

# HOUSE BILL No. 4342

February 24, 2011, Introduced by Reps. Talabi, Smiley, Santana, Darany, Bauer, Slavens, Townsend, Liss, Geiss, Tlaib, Barnett, Oakes, Brown, Cavanagh, Hovey-Wright, Rutledge, Dillon, Haugh, Switalski, Segal, Durhal, Brunner, 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 sections 5306, 5314, 5315, and 5316 (MCL 700.5306, 700.5314, 700.5315, and 700.5316), section 5306 as amended by 2004 PA 532, section 5314 as amended by 2000 PA 469, and section 5316 as amended by 2000 PA 54, and by adding section 5306a.

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

1           Sec. 5306. (1) The court may appoint a guardian if the court  
2 finds by clear and convincing evidence both that the individual for  
3 whom a guardian is sought is an incapacitated individual and that  
4 the appointment is necessary as a means of providing continuing  
5 care and supervision of the incapacitated individual, with each  
6 finding supported separately on the record. Alternately, the court

1 may dismiss the proceeding or enter another appropriate order.

2 (2) The court shall grant a guardian only those powers and  
3 only for that period of time as is necessary to provide for the  
4 demonstrated need of the incapacitated individual. The court shall  
5 design the guardianship to encourage the development of maximum  
6 self-reliance and independence in the individual. If the court is  
7 aware that an individual has executed a patient advocate  
8 designation under section 5506, the court shall not grant a  
9 guardian any of the same powers that are held by the patient  
10 advocate. A court order establishing a guardianship shall specify  
11 **WHAT POWERS ARE GRANTED TO THE GUARDIAN**, any limitations on the  
12 guardian's powers, and any time limits on the guardianship. **THE**  
13 **INCAPACITATED INDIVIDUAL RETAINS ALL RIGHTS AND POWERS NOT**  
14 **EXPRESSLY OR IMPLIEDLY TRANSFERRED TO THE GUARDIAN BY COURT ORDER.**

15 (3) If the court finds by clear and convincing evidence that  
16 an individual is incapacitated and lacks the capacity to do some,  
17 but not all, of the tasks necessary to care for himself or herself,  
18 the court may appoint a limited guardian to provide guardianship  
19 services to the individual, but the court shall not appoint a full  
20 guardian.

21 (4) If the court finds by clear and convincing evidence that  
22 the individual is incapacitated and is totally without capacity to  
23 care for himself or herself, the court shall specify that finding  
24 of fact in an order and may appoint a full guardian.

25 (5) If an individual executed a patient advocate designation  
26 under section 5506 before the time the court determines that he or  
27 she became a legally incapacitated individual, a guardian does not

1 have and shall not exercise the power or duty of making medical or  
2 mental health treatment decisions that the patient advocate is  
3 designated to make. If, however, a petition for guardianship or for  
4 modification under section 5310 alleges and the court finds that  
5 the patient advocate designation was not executed in compliance  
6 with section 5506, that the patient advocate is not complying with  
7 the terms of the designation or with the applicable provisions of  
8 sections 5506 to 5515, or that the patient advocate is not acting  
9 consistent with the ward's best interests, the court may modify the  
10 guardianship's terms to grant those powers to the guardian.

11 **SEC. 5306A. (1) AN INDIVIDUAL FOR WHOM A GUARDIAN IS APPOINTED**  
12 **UNDER SECTION 5306 HAS ALL OF THE FOLLOWING RIGHTS:**

13 **(A) TO OBJECT TO THE APPOINTMENT OF A SUCCESSOR GUARDIAN BY**  
14 **WILL OR OTHER WRITING, AS PROVIDED IN SECTION 5301.**

15 **(B) TO HAVE THE GUARDIANSHIP PROCEEDING COMMENCED AND**  
16 **CONDUCTED IN THE PLACE WHERE THE INDIVIDUAL RESIDES OR IS PRESENT**  
17 **OR, IF THE INDIVIDUAL IS ADMITTED TO AN INSTITUTION BY A COURT, IN**  
18 **THE COUNTY IN WHICH THE COURT IS LOCATED, AS PROVIDED IN SECTION**  
19 **5302.**

20 **(C) TO PETITION ON HIS OR HER OWN BEHALF FOR THE APPOINTMENT**  
21 **OF A GUARDIAN, AS PROVIDED IN SECTION 5303.**

22 **(D) TO HAVE LEGAL COUNSEL OF HIS OR HER OWN CHOICE REPRESENT**  
23 **HIM OR HER ON THE PETITION TO APPOINT A GUARDIAN, AS PROVIDED IN**  
24 **SECTIONS 5303, 5304, AND 5305.**

25 **(E) IF HE OR SHE IS NOT REPRESENTED BY LEGAL COUNSEL, TO THE**  
26 **APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INDIVIDUAL ON**  
27 **THE PETITION TO APPOINT A GUARDIAN, AS PROVIDED IN SECTION 5303.**

1 (F) TO AN INDEPENDENT EVALUATION OF HIS OR HER CAPACITY BY A  
2 PHYSICIAN OR MENTAL HEALTH PROFESSIONAL, AT PUBLIC EXPENSE IF HE OR  
3 SHE IS INDIGENT, AS PROVIDED IN SECTION 5304.

4 (G) TO BE PRESENT AT THE HEARING ON THE PETITION TO APPOINT A  
5 GUARDIAN AND TO HAVE ALL PRACTICAL STEPS TAKEN TO ENSURE THIS,  
6 INCLUDING, IF NECESSARY, MOVING THE HEARING SITE, AS PROVIDED BY  
7 SECTION 5304.

8 (H) TO SEE OR HEAR ALL THE EVIDENCE PRESENTED IN THE HEARING  
9 ON THE PETITION TO APPOINT A GUARDIAN, AS PROVIDED IN SECTION 5304.

10 (I) TO PRESENT EVIDENCE AND CROSS-EXAMINE WITNESSES IN THE  
11 HEARING ON THE PETITION TO APPOINT A GUARDIAN, AS PROVIDED IN  
12 SECTION 5304.

13 (J) TO A TRIAL BY JURY ON THE PETITION TO APPOINT A GUARDIAN,  
14 AS PROVIDED IN SECTION 5304.

15 (K) TO A CLOSED HEARING ON THE PETITION TO APPOINT A GUARDIAN,  
16 AS PROVIDED IN SECTION 5304.

17 (L) IF A GUARDIAN AD LITEM IS APPOINTED, TO BE PERSONALLY  
18 VISITED BY THE GUARDIAN AD LITEM, AS PROVIDED IN SECTION 5305.

19 (M) IF A GUARDIAN AD LITEM IS APPOINTED, TO AN EXPLANATION BY  
20 THE GUARDIAN AD LITEM OF THE NATURE, PURPOSE, AND LEGAL EFFECTS OF  
21 A GUARDIAN'S APPOINTMENT, AS PROVIDED IN SECTION 5305.

22 (N) IF A GUARDIAN AD LITEM IS APPOINTED, TO AN EXPLANATION BY  
23 THE GUARDIAN AD LITEM OF THE INDIVIDUAL'S RIGHTS IN THE HEARING  
24 PROCEDURE, AS PROVIDED IN SECTION 5305.

25 (O) IF A GUARDIAN AD LITEM IS APPOINTED, TO BE INFORMED BY THE  
26 GUARDIAN AD LITEM OF THE RIGHT TO CONTEST THE PETITION, TO REQUEST  
27 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 IF THE INDIVIDUAL IS UNABLE TO AFFORD LEGAL COUNSEL, AS PROVIDED IN  
4 SECTION 5305.

5 (P) TO BE INFORMED OF THE NAME OF EACH PERSON KNOWN TO BE  
6 SEEKING APPOINTMENT AS GUARDIAN, INCLUDING, IF A GUARDIAN AD LITEM  
7 IS APPOINTED, TO BE INFORMED OF THE NAMES BY THE GUARDIAN AD LITEM  
8 AS PROVIDED IN SECTION 5305.

9 (Q) TO REQUIRE THAT PROOF OF INCAPACITY AND THE NEED FOR A  
10 GUARDIAN BE PROVEN BY CLEAR AND CONVINCING EVIDENCE, AS PROVIDED IN  
11 SECTION 5306.

12 (R) TO THE LIMITATION OF THE POWERS AND PERIOD OF TIME OF A  
13 GUARDIANSHIP TO ONLY THE AMOUNT AND TIME THAT IS NECESSARY, AS  
14 PROVIDED IN SECTION 5306.

15 (S) TO A GUARDIANSHIP DESIGNED TO ENCOURAGE THE DEVELOPMENT OF  
16 MAXIMUM SELF-RELIANCE AND INDEPENDENCE AS PROVIDED IN SECTION 5306.

17 (T) TO PREVENT THE GRANT OF POWERS TO A GUARDIAN IF THOSE  
18 POWERS ARE ALREADY HELD BY A VALID PATIENT ADVOCATE, AS PROVIDED IN  
19 SECTION 5306.

20 (U) TO PERIODIC REVIEW OF THE GUARDIANSHIP BY THE COURT,  
21 INCLUDING THE RIGHT TO A HEARING AND THE APPOINTMENT OF AN ATTORNEY  
22 IF ISSUES ARISE UPON THE REVIEW OF THE GUARDIANSHIP, AS PROVIDED IN  
23 SECTION 5309.

24 (V) TO, AT ANY TIME, SEEK MODIFICATION OR TERMINATION OF THE  
25 GUARDIANSHIP BY INFORMAL LETTER TO THE JUDGE, AS PROVIDED IN  
26 SECTION 5310.

27 (W) TO A HEARING WITHIN 28 DAYS OF REQUESTING A REVIEW,

1 MODIFICATION, OR TERMINATION OF THE GUARDIANSHIP, AS PROVIDED IN  
2 SECTION 5310.

3 (X) TO THE SAME RIGHTS ON A PETITION FOR MODIFICATION OR  
4 TERMINATION OF THE GUARDIANSHIP WITH RESPECT TO THE APPOINTMENT OF  
5 A VISITOR AS APPLY TO A PETITION FOR APPOINTMENT OF A GUARDIAN, AS  
6 PROVIDED IN SECTION 5310.

7 (Y) TO PERSONAL NOTICE OF A PETITION FOR APPOINTMENT OR  
8 REMOVAL OF A GUARDIAN, AS PROVIDED IN SECTION 5311.

9 (Z) TO WRITTEN NOTICE OF THE NATURE, PURPOSE, AND LEGAL  
10 EFFECTS OF THE APPOINTMENT OF A GUARDIAN, AS PROVIDED IN SECTION  
11 5311.

12 (AA) TO CHOOSE THE PERSON WHO WILL SERVE AS GUARDIAN, IF THE  
13 CHOSEN PERSON IS SUITABLE AND WILLING TO SERVE, AS PROVIDED IN  
14 SECTION 5313.

15 (BB) TO CONSULT WITH THE GUARDIAN ABOUT MAJOR DECISIONS  
16 AFFECTING THE INDIVIDUAL, IF MEANINGFUL CONVERSATION IS POSSIBLE,  
17 AS PROVIDED IN SECTION 5314.

18 (CC) TO QUARTERLY VISITS BY THE GUARDIAN, AS PROVIDED IN  
19 SECTION 5314.

20 (DD) TO HAVE THE GUARDIAN NOTIFY THE COURT WITHIN 14 DAYS OF A  
21 CHANGE IN THE INDIVIDUAL'S RESIDENCE, AS PROVIDED IN SECTION 5314.

22 (EE) TO HAVE THE GUARDIAN SECURE SERVICES TO RESTORE THE  
23 INDIVIDUAL TO THE BEST POSSIBLE STATE OF MENTAL AND PHYSICAL WELL-  
24 BEING SO THAT THE INDIVIDUAL CAN RETURN TO SELF-MANAGEMENT AT THE  
25 EARLIEST POSSIBLE TIME, AS PROVIDED IN SECTION 5314.

26 (FF) TO HAVE THE GUARDIAN TAKE REASONABLE CARE OF THE  
27 INDIVIDUAL'S CLOTHING, FURNITURE, VEHICLES, AND OTHER PERSONAL

1 EFFECTS, AS PROVIDED IN SECTION 5314.

2 (GG) TO PARTIALLY SELF-MANAGE HIS OR HER PROPERTY TO ENCOURAGE  
3 SELF-RELIANCE AND INDEPENDENCE, AS PROVIDED IN SECTION 5316.

4 (2) WITHIN 7 DAYS AFTER BEING APPOINTED, A GUARDIAN SHALL  
5 INFORM THE WARD IN WRITING OF HIS OR HER RIGHTS ENUMERATED IN THIS  
6 SECTION. THE GUARDIAN SHALL SIGN AND DATE THE ADVICE OF RIGHTS  
7 NOTICE. THE WARD SHALL SIGN AND DATE AN ACKNOWLEDGEMENT THAT THE  
8 WARD HAS RECEIVED THE ADVICE OF RIGHTS NOTICE. THE SIGNED ADVICE OF  
9 RIGHTS NOTICE AND ACKNOWLEDGEMENT SHALL BE FILED WITH THE COURT.  
10 WITHIN 180 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
11 ADDED THIS SECTION, THE STATE COURT ADMINISTRATIVE OFFICE AND THE  
12 OFFICE OF SERVICES TO THE AGING CREATED IN SECTION 5 OF THE OLDER  
13 MICHIGANIANS ACT, 1981 PA 180, MCL 400.585, SHALL PROMULGATE A FORM  
14 TO BE USED TO GIVE THE WRITTEN NOTICE UNDER THIS SECTION, WHICH  
15 SHALL INCLUDE SPACE FOR THE COURT TO INCLUDE INFORMATION ON HOW TO  
16 CONTACT THE COURT OR OTHER RELEVANT PERSONNEL WITH RESPECT TO THE  
17 RIGHTS ENUMERATED IN THIS SECTION.

18 Sec. 5314. Whenever meaningful communication is possible, a  
19 legally incapacitated individual's guardian shall consult with the  
20 legally incapacitated individual before making a major decision  
21 affecting the legally incapacitated individual. ~~Except as limited~~  
22 **TO THE EXTENT A GUARDIAN OF A LEGALLY INCAPACITATED INDIVIDUAL IS**  
23 **GRANTED POWERS BY THE COURT** under section 5306, ~~a legally~~  
24 ~~incapacitated individual's~~ **THE** guardian is responsible for the  
25 ward's care, custody, and control, but is not liable to third  
26 persons by reason of that responsibility for the ward's acts. In  
27 particular and without qualifying the previous sentences, a

1 guardian has all of the following powers and duties, ~~except as~~  
2 ~~modified~~ **TO THE EXTENT GRANTED** by court order:

3 (a) ~~To the extent that it is consistent with the terms of an~~  
4 ~~order by a court of competent jurisdiction relating to the ward's~~  
5 ~~detention or commitment, the guardian is entitled to~~ **THE** custody of  
6 the person of the ~~guardian's~~ ward and ~~may~~ **THE POWER TO** establish  
7 the ward's place of residence within or without this state. ~~A~~  
8 ~~ward's~~ **THE** guardian shall visit the ward within 3 months after the  
9 guardian's appointment and not less than once within 3 months after  
10 each previous visit. The guardian ~~must~~ **SHALL** notify the court  
11 within 14 days of a change in the ward's place of residence.

12 (b) If entitled to custody of the ward, the ~~guardian must~~ **DUTY**  
13 **TO** make provision for the ward's care, comfort, and maintenance  
14 and, when appropriate, arrange for the ward's training and  
15 education. The guardian shall secure services to restore the ward  
16 to the best possible state of mental and physical well-being so  
17 that the ward can return to self-management at the earliest  
18 possible time. Without regard to custodial rights of the ward's  
19 person, the guardian ~~must~~ **SHALL** take reasonable care of the ward's  
20 clothing, furniture, vehicles, and other personal effects and  
21 commence a protective proceeding if the ward's other property needs  
22 protection. If a guardian commences a protective proceeding because  
23 the guardian believes that it is in the ward's best interest to  
24 sell or otherwise dispose of the ward's real property or interest  
25 in real property, the court may appoint the guardian as special  
26 conservator and authorize the special conservator to proceed under  
27 section 5423(3). A guardian shall not otherwise sell the ward's

1 real property or interest in real property.

2 (c) ~~A guardian may~~ **THE POWER TO** give the consent or approval  
3 that is necessary to enable the ward to receive medical or other  
4 professional care, counsel, treatment, or service.

5 (d) If a conservator for the ward's estate is not appointed, a  
6 ~~guardian may~~ **THE POWER TO** do any of the following:

7 (i) Institute a proceeding to compel a person under a duty to  
8 support the ward or to pay money for the ward's welfare to perform  
9 that duty.

10 (ii) Receive money and tangible property deliverable to the  
11 ward and apply the money and property for the ward's support, care,  
12 and education. The guardian shall not use money from the ward's  
13 estate for room and board that the guardian or the guardian's  
14 spouse, parent, or child have furnished the ward unless a charge  
15 for the service is approved by court order made upon notice to at  
16 least 1 of the ward's next of kin, if notice is possible. The  
17 guardian shall exercise care to conserve any excess for the ward's  
18 needs.

19 (e) The ~~guardian shall~~ **DUTY TO** report the condition of the  
20 ward and the ward's estate that is subject to the guardian's  
21 possession or control, as required by the court, but not less often  
22 than annually. The guardian shall also serve the report required  
23 under this subdivision on the ward and interested persons as  
24 specified in the Michigan court rules. A report under this  
25 subdivision ~~must~~ **SHALL** contain all of the following:

26 (i) The ward's current mental, physical, and social condition.

27 (ii) Improvement or deterioration in the ward's mental,

1 physical, and social condition that occurred during the past year.

2 (iii) The ward's present living arrangement and changes in his  
3 or her living arrangement that occurred during the past year.

4 (iv) Whether the guardian recommends a more suitable living  
5 arrangement for the ward.

6 (v) Medical treatment received by the ward.

7 (vi) Services received by the ward.

8 (vii) A list of the guardian's visits with, and activities on  
9 behalf of, the ward.

10 (viii) A recommendation as to the need for continued  
11 guardianship.

12 (f) If a conservator is appointed, the ~~guardian shall~~ **DUTY TO**  
13 pay to the conservator, for management as provided in this act, the  
14 amount of the ward's estate received by the guardian in excess of  
15 the amount the guardian expends for the ward's current support,  
16 care, and education. The guardian shall account to the conservator  
17 for the amount expended.

18 Sec. 5315. (1) ~~A TO THE EXTENT GRANTED BY THE COURT UNDER~~  
19 **SECTION 5306, THE** guardian of an individual for whom a conservator  
20 also is appointed controls the ward's custody and care and is  
21 entitled to receive reasonable amounts for those services and for  
22 room and board furnished to the ward as agreed upon between the  
23 guardian and the conservator if the amounts agreed upon are  
24 reasonable under the circumstances. The guardian may request the  
25 conservator to expend the ward's estate by payment to a third  
26 person or institution for the ward's care and maintenance.

27 (2) If a ward dies while under guardianship and a conservator

1 has not been appointed for the ward's estate and if the guardian  
2 has possession of money of the deceased ward, upon petition of the  
3 guardian and with or without notice, the court may hear a claim for  
4 burial expenses or any other claim as the court considers  
5 advisable. Upon hearing the claim, the court may enter an order  
6 allowing or disallowing the claim or a part of the claim and may  
7 provide in the order of allowance that the claim or a part of it be  
8 paid immediately if the payment can be made without injury or  
9 serious inconvenience to the ward's estate.

10       Sec. 5316. ~~To encourage self-reliance and independence in~~  
11 **EXCEPT TO THE EXTENT THE COURT GRANTS THE GUARDIAN OR CONSERVATOR**  
12 **OF** a legally incapacitated individual **THE POWER TO CONTROL THE**  
13 **INDIVIDUAL'S MONEY OR PROPERTY**, ~~the court may authorize the~~  
14 individual ~~to function~~ **MAY HANDLE HIS OR HER MONEY OR PROPERTY**  
15 without the consent or supervision of the individual's guardian or  
16 conservator, ~~in handling part of his or her money or property,~~  
17 including ~~authorizing the individual to maintain~~ **MAINTAINING** an  
18 account with a financial institution. To the extent the individual  
19 ~~is authorized~~ **HAS THE POWER** to function autonomously, a person may  
20 deal with the individual as though the individual is mentally  
21 competent.