

**SB 1390, As Passed Senate, November 14, 2000**

**SUBSTITUTE FOR  
SENATE BILL NO. 1390**

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5215, 5314, and 5423 (MCL 700.5215, 700.5314, and 700.5423), section 5314 as amended by 2000 PA 313, and by adding section 5108.

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

1        SEC. 5108. A CONSERVATOR SHALL NOT SELL REAL PROPERTY WITH-  
2 OUT APPROVAL OF THE COURT. THE COURT SHALL ONLY APPROVE THE SALE  
3 OF REAL PROPERTY IF, AFTER A HEARING WITH NOTICE TO INTERESTED  
4 PERSONS AS SPECIFIED IN THE MICHIGAN COURT RULES, THE COURT CON-  
5 SIDERS EVIDENCE OF THE VALUE OF THE REAL PROPERTY AND OTHERWISE  
6 DETERMINES THE SALE TO BE IN THE PROTECTED INDIVIDUAL'S BEST  
7 INTEREST.

8        Sec. 5215. A minor's guardian has the powers and  
9 responsibilities of a parent who is not deprived of custody of

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1 the parent's minor and unemancipated child, except that a  
2 guardian is not legally obligated to provide for the ward from  
3 the guardian's own money and is not liable to third persons by  
4 reason of the parental relationship for the ward's acts. A  
5 guardian has all of the following powers and duties:

6 (a) The guardian shall take reasonable care of a ward's per-  
7 sonal effects and commence a protective proceeding if necessary  
8 to protect the ward's other property. IF A GUARDIAN COMMENCES A  
9 PROTECTIVE PROCEEDING BECAUSE THE GUARDIAN BELIEVES THAT IT IS IN  
10 THE WARD'S BEST INTEREST TO SELL OR OTHERWISE DISPOSE OF THE  
11 WARD'S REAL PROPERTY OR INTEREST IN REAL PROPERTY, THE COURT MAY  
12 APPOINT THE GUARDIAN AS SPECIAL CONSERVATOR AND AUTHORIZE THE  
13 SPECIAL CONSERVATOR TO PROCEED UNDER SECTION 5108. A GUARDIAN  
14 SHALL NOT OTHERWISE SELL THE WARD'S REAL PROPERTY OR INTEREST IN  
15 REAL PROPERTY.

16 (b) The guardian may receive money payable for the ward's  
17 support to the ward's parent, guardian, or custodian under the  
18 terms of a statutory benefit or insurance system, or a private  
19 contract, devise, trust, conservatorship, or custodianship. The  
20 guardian may receive the ward's money or property paid or deliv-  
21 ered under section 5102. Money or property received under that  
22 section shall be applied to the ward's current needs for support,  
23 care, and education. The guardian shall exercise due care to  
24 conserve any excess for the ward's future needs unless a conser-  
25 vator is appointed for the ward's estate, in which case the  
26 excess shall be paid over at least annually to the conservator.  
27 The guardian shall not use that money or property for

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1 compensation for the guardian's services except as approved by  
2 court order or as determined by a duly appointed conservator  
3 other than the guardian. A guardian may institute a proceeding  
4 to compel a person's performance of a duty to support the ward or  
5 to pay money for the ward's welfare.

6 (c) The guardian shall facilitate the ward's education and  
7 social or other activities, and shall authorize medical or other  
8 professional care, treatment, or advice. A guardian is not  
9 liable by reason of this consent for injury to the ward resulting  
10 from the negligence or acts of third persons unless it would be  
11 illegal for a parent to have consented.

12 (d) A guardian may consent to a minor ward's marriage.

13 (e) Subject to the conditions and restrictions of chapter X  
14 of THE PROBATE CODE OF 1939, 1939 PA 288, MCL 710.21 to 710.70, a  
15 guardian may consent to marriage or adoption of a minor ward or  
16 to the release of a minor ward for adoption.

17 (f) A guardian must report the condition of the ward and of  
18 the ward's estate that is subject to the guardian's possession or  
19 control as ordered by the court on petition of a person inter-  
20 ested in the minor's welfare or as required by court rule. The  
21 report must detail the condition of the ward, medical or mental  
22 health treatment or care to which the ward was subjected, and  
23 what reason, if any, exists for the continuation of the  
24 guardianship.

25 (g) Within 14 days after a change in the ward's place of  
26 residence, the guardian shall give to the court notice of the  
27 ward's new address.

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1       Sec. 5314. Whenever meaningful communication is possible, a  
2 legally incapacitated individual's guardian should consult with  
3 the legally incapacitated individual before making a major deci-  
4 sion affecting the legally incapacitated individual. Except as  
5 limited under section 5306, a legally incapacitated individual's  
6 guardian is responsible for the ward's care, custody, and con-  
7 trol, but is not liable to third persons by reason of that  
8 responsibility for the ward's acts. In particular and without  
9 qualifying the previous ~~sentence~~ SENTENCES, a guardian has all  
10 of the following powers and duties, except as modified by court  
11 order:

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

19       (b) If entitled to custody of the ward, the guardian must  
20 make provision for the ward's care, comfort, and maintenance and,  
21 when appropriate, arrange for the ward's training and education.  
22 The guardian ~~has the responsibility of securing~~ SHALL SECURE  
23 services to restore the ward to the best possible state of mental  
24 and physical well-being so that the ward can return to  
25 self-management at the earliest possible time. Without regard to  
26 custodial rights of the ward's person, the guardian must take  
27 reasonable care of the ward's clothing, furniture, vehicles, and

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1 other personal effects and commence a protective proceeding if  
2 the ward's other property needs protection. IF A GUARDIAN COM-  
3 MENCES A PROTECTIVE PROCEEDING BECAUSE THE GUARDIAN BELIEVES THAT  
4 IT IS IN THE WARD'S BEST INTEREST TO SELL OR OTHERWISE DISPOSE OF  
5 THE WARD'S REAL PROPERTY OR INTEREST IN REAL PROPERTY, WITHOUT  
6 APPOINTING A CONSERVATOR, THE COURT MAY AUTHORIZE THE GUARDIAN TO  
7 PROCEED UNDER SECTION 5108.

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

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

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

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

25 (e) The guardian shall report the condition of the ward and  
26 the ward's estate that is subject to the guardian's possession or  
27 control, as required by the court, but not less often than

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1 annually. The guardian shall also serve the report required  
2 under this subdivision on the ward and interested persons as  
3 specified in the Michigan court rules. A report under this sub-  
4 division must contain all of the following:

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

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

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

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

15 (v) Medical treatment received by the ward.

16 (vi) Services received by the ward.

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

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

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

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1       Sec. 5423. (1) Subject to a limitation provided in section  
2 5427, a conservator has all of the powers conferred in this  
3 section and the additional powers conferred by law on trustees in  
4 this state. In addition, a conservator of the estate of an  
5 unmarried minor, as to whom no one has parental rights, has the  
6 powers, responsibilities, and duties of a guardian described in  
7 section 5215 until the individual is no longer a minor or  
8 marries. The parental rights conferred on a conservator by this  
9 section do not preclude a guardian's appointment as provided in  
10 part 2.

11       (2) Acting reasonably in an effort to accomplish the purpose  
12 of the appointment, and EXCEPT AS PROVIDED IN SUBDIVISION (G),  
13 without court authorization or confirmation, a conservator may do  
14 any of the following:

15       (a) Collect, hold, or retain estate property, including land  
16 in another state, until judging that disposition of the property  
17 should be made. Property may be retained even though it includes  
18 property in which the conservator is personally interested.

19       (b) Receive an addition to the estate.

20       (c) Continue or participate in the operation of a business  
21 or other enterprise.

22       (d) Acquire an undivided interest in estate property in  
23 which the conservator, in a fiduciary capacity, holds an undi-  
24 vided interest.

25       (e) Invest or reinvest estate property. If the conservator  
26 exercises the power conferred by this subdivision, the

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1 conservator must invest or reinvest the property in accordance  
2 with the Michigan prudent investor rule.

3 (f) Deposit estate money in a state or federally insured  
4 financial institution including one operated by the conservator.

5 (g) Acquire or dispose of estate property, including land in  
6 another state, for cash or on credit, at public or private sale,  
7 or manage, develop, improve, exchange, partition, change the  
8 character of, or abandon estate property. A CONSERVATOR SHALL  
9 NOT SELL OR OTHERWISE DISPOSE OF THE PROTECTED INDIVIDUAL'S REAL  
10 PROPERTY OR INTEREST IN REAL PROPERTY EXCEPT IN COMPLIANCE WITH  
11 THE PROCEDURE PRESCRIBED IN SECTION 5108.

12 (h) Make an ordinary or extraordinary repair or alteration  
13 in a building or other structure, demolish an improvement, or  
14 raze an existing or erect a new party wall or building.

15 (i) Subdivide, develop, or dedicate land to public use; make  
16 or obtain the vacation of a plat or adjust a boundary; adjust a  
17 difference in valuation on exchange or partition by giving or  
18 receiving consideration; or dedicate an easement to public use  
19 without consideration.

20 (j) Enter for any purpose into a lease as lessor or lessee  
21 with or without option to purchase or renew for a term within or  
22 extending beyond the term of the conservatorship.

23 (k) Enter into a lease or arrangement for exploration and  
24 removal of a mineral or other natural resource or enter into a  
25 pooling or unitization agreement.

26 (l) Grant an option involving disposition of estate property  
27 or take an option for the acquisition of property.



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1 (m) Vote a security, in person or by general or limited  
2 proxy.

3 (n) Pay a call, assessment, or another amount chargeable or  
4 accruing against or on account of a security.

5 (o) Sell or exercise stock subscription or conversion  
6 rights.

7 (p) Consent, directly or through a committee or other agent,  
8 to the reorganization, consolidation, merger, dissolution, or  
9 liquidation of a corporation or other business enterprise.

10 (q) Hold a security in the name of a nominee or in other  
11 form without disclosure of the conservatorship so that title to  
12 the security may pass by delivery. However, the conservator is  
13 liable for an act of the nominee in connection with the stock so  
14 held.

15 (r) Insure the estate property against damage or loss or the  
16 conservator against liability with respect to third persons.

17 (s) Borrow money to be repaid from estate property or  
18 otherwise.

19 (t) Advance money for the protection of the estate or the  
20 protected individual, and for all expense, loss, or liability  
21 sustained in the estate's administration or because of the hold-  
22 ing or ownership of estate property, for which the conservator  
23 has a lien on the estate as against the protected individual for  
24 an advance so made.

25 (u) Pay or contest a claim; settle a claim by or against the  
26 estate or the protected individual by compromise, arbitration, or

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1 otherwise; and release, in whole or in part, a claim belonging to  
2 the estate to the extent that the claim is uncollectible.

3 (v) Pay a tax, assessment, conservator's compensation, or  
4 other expense incurred in the estate's collection, care, adminis-  
5 tration, and protection.

6 (w) Allocate an item of income or expense to either estate  
7 income or principal, as provided by law, including creation of a  
8 reserve out of income for depreciation, obsolescence, or amorti-  
9 zation, or for depletion in a mineral or timber property.

10 (x) Pay money distributable to a protected individual or the  
11 protected individual's dependent by paying the money to the dis-  
12 tributee or by paying the money for the use of the distributee to  
13 the distributee's guardian, or if none, to a relative or other  
14 person having custody of the distributee.

15 (y) Employ a person, including an auditor, investment advi-  
16 sor, or agent, even though the person is associated with the con-  
17 servator, to advise or assist in the performance of an adminis-  
18 trative duty; act upon the person's recommendation without inde-  
19 pendent investigation; and, instead of acting personally, employ  
20 an agent to perform an act of administration, whether or not  
21 discretionary.

22 (z) Employ an attorney to perform necessary legal services  
23 or to advise or assist the conservator in the performance of the  
24 conservator's administrative duties. An attorney employed under  
25 this subdivision shall receive reasonable compensation for that  
26 employment.

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1 (aa) Prosecute or defend an action, claim, or proceeding in  
2 any jurisdiction for the protection of estate property and of the  
3 conservator in the performance of a fiduciary duty.

4 (bb) Execute and deliver an instrument that will accomplish  
5 or facilitate the exercise of a power vested in the conservator.

6 (cc) Respond to an environmental concern or hazard affecting  
7 property as provided in section 5424.

8 Enacting section 1. This amendatory act takes effect June  
9 1, 2001.