Legislative Analysis

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POWERS AND DUTIES OF GUARDIANS AND CONSERVATORS

Senate Bill 585 as enrolled
Sponsor: Sen. Jeff Irwin

Senate Bill 586 as enrolled
Sponsor: Sen. Ruth Johnson

House Committee: Judiciary [Discharged]
Senate Committee: Housing and Human Services
Complete to 8-31-26

(Enacted as Public Acts 68 and 69 of 2026)

SUMMARY:

Together, the bills amend the Estates and Protected Individuals Code (EPIC) to create new requirements for guardians and conservators related to moving or selling the residence of a ***legally incapacitated individual***.

> ***Legally incapacitated individual*** means an individual, other than a minor, for whom a guardian has been appointed under EPIC, or who has been adjudged by a court to be an *incapacitated individual*.[1]

Senate Bill 585 would amend section 5423 of EPIC to require courts to consider an appraisal of the value of a protected individual's property, conducted within the preceding six months by a *professional real estate appraiser*,[2] prior to deciding whether to approve the sale, disposal, mortgage, or pledge of or lien against a protected individual's principal dwelling, real property, or interest in real property by a ***conservator***. If the court approves the sale of the principal dwelling that is less than the appraised value of the property, the court would have to explain on the record why the sale is in the protected individual's best interest.

> ***Conservator*** means a person appointed by a court to manage a person's estate.

MCL 700.5423

Senate Bill 586 would add a new section to EPIC, section 5306b, to establish the right of a legally incapacitated individual, if possible, to remain in the individual's own surroundings or, if not possible, in the least restrictive environment suitable to the individual's unique needs, abilities, and resources. Section 5306b also would create various requirements (described below) applicable to ***guardians*** related to the authority to change an incapacitated individual's place of residence.

[1] *Incapacitated individual* means an individual who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, not including minority, to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions.
[2] *Professional real estate appraiser* means a professional licensed under Article 26 of the Occupational Code.

Guardian means a person who has qualified as a guardian of a minor or a legally incapacitated individual under a parental or spousal nomination or a court appointment, including a limited guardian under sections 5205, 5206, and 5306 of EPIC,[3] but not including a *guardian ad litem*.[4]

Petition to move a legally incapacitated individual

Except as provided below, before moving a legally incapacitated individual from their permanent residence, the bill would require a guardian to file a petition that includes all of the following on a form created by the State Court Administrative Office (or in a substantially similar form):

- The *individual's permanent residence* (their true, fixed, and permanent home to which, whenever absent, they intend to return).
- The proposed new residence.
- The reason for the proposed move.
- Whether the move is to the least restrictive environment suitable to the individual's unique needs, abilities, and resources, including consideration of any potential for harm and the individual's rights under section 5306a.[5]
- How the move will impact the individual's ability to continue to participate in their community activities and personal relationships.
- The efforts made or resources explored to enable the individual to remain in their current residence, including home- and community-based services, physical and occupational therapy, and available home modifications.
- How the guardian has communicated with the individual about the proposed move and whether the individual objects to or supports the proposed move.

Requirements to file a petition

A guardian would have to file a petition described above if any of the following apply:

- The legally incapacitated individual's circumstances and resources change.
- The changes support moving the legally incapacitated individual to a new permanent residence.
- The move is to the least restrictive environment suitable to the legally incapacitated individual's unique needs, abilities, and resources, including consideration of any potential for harm and the individual's rights under section 5306a.
- The move is not being arranged solely or primarily for the convenience of the guardian.
- If removal from the permanent residence requires the sale, transfer, or disposal or real property or personal property, the guardian has made reasonable efforts to communicate with the legally incapacitated individual's loved ones to identify and honor the individual's wishes to preserve sentimental personal property in the overall context of the individual's values, wishes, and resources.

The bill would further authorize courts to remove a guardian that fails to comply with the above filing requirements.

[3] MCL 700.5205, 700.5206, and 700.5306

[4] A *guardian ad litem* is an individual appointed by the court in a specific case or instance to protect the interests of a person who is unable to take care of themselves (typically a minor or a legally incapacitated individual), with or without that person's consent. Specific duties of guardians ad litem are provided for under MCL 700.5305.

[5] https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-700-5306a

Duties of guardians ad litem

The court would have to appoint a guardian ad litem and hold a hearing within 28 days after a petition is filed as described above. The guardian ad litem, in addition to their existing duties under section 5305,[6] would have to do all of the following:

- Advise the individual that a petition has been filed to move them from their permanent residence.
- Explain that if the court grants the petition, the guardian will have the authority to change the individual's permanent residence to the location specified in the petition or another location the court determines appropriate.
- Determine, if possible, the wishes of the individual to remain in their permanent residence and whether the individual objects.
- Include the above information in the guardian ad litem's written report.

Granting of petitions

The bill would prohibit a court from granting a petition for removal from a permanent residence unless, after a hearing, the court finds by *clear and convincing evidence*[7] that all of the following apply:

- The move will appropriately protect the individual's physical health, safety, or welfare.
- The move is to the least restrictive environment suitable to the individual's unique needs, abilities, and resources, including consideration of any potential for harm and the individual's rights under section 5306a.
- If the individual does *not* consent to the move, there is no reasonable or appropriate way to provide similar benefits for the individual in the individual's permanent residence through use of home- and community-based services, physical or occupational therapy, available home modifications, or other means.
- The move will allow the individual the greatest opportunity to continue to be involved in their community activities and personal relationships.
- The move is not being arranged solely or primarily for the convenience of the guardian.

If the court finds, by clear and convincing evidence, that a location *other than* the permanent residence or proposed new residence satisfies the above criteria, the court could order that the guardian move the individual to the alternative location.

Moving a legally incapacitated individual without a petition

The bill would authorize a guardian to move a legally incapacitated individual *before* a petition described above is filed if either of the following applies:

- The court previously granted the guardian authority to move the individual based on a hearing on the record consistent with the requirements above, including findings of fact on the record when the court appointed the guardian on an initial or subsequent petition.
- An emergency condition exists, including an emergency that presents a risk of serious harm to the safety of the individual.

[6] https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-700-5305

[7] *Clear and convincing evidence* is an evidentiary standard that requires demonstrating that evidence is highly and substantially more likely to be true than untrue. Under this standard, the burden of proof is satisfied when the party with the burden convinces the judge or jury that the contention is highly probable.

If a guardian moves a legally incapacitated individual without a petition, the guardian would have to take all reasonable steps to preserve the individual's permanent residence. The guardian also would have to notify the court of the ward's temporary place of residence within 14 days after the move.

If a guardian determines that, following a temporary absence from a legally incapacitated individual's permanent residence,[8] the individual will *not* return to their permanent residence, the guardian would be required to file a petition described above to that effect.

Court review of placement

If a legally incapacitated individual's circumstances and resources are expected to change such that the current permanent residence may no longer be the least restrictive environment suitable to the individual's unique needs, abilities, and resources, the court would have to order a review of the placement at a time and date set by the court.

Other changes

The bill also would make complimentary changes to sections 5306 and 5314, which pertain to the power of guardians to change or establish a legally incapacitated individual's place of residence, by subjecting those sections to the requirements in new section 5306b.

MCL 700.5306 and 700.5314 and proposed MCL 700.5306b

BACKGROUND AND DISCUSSION:

In general, conservators and guardians are appointed by the probate court to act in the best interest of an individual who is allegedly, or has been determined by a court to be, legally incapacitated and unable to make decisions for themselves. While Michigan law allows any individual who is at least 18 years of age and willing to serve to be appointed as a conservator or guardian (or both), courts sometimes appoint a "professional" (such as a licensed attorney) to fulfill these functions. In many cases, conservators and guardians exercise a considerable degree of power over an individual's finances, property, living arrangements, and medical care.

In 2019, the Elder Abuse Task Force was created under the Department of Attorney General to address and prevent cases of elder abuse by conservators and guardians. A core initiative of the task force is to strengthen protections for wards whose guardian has decided to remove them from their residence or community, which supporters of the bills argue can result in serious harm to the health and well-being of seniors. Supporters of the bills also argue that requiring independent appraisals of property values will better protect seniors and other vulnerable individuals from conservators or guardians seeking to personally benefit from financially exploitative undervaluing or rushed property sales. However, those opposing the bills argue that the independent appraisal requirements impose undue financial burdens on wards, conservators, and guardians that ultimately risk delaying the sale of property, and that existing safeguards—such as banks requiring an appraisal before agreeing to finance the sale of a property—afford sufficient protections to vulnerable individuals.

[8] Reasons for a temporary absence include, but are not limited to, an emergency, travel, short-term rehabilitation, or hospitalization.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on local court funding units. The fiscal impact to local courts would depend on how provisions of the bills affect the level of court activity, court caseloads, and related administrative costs. Any costs incurred by the State Court Administrative Office for creating the form to be used by a guardian to file a petition with the court would be minimal and paid for with existing appropriations.

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