

Legislative Analysis



LICENSURE OF PROFESSIONAL GUARDIANS AND PROFESSIONAL CONSERVATORS

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<http://www.house.mi.gov/hfa>

House Bill: 4727 as introduced
Sponsor: Rep. Jimmie Wilson, Jr.

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4728 as introduced
Sponsor: Rep. Kathy Schmaltz

House Bill 4729 as introduced
Sponsor: Rep. Curt S. VanderWall

House Committee: Families and Veterans
Complete to 9-16-25

SUMMARY:

House Bill 4728 would add Article 14A to the Occupational Code to provide for the licensure of *professional guardians* and *professional conservators*.

Professional guardian would mean a person that provides guardianship services for a fee (but would not include an individual who is related to all but two of the individuals they have been appointed as *guardian* for).

Guardian would mean a person who has qualified as a guardian of a minor or a legally incapacitated individual (as described for House Bill 4727, below) under a parental or spousal nomination or a court appointment and would include a limited guardian as described in sections 5205, 5206, and 5306 of the Estates and Protected Individuals Code (EPIC).¹ Guardian would not include a guardian ad litem.

Professional conservator would mean a person that provides conservatorship services for a fee (but would not include an individual who is related to all but two of the individuals they have been appointed as *conservator* for).

Conservator would mean a person appointed by a court to manage a *protected individual's* estate.

Protected individual means a minor or other individual for whom a conservator has been appointed or other protective order has been made as provided in Part 4 of Article V of EPIC² (also see House Bill 4727, below).

¹ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-700-5205>

<https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-700-5206>

<https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-700-5306>

² <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-386-1998-V-4>

Licensure

Beginning two years after the bill's effective date, the Department of Licensing and Regulatory Affairs (LARA) would have to license an individual who meets all of the following as a professional guardian or professional conservator:

- The individual submits a completed application on a form prescribed by LARA.
- The individual pays the applicable fee (\$250 for an initial application or, as described below, \$100 for a renewal).
- The individual is at least 21 years old.
- The individual submits a background check as described below.
- The individual has not been convicted of a prohibited crime as described below.
- The individual has not been found liable in a civil action involving exploitation, abuse, theft, fraud, misrepresentation, misappropriation, or conversion.
- The individual has not been removed by the court as, or relieved by an employer or client of the responsibilities of, a guardian or conservator for an action involving exploitation, abuse, theft, fraud, misrepresentation, misappropriation, or conversion.
- The individual has graduated from an accredited high school or a comparable school or educational institution or has passed the General Educational Development (GED) test or another graduate equivalency examination.
- The individual submits proof to LARA of the following:
 - Having passed the Center for Guardianship Certification National Certified Guardian Examination.
 - Completion of other educational requirements required by the Center for Guardianship Certification, including a minimum of 20 hours of continuing education units in the 24 months preceding the submission of the application, as offered by a state or national trade association dedicated to the advancement of the guardianship profession.
 - Coverage by professional liability insurance, either as the named insured or as an employee of the named insured.

LARA would have to revoke the license of an individual who does not meet the above requirements.

LARA would have to issue a unique license number to an individual licensed under these provisions. A license would be valid for 36 months and subject to renewal as described below. An individual could not advertise that they are a licensed professional guardian or licensed professional conservator unless they are licensed under these provisions.

LARA would have to post on its website a list of licensed professional guardians and licensed professional conservators and, if applicable, their employer and would also be required to update the list each month.

An individual licensed under these provisions who has been criminally convicted or found civilly liable in an action involving exploitation, abuse, theft, fraud, misrepresentation, misappropriation, or conversion would have to report the conviction or finding within 30 days to LARA and to each probate court where they currently serve as a professional guardian or professional conservator.

Renewal

LARA would have to renew a license for a professional guardian or professional conservator if the individual does all of the following:

- Submits a completed renewal application on a form prescribed by LARA.
- Pays a renewal fee of \$100.
- Submits proof of having completed 30 hours of continuing education units in the previous 36-month period, as offered by a state or national trade association dedicated to the advancement of the guardianship profession.
- Submits a new background check as described below.
- Submits proof of valid professional liability insurance.

Prohibited criminal history

Except as otherwise described below, a professional guardian or professional conservator would be prohibited from employing or independently contracting with an individual who has been convicted of any of the following in a capacity where the individual will regularly have direct access to or provide direct services to incapacitated or protected individuals served by the professional guardian or conservator:

- A relevant crime described under 42 USC 1320a-7(a).³
- Any of the following, an attempt or conspiracy to commit any of the following, or any other state or federal offense that is similar to the following:
 - A felony or misdemeanor that involves the intent to cause death or serious impairment of a body function or that results in death or serious impairment of a body function.
 - A felony or misdemeanor that involves negligent homicide or a violation of section 601d(1) of the Michigan Vehicle Code.⁴
 - A felony or misdemeanor that involves the use of force or violence or the threat of the use of force or violence.
 - A felony or misdemeanor that involves cruelty or torture.
 - A felony or misdemeanor that involves criminal sexual conduct.
 - A felony or misdemeanor that involves home invasion.
 - A felony or misdemeanor that involves larceny.
 - A felony or misdemeanor that involves abuse or neglect.
 - A felony or misdemeanor under chapter XXA (Vulnerable Adults) of the Michigan Penal Code.⁵
 - A felony or misdemeanor that involves fraud, theft, exploitation, misrepresentation, misappropriation, or conversion.
 - A felony or misdemeanor that involves embezzlement.
 - A felony or misdemeanor that involves the diversion or adulteration of a prescription drug or other medication.
 - A felony or misdemeanor that involves the use of a firearm or dangerous weapon, but only if the conviction was within the previous 10 years.
 - Any other misdemeanor [but not a felony] that involves assault, fraud, theft, or the possession or delivery of a controlled substance (except marijuana-related offenses), but only if the conviction was within the previous 10 years.

³ <https://www.law.cornell.edu/uscode/text/42/1320a-7> This federal regulation lists types of convictions for which an individual must be excluded from participating in any federal (and certain state) health care programs.

⁴ <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-257-601D>

⁵ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-328-1931-XXA>

An individual could not be licensed as a professional guardian or professional conservator until a background check is conducted, or the individual receives criminal record information, as described below. In addition, a professional guardian or professional conservator could not hire or contract with anyone who regularly has direct access to or provides direct services to incapacitated or protected individuals served by the guardian or conservator until the professional guardian or professional conservator has received the individual's criminal history check or record information.

An individual whose license is denied or revoked based on a criminal history check could appeal to LARA under the contested case provisions of the Administrative Procedures Act if the individual believes the criminal history report to be inaccurate.

The provisions and prohibited offenses described above would not apply to individuals under an independent contract with a professional guardian or professional conservator if either of the following apply:

- The individual is not under the guardian's or conservator's control and the services they are contracted for are not directly related to providing services to an incapacitated or protected individuals.
- The services the individual is contracted for allow for directed access to an incapacitated or protected individual but are not performed on an ongoing basis.

Background checks

The bill would require an applicant for licensure as, or employment as an employee or contractor for, a professional guardian or professional conservator to give written consent at the time of application for the Department of State Police (MSP) to conduct a criminal history check, along with acceptable identification. The background check would include the submission of fingerprints to the Federal Bureau of Investigation (FBI), for a national criminal history check, as well as a check of state and federal registries that document substantiated findings of abuse, neglect, or misappropriation of property. A written report would have to be made of the findings of the background checks, and any fees would be the responsibility of the applicant for licensure or the employer, as applicable.

Confidentiality

A professional guardian or professional conservator could use criminal history record information only to evaluate an applicant's qualifications for employment or an independent contract and could not disclose the information to a person not directly involved in evaluating those qualifications. An individual who knowingly uses or disseminates criminal history record information in violation of these provisions would be guilty of a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$1,000, or both. Except for a knowing or intentional release of false information, a professional guardian employer or professional conservator employer would not be liable regarding a criminal history check conducted in compliance with the bill or the release of criminal history record information described above.

Conditional employment

A professional guardian or professional conservator could conditionally employ an individual before receiving the individual's background check as long as the professional guardian or professional conservator requests the background check upon conditionally employing the individual; the individual signs a statement indicating that they have not been convicted of any

of the crimes listed above and that their employment will be termination if the background check does not confirm that statement; and the individual does not have regular direct access to, or provide direct services without supervision to, incapacitated or protected individuals until the background check is obtained and the individual is eligible for that employment. (An individual who knowingly provides false information regarding identity, criminal convictions, or substantiated findings on a statement described above would be guilty of a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both.)

However, a professional guardian or professional conservator could allow someone employed on a conditional basis to have regular direct access to, or provide direct services without supervision to, incapacitated or protected individuals if all of the following are met:

- At its own expense, and before the individual has direct access to incapacitated or protected individuals, the professional guardian or professional conservator conducts a search of public records on that individual through the Internet Criminal History Access Tool (ICHAT) maintained by MSP and the results of that search do not uncover any information that would indicate the individual is not eligible to have such regular direct access or so provide those direct services.
- The individual, before they have direct access or provide direct services, signs a statement that they have resided in Michigan without interruption for at least the immediately preceding 12-month period.
- If applicable, the individual provides to MSP a set of fingerprints on or before the expiration of 10 business days following the date of conditional employment.

Continued employment

As a condition of continued employment, each employee, independent contractor, or individual would have to do both of the following:

- Agree in writing to report to the professional guardian or professional conservator immediately upon being arraigned or convicted for one or more of the crimes listed above. (An arraignment would not be cause for denial or termination of employment.)
- Provide a set of fingerprints to MSP if one is not already on file.

Other provisions

LARA would have to maintain an electronic web-based system to assist applicants for licensure and professional guardian or conservator employers to check relevant registries and conduct criminal history checks of its employees and independent contractors. LARA also would have to provide for an automated notice to those employers for individuals in the system who, since the initial criminal history check, have been convicted of a crime listed above or have had a substantiated finding of abuse, neglect, or misappropriation of property. LARA could charge an employer a one-time set-up fee of up to \$100 for access to the system.

Finally, the bill would provide that the term of office of a member of an appointed board of guardians and conservators begins on July 1.⁶

MCL 339.303a

⁶ The bill does not contain any language creating or otherwise regarding such a board.

House Bill 4727 would amend Article V of the Estates and Protected Individuals Code (EPIC), which contains provisions concerning legal protections for minors (under 18 years old) and individuals who are legally incapacitated (impaired to the extent of lacking the understanding or capacity needed to make or communicate informed decisions) because of mental illness, mental deficiency, physical illness or disability, or chronic drug or alcohol use, including provisions related to the appointment of guardians or conservators.

The code allows a court to appoint or approve a *professional guardian* or *professional conservator* to act as a guardian or conservator under the code for a minor or a legally incapacitated individual, or to act as a guardian for a developmentally disabled individual under the Mental Health Code, as long as certain conditions are met (including a finding by the court that the appointment is in the best interests of the minor or the incapacitated or developmentally disabled individual).

The bill would amend these provisions to generally provide, beginning two years after the bill's effective date, that a court cannot appoint a person as a professional guardian or professional conservator unless the person is or employs an individual licensed under Article 14A of the Occupational Code (that is, House Bill 4728).

The bill also would amend provisions related to the appointment of a guardian for a legally incapacitated individual who is not a minor.⁷ These provisions list persons a court can appoint to serve in this capacity, if suitable and willing, in a specific order of priority. If no person in that list can be selected, the code allows the court to appoint an individual who is related to the incapacitated individual, as similarly listed in an order of preference. The bill would amend this second list to allow a court to appoint (from the last position of preference) a person or individual that is a professional guardian (an individual would have to be licensed as a professional guardian under Article 14A of the Occupational Code). In addition, an employee of a professional guardian appointed under these provisions could not independently make medical, psychological, financial, legal, or housing decisions on behalf of the incapacitated individual unless the employee is licensed under Article 14A.

Similarly, the bill would amend provisions related to the appointment of a conservator for the estate of a minor or legally incapacitated individual, where those that can be considered for appointment are listed in a specific order of priority, to allow the court to appoint a person or individual that is a professional conservator (an individual would have to be licensed as a professional conservator under Article 14A of the Occupational Code). This would be added in the last position of priority, above "any person the court determines is suitable and willing to serve." In addition, under the bill, an employee of a professional conservator appointed under these provisions could not independently make medical, psychological, financial, legal, or housing decisions on behalf of the minor or incapacitated individual unless the employee is licensed under Article 14A.

The bill cannot take effect unless House Bill 4728 is also enacted.

MCL 700.5106, 700.5313, and 700.5409

⁷ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-700-5313>

House Bill 4729 would amend the Mental Health Code, which authorizes a court to appoint any suitable individual or agency, public or private, as guardian of an individual with a developmental disability, including a private association capable of conducting an active guardianship program. DHHS can be appointed only if no other suitable individual or agency can be identified.

The bill would newly require the court to appoint a professional guardian in the following order of priority:

- A person or individual that is a professional guardian (an individual would have to be licensed as a professional guardian under Article 14A of the Occupational Code).
- If a professional guardian licensed under Article 14A of the Occupational Code is not available or willing to serve, a person the court determines is suitable and willing to serve.

Beginning two years after the bill's effective date, both of the following would apply:

- The court could not appoint a person as a professional guardian unless the person either is an individual licensed under Article 14A of the Occupational Code or employs such a licensed individual.
- An employee of a professional guardian could not independently make medical, psychological, financial, legal, or housing decisions on behalf of an individual with a developmental disability unless the employee is licensed under Article 14A of the Occupational Code.

MCL 330.1628

FISCAL IMPACT:

House Bill 4728 would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs. The bill would require LARA to create a new license category for guardians and conservators and assess a \$250 initial license fee and \$100 renewal fee; the licenses would have to be renewed every three years. LARA estimates that approximately 300 licenses would be issued, which would result in initial revenue of about \$75,000 and annual revenue of about \$10,000.

LARA would also experience increased costs associated with enforcing the licensing requirements under this bill. The department indicated that an additional 3.0 FTEs would be required at an annual cost of approximately \$556,900. Additionally, LARA estimates at least \$60,000 in one-time costs to update the licensing software to accommodate the new license type. The bill would also require LARA to maintain a database of professional guardians and conservators, which LARA estimates will require a one-time cost of about \$560,600. LARA may collect a \$100 one-time fee from professional guardian and conservator employers to access the system, though an estimate of the expected revenue is unavailable.

House Bill 4729 would have no direct fiscal impact on DHHS or the state Medicaid program.

The bills also would have an indeterminate fiscal impact on local units of government. Under the bills, there could be additional costs to local court systems that would depend on how provisions of the bills affected court caseloads and related administrative costs. Under House

Bill 4728, an individual who knowingly uses or disseminates criminal history record information obtained under the bill would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000, or both. Misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. Because there is no practical way to determine the number of violations that would occur, an estimate of the amount of costs related to county jails, penal fine revenue collections, or costs to local courts cannot be made.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.