

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senator Schuitmaker

ENROLLED SENATE BILL No. 539

AN ACT to amend 1998 PA 386, entitled "An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts," by amending sections 5313 and 5433 (MCL 700.5313 and 700.5433), section 5313 as amended by 2000 PA 463, and by adding sections 5202a and 5301a.

The People of the State of Michigan enact:

Sec. 5202a. (1) If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in this state on filing with a court in this state an application for appointment, an authenticated copy of the guardian's appointment in the other state, and an acceptance of appointment. Letters of guardianship for the temporary guardian expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary guardian under subsection (1), the guardian shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary guardian shall be appointed full guardian and the court shall issue letters of guardianship accordingly.

(3) If an objection is filed to a guardianship under this section, the guardianship continues unless a court in this state enters an order removing the guardian.

Sec. 5301a. (1) If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in this state on filing with a court in this state an application for appointment, an authenticated copy of the guardian's appointment in the other state, and an acceptance of appointment. Letters of guardianship for the temporary guardian expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary guardian under subsection (1), the guardian shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary guardian shall be appointed full guardian and the court shall issue letters of guardianship accordingly.

(3) If an objection is filed to a guardianship under this section, the guardianship continues unless a court in this state enters an order removing the guardian.

Sec. 5313. (1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward's

property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, in the following order of priority:

(a) A person previously appointed, qualified, and serving in good standing as guardian for the legally incapacitated individual in another state.

(b) A person the individual subject to the petition chooses to serve as guardian.

(c) A person nominated as guardian in a durable power of attorney or other writing by the individual subject to the petition.

(d) A person named by the individual as a patient advocate or attorney in fact in a durable power of attorney.

(3) If there is no person chosen, nominated, or named under subsection (2), or if none of the persons listed in subsection (2) are suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

(a) The legally incapacitated individual's spouse. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased spouse.

(b) An adult child of the legally incapacitated individual.

(c) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.

(d) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.

(e) A person nominated by a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual.

(4) If none of the persons as designated or listed in subsection (2) or (3) are suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian as provided in section 5106.

Sec. 5433. (1) If a conservator has not been appointed in this state and a petition in a protective proceeding is not pending in this state, a conservator appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary conservator in this state on filing with a court in this state an application for appointment, an authenticated copy of letters of appointment in the other state, and an acceptance of appointment. Letters of conservatorship for the temporary conservator expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary conservator under subsection (1), the conservator shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary conservator shall be appointed full conservator and the court shall issue letters of conservatorship accordingly.

(3) If an objection is filed to a conservatorship under this section, the conservatorship continues unless a court in this state enters an order removing the conservator.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor