

# SENATE BILL NO. 256

April 11, 2023, Introduced by Senator JOHNSON and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending section 5106 (MCL 700.5106), as amended by 2017 PA 136.

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

1           Sec. 5106. (1) Subject to subsections (2) and (3), the court  
2 may appoint or approve a professional guardian or professional  
3 conservator, as appropriate, as a guardian or conservator under  
4 this act, or as a plenary guardian or partial guardian as those  
5 terms are defined in section 600 of the mental health code, 1974 PA  
6 258, MCL 330.1600.

1 (2) The court shall only appoint a professional guardian or  
2 professional conservator as authorized under subsection (1) if the  
3 court finds on the record all of the following:

4 (a) The appointment of the professional guardian or  
5 professional conservator is in the ward's, developmentally disabled  
6 individual's, incapacitated individual's, or protected individual's  
7 best interests.

8 (b) There is no other person that is competent, suitable, and  
9 willing to serve in that fiduciary capacity in accordance with  
10 section 5212, 5313, or 5409.

11 (3) The court shall not appoint a professional guardian or  
12 professional conservator as authorized under subsection (1) unless  
13 the professional guardian or professional conservator files a bond  
14 in an amount and with the conditions as determined by the court.  
15 For a professional conservator, the sureties and liabilities of the  
16 bond are subject to sections 5410 and 5411. **The court shall not**  
17 **appoint an individual who was removed as a county public**  
18 **administrator under 1947 PA 194, MCL 720.201 to 720.223, as a**  
19 **professional guardian or professional conservator.**

20 (4) A professional guardian or professional conservator  
21 appointed under this section shall not receive as a result of that  
22 appointment a benefit beyond compensation specifically authorized  
23 for that type of fiduciary by this act or the mental health code,  
24 1974 PA 258, MCL 330.1001 to 330.2106. This subsection does not  
25 prevent a person from providing compensation or other benefits,  
26 from a source other than the estate of the ward, developmentally  
27 disabled individual, incapacitated individual, or protected  
28 individual, to a professional guardian or professional conservator  
29 appointed or approved under this section. If a professional

1 guardian or professional conservator appointed or approved under  
2 this section receives or is to receive compensation or other  
3 benefits as a result of that appointment from a person other than  
4 this state, a political subdivision of this state, or a trust  
5 created under section 5407(2), the professional guardian or  
6 professional conservator shall file with the appointing or  
7 approving court a written statement of the compensation or other  
8 benefit received or to be received, including the source of the  
9 compensation or other benefit, in a form and in a manner prescribed  
10 by the Michigan court rules. The professional guardian or  
11 professional conservator shall serve a copy of the form described  
12 in this subsection to the ward, developmentally disabled  
13 individual, incapacitated individual, or protected individual and  
14 to interested persons.

15 (5) A professional guardian appointed under this section shall  
16 establish and maintain a schedule of visitation so that an  
17 individual associated with the professional guardian who is  
18 responsible for the ward's care visits the ward within 3 months  
19 after the professional guardian's appointment and not less than  
20 once within 3 months after each previous visit.

21 (6) A professional guardian appointed under this section shall  
22 ensure that there are a sufficient number of employees assigned to  
23 the care of wards for the purpose of performing the necessary  
24 duties associated with ensuring that proper and appropriate care is  
25 provided.

26 (7) For the purposes of the statutory authorization required  
27 by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL  
28 487.11105, to act as a fiduciary in this state, if the court  
29 appoints a for-profit or nonprofit, nonbanking corporation

1 organized under the laws of this state to serve in a fiduciary  
2 capacity that is listed in subsection (1), the nonbanking  
3 corporation is authorized to act in that fiduciary capacity. The  
4 authorization under this subsection confers the fiduciary capacity  
5 only to the extent necessary in the particular matter of each  
6 appointment and is not a general grant of fiduciary authority. A  
7 nonbanking corporation is not authorized to act in any other  
8 fiduciary capacity.