

SENATE BILL NO. 505

June 03, 2021, Introduced by Senators IRWIN, JOHNSON, RUNESTAD, WOJNO and CHANG and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5303, 5304, 5306, 5306a, 5312, and 5416 (MCL 700.5303, 700.5304, 700.5306, 700.5306a, 700.5312, and 700.5416), section 5303 as amended by 2017 PA 155, section 5306 as amended by 2019 PA 170, section 5306a as added by 2012 PA 173, and section 5312 as amended by 2000 PA 54.

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. The petition

1 must contain specific facts about the individual's condition and
2 specific examples of the individual's recent conduct that
3 demonstrate the need for a guardian's appointment.

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

12 (3) ~~Upon~~**On** the filing of a petition under subsection (1), the
13 court shall set a date for **initial** hearing. ~~on the issue of~~
14 ~~incapacity.~~ Unless the allegedly incapacitated individual has legal
15 counsel of his or her own choice, the court shall appoint a
16 guardian ad litem ~~to represent the person in the proceeding.~~**for the**
17 **initial hearing. The court may enter a final order on the petition**
18 **at the initial hearing if the court does not set a trial date under**
19 **subsection (4).**

20 (4) At the initial hearing under subsection (3), the court
21 shall set a trial date for the petition under subsection (1) if any
22 of the following apply:

23 (a) The guardian ad litem reports that the allegedly
24 incapacitated individual objects to any portion of the relief
25 requested by the petitioner.

26 (b) The allegedly incapacitated individual or his or her legal
27 counsel requests the matter be set for trial.

28 (c) Any reason as justice requires.

29 (5) If the court sets a trial date at the initial hearing

1 under subsection (4), the court shall do both of the following:

2 (a) Enter a scheduling order to the extent necessary.

3 (b) Enter an order that provides, to the extent practicable,
4 for the attendance of the allegedly incapacitated individual at the
5 trial if the allegedly incapacitated individual wishes to attend.
6 An order entered under this subdivision may order any interested
7 person over whom the court has jurisdiction to facilitate
8 attendance or move the hearing site under section 5304.

9 Sec. 5304. (1) If necessary, the court may order that an
10 individual alleged to be incapacitated be examined by a physician
11 or mental health professional appointed by the court who shall
12 submit a report in writing to the court at least 5 days before the
13 hearing set under section 5303. A report prepared as provided in
14 this subsection ~~shall~~**must** not be made a part of the proceeding's
15 public record, but ~~shall~~**must** be available to the court or an
16 appellate court in which the proceeding is subject to review, to
17 the alleged incapacitated individual, to the petitioner, to their
18 respective legal counsels, and to other persons as the court
19 directs. The report may be used as provided in the Michigan rules
20 of evidence.

21 (2) The alleged incapacitated individual has the right to
22 secure an independent evaluation, at his or her own expense or, if
23 indigent, at the expense of ~~the~~**this** state. Compensation for an
24 independent evaluation at public expense ~~shall~~**must** be in an amount
25 that, based ~~upon~~**on** time and expense, the court approves as
26 reasonable.

27 (3) A report prepared under this section ~~shall~~**must** contain
28 all of the following:

29 (a) A detailed description of the individual's ~~physical~~**or**

1 ~~psychological infirmities.~~**cognitive and functional abilities and**
2 **limitations.**

3 (b) An explanation of how and to what extent each ~~infirmity~~
4 ~~interferes with the individual's ability to receive or evaluate~~
5 ~~information in making decisions.~~**the individual is able to receive,**
6 **understand, participate in, and evaluate information in making**
7 **decisions.**

8 (c) ~~A~~**If the report is being completed by a physician or**
9 **mental health professional, a** listing of all medications the
10 individual is receiving, the dosage of each medication, and a
11 description of the effects each medication has ~~upon~~**on** the
12 individual's behavior.

13 (d) ~~A~~**If the report is being completed by a physician or**
14 **mental health professional, a** prognosis for improvement in the
15 individual's condition, **including whether it is a permanent or**
16 **temporary condition,** and a recommendation for the most appropriate
17 rehabilitation plan.

18 (e) The signatures **and printed names** of all individuals who
19 performed the evaluations, ~~upon which the report is based.~~**where**
20 **they are employed, the date of examination on which the report is**
21 **based, the length of time they have known the individual, and the**
22 **length of time they met the individual.**

23 (f) **Whether the individual has the ability to assign or**
24 **delegate responsibilities to ensure his or her well-being.**

25 (g) **Whether the individual has executed a document directing**
26 **care or naming an agent to act on his or her behalf, including, but**
27 **not limited to, a power of attorney, patient advocate designation,**
28 **or do-not-resuscitate order.**

29 (h) **If the report is being completed by a visitor, it must**

1 also include, at a minimum, an assessment of the existence of
 2 current formal and informal supports, the ability of supportive
 3 services and benefits to meet any unmet needs, the identification
 4 of any existing concerns regarding the individual's well-being, and
 5 the individual's ability to address those existing concerns.

6 (4) If the court finds that the report prepared under this
 7 section does not substantially comply with the requirements of this
 8 section, the court shall not consider the evaluation.

9 (5) ~~(4)~~—The individual alleged to be incapacitated is entitled
 10 to be present at the hearing in person, and to see or hear all
 11 evidence bearing ~~upon~~ on the individual's condition. If the
 12 individual wishes to be present at the hearing, all practical steps
 13 ~~shall~~ **must** be taken to ensure his or her presence, including, if
 14 necessary, moving the hearing site.

15 (6) ~~(5)~~—The individual **alleged to be incapacitated** is entitled
 16 to be represented by legal counsel, to present evidence, to cross-
 17 examine witnesses, including the court-appointed physician or
 18 mental health professional and the visitor, and to trial by jury.

19 (7) ~~(6)~~—The issue of incapacity may be determined at a closed
 20 hearing without a jury if requested by the individual alleged to be
 21 incapacitated or that individual's legal counsel.

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

29 (2) **The court shall dismiss the proceeding under subsection**

1 (1) if the court cannot be shown both of the following by clear and
2 convincing evidence:

3 (a) That the individual for whom a guardian is sought is an
4 incapacitated individual.

5 (b) That the appointment is necessary as a means of providing
6 continuing care and supervision of the individual.

7 (3) At any time during the proceedings under subsection (1),
8 the court may stay the guardianship proceedings for a reasonable
9 period of time, based on the needs of the individual, to allow the
10 individual the opportunity to explore the alternatives to
11 appointment of a guardian. If the individual properly names a
12 patient advocate under a patient advocate designation, an attorney
13 in fact under a power of attorney, or a representative payee under
14 a governmental benefit during the stay under this subsection and
15 provides evidence of naming the patient advocate, attorney in fact,
16 or representative payee to the court, the court may dismiss the
17 petition with or without a hearing. This subsection does not
18 prevent the court from ordering a temporary guardianship under
19 section 5312a if the temporary guardianship is limited in scope and
20 the court explicitly finds that the individual has the capacity to
21 execute a power of attorney, patient advocate designation, or
22 designate a representative payee.

23 (4) ~~(2)~~—The court shall grant a guardian only those powers and
24 only for that period of time as is necessary to provide for the
25 demonstrated need of the incapacitated individual. The court shall
26 design the guardianship to encourage the development of maximum
27 self-reliance and independence in the individual. If the court is
28 aware that an individual has executed a patient advocate
29 designation under section 5506, the court shall not grant a

1 guardian any of the same powers that are held by the patient
2 advocate. A court order establishing a guardianship shall specify
3 any limitations on the guardian's powers and any time limits on the
4 guardianship.

5 (5) ~~(3)~~—If the court finds by clear and convincing evidence
6 that an individual is incapacitated and lacks the capacity to do
7 some, but not all, of the tasks necessary to care for himself or
8 herself, the court may appoint a limited guardian to provide
9 guardianship services to the individual, but the court shall not
10 appoint a full guardian.

11 (6) ~~(4)~~—If the court finds by clear and convincing evidence
12 that the individual is incapacitated and is totally without
13 capacity to care for himself or herself, the court shall specify
14 that finding of fact in an order and may appoint a full guardian.

15 (7) ~~(5)~~—If an individual executed a patient advocate
16 designation under section 5506 before the time the court determines
17 that he or she became a legally incapacitated individual, a
18 guardian does not have and shall not exercise the power or duty of
19 making medical or mental health treatment decisions that the
20 patient advocate is designated to make. If, however, a petition for
21 guardianship or for modification under section 5310 alleges and the
22 court finds that the patient advocate designation was not executed
23 in compliance with section 5506, that the patient advocate is not
24 complying with the terms of the designation or with the applicable
25 provisions of sections 5506 to 5515, or that the patient advocate
26 is not acting consistent with the ward's best interests, the court
27 may modify the guardianship's terms to grant those powers to the
28 guardian.

29 (8) ~~(6)~~—If the court finds by clear and convincing evidence

1 that the individual is incapacitated, that the person that has the
2 care and custody of the incapacitated individual denied another
3 person access to the incapacitated individual, and that the
4 incapacitated individual desires contact with the other person or
5 that contact with the other person is in the incapacitated
6 individual's best interest, the court may appoint a limited
7 guardian to supervise access with the other person.

8 Sec. 5306a. (1) An individual for whom a guardian is sought or
9 has been appointed under section 5306 has all of the following
10 rights:

11 (a) To object to the appointment of a successor guardian by
12 will or other writing, as provided in section 5301.

13 (b) To have the guardianship proceeding commenced and
14 conducted in the place where the individual resides or is present
15 or, if the individual is admitted to an institution by a court, in
16 the county in which the court is located, as provided in section
17 5302.

18 (c) To petition on his or her own behalf for the appointment
19 of a guardian, as provided in section 5303.

20 (d) To have legal counsel of his or her own choice represent
21 him or her on the petition to appoint a guardian, as provided in
22 sections 5303, 5304, and 5305.

23 (e) If he or she is not represented by legal counsel, to the
24 appointment of a guardian ad litem to represent the individual on
25 the petition to appoint a guardian, as provided in section 5303.

26 (f) To an independent evaluation of his or her capacity by a
27 physician or mental health professional, at public expense if he or
28 she is indigent, as provided in section 5304.

29 (g) To be present at the hearing on the petition to appoint a

1 guardian and to have all practical steps taken to ensure this,
2 including, if necessary, moving the hearing site, as provided by
3 section 5304.

4 (h) To see or hear all the evidence presented in the hearing
5 on the petition to appoint a guardian, as provided in section 5304.

6 (i) To present evidence and cross-examine witnesses in the
7 hearing on the petition to appoint a guardian, as provided in
8 section 5304.

9 (j) To a trial by jury on the petition to appoint a guardian,
10 as provided in section 5304.

11 (k) To a closed hearing on the petition to appoint a guardian,
12 as provided in section 5304.

13 (l) If a guardian ad litem is appointed, to be personally
14 visited by the guardian ad litem, as provided in section 5305.

15 (m) If a guardian ad litem is appointed, to an explanation by
16 the guardian ad litem of the nature, purpose, and legal effects of
17 a guardian's appointment, as provided in section 5305.

18 (n) If a guardian ad litem is appointed, to an explanation by
19 the guardian ad litem of the individual's rights in the hearing
20 procedure, as provided in section 5305.

21 (o) If a guardian ad litem is appointed, to be informed by the
22 guardian ad litem of the right to contest the petition, to request
23 limits on the guardian's powers, to object to a particular person
24 being appointed guardian, to be present at the hearing, to be
25 represented by legal counsel, and to have legal counsel appointed
26 if the individual is unable to afford legal counsel, as provided in
27 section 5305.

28 (p) To be informed of the name of each person known to be
29 seeking appointment as guardian, including, if a guardian ad litem

1 is appointed, to be informed of the names by the guardian ad litem
2 as provided in section 5305.

3 (q) To require that proof of incapacity and the need for a
4 guardian be proven by clear and convincing evidence, as provided in
5 section 5306.

6 (r) To the limitation of the powers and period of time of a
7 guardianship to only the amount and time that is necessary, as
8 provided in section 5306.

9 (s) To a guardianship designed to encourage the development of
10 maximum self-reliance and independence as provided in section 5306.

11 (t) To prevent the grant of powers to a guardian if those
12 powers are already held by a valid patient advocate, as provided in
13 section 5306.

14 (u) To periodic review of the guardianship by the court,
15 including the right to a hearing and the appointment of an attorney
16 if issues arise upon the review of the guardianship, as provided in
17 section 5309.

18 (v) To, at any time, seek modification or termination of the
19 guardianship by informal letter to the judge, as provided in
20 section 5310.

21 (w) To a hearing within 28 days of requesting a review,
22 modification, or termination of the guardianship, as provided in
23 section 5310.

24 (x) To the same rights on a petition for modification or
25 termination of the guardianship including the appointment of a
26 visitor as apply to a petition for appointment of a guardian, as
27 provided in section 5310.

28 (y) To personal notice of a petition for appointment or
29 removal of a guardian, as provided in section 5311.

1 (z) To written notice of the nature, purpose, and legal
2 effects of the appointment of a guardian, as provided in section
3 5311.

4 (aa) To choose the person who will serve as guardian, if the
5 chosen person is suitable and willing to serve, as provided in
6 section 5313.

7 (bb) To consult with the guardian about major decisions
8 affecting the individual, if meaningful conversation is possible,
9 as provided in section 5314.

10 (cc) To quarterly visits by the guardian, as provided in
11 section 5314.

12 ~~(dd) To have the guardian notify the court within 14 days of a~~
13 ~~change in the individual's residence, as provided in section 5314.~~

14 **(dd)** ~~(ee)~~ To have the guardian secure services to restore the
15 individual to the best possible state of mental and physical well-
16 being so that the individual can return to self-management at the
17 earliest possible time, as provided in section 5314.

18 **(ee)** ~~(ff)~~ To have the guardian take reasonable care of the
19 individual's clothing, furniture, vehicles, and other personal
20 effects, as provided in section 5314.

21 (2) A guardian ad litem shall inform the ward in writing of
22 his or her rights enumerated in this section. The state court
23 administrative office and the ~~office of services to the aging~~
24 ~~created in section 5 of the older Michigianians act, 1981 PA 180,~~
25 ~~MCL 400.585,~~ **aging and adult services agency created under**
26 **Executive Reorganization Order No. 2015-1, MCL 400.227,** shall
27 promulgate a form to be used to give the written notice under this
28 section, which ~~shall~~ **must** include space for the court to include
29 information on how to contact the court or other relevant personnel

1 with respect to the rights enumerated in this section.

2 ~~Sec. 5312. (1) If an individual does not have a guardian, an~~
3 ~~emergency exists, and no other person appears to have authority to~~
4 ~~act in the circumstances, the court shall provide notice to the~~
5 ~~individual alleged to be incapacitated and shall hold a hearing.~~
6 ~~Upon a showing that the individual is an incapacitated individual,~~
7 ~~the court may exercise the power of a guardian, or appoint a~~
8 ~~temporary guardian with only the powers and for the period of time~~
9 ~~as ordered by the court. A hearing with notice as provided in~~
10 ~~section 5311 shall be held within 28 days after the court has acted~~
11 ~~under this subsection.~~

12 ~~(2) If an appointed guardian is not effectively performing the~~
13 ~~guardian's duties and the court further finds that the legally~~
14 ~~incapacitated individual's welfare requires immediate action, the~~
15 ~~court may appoint, with or without notice, a temporary guardian for~~
16 ~~the legally incapacitated individual for a specified period not to~~
17 ~~exceed 6 months.~~

18 ~~(3) A temporary guardian is entitled to the care and custody~~
19 ~~of the ward, and the authority of a permanent guardian previously~~
20 ~~appointed by the court is suspended as long as a temporary guardian~~
21 ~~has authority. A temporary guardian may be removed at any time. A~~
22 ~~temporary guardian shall make reports as the court requires. In~~
23 ~~other respects, the provisions of this act concerning guardians~~
24 ~~apply to temporary guardians.~~

25 **(1) An interested person may file a petition to appoint an**
26 **emergency guardian for an allegedly incapacitated individual under**
27 **this subsection. If a petition is filed under this subsection, the**
28 **petitioner shall give notice, except as otherwise provided in**
29 **subsection (2), as provided by section 5311, and the court shall**

1 appoint a guardian ad litem under section 5305. The court shall
2 conduct a hearing on a petition under this subsection as soon as
3 possible and not later than 7 days after the court receives the
4 petition. Except as otherwise provided in subsection (2), following
5 the hearing under this subsection, the court may appoint an
6 emergency guardian if the court finds by a preponderance of the
7 evidence that all of the following apply:

8 (a) An emergency exists that is likely to result in
9 substantial harm to the allegedly incapacitated individual's
10 physical health, safety, or welfare.

11 (b) No other person appears to have authority to act in the
12 circumstances.

13 (c) There is a basis that both the individual is an
14 incapacitated individual and appointment of an emergency guardian
15 is necessary as a means of providing continuing care and
16 supervision of the individual.

17 (2) On the filing of a petition to appoint an emergency
18 guardian under subsection (1), the court may appoint an emergency
19 guardian for an allegedly incapacitated individual without notice
20 to the allegedly incapacitated individual only if the court
21 determines from an affidavit or ex parte testimony showing, by
22 clear and convincing evidence, that all of the following apply:

23 (a) An emergency exists that is likely to result in imminent
24 and substantial harm to the allegedly incapacitated individual's
25 physical health, safety, or welfare.

26 (b) No other person appears to have authority to act in the
27 circumstances.

28 (c) There is a basis that both the individual is an
29 incapacitated individual and appointment of an emergency guardian

1 is necessary as a means of providing continuing care and
2 supervision of the individual.

3 (3) If the court appoints an emergency guardian under
4 subsection (2), the court shall do all of the following:

5 (a) Appoint a guardian ad litem for the allegedly
6 incapacitated individual under section 5305.

7 (b) Within 48 hours after the appointment of an emergency
8 guardian under this subsection, give notice of the appointment to
9 the allegedly incapacitated individual and any other person, as
10 determined by the court.

11 (c) Within 7 days after the appointment of an emergency
12 guardian under this subsection, hold a hearing on whether the
13 conditions for the appointment of the emergency guardian exist.

14 (4) If the court finds conditions exist for the appointment of
15 the emergency guardian at a hearing under this section, and the
16 individual wishes to contest the appointment, the court must set a
17 date for a hearing and enter an order consistent with section
18 5305(5).

19 (5) An order appointing an emergency guardian under this
20 section expires 28 days after the appointment. However, the court
21 may extend an order appointing an emergency guardian under this
22 section once for an additional 28 days if the court finds by a
23 preponderance of the evidence, upon an affidavit by the appointed
24 emergency guardian or following a hearing set at the discretion of
25 the court, that the conditions that led to the appointment of the
26 emergency guardian still exist.

27 (6) An emergency guardian may only exercise the powers
28 specified by the court.

29 (7) The court may remove an emergency guardian at any time.

1 **(8) An appointment of an emergency guardian under this section**
2 **is not a determination that a basis exists for an appointment of a**
3 **guardian under section 5306(1).**

4 Sec. 5416. **(1)** In relation to powers conferred by this part or
5 implicit in the title acquired by virtue of the proceeding, a
6 conservator shall act as a fiduciary and observe the standard of
7 care applicable to a trustee.

8 **(2) A conservator for an individual that is subject to a**
9 **conservatorship for a reason other than minority has the duty to**
10 **take all steps within the scope of the conservator's authority to**
11 **ensure the individual attends any hearing concerning the**
12 **individual's conservatorship if the individual wishes to attend the**
13 **hearing in a manner as provided in section 5406.**

14 Enacting section 1. This amendatory act does not take effect
15 unless all of the following bills of the 101st Legislature are
16 enacted into law:

17 (a) Senate Bill No. 504.

18

19 (b) Senate Bill No. 503.

20

21 (c) Senate Bill No. 506.

22