

**SUBSTITUTE FOR
HOUSE BILL NO. 4728**

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 303a (MCL 339.303a), as amended by 2014 PA 265,
and by adding article 14A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 303a. The term of office of a member of a board appointed
2 under this article ~~shall commence~~ **commences** on 1 of the following
3 dates, as applicable:

4 Accountancy	July 1
5 Architects	April 1
6 Barbers	October 1
7 Collection agencies	July 1



1	Cosmetology	January 1
2	Employment agencies	October 1
3	Guardians and conservators	July 1
4	Hearing aid dealers	October 1
5	Land surveyors	April 1
6	Landscape architects	July 1
7	Mortuary science	July 1
8	Professional engineers	April 1
9	Real estate appraisers	July 1
10	Real estate brokers and salespersons	July 1
11	Residential builders	April 1

12 **Article 14A**

13 **Sec. 1410. As used in this article:**

14 (a) "Conservator" means that term as defined in section 1103
 15 of the estates and protected individuals code, 1998 PA 386, MCL
 16 700.1103.

17 (b) "Department" means the department of licensing and
 18 regulatory affairs.

19 (c) "Guardian" means that term as defined in section 1104 of
 20 the estates and protected individuals code, 1998 PA 386, MCL
 21 700.1104.

22 (d) "Professional conservator" means that term as defined in
 23 section 1106 of the estates and protected individuals code, 1998 PA
 24 386, MCL 700.1106.

25 (e) "Professional guardian" means that term as defined in
 26 section 1106 of the estates and protected individuals code, 1998 PA
 27 386, MCL 700.1106.

28 **Sec. 1411. (1) Beginning 2 years after the effective date of**
 29 **the amendatory act that added this section, the department shall**



1 license an individual as a professional guardian or professional
2 conservator who meets all of the following requirements:

3 (a) Submits a completed application to the department on a
4 form prescribed by the department.

5 (b) Pays an initial application fee or renewal application
6 fee, as applicable.

7 (c) Is 21 years of age or older.

8 (d) Submits a criminal background check under section 1413.

9 (e) Has not been convicted of a crime listed in section
10 1413(1).

11 (f) Has not been found liable in a civil action that involved
12 fraud, misrepresentation, misappropriation, theft, exploitation,
13 abuse, or conversion.

14 (g) Has not been removed as a guardian or conservator by the
15 court for an action involving fraud, misrepresentation,
16 misappropriation, theft, exploitation, abuse, or conversion.

17 (h) Has not been relieved of the responsibilities of a
18 guardian or conservator by an employer or client for an action
19 involving fraud, misrepresentation, misappropriation, theft,
20 exploitation, abuse, or conversion.

21 (i) Has graduated from an accredited high school or comparable
22 school or educational institution or passed the general educational
23 development test or other graduate equivalency examination.

24 (j) Passes and submits proof to the department of passage of
25 the Center for Guardianship Certification National Certified
26 Guardian Examination.

27 (k) Submits proof to the department of completion of other
28 educational requirements required by the Center for Guardianship
29 Certification, including a minimum of 20 hours of continuing



1 education units in the 24 months preceding the submission of the
2 application, as offered by a state or national trade association
3 dedicated to the advancement of the guardianship profession.

4 (l) Submits proof to the department of coverage by professional
5 liability insurance, as the named insured or employee of the named
6 insured.

7 (2) The department shall issue a unique license number to an
8 individual licensed under this section.

9 (3) This license is valid for 36 months and subject to renewal
10 according to section 1412.

11 (4) Only an individual licensed under this section may
12 advertise that the individual is a licensed professional guardian
13 or licensed professional conservator.

14 (5) An individual licensed under this section who has been
15 found civilly liable or criminally convicted in an action that
16 involves fraud, misrepresentation, misappropriation, theft,
17 exploitation, abuse, or conversion shall report this finding or
18 conviction to the department and each probate court in which the
19 individual is currently serving as a professional guardian or
20 professional conservator within 30 days after conviction or finding
21 of civil liability.

22 (6) The department shall revoke the license of an individual
23 who does not meet the requirements under subsection (1).

24 (7) An individual denied a license or whose license has been
25 revoked by the department based on a criminal history check
26 conducted under section 1413 may appeal to the department if the
27 individual believes that the criminal history report is inaccurate,
28 and the appeal must be conducted as a contested case under the
29 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to



1 24.328.

2 (8) The department shall post on its website a list of
3 licensed professional guardians and licensed professional
4 conservators, and if applicable, their employer. The department
5 shall update the list each month.

6 (9) As used in this section, "department" means the department
7 of licensing and regulatory affairs.

8 Sec. 1412. Beginning 2 years after the effective date of the
9 amendatory act that added this chapter, the department shall renew
10 a license for a guardian or conservator if the guardian or
11 conservator, as applicable, does all of the following:

12 (a) Submits a completed renewal application to the department
13 on a form prescribed by the department.

14 (b) Pays a renewal fee.

15 (c) Submits proof of having completed 30 hours of continuing
16 education units in the previous 36-month period, as offered by a
17 state or national trade association dedicated to the advancement of
18 the guardianship profession.

19 (d) Submits a new background check as described in section
20 1413.

21 (e) Submits proof of valid professional liability insurance.

22 Sec. 1413. (1) Except as otherwise provided in subsection (2),
23 a professional guardian or professional conservator shall not
24 employ or independently contract with an individual who regularly
25 has direct access to or provides direct services to incapacitated
26 or protected individuals served by the professional guardian or
27 professional conservator, if the individual has been convicted of
28 any of the following:

29 (a) A relevant crime described under 42 USC 1320a-7(a).



1 (b) Any of the following felonies or misdemeanors, an attempt
2 or conspiracy to commit any of those felonies or misdemeanors, or
3 any other state or federal crime that is similar to the felonies or
4 misdemeanors described in this subdivision:

5 (i) A felony or misdemeanor that involves the intent to cause
6 death or serious impairment of a body function, that results in
7 death or serious impairment of a body function, that involves the
8 use of force or violence, or that involves the threat of the use of
9 force or violence.

10 (ii) A felony or misdemeanor involving cruelty or torture.

11 (iii) A felony or misdemeanor under chapter XXA of the Michigan
12 penal code, 1931 PA 328, MCL 750.145m to 750.145r.

13 (iv) A felony or misdemeanor involving criminal sexual conduct.

14 (v) A felony or misdemeanor involving abuse or neglect.

15 (vi) Within the last 10 years, a felony or misdemeanor
16 involving the use of a firearm or dangerous weapon.

17 (vii) A felony or misdemeanor involving the diversion or
18 adulteration of a prescription drug or other medications.

19 (viii) A felony or misdemeanor involving fraud,
20 misrepresentation, misappropriation, theft, exploitation, or
21 conversion.

22 (ix) A felony or misdemeanor involving home invasion.

23 (x) A felony or misdemeanor involving embezzlement.

24 (xi) A felony or misdemeanor involving negligent homicide or a
25 violation of section 601d(1) of the Michigan vehicle code, 1949 PA
26 300, MCL 257.601d.

27 (xii) A felony or misdemeanor involving larceny.

28 (xiii) Within the last 10 years, any other misdemeanor involving



1 assault, fraud, theft, or the possession or delivery of a
2 controlled substance, except marihuana-related offenses.

3 (2) Except as otherwise provided in this subsection or
4 subsection (5), a professional guardian or professional conservator
5 shall not employ or independently contract with an individual who
6 regularly has direct access to or provides direct services to
7 incapacitated or protected individuals served by the professional
8 guardian or professional conservator and an individual applicant
9 must not be licensed as a professional guardian or professional
10 conservator until the professional guardian, professional
11 conservator, or the individual applicant for a license has a
12 criminal history check conducted in compliance with this section or
13 has received criminal history record information in compliance with
14 subsections (3) and (10). This subsection and subsection (1) do not
15 apply to an individual who is under an independent contract with a
16 professional guardian or professional conservator if the individual
17 is not under the professional guardian's or professional
18 conservator's control and the services for which the individual is
19 contracted are not directly related to the provision of services to
20 an incapacitated or protected individual or if the services for
21 which the individual is contracted allow for direct access to the
22 incapacitated or protected individuals but are not performed on an
23 ongoing basis.

24 (3) An individual who applies for a license as a professional
25 guardian or professional conservator or employment either as an
26 employee or as an independent contractor for a professional
27 guardian or professional conservator and who has not been the
28 subject of a criminal history check conducted in compliance with
29 this section shall give written consent at the time of application



1 for the department of state police to conduct a criminal history
2 check under this section, along with identification acceptable to
3 the department of state police. If the applicant has been the
4 subject of a criminal history check conducted in compliance with
5 this section, the applicant shall give written consent at the time
6 of application for the professional guardian or professional
7 conservator to obtain the criminal history record information as
8 prescribed in subsection (4) from the department and for the
9 department of state police to conduct a criminal history check
10 under this section if the requirements of subsection (10) are not
11 met and a request to the Federal Bureau of Investigation to make a
12 determination of the existence of any national criminal history
13 pertaining to the applicant is necessary, along with identification
14 acceptable to the department of state police. On receipt of the
15 written consent to obtain the criminal history record information
16 and identification required under this subsection, the professional
17 guardian or professional conservator that has made a good-faith
18 offer of employment or an independent contract to the applicant
19 shall request the criminal history record information from the
20 department and shall make a request regarding the applicant to the
21 department to conduct a check of all relevant registries in the
22 manner required in subsection (4). If the requirements of
23 subsection (10) are not met and a request to the Federal Bureau of
24 Investigation to make a subsequent determination of the existence
25 of any national criminal history pertaining to the applicant is
26 necessary, the professional guardian or professional conservator
27 shall proceed in the manner required in subsection (4).

28 (4) On receipt of the written consent to conduct a criminal
29 history check and identification required under subsection (3), the



1 professional guardian employer, professional conservator employer,
2 or the applicant for a license as a professional guardian or
3 professional conservator shall make a request to the department of
4 state police to conduct a criminal history check on the applicant,
5 to input the applicant's fingerprints into the automated
6 fingerprint identification system database, and to forward the
7 applicant's fingerprints to the Federal Bureau of Investigation.
8 The department of state police shall request the Federal Bureau of
9 Investigation to make a determination of the existence of any
10 national criminal history pertaining to the applicant. The
11 applicant shall provide the department of state police with a set
12 of fingerprints. The request must be made in a manner prescribed by
13 the department of state police. The professional guardian or
14 professional conservator shall make the written consent and
15 identification available to the department of state police. The
16 professional guardian or professional conservator shall make a
17 request regarding that applicant to the relevant licensing or
18 regulatory department to conduct a check of all relevant registries
19 established according to federal and state law and regulations for
20 any substantiated findings of abuse, neglect, or misappropriation
21 of property. If the department of state police or the Federal
22 Bureau of Investigation charges a fee for conducting the criminal
23 history check, the professional guardian employer, professional
24 conservator employer, or applicant for a license as a professional
25 guardian or professional conservator shall pay the cost of the
26 charge. The department of state police shall conduct a criminal
27 history check on the applicant named in the request. The department
28 of state police shall provide the department with a written report
29 of the criminal history check conducted under this subsection. The



1 report must contain any criminal history record information on the
2 applicant maintained by the department of state police. The
3 department of state police shall provide the results of the Federal
4 Bureau of Investigation determination to the department within 30
5 days after the request is made. If criminal history record
6 information is disclosed on the written report of the criminal
7 history check or the Federal Bureau of Investigation determination
8 that resulted in a conviction, the department shall notify the
9 professional guardian employer, professional conservator employer,
10 or applicant for a license as a professional guardian or
11 professional conservator in writing of the type of crime disclosed
12 on the written report of the criminal history check or the Federal
13 Bureau of Investigation determination without disclosing the
14 details of the crime. Any charges imposed by the department of
15 state police or the Federal Bureau of Investigation for conducting
16 a criminal history check or making a determination under this
17 subsection must be paid in the manner required under this
18 subsection.

19 (5) If a professional guardian or professional conservator
20 determines it necessary to employ an applicant before receiving the
21 results of the applicant's criminal history check or criminal
22 history record information under this section, the professional
23 guardian or professional conservator may conditionally employ the
24 individual if all of the following apply:

25 (a) The professional guardian or professional conservator
26 requests the criminal history check or criminal history record
27 information under this section on conditionally employing the
28 individual.

29 (b) The individual signs a statement in writing that indicates



1 all of the following:

2 (i) That the individual has not been convicted of 1 or more of
3 the crimes that are described in subsection (1) (a) and (b) .

4 (ii) That the individual agrees that, if the information in the
5 criminal history check conducted under this section does not
6 confirm the individual's statement under subparagraph (i) , the
7 individual's employment will be terminated by the professional
8 guardian or professional conservator as required under subsection
9 (1) .

10 (iii) That the individual understands that the conditions
11 described in subparagraphs (i) and (ii) may result in the termination
12 of the individual's employment and that those conditions are good
13 cause for termination.

14 (c) Except as otherwise provided in this subdivision, the
15 professional guardian or professional conservator does not permit
16 the individual to have regular direct access to or provide direct
17 services to incapacitated individuals or protected individuals
18 served by the professional guardian or professional conservator
19 without supervision until the criminal history check or criminal
20 history record information is obtained and the individual is
21 eligible for that employment. If required under this subdivision,
22 the professional guardian or professional conservator shall provide
23 on-site supervision of an individual served by the professional
24 guardian or professional conservator on a conditional basis under
25 this subsection by an individual who has undergone a criminal
26 history check conducted in compliance with this section. A
27 professional guardian or professional conservator may permit an
28 individual in the professional guardian's or professional
29 conservator's employment on a conditional basis under this



1 subsection to have regular direct access to or provide direct
2 services to incapacitated or protected individuals in the
3 professional guardian's or professional conservator's care without
4 supervision if all of the following conditions are met:

5 (i) The professional guardian or professional conservator, at
6 its own expense and before the individual has direct access to or
7 provides direct services to incapacitated individuals or protected
8 individuals of the professional guardian or professional
9 conservator, conducts a search of public records on that individual
10 through the internet criminal history access tool maintained by the
11 department of state police and the results of that search do not
12 uncover any information that would indicate that the individual is
13 not eligible to have regular direct access to or provide direct
14 services to incapacitated individuals or protected individuals
15 under this section.

16 (ii) Before the individual has direct access to or provides
17 direct services to incapacitated or protected individuals of the
18 professional guardian or professional conservator, the individual
19 signs a statement in writing that the individual has resided in
20 this state without interruption for at least the immediately
21 preceding 12-month period.

22 (iii) If applicable, the individual provides to the department
23 of state police a set of fingerprints on or before the expiration
24 of 10 business days following the date the individual was
25 conditionally employed under this subsection.

26 (6) The department shall develop and distribute a model form
27 for the statements required under subsection (5) (b) and (c). The
28 department shall make the model form available to professional
29 guardians and professional conservators on request at no charge.



1 (7) If an individual is employed as a conditional employee
2 under subsection (5), and the information under subsection (3) or
3 report under subsection (4) does not confirm the individual's
4 statement under subsection (5)(b), the professional guardian or
5 professional conservator shall terminate the individual's
6 employment as required by subsection (1).

7 (8) An individual who knowingly provides false information
8 regarding the individual's identity, criminal convictions, or
9 substantiated findings on a statement described in subsection
10 (5)(b) is guilty of a misdemeanor punishable by imprisonment for
11 not more than 93 days or a fine of not more than \$500.00, or both.

12 (9) A professional guardian or professional conservator shall
13 use criminal history record information obtained under subsection
14 (3) or (4) for only the purpose of evaluating an applicant's
15 qualifications for employment or an independent contract, in the
16 position for which the applicant has applied and for the purposes
17 of subsections (5) and (7). A professional guardian employer or
18 professional conservator employer shall not disclose criminal
19 history record information obtained under subsection (3) or (4) to
20 a person who is not directly involved in evaluating the applicant's
21 qualifications for employment or an independent contract. An
22 individual who knowingly uses or disseminates the criminal history
23 record information obtained under subsection (3) or (4) in
24 violation of this subsection is guilty of a misdemeanor punishable
25 by imprisonment for not more than 93 days or a fine of not more
26 than \$1,000.00, or both. Except for a knowing or intentional
27 release of false information, a professional guardian employer or
28 professional conservator employer does not have liability in
29 connection with a criminal history check conducted in compliance



1 with this section or the release of criminal history record
2 information under this subsection.

3 (10) On consent of an applicant as required in subsection (3)
4 and on request from a professional guardian employer or
5 professional conservator employer that has made a good-faith offer
6 of employment or an independent contract to the applicant, the
7 department shall review the criminal history record information, if
8 any, and notify the requesting professional guardian employer or
9 professional conservator employer of the information in the manner
10 prescribed in subsection (4). Until the department of state police
11 can participate with the Federal Bureau of Investigation's
12 automatic notification system similar to the system required of the
13 state police under subsection (13) and federal regulations allow
14 the federal criminal record to be used for subsequent authorized
15 uses, as determined in an order issued by the department, a
16 professional guardian or professional conservator may rely on the
17 criminal history record information provided by the department
18 under this subsection and a request to the Federal Bureau of
19 Investigation to make a subsequent determination of the existence
20 of any national criminal history pertaining to the applicant is not
21 necessary if all of the following requirements are met:

22 (a) The criminal history check was conducted during the
23 immediately preceding 12-month period.

24 (b) The applicant has been continuously employed by the
25 professional guardian or professional conservator since the
26 criminal history check was conducted in compliance with this
27 section or meets the continuous employment requirement of this
28 subdivision other than being on layoff status for less than 1 year
29 from a professional guardian or professional conservator.



1 (c) The applicant can provide evidence acceptable to the
2 department that the applicant has been a resident of this state for
3 the immediately preceding 12-month period.

4 (11) As a condition of continued employment, each employee,
5 independent contractor, or individual shall do each of the
6 following:

7 (a) Agree in writing to report to the professional guardian or
8 professional conservator immediately on being arraigned for 1 or
9 more of the criminal offenses listed in subsection (1)(a) and (b),
10 and on being convicted of 1 or more of the criminal offenses listed
11 in subsection (1)(a) and (b). Reporting of an arraignment under
12 this subdivision is not cause for termination or denial of
13 employment.

14 (b) If a set of fingerprints is not already on file with the
15 department of state police, provide the department of state police
16 with a set of fingerprints.

17 (12) The department of state police and the Federal Bureau of
18 Investigation shall store and retain all fingerprints submitted
19 under this section and provide for an automatic notification if
20 subsequent criminal information submitted into the system matches a
21 set of fingerprints previously submitted under this section. On
22 notification under this subsection, the department of state police
23 shall immediately notify the department and the department shall
24 immediately contact each professional guardian employer or
25 professional conservator employer with which that individual is
26 associated. Information in the database established under this
27 subsection is confidential, is not subject to disclosure under the
28 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
29 must not be disclosed to any person except for purposes of this act



1 or for law enforcement purposes.

2 (13) The department shall maintain an electronic web-based
3 system to assist professional guardian employers and professional
4 conservator employers and applicants for a license as a
5 professional guardian employer or professional conservator employer
6 required to check relevant registries and conduct criminal history
7 checks of its employees and independent contractors, and to provide
8 for an automated notice to those professional guardian employers or
9 professional conservator employers for those individuals inputted
10 in the system who, since the initial criminal history check, have
11 been convicted of a disqualifying offense or have been the subject
12 of a substantiated finding of abuse, neglect, or misappropriation
13 of property. The department may charge a professional guardian
14 employer or professional conservator employer a 1-time set-up fee
15 of up to \$100.00 for access to the electronic web-based system
16 under this section.

17 (14) As used in this section:

18 (a) "Convicted" means either of the following:

19 (i) For a crime that is not a relevant crime, a final
20 conviction, the payment of a fine, a plea of guilty or nolo
21 contendere if accepted by the court, or a finding of guilt for a
22 criminal law violation or a juvenile adjudication or disposition by
23 the juvenile division of probate court or family division of
24 circuit court for a violation that if committed by an adult would
25 be a crime.

26 (ii) For a relevant crime described under 42 USC 1320a-7(a),
27 convicted means that term as defined in 42 USC 1320a-7.

28 (b) "Criminal history check conducted in compliance with this
29 section" means a criminal history check conducted under this



1 section.

2 (c) "Direct access" means access to an incapacitated
3 individual's or protected individual's financial information,
4 medical records, treatment information, or any other identifying
5 information.

6 (d) "Independent contract" means a contract entered into by a
7 professional guardian or professional conservator with an
8 individual who provides the contracted services independently for
9 the professional guardian or professional conservator.

10 (e) "Under the professional guardian's or professional
11 conservator's control" means an individual employed by or under
12 independent contract with a professional guardian or professional
13 conservator for whom the professional guardian or professional
14 conservator does both of the following:

15 (i) Determines whether the individual who has access to
16 incapacitated individuals or protected individuals may consent to
17 the care, treatment, or other similar support service functions to
18 incapacitated individuals or protected individuals served by the
19 professional guardian or professional conservator.

20 (ii) Directs or oversees 1 or more of the following:

21 (A) The policy or procedures the individual must follow in
22 performing the individual's duties.

23 (B) The tasks performed by the individual.

24 (C) The individual's work schedule.

25 (D) The supervision or evaluation of the individual's work or
26 job performance, including imposing discipline or granting
27 performance awards.

28 (E) The compensation the individual receives for performing
29 the individual's duties.



1 (F) The conditions under which the individual performs the
2 individual's duties.

3 Enacting section 1. This amendatory act does not take effect
4 unless House Bill No. ____ (request no. H01902'25 a) of the 103rd
5 Legislature is enacted into law.