate property. The bill would prohibit a conservator from selling or otherwise disposing of a protected individual's real property or interest in real property except in compliance with the provisions outlined above.

MCL 700.5305 & 700.5406 (S.B. 1385)
Proposed MCL 700.5108 (S.B. 1386)
MCL 700.5401 (S.B. 1387)
 700.5314 (S.B. 1388)
 700.5303 (S.B. 1389)
 700.5215 et al. (S.B. 1390)

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills would have an indeterminate impact on State and local government. The FY 2000-01 Family Independence Agency budget includes \$600,000 (80/20 Federal/State match) for guardianship contracts. Actual expenditures in FY 1998-99 totaled \$461,659. No Statewide data are available on current amounts paid by local units of government for guardians.

Date Completed: 11-13-00

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.