

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 1390 through 1393 (as introduced 9-27-00)
Sponsor: Senator Glenn D. Steil
Committee: Families, Mental Health and Human Services

Date Completed: 9-27-00

CONTENT

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

- **Regulate a guardian's or conservator's sale or other disposition of real property.**
- **Require a guardian ad litem appointed for an allegedly incapacitated individual to consider whether there was an appropriate alternative to appointment of a guardian.**
- **Require a guardian to prepare an inventory of his or her ward's estate, if the ward did not have a conservator.**
- **Prohibit a court from granting a guardian the same powers held by a patient advocate.**

Senate Bill 1390

The bill specifies that, if a conservator or a guardian with court authorization decided to sell or otherwise dispose of a protected individual's or ward's real property or interest in real property, the conservator or guardian would have to do all of the following:

- Serve notice on the ward or protected individual and each "interested person", sending with the notice a copy of a certified appraiser's appraisal of the property.
- File with the court a petition requesting approval of the sale or other disposition, along with the appraisal, a statement of one or more bases for the sale or other disposal, and proof of service.
- If the court approved, and the sale or other disposition were completed, file with the court a report that detailed the sale or other disposition.

If, after a hearing on a petition filed for the sale or disposition of real property, the court determined that the sale or other disposition was in the ward's or protected individual's best interest, the court would have to issue its approval.

Under EPIC, a minor's guardian has the powers and responsibilities of a parent who is not deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide for the ward from the guardian's own money and is not liable to third persons by reason of the parental relationship for the ward's acts. 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, without appointing a conservator, the court could authorize the guardian to proceed under the provisions outlined above.

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.

Senate Bill 1391

Guardianship Proceedings: Guardian Ad Litem

The Code specifies the duties of a guardian ad litem appointed for an individual alleged to be incapacitated. Among other things, those duties include making determinations, and informing the court of those determinations, on all of the following:

- Whether the individual wishes to be present at the hearing.
- Whether the individual wishes to contest the petition.
- Whether the individual wishes that limits be placed on the guardian's powers.
- Whether the individual objects to a particular person being appointed guardian.

The bill would add to that list whether there existed an appropriate alternative to appointment of a guardian or whether the guardianship should be limited, and if so, what those limits should be in terms of both authority and time.

Conservatorship Proceedings: Consideration of Alternatives

The bill would require an attorney, guardian ad litem, physician or mental health professional, or visitor who represented, met with, examined, or evaluated an individual who was the subject of a petition for a protective order to consider whether, rather than any protective order, there was a more appropriate alternative, such as mediation. If not, the person would have to consider and recommend to the court the limits on the authority and time period that should be included in an order appointing a conservator or another protective order.

Senate Bill 1392

The bill would require that, if a guardian's ward did not have a conservator, within 63 days after the guardian's appointment, a guardian prepare and file with the appointing court an inventory of the ward's estate. The inventory would have to include the ward's real and personal property. Unless a conservator was appointed, a guardian would have to file an inventory within one year after each of the guardian's previous inventory filings or as often as the court directed.

The bill also specifies that if a guardianship were in effect before the bill's effective date, the guardian would have to comply with the requirement to file an inventory within 63 days after the bill's effective date.

Senate Bill 1393

The bill would prohibit a court from granting a guardian the same powers that were held by a patient advocate designated under Section 5506 of EPIC (MCL 700.5506). If a valid patient advocate designation were made after a guardian's appointment and a power or duty of the patient advocate conflicted with that of the guardian, the patient advocate designation would control as to that power or duty. This prohibition would not apply if the court determined that the patient advocate's actions were not consistent with the patient's best interests or were otherwise not complying with the patient advocate designation or EPIC.

(Section 5506 provides for a person's written designation of another person to exercise powers concerning care, custody, and medical treatment decisions for the individual making the designation. An individual so designated is known as a patient advocate and the individual making the designation is known as a patient. A patient advocate's authority is exercisable only when the patient is unable to participate in medical treatment decisions.)

MCL 700.5215 et al. (S.B. 1390)
700.5305 & 700.5406 (S.B. 1391)
700.5314 (S.B. 1392)

Legislative Analyst: P. Affholter

700.5306 (S.B. 1393)

FISCAL IMPACT

The bills would have an indeterminate impact on the State and local units of government.

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.