

**SB 1385, As Passed Senate, November 14, 2000**

**SUBSTITUTE FOR  
SENATE BILL NO. 1385**

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5305 and 5406 (MCL 700.5305 and 700.5406), section 5406 as amended by 2000 PA 54.

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

1       Sec. 5305. (1) The duties of a guardian ad litem appointed  
2 for an individual alleged to be incapacitated include all of the  
3 following:

4       (a) Personally visiting the individual.

5       (b) Explaining to the individual the nature, purpose, and  
6 legal effects of a guardian's appointment.

7       (c) Explaining to the individual the hearing procedure and  
8 the individual's rights in the hearing procedure, including, but  
9 not limited to, the right to contest the petition, to request  
10 limits on the guardian's powers, to object to a particular person

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1 being appointed guardian, to be present at the hearing, to be  
2 represented by legal counsel, and to have legal counsel appointed  
3 for the individual if he or she is unable to afford legal  
4 counsel.

5 (d) Informing the individual of the name of ~~any~~ EACH  
6 person known to be seeking appointment as guardian.

7 (e) Making determinations, and informing the court of those  
8 determinations, on all of the following:

9 (i) WHETHER THERE ARE 1 OR MORE APPROPRIATE ALTERNATIVES TO  
10 THE APPOINTMENT OF A FULL GUARDIAN. BEFORE INFORMING THE COURT  
11 OF HIS OR HER DETERMINATION UNDER THIS SUBPARAGRAPH, THE GUARDIAN  
12 AD LITEM SHALL CONSIDER THE APPROPRIATENESS OF AT LEAST EACH OF  
13 THE FOLLOWING ALTERNATIVES:

14 (A) APPOINTMENT OF A LIMITED GUARDIAN, INCLUDING THE SPE-  
15 CIFIC POWERS AND LIMITATION ON THOSE POWERS THE GUARDIAN AD LITEM  
16 BELIEVES APPROPRIATE.

17 (B) APPOINTMENT OF A CONSERVATOR OR ANOTHER PROTECTIVE ORDER  
18 UNDER PART 4 OF THIS ARTICLE.

19 (C) EXECUTION OF [REDACTED]  
20 [REDACTED]  
21 [REDACTED] A PATIENT ADVOCATE DESIGNATION, DO-NOT-RESUSCITATE  
22 DECLARATION, OR DURABLE POWER OF ATTORNEY WITH OR WITHOUT LIMITA-  
23 TIONS ON PURPOSE, AUTHORITY, OR DURATION.

24 (ii) WHETHER A DISAGREEMENT OR DISPUTE RELATED TO THE GUARD-  
25 IANSHIP PETITION MIGHT BE RESOLVED THROUGH COURT ORDERED  
26 MEDIATION.

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1       (iii) ~~(i)~~ Whether the individual wishes to be present at  
2 the hearing.

3       (iv) ~~(ii)~~ Whether the individual wishes to contest the  
4 petition.

5       (v) ~~(iii)~~ Whether the individual wishes limits placed on  
6 the guardian's powers.

7       (vi) ~~(iv)~~ Whether the individual objects to a particular  
8 person being appointed guardian.

9       (2) The court shall not order compensation of the guardian  
10 ad litem unless the guardian ad litem states on the record or in  
11 the guardian ad litem's written report that he or she has com-  
12 plied with subsection (1).

13       (3) If the individual alleged to be incapacitated wishes to  
14 contest the petition, to have limits placed on the guardian's  
15 powers, or to object to a particular person being appointed  
16 guardian and if legal counsel has not been secured, the court  
17 shall appoint legal counsel to represent the individual alleged  
18 to be incapacitated. If the individual alleged to be incapaci-  
19 tated is indigent, the state shall bear the expense of legal  
20 counsel.

21       (4) If the individual alleged to be incapacitated requests  
22 legal counsel or the guardian ad litem determines it is in the  
23 INDIVIDUAL'S best interest ~~of the individual~~ to have legal  
24 counsel, and if legal counsel has not been secured, the court  
25 shall appoint legal counsel. If the individual alleged to be  
26 incapacitated is indigent, the state shall bear the expense of  
27 legal counsel.

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1 (5) If the individual alleged to be incapacitated has legal  
2 counsel appointed under subsection (3) or (4), the appointment of  
3 a guardian ad litem terminates.

4 Sec. 5406. (1) Upon receipt of a petition for a  
5 conservator's appointment or another protective order because of  
6 minority, the court shall set a date for hearing. If, at any  
7 time in the proceeding, the court determines that the minor's  
8 interests are or may be inadequately represented, the court may  
9 appoint an attorney to represent the minor, giving consideration  
10 to the minor's choice if 14 years of age or older. An attorney  
11 appointed by the court to represent a minor has the powers and  
12 duties of a guardian ad litem.

13 (2) Upon receipt of a petition for a conservator's appoint-  
14 ment or another protective order for a reason other than minori-  
15 ty, the court shall set a date for hearing. Unless the individ-  
16 ual to be protected has chosen counsel, or is mentally competent  
17 but aged or physically infirm, the court shall appoint a guardian  
18 ad litem to represent the person in the proceeding. If the  
19 alleged disability is mental illness, mental deficiency, physical  
20 illness or disability, chronic use of drugs, or chronic intoxica-  
21 tion, the court may direct that the individual alleged to need  
22 protection be examined by a physician or mental health profes-  
23 sional appointed by the court, preferably a physician or mental  
24 health professional who is not connected with an institution in  
25 which the individual is a patient or is detained. The individual  
26 alleged to need protection has the right to secure an independent  
27 evaluation at his or her own expense. The court may send a

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1 visitor to interview the individual to be protected. The visitor  
2 may be a guardian ad litem or a court officer or employee.

3 (3) The court may utilize, as an additional visitor, the  
4 service of a public or charitable agency to evaluate the condi-  
5 tion of the individual to be protected and make appropriate rec-  
6 ommendations to the court.

7 (4) A GUARDIAN AD LITEM, PHYSICIAN, MENTAL HEALTH PROFES-  
8 SIONAL, OR VISITOR APPOINTED UNDER THIS SECTION WHO MEETS WITH,  
9 EXAMINES, OR EVALUATES AN INDIVIDUAL WHO IS THE SUBJECT OF A  
10 PETITION IN A PROTECTIVE PROCEEDING SHALL DO ALL OF THE  
11 FOLLOWING:

12 (A) CONSIDER WHETHER THERE IS AN APPROPRIATE ALTERNATIVE TO  
13 A CONSERVATORSHIP.

14 (B) IF A CONSERVATORSHIP IS APPROPRIATE, CONSIDER THE DESIR-  
15 ABILITY OF LIMITING THE SCOPE AND DURATION OF THE CONSERVATOR'S  
16 AUTHORITY.

17 (C) REPORT TO THE COURT BASED ON THE CONSIDERATIONS REQUIRED  
18 IN SUBDIVISIONS (A) AND (B).

19 (5) ~~(4)~~ The individual to be protected is entitled to be  
20 present at the hearing in person. If the individual wishes to be  
21 present at the hearing, all practical steps must be taken to  
22 ensure the individual's presence including, if necessary, moving  
23 the site of the hearing. The individual is entitled to be repre-  
24 sented by counsel, to present evidence, to cross-examine wit-  
25 nesses, including a court-appointed physician or other qualified  
26 person and a visitor, and to trial by jury. The issue may be  
27 determined at a closed hearing or without a jury if the

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1 individual to be protected or counsel for the individual so  
2 requests.

3       (6) ~~-(5)-~~ Any person may request for permission to partici-  
4 pate in the proceeding, and the court may grant the request, with  
5 or without hearing, upon determining that the best interest of  
6 the individual to be protected will be served by granting the  
7 request. The court may attach appropriate conditions to the  
8 permission.

9       (7) ~~-(6)-~~ After hearing, upon finding that a basis for a  
10 conservator's appointment or another protective order is estab-  
11 lished by clear and convincing evidence, the court shall make the  
12 appointment or other appropriate protective order.

13       Enacting section 1. This amendatory act takes effect  
14 June 1, 2001.