

HOUSE BILL No. 4335

February 24, 2011, Introduced by Reps. Segal, Darany, Slavens, Smiley, Liss, Santana, Tlaib, Barnett, Bauer, Irwin, Geiss, Rutledge, Hovey-Wright, Oakes, Brown, Dillon, Haugh, Switalski, Townsend, Brunner, Cavanagh, Meadows, McCann and Lipton and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 5305 (MCL 700.5305), as amended by 2000 PA 464,
and by adding section 5319.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5305. (1) The duties of a guardian ad litem appointed for
2 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 the
8 individual's rights in the hearing procedure, including, but not
9 limited to, the right to contest the petition, to request limits on
10 the guardian's powers, to object to a particular person being

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

4 (d) Informing the individual of the name of each person known
5 to be seeking appointment as guardian.

6 (E) ASKING THE INDIVIDUAL AND THE PETITIONER ABOUT THE AMOUNT
7 OF CASH AND PROPERTY READILY CONVERTIBLE INTO CASH THAT IS IN THE
8 INDIVIDUAL'S ESTATE.

9 (F) ~~(e)~~ Making determinations, and informing the court of
10 those determinations, on all of the following:

11 (i) Whether there are 1 or more appropriate alternatives to the
12 appointment of a full guardian OR WHETHER 1 OR MORE ACTIONS SHOULD
13 BE TAKEN IN ADDITION TO THE APPOINTMENT OF A GUARDIAN. Before
14 informing the court of his or her determination under this
15 subparagraph, the guardian ad litem shall consider the
16 appropriateness of at least each of the following AS alternatives
17 OR ADDITIONAL ACTIONS:

18 (A) Appointment of a limited guardian, including the specific
19 powers and limitation on those powers the guardian ad litem
20 believes appropriate.

21 (B) Appointment of a conservator or another protective order
22 under part 4 of this article. IN THE REPORT INFORMING THE COURT OF
23 THE DETERMINATIONS UNDER THIS SUBDIVISION, THE GUARDIAN AD LITEM
24 SHALL INCLUDE AN ESTIMATE OF THE AMOUNT OF CASH AND PROPERTY
25 READILY CONVERTIBLE INTO CASH THAT IS IN THE INDIVIDUAL'S ESTATE.

26 (C) Execution of a patient advocate designation, do-not-
27 resuscitate declaration, or durable power of attorney with or

1 without limitations on purpose, authority, or duration.

2 (ii) Whether a disagreement or dispute related to the
3 guardianship petition might be resolved through court ordered
4 mediation.

5 (iii) Whether the individual wishes to be present at the
6 hearing.

7 (iv) Whether the individual wishes to contest the petition.

8 (v) Whether the individual wishes limits placed on the
9 guardian's powers.

10 (vi) Whether the individual objects to a particular person
11 being appointed guardian.

12 (2) The court shall not order compensation of the guardian ad
13 litem unless the guardian ad litem states on the record or in the
14 guardian ad litem's written report that he or she has complied with
15 subsection (1).

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

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

1 the state shall bear the expense of legal counsel.

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

5 SEC. 5319. (1) IF A COURT DETERMINES THAT THE TOTAL AMOUNT OF
6 CASH AND PROPERTY THAT IS READILY CONVERTIBLE INTO CASH IN A WARD'S
7 ESTATE EXCEEDS THE LIMIT FOR ADMINISTERING A DECEDENT'S ESTATE
8 UNDER SECTION 3982, ADJUSTED FOR THE YEAR IN WHICH THE GUARDIAN IS
9 APPOINTED IN THE MANNER PROVIDED UNDER SECTION 1210 FOR CERTAIN
10 DOLLAR AMOUNTS APPLICABLE TO DECEDENTS' ESTATES, OR IF THE COURT
11 DETERMINES THAT FINANCIAL PROTECTION IS REQUIRED FOR THE WARD FOR
12 ANOTHER REASON, THE COURT MAY ORDER THE GUARDIAN TO PETITION FOR
13 THE APPOINTMENT OF A CONSERVATOR OR FOR ANOTHER PROTECTIVE ORDER
14 FOR THE WARD'S ESTATE.

15 (2) IF A CONSERVATOR HAS NOT BEEN APPOINTED FOR A WARD'S
16 ESTATE AND THE GUARDIAN DETERMINES THAT THERE IS MORE CASH OR
17 PROPERTY THAT IS READILY CONVERTIBLE INTO CASH IN THE WARD'S ESTATE
18 THAN WAS REPORTED BY THE GUARDIAN AD LITEM UNDER SECTION
19 5305(1)(F), THE GUARDIAN SHALL REPORT THE AMOUNT OF THE ADDITIONAL
20 CASH OR PROPERTY TO THE COURT.