

## **INCREASED PROTECTIONS FOR INDIVIDUALS WITH GUARDIANS OR CONSERVATORS**

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

### **House Bill 5186**

**Sponsor: Rep. Rick Jones**

### **House Bill 5187**

**Sponsor: Rep. Andy Coulouris**

### **House Bill 5188**

**Sponsor: Rep. Glenn Steil, Jr.**

**Committee: Judiciary**

**Complete to 1-8-08**

## **A SUMMARY OF HOUSE BILL 5186-5188 AS INTRODUCED 9-7-07**

The Estates and Protected Individuals Code establishes the rules for when a guardian may be appointed to take care of an individual and when a conservator may be appointed to take care of an individual's financial affairs. A person can have both a guardian and a conservator appointed on his or her behalf. Generally speaking, a guardian is appointed when a finding is made by a court that a person is legally incapacitated—that is, unable to make informed decisions about his or her own care and custody. During the process to determine if an individual is legally incapacitated, a guardian ad litem is appointed to represent the best interests of the individual in question if he or she does not already have legal counsel of his or her own choosing. A person who has had a guardian assigned to care for him or her is referred to as a "ward" and a person who has had a conservator appointed to take care of his or her money or property is referred to as a "protected individual."

House Bills 5186-5188 as a package would amend several sections of the Estates and Protected Individuals Code (EPIC) to require a guardian ad litem to report the amount of what is considered as "liquid assets" belonging to the individual to the court; grant a court discretion under certain circumstances to appoint a conservator, in addition to a guardian, upon a finding of legal incapacity; prohibit a conservator from selling, mortgaging, or disposing of the individual's property without court approval; and require, with certain exceptions, a conservator to furnish a bond. The bills are tie-barred to each other, meaning that none can take effect unless all are enacted.

### **House Bill 5186**

House Bill 5186 would amend EPIC (MCL 700.5305 and 700.5319). In addition to the current duties of a guardian ad litem appointed for an individual alleged to be incapacitated, the bill would add a requirement to report to the court the amount of cash and property readily convertible into cash that is in the individual's estate (liquid assets).

If the liquid assets of a ward's estate exceeded the limit for administering a small estate of a deceased person (\$15,000 or more after funeral and burial expenses are paid), the bill would allow a court to order the guardian to petition for the appointment of a conservator for the ward's estate. If a conservator were not appointed, and the guardian determined that there were more liquid assets than was reported by the guardian ad litem, the guardian would have to report the amount of the additional cash or property to the court.

#### House Bill 5187

The bill would amend EPIC (MCL 700.5422 and 700.5423) to specifically prohibit a conservator from mortgaging, pledging, or causing a lien to be placed on the protected individual's home without court approval. Currently, a conservator must obtain approval from the court in order to sell or otherwise dispose of the protected individual's real property (in general, land and buildings or fixtures on the land) or interest in real property. A sale or other disposal of real property or an interest in real property can only be approved if, after a hearing with notice to interested persons and consideration of evidence of the value of the property, the court determines the sale or disposal of the real property is in the protected individual's best interest. Under the bill, these provisions would also extend to a conservator's ability to mortgage, pledge, or cause a lien to be placed on the protected individual's real property or interest in real property.

A conservator would be required to record an order allowing the sale, disposal, mortgage, or pledge or placement of a lien on real property in the records of the register of deeds for the county in which the real property is located. Unless the order had been recorded or a person to whom an interest in the property was transferred had been given a copy of the order, the person would not be entitled to presume that the conservator had the power to make the transaction.

#### House Bill 5188

The bill would amend EPIC (MCL 700.5410) to require a conservator to furnish a bond if the estate in question exceeded the small estate threshold. Specifically, a court would have to require the conservator, with some exceptions, to furnish a bond if the court determined that the value of cash and property readily convertible into cash in the estate and in the conservator's control exceeded the small estate threshold for administering a decedent's estate, adjusted under Section 1210 for the year in which the conservator was appointed. This requirement would not apply if one or more of the following applied:

- The estate contained no property readily convertible to cash and the cash was in a restricted account with a financial institution.
- The conservator had been granted trust powers under Section 14401 of the Banking Code.
- The court determined that requiring a bond would impose a financial hardship on the estate.
- The court stated on the record the reasons why a bond was not necessary.

**FISCAL IMPACT:**

These bills would have a minimal fiscal impact on the judiciary system. The bills' new requirements may cause an increase in administrative workload for some courts, depending upon the number of relevant cases they handle.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Viola Bay Wild

---

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.