

HOUSE BILL No. 4684

May 31, 2017, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

8 (2) The court shall grant a guardian only those powers and
9 only for that period of time as is necessary to provide for the

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

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

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

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

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

6 **(6) IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT**
7 **THE INDIVIDUAL IS INCAPACITATED, THAT THE PERSON THAT HAS THE CARE**
8 **AND CUSTODY OF THE INCAPACITATED INDIVIDUAL DENIED A RELATIVE OF**
9 **THE INCAPACITATED INDIVIDUAL ACCESS TO THE INCAPACITATED**
10 **INDIVIDUAL, AND THAT THE INCAPACITATED INDIVIDUAL DESIRES CONTACT**
11 **WITH THE RELATIVE OR THAT CONTACT WITH THE RELATIVE IS IN THE**
12 **INCAPACITATED INDIVIDUAL'S BEST INTEREST, THE COURT MAY APPOINT A**
13 **LIMITED GUARDIAN TO SUPERVISE ACCESS WITH THE RELATIVE.**

14 Enacting section 1. This amendatory act takes effect 90 days
15 after the date it is enacted into law.