

# HOUSE BILL No. 4021

January 12, 2017, Introduced by Rep. Kosowski and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5303 and 5306 (MCL 700.5303 and 700.5306), section 5303 as amended by 2013 PA 157 and section 5306 as amended by 2004 PA 532.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 5303. (1) An individual in his or her own behalf, or any  
2 person interested in the individual's welfare, may petition for a  
3 finding of incapacity and appointment of a guardian. **A PERSON**  
4 **INTERESTED IN THE WELFARE OF A MINOR WHO IS NOT LESS THAN 17 YEARS**  
5 **AND 6 MONTHS OF AGE MAY PETITION FOR A FINDING OF INCAPACITY AND**  
6 **APPOINTMENT OF GUARDIAN EFFECTIVE ON THE MINOR'S EIGHTEENTH**  
7 **BIRTHDAY.** The petition ~~shall~~**MUST** contain specific facts about the  
8 individual's condition and specific examples of the individual's  
9 recent conduct that demonstrate the need for a guardian's

1 appointment.

2 (2) Before a petition is filed under this section, the court  
3 shall provide the person intending to file the petition with  
4 written information that sets forth alternatives to appointment of  
5 a full guardian, including, but not limited to, a limited guardian,  
6 conservator, patient advocate designation, do-not-resuscitate  
7 order, or durable power of attorney with or without limitations on  
8 purpose, authority, or time period, and an explanation of each  
9 alternative.

10 (3) ~~Upon~~**ON** the filing of a petition under subsection (1), the  
11 court shall set a date for hearing on the issue of incapacity. **IF**  
12 **THE ALLEGEDLY INCAPACITATED INDIVIDUAL IS A MINOR WHO IS NOT LESS**  
13 **THAN 17 YEARS AND 6 MONTHS OF AGE, THE COURT MAY SET A HEARING ON**  
14 **THE ISSUE OF INCAPACITY BEFORE THE MINOR'S EIGHTEENTH BIRTHDAY.**

15 Unless the allegedly incapacitated individual has legal counsel of  
16 his or her own choice, the court shall appoint a guardian ad litem  
17 to represent the ~~person~~**INDIVIDUAL** in the proceeding.

18 Sec. 5306. (1) The court may appoint a guardian if the court  
19 finds by clear and convincing evidence both that the individual for  
20 whom a guardian is sought is an incapacitated individual and that  
21 the appointment is necessary as a means of providing continuing  
22 care and supervision of the incapacitated individual, with each  
23 finding supported separately on the record. Alternately, the court  
24 may dismiss the proceeding or enter another appropriate order.

25 (2) The court shall grant a guardian only those powers and  
26 only for that period of time as is necessary to provide for the  
27 demonstrated need of the incapacitated individual. The court shall

1 design the guardianship to encourage the development of maximum  
2 self-reliance and independence in the individual. If the court is  
3 aware that an individual has executed a patient advocate  
4 designation under section 5506, the court shall not grant a  
5 guardian any of the same powers that are held by the patient  
6 advocate. A court order establishing a guardianship shall specify  
7 any limitations on the guardian's powers and any time limits on the  
8 guardianship.

9 (3) If the court finds by clear and convincing evidence that  
10 an individual is incapacitated and lacks the capacity to do some,  
11 but not all, of the tasks necessary to care for himself or herself,  
12 the court may appoint a limited guardian to provide guardianship  
13 services to the individual, but the court shall not appoint a full  
14 guardian.

15 (4) If the court finds by clear and convincing evidence that  
16 the individual is incapacitated and is totally without capacity to  
17 care for himself or herself, the court shall specify that finding  
18 of fact in an order and may appoint a full guardian.

19 (5) If an individual executed a patient advocate designation  
20 under section 5506 before the time the court determines that he or  
21 she became a legally incapacitated individual, a guardian does not  
22 have and shall not exercise the power or duty of making medical or  
23 mental health treatment decisions that the patient advocate is  
24 designated to make. If, however, a petition for guardianship or for  
25 modification under section 5310 alleges and the court finds that  
26 the patient advocate designation was not executed in compliance  
27 with section 5506, that the patient advocate is not complying with

1 the terms of the designation or with the applicable provisions of  
2 sections 5506 to 5515, or that the patient advocate is not acting  
3 consistent with the ward's best interests, the court may modify the  
4 guardianship's terms to grant those powers to the guardian.

5           **(6) IF THE INCAPACITATED INDIVIDUAL IS A MINOR WHO IS NOT LESS**  
6 **THAN 17 YEARS AND 6 MONTHS OF AGE, THE COURT MAY MAKE THE**  
7 **APPOINTMENT OF A GUARDIAN UNDER SUBSECTION (1) EFFECTIVE ON THE**  
8 **MINOR'S EIGHTEENTH BIRTHDAY.**