

SENATE BILL No. 1391

September 27, 2000, Introduced by Senators STEIL, HAMMERSTROM, BULLARD, JOHNSON, SHUGARS, SIKKEMA, BENNETT, DUNASKISS, NORTH, GOUGEON, SCHWARZ, HART, DINGELL, DE BEAUSSAERT, GOSCHKA, SCHUETTE and MC MANUS and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5305 and 5406 (MCL 700.5305 and 700.5406), section 5406 as amended by 2000 PA 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5305. (1) The duties of a guardian ad litem appointed
2 for an individual alleged to be incapacitated include all of the
3 following:

4 (a) Personally visiting the individual.

5 (b) Explaining to the individual the nature, purpose, and
6 legal effects of a guardian's appointment.

7 (c) Explaining to the individual the hearing procedure and
8 the individual's rights in the hearing procedure, including, but
9 not limited to, the right to contest the petition, to request
10 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 for the individual if he or she is unable to afford legal
4 counsel.

5 (d) Informing the individual of the name of ~~any~~ EACH
6 person known to be seeking appointment as guardian.

7 (e) Making determinations, and informing the court of those
8 determinations, on all of the following:

9 (i) WHETHER AN APPROPRIATE ALTERNATIVE EXISTS TO APPOINTMENT
10 OF A GUARDIAN OR WHETHER THE GUARDIANSHIP SHOULD BE LIMITED, AND
11 IF SO, WHAT THOSE LIMITS SHOULD BE IN TERMS OF BOTH AUTHORITY AND
12 TIME.

13 (ii) ~~(i)~~ Whether the individual wishes to be present at
14 the hearing.

15 (iii) ~~(ii)~~ Whether the individual wishes to contest the
16 petition.

17 (iv) ~~(iii)~~ Whether the individual wishes limits placed on
18 the guardian's powers.

19 (v) ~~(iv)~~ Whether the individual objects to a particular
20 person being appointed guardian.

21 (2) The court shall not order compensation of the guardian
22 ad litem unless the guardian ad litem states on the record or in
23 the guardian ad litem's written report that he or she has com-
24 plied with subsection (1).

25 (3) If the individual alleged to be incapacitated wishes to
26 contest the petition, to have limits placed on the guardian's
27 powers, or to object to a particular person being appointed

1 guardian and if legal counsel has not been secured, the court
2 shall appoint legal counsel to represent the individual alleged
3 to be incapacitated. If the individual alleged to be incapaci-
4 tated is indigent, the state shall bear the expense of legal
5 counsel.

6 (4) If the individual alleged to be incapacitated requests
7 legal counsel or the guardian ad litem determines it is in the
8 INDIVIDUAL'S best interest ~~of the individual~~ to have legal
9 counsel, and if legal counsel has not been secured, the court
10 shall appoint legal counsel. If the individual alleged to be
11 incapacitated is indigent, the state shall bear the expense of
12 legal counsel.

13 (5) If the individual alleged to be incapacitated has legal
14 counsel appointed under subsection (3) or (4), the appointment of
15 a guardian ad litem terminates. IF LEGAL COUNSEL IS APPOINTED
16 BEFORE THE GUARDIAN AD LITEM COMPLETES 1 OR MORE OF THE DUTIES
17 LISTED IN SUBSECTION (1), THE LEGAL COUNSEL'S DUTIES INCLUDE THE
18 DUTIES THE GUARDIAN AD LITEM HAS NOT COMPLETED.

19 Sec. 5406. (1) Upon receipt of a petition for a
20 conservator's appointment or another protective order because of
21 minority, the court shall set a date for hearing. If, at any
22 time in the proceeding, the court determines that the minor's
23 interests are or may be inadequately represented, the court may
24 appoint an attorney to represent the minor, giving consideration
25 to the minor's choice if 14 years of age or older. An attorney
26 appointed by the court to represent a minor has the powers and
27 duties of a guardian ad litem.

1 (2) Upon receipt of a petition for a conservator's
2 appointment or another protective order for a reason other than
3 minority, the court shall set a date for hearing. Unless the
4 individual to be protected has chosen counsel, or is mentally
5 competent but aged or physically infirm, the court shall appoint
6 a guardian ad litem to represent the person in the proceeding.
7 If the alleged disability is mental illness, mental deficiency,
8 physical illness or disability, chronic use of drugs, or chronic
9 intoxication, the court may direct that the individual alleged to
10 need protection be examined by a physician or mental health pro-
11 fessional appointed by the court, preferably a physician or
12 mental health professional who is not connected with an institu-
13 tion in which the individual is a patient or is detained. The
14 individual alleged to need protection has the right to secure an
15 independent evaluation at his or her own expense. The court may
16 send a visitor to interview the individual to be protected. The
17 visitor may be a guardian ad litem or a court officer or
18 employee.

19 (3) The court may utilize, as an additional visitor, the
20 service of a public or charitable agency to evaluate the condi-
21 tion of the individual to be protected and make appropriate rec-
22 ommendations to the court.

23 (4) AN ATTORNEY, GUARDIAN AD LITEM, PHYSICIAN OR MENTAL
24 HEALTH PROFESSIONAL, OR VISITOR WHO REPRESENTS, MEETS WITH,
25 EXAMINES, OR EVALUATES AN INDIVIDUAL WHO IS THE SUBJECT OF A
26 PETITION FOR A PROTECTIVE ORDER SHALL CONSIDER WHETHER, RATHER
27 THAN ISSUING ANY PROTECTIVE ORDER, THERE IS A MORE APPROPRIATE

1 ALTERNATIVE, SUCH AS MEDIATION. IF NOT, THE PERSON SHALL
2 CONSIDER AND RECOMMEND TO THE COURT THE LIMITS ON THE AUTHORITY
3 AND TIME PERIOD THAT SHOULD BE INCLUDED IN AN ORDER APPOINTING A
4 CONSERVATOR OR ANOTHER PROTECTIVE ORDER.

5 (5) ~~(4)~~ The individual to be protected is entitled to be
6 present at the hearing in person. If the individual wishes to be
7 present at the hearing, all practical steps must be taken to
8 ensure the individual's presence including, if necessary, moving
9 the site of the hearing. The individual is entitled to be repre-
10 sented by counsel, to present evidence, to cross-examine wit-
11 nesses, including a court-appointed physician or other qualified
12 person and a visitor, and to trial by jury. The issue may be
13 determined at a closed hearing or without a jury if the individ-
14 ual to be protected or counsel for the individual so requests.

15 (6) ~~(5)~~ Any person may request for permission to partici-
16 pate in the proceeding, and the court may grant the request, with
17 or without hearing, upon determining that the best interest of
18 the individual to be protected will be served by granting the
19 request. The court may attach appropriate conditions to the
20 permission.

21 (7) ~~(6)~~ After hearing, upon finding that a basis for a
22 conservator's appointment or another protective order is estab-
23 lished by clear and convincing evidence, the court shall make the
24 appointment or other appropriate protective order.