

SENATE BILL No. 1385

September 27, 2000, Introduced by Senators GOUGEON, HAMMERSTROM, JOHNSON, STEIL, BULLARD, GOSCHKA, HART and SHUGARS and referred to the Committee on Families, Mental Health and Human Services.

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

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 AN APPROPRIATE ALTERNATIVE EXISTS TO APPOINTMENT
10 OF A GUARDIAN. THE ALTERNATIVES THE GUARDIAN AD LITEM CONSIDERS
11 SHALL INCLUDE AT LEAST ALL OF THE FOLLOWING:

12 (A) APPOINTMENT OF A LIMITED GUARDIAN OR OF A CONSERVATOR.

13 (B) REQUESTING THE COURT TO ORDER MEDIATION.

14 (C) REQUESTING THE COURT TO ISSUE AN ORDER GIVING ANOTHER
15 PERSON AUTHORITY LIMITED TO A SPECIFIED PURPOSE.

16 (D) EXECUTION OF A PATIENT ADVOCATE DESIGNATION, LIVING
17 WILL, DO-NOT-RESUSCITATE DECLARATION, OR DURABLE POWER OF ATTOR-
18 NEY WITH OR WITHOUT LIMITATIONS ON PURPOSE, AUTHORITY, OR TIME
19 PERIOD.

20 (ii) ~~(i)~~ Whether the individual wishes to be present at
21 the hearing.

22 (iii) ~~(ii)~~ Whether the individual wishes to contest the
23 petition.

24 (iv) ~~(iii)~~ Whether the individual wishes limits placed on
25 the guardian's powers.

26 (v) ~~(iv)~~ Whether the individual objects to a particular
27 person being appointed guardian.

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

5 (3) If the individual alleged to be incapacitated wishes to
6 contest the petition, to have limits placed on the guardian's
7 powers, or to object to a particular person being appointed
8 guardian and if legal counsel has not been secured, the court
9 shall appoint legal counsel to represent the individual alleged
10 to be incapacitated. If the individual alleged to be incapaci-
11 tated is indigent, the state shall bear the expense of legal
12 counsel.

13 (4) If the individual alleged to be incapacitated requests
14 legal counsel or the guardian ad litem determines it is in the
15 INDIVIDUAL'S best interest ~~of the individual~~ to have legal
16 counsel, and if legal counsel has not been secured, the court
17 shall appoint legal counsel. If the individual alleged to be
18 incapacitated is indigent, the state shall bear the expense of
19 legal counsel.

20 (5) If the individual alleged to be incapacitated has legal
21 counsel appointed under subsection (3) or (4), the appointment of
22 a guardian ad litem terminates. IF LEGAL COUNSEL IS APPOINTED
23 BEFORE THE GUARDIAN AD LITEM COMPLETES 1 OR MORE OF THE DUTIES
24 LISTED IN SUBSECTION (1), THE LEGAL COUNSEL'S DUTIES INCLUDE THE
25 DUTIES NOT COMPLETED.

26 Sec. 5406. (1) Upon receipt of a petition for a
27 conservator's appointment or another protective order because of

1 minority, the court shall set a date for hearing. If, at any
2 time in the proceeding, the court determines that the minor's
3 interests are or may be inadequately represented, the court may
4 appoint an attorney to represent the minor, giving consideration
5 to the minor's choice if 14 years of age or older. An attorney
6 appointed by the court to represent a minor has the powers and
7 duties of a guardian ad litem.

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

25 (3) The court may utilize, as an additional visitor, the
26 service of a public or charitable agency to evaluate the

1 condition of the individual to be protected and make appropriate
2 recommendations to the court.

3 (4) AN ATTORNEY, GUARDIAN AD LITEM, PHYSICIAN OR MENTAL
4 HEALTH PROFESSIONAL, OR VISITOR WHO REPRESENTS, MEETS WITH,
5 EXAMINES, OR EVALUATES AN INDIVIDUAL WHO IS THE SUBJECT OF A
6 PETITION FOR A PROTECTIVE ORDER SHALL CONSIDER WHETHER, RATHER
7 THAN ISSUING ANY PROTECTIVE ORDER, THERE IS A MORE APPROPRIATE
8 ALTERNATIVE, SUCH AS MEDIATION. IF NOT, THE PERSON SHALL CON-
9 sider AND RECOMMEND TO THE COURT THE LIMITS ON THE AUTHORITY AND
10 TIME PERIOD THAT SHOULD BE INCLUDED IN AN ORDER APPOINTING A CON-
11 SERVATOR OR ANOTHER PROTECTIVE ORDER.

12 (5) ~~-(4)-~~ The individual to be protected is entitled to be
13 present at the hearing in person. If the individual wishes to be
14 present at the hearing, all practical steps must be taken to
15 ensure the individual's presence including, if necessary, moving
16 the site of the hearing. The individual is entitled to be repre-
17 sented by counsel, to present evidence, to cross-examine wit-
18 nesses, including a court-appointed physician or other qualified
19 person and a visitor, and to trial by jury. The issue may be
20 determined at a closed hearing or without a jury if the individ-
21 ual to be protected or counsel for the individual so requests.

22 (6) ~~-(5)-~~ Any person may request for permission to partici-
23 pate in the proceeding, and the court may grant the request, with
24 or without hearing, upon determining that the best interest of
25 the individual to be protected will be served by granting the
26 request. The court may attach appropriate conditions to the
27 permission.

1 (7) ~~—(6)—~~ After hearing, upon finding that a basis for a
2 conservator's appointment or another protective order is estab-
3 lished by clear and convincing evidence, the court shall make the
4 appointment or other appropriate protective order.