

SENATE BILL No. 1394

September 27, 2000, Introduced by Senators STEIL, BULLARD, SHUGARS, SIKKEMA, BENNETT, DUNASKISS, NORTH, GOUGEON, SCHWARZ, HART, DINGELL, DE BEAUSSAERT, GOSCHKA, SCHUETTE and MC MANUS and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5306 and 5314 (MCL 700.5306 and 700.5314), section 5314 as amended by 2000 PA 54.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5306. (1) The court may appoint a guardian if ~~it is~~
2 ~~satisfied~~ THE COURT FINDS by clear and convincing evidence that
3 the individual for whom a guardian is sought is an incapacitated
4 individual ~~,~~ and that the appointment is necessary as a means
5 of providing continuing care and supervision of the incapacitated
6 individual. Alternately, the court may dismiss the proceeding or
7 enter another appropriate order.

8 (2) ~~A guardian shall be granted~~ THE COURT SHALL GRANT A
9 GUARDIAN only those powers and only for that period of time as is
10 necessary to provide for the demonstrated need of the

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1 incapacitated individual. ~~, and the guardianship shall be~~
2 ~~designed~~ THE COURT SHALL DESIGN THE GUARDIANSHIP to encourage
3 the development of maximum self-reliance and independence in the
4 individual. A court order establishing a guardianship shall
5 specify any limitations on the guardian's powers and any time
6 limits on the guardianship.

7 (3) If ~~it is found~~ THE COURT FINDS by clear and convincing
8 evidence that ~~the~~ AN individual is incapacitated and lacks the
9 capacity to do some, but not all, of the tasks necessary to care
10 for himself or herself, the court may appoint a limited guardian
11 to provide guardianship services to the individual, but the court
12 shall not appoint a full guardian.

13 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
14 COURT SHALL NOT GRANT A GUARDIAN THE POWER OF CONSENT OVER THE
15 WARD'S DECISION TO MARRY. THE COURT MAY GRANT A GUARDIAN THE
16 POWER TO OBJECT TO THE WARD'S MARRIAGE AS PROVIDED IN SECTION
17 5314. THE COURT MAY GRANT A GUARDIAN THE POWER OF CONSENT OVER
18 THE WARD'S DECISION TO MARRY IF, AT THE TIME OF THE GUARDIAN'S
19 APPOINTMENT, THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE
20 THAT THE INDIVIDUAL LACKS THE LEGAL CAPACITY TO CONTRACT MARRIAGE
21 AND IS UNLIKELY EVER TO REGAIN THAT LEGAL CAPACITY.

22 (5) ~~(4)~~ If ~~it is found~~ THE COURT FINDS by clear and con-
23 vincing evidence that ~~the~~ AN individual is incapacitated and is
24 totally without capacity to care for himself or herself, the
25 court shall specify that finding of fact in an order and may
26 appoint a full guardian FOR THE INDIVIDUAL.

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 ~~foregoing~~ PROVISIONS IN THE PREVIOUS SENTENCES,
10 a guardian has all of the following powers and duties, except as
11 modified by court 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, ~~of the ward~~ AND SUBJECT TO SUBDIVISION
15 (G), the guardian is entitled to custody of the person of the
16 guardian's ward and may establish the ward's place of residence
17 within or without this state. The guardian must notify the court
18 within 14 days of a change in the ward's 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

1 other personal effects and commence a protective proceeding if
2 the ward's other property ~~is in need of~~ NEEDS protection.

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

6 (d) If a conservator for the ward's estate is not appointed,
7 a guardian may DO ALL OF THE FOLLOWING:

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

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

20 (e) The guardian shall report the condition of the ward and
21 the ward's estate that is subject to the guardian's possession or
22 control, as required by the court, but not less often than
23 annually. A report under this subdivision must contain all of
24 the following:

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

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

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

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

9 (v) Medical treatment received by the ward.

10 (vi) Services received by the ward.

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

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

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

21 (G) IF THE GUARDIAN DOES NOT HAVE THE POWER OF CONSENT OVER
22 THE WARD'S DECISION TO MARRY, THE GUARDIAN MAY FILE OBJECTION TO
23 THE MARRIAGE WITH THE COURT. IF A GUARDIAN FILES AN OBJECTION
24 UNDER THIS SUBDIVISION, THE COURT SHALL HOLD A HEARING ON THE
25 MATTER. THE WARD SHALL BE NOTIFIED OF THE HEARING AND IS ENTI-
26 TLED TO BE PRESENT AT THE HEARING IN PERSON. IF THE WARD WISHES
27 TO BE PRESENT AT THE HEARING, ALL PRACTICAL STEPS MUST BE TAKEN

1 TO ENSURE THE WARD'S PRESENCE INCLUDING, IF NECESSARY, MOVING THE
2 SITE OF THE HEARING. IF IT APPEARS THAT THE WARD IS NOT ADE-
3 QUATELY REPRESENTED, THE COURT MAY APPOINT A GUARDIAN AD LITEM TO
4 REPRESENT THE WARD'S INTERESTS. AT THE HEARING, THE GUARDIAN HAS
5 THE BURDEN OF PROVING THAT THE WARD LACKS THE LEGAL CAPACITY TO
6 CONTRACT MARRIAGE OR THAT THE MARRIAGE IS NOT IN THE WARD'S BEST
7 INTEREST.