

**[No. 313]**

**(HB 5921)**

AN ACT to amend 1998 PA 386, entitled "An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts," by amending section 5314 (MCL 700.5314), as amended by 2000 PA 54.

*The People of the State of Michigan enact:*

**700.5314 Powers and duties of guardian. [M.S.A. 27.15314]**

Sec. 5314. Whenever meaningful communication is possible, a legally incapacitated individual's guardian should consult with the legally incapacitated individual before making a major decision affecting the legally incapacitated individual. Except as limited under section 5306, a legally incapacitated individual's guardian is responsible for the ward's care, custody, and control, but is not liable to third persons by reason of that responsibility for the ward's acts. In particular and without qualifying the previous sentence, a guardian has all of the following powers and duties, except as modified by court order:

(a) To the extent that it is consistent with the terms of an order by a court of competent jurisdiction relating to the ward's detention or commitment, the guardian is entitled to custody of the person of the guardian's ward and may establish the ward's place of residence within or without this state. The guardian must notify the court within 14 days of a change in the ward's place of residence.

(b) If entitled to custody of the ward, the guardian must make provision for the ward's care, comfort, and maintenance and, when appropriate, arrange for the ward's training and education. The guardian has the responsibility of securing services to restore the ward to the best possible state of mental and physical well-being so that the ward can return to self-management at the earliest possible time. Without regard to custodial rights of the ward's person, the guardian must take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence a protective proceeding if the ward's other property needs protection.

(c) A guardian may give the consent or approval that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If a conservator for the ward's estate is not appointed, a guardian may do any of the following:

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

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

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

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

(ii) Any improvement or deterioration in the ward's mental, physical, and social condition that occurred during the past year.

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

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

(v) Medical treatment received by the ward.

(vi) Services received by the ward.

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

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

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

### **Effective date.**

Enacting section 1. This amendatory act takes effect January 1, 2001.

This act is ordered to take immediate effect.

Approved October 17, 2000.

Filed with Secretary of State October 17, 2000.

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