

SB1390, As Passed House, December 6, 2000

REPRINT

HOUSE SUBSTITUTE FOR

SENATE BILL NO. 1390

(As passed the House, December 6, 2000)

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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5215. A minor's guardian has the powers and responsi-
2 bilities of a parent who is not deprived of custody of the
3 parent's minor and unemancipated child, except that a guardian is
4 not legally obligated to provide for the ward from the guardian's
5 own money and is not liable to third persons by reason of the
6 parental relationship for the ward's acts. A guardian has all of
7 the following powers and duties:

8 (a) The guardian shall take reasonable care of a ward's
9 personal effects and commence a protective proceeding if
10 necessary to protect the ward's other property. IF A GUARDIAN

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1 COMMENCES A PROTECTIVE PROCEEDING BECAUSE THE GUARDIAN BELIEVES
2 THAT IT IS IN THE WARD'S BEST INTEREST TO SELL OR OTHERWISE DIS-
3 POSE OF THE WARD'S REAL PROPERTY OR INTEREST IN REAL PROPERTY,
4 THE COURT MAY APPOINT THE GUARDIAN AS SPECIAL CONSERVATOR AND
5 AUTHORIZE THE SPECIAL CONSERVATOR TO PROCEED UNDER SECTION
6 5423(3). A GUARDIAN SHALL NOT OTHERWISE SELL THE WARD'S REAL
7 PROPERTY OR INTEREST IN REAL PROPERTY.

8 (b) The guardian may receive money payable for the ward's
9 support to the ward's parent, guardian, or custodian under the
10 terms of a statutory benefit or insurance system, or a private
11 contract, devise, trust, conservatorship, or custodianship. The
12 guardian may receive the ward's money or property paid or deliv-
13 ered under section 5102. Money or property received under that
14 section shall be applied to the ward's current needs for support,
15 care, and education. The guardian shall exercise due care to
16 conserve any excess for the ward's future needs unless a conser-
17 vator is appointed for the ward's estate, in which case the
18 excess shall be paid over at least annually to the conservator.
19 The guardian shall not use that money or property for compensa-
20 tion for the guardian's services except as approved by court
21 order or as determined by a duly appointed conservator other than
22 the guardian. A guardian may institute a proceeding to compel a
23 person's performance of a duty to support the ward or to pay
24 money for the ward's welfare.

25 (c) The guardian shall facilitate the ward's education and
26 social or other activities, and shall authorize medical or other
27 professional care, treatment, or advice. A guardian is not

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1 liable by reason of this consent for injury to the ward resulting
2 from the negligence or acts of third persons unless it would be
3 illegal for a parent to have consented.

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

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

9 (f) A guardian must report the condition of the ward and of
10 the ward's estate that is subject to the guardian's possession or
11 control as ordered by the court on petition of a person inter-
12 ested in the minor's welfare or as required by court rule. The
13 report must detail the condition of the ward, medical or mental
14 health treatment or care to which the ward was subjected, and
15 what reason, if any, exists for the continuation of the
16 guardianship.

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

20 Sec. 5314. Whenever meaningful communication is possible, a
21 legally incapacitated individual's guardian [~~should~~ SHALL] consult
with
22 the legally incapacitated individual before making a major deci-
23 sion affecting the legally incapacitated individual. Except as
24 limited under section 5306, a legally incapacitated individual's
25 guardian is responsible for the ward's care, custody, and con-
26 trol, but is not liable to third persons by reason of that
27 responsibility for the ward's acts. In particular and without

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1 qualifying the previous ~~sentence~~ SENTENCES, a guardian has all
2 of the following powers and duties, except as modified by court
3 order:

4 (a) To the extent that it is consistent with the terms of an
5 order by a court of competent jurisdiction relating to the ward's
6 detention or commitment, the guardian is entitled to custody of
7 the person of the guardian's ward and may establish the ward's
8 place of residence within or without this state. A WARD'S GUARD-
9 IAN SHALL VISIT THE WARD WITHIN 3 MONTHS AFTER THE GUARDIAN'S
10 APPOINTMENT AND NOT LESS THAN ONCE WITHIN 3 MONTHS AFTER EACH
11 PREVIOUS VISIT. The guardian must notify the court within 14 days
12 of a change in the ward's place of residence.

13 (b) If entitled to custody of the ward, the guardian must
14 make provision for the ward's care, comfort, and maintenance and,
15 when appropriate, arrange for the ward's training and education.
16 The guardian ~~has the responsibility of securing~~ SHALL SECURE
17 services to restore the ward to the best possible state of mental
18 and physical well-being so that the ward can return to
19 self-management at the earliest possible time. Without regard to
20 custodial rights of the ward's person, the guardian must take
21 reasonable care of the ward's clothing, furniture, vehicles, and
22 other personal effects and commence a protective proceeding if
23 the ward's other property needs protection. IF A GUARDIAN COM-
24 MENCES A PROTECTIVE PROCEEDING BECAUSE THE GUARDIAN BELIEVES THAT
25 IT IS IN THE WARD'S BEST INTEREST TO SELL OR OTHERWISE DISPOSE OF
26 THE WARD'S REAL PROPERTY OR INTEREST IN REAL PROPERTY, THE COURT
27 MAY APPOINT THE GUARDIAN AS SPECIAL CONSERVATOR AND AUTHORIZE THE

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1 SPECIAL CONSERVATOR TO PROCEED UNDER SECTION 5423(3). A GUARDIAN
2 SHALL NOT OTHERWISE SELL THE WARD'S REAL PROPERTY OR INTEREST IN
3 REAL PROPERTY.

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

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

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

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

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

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

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

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

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

11 (v) Medical treatment received by the ward.

12 (vi) Services received by the ward.

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

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

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

23 Sec. 5423. (1) Subject to a limitation provided in section
24 5427, a conservator has all of the powers conferred in this sec-
25 tion and the additional powers conferred by law on trustees in
26 this state. In addition, a conservator of the estate of an
27 unmarried minor, as to whom no one has parental rights, has the

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1 powers, responsibilities, and duties of a guardian described in
2 section 5215 until the individual is no longer a minor or
3 marries. The parental rights conferred on a conservator by this
4 section do not preclude a guardian's appointment as provided in
5 part 2.

6 (2) Acting reasonably in an effort to accomplish the purpose
7 of the appointment and without court authorization or confirma-
8 tion, a conservator may do any of the following:

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

13 (b) Receive an addition to the estate.

14 (c) Continue or participate in the operation of a business
15 or other enterprise.

16 (d) Acquire an undivided interest in estate property in
17 which the conservator, in a fiduciary capacity, holds an undi-
18 vided interest.

19 (e) Invest or reinvest estate property. If the conservator
20 exercises the power conferred by this subdivision, the conserva-
21 tor must invest or reinvest the property in accordance with the
22 Michigan prudent investor rule.

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

25 (g) ~~Acquire~~ EXCEPT AS PROVIDED IN SUBSECTION (3), ACQUIRE
26 or dispose of estate property, including land in another state,
27 for cash or on credit, at public or private sale, or manage,

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1 develop, improve, exchange, partition, change the character of,
2 or abandon estate property.

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

6 (i) Subdivide, develop, or dedicate land to public use; make
7 or obtain the vacation of a plat or adjust a boundary; adjust a
8 difference in valuation on exchange or partition by giving or
9 receiving consideration; or dedicate an easement to public use
10 without consideration.

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

14 (k) Enter into a lease or arrangement for exploration and
15 removal of a mineral or other natural resource or enter into a
16 pooling or unitization agreement.

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

19 (m) Vote a security, in person or by general or limited
20 proxy.

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

23 (o) Sell or exercise stock subscription or conversion
24 rights.

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

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1 (q) Hold a security in the name of a nominee or in other
2 form without disclosure of the conservatorship so that title to
3 the security may pass by delivery. However, the conservator is
4 liable for an act of the nominee in connection with the stock so
5 held.

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

8 (s) Borrow money to be repaid from estate property or
9 otherwise.

10 (t) Advance money for the protection of the estate or the
11 protected individual, and for all expense, loss, or liability
12 sustained in the estate's administration or because of the hold-
13 ing or ownership of estate property, for which the conservator
14 has a lien on the estate as against the protected individual for
15 an advance so made.

16 (u) Pay or contest a claim; settle a claim by or against the
17 estate or the protected individual by compromise, arbitration, or
18 otherwise; and release, in whole or in part, a claim belonging to
19 the estate to the extent that the claim is uncollectible.

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

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

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1 (x) Pay money distributable to a protected individual or the
2 protected individual's dependent by paying the money to the
3 distributee or by paying the money for the use of the distributee
4 to the distributee's guardian, or if none, to a relative or other
5 person having custody of the distributee.

6 (y) Employ a person, including an auditor, investment advi-
7 sor, or agent, even though the person is associated with the con-
8 servator, to advise or assist in the performance of an adminis-
9 trative duty; act upon the person's recommendation without inde-
10 pendent investigation; and, instead of acting personally, employ
11 an agent to perform an act of administration, whether or not
12 discretionary.

13 (z) Employ an attorney to perform necessary legal services
14 or to advise or assist the conservator in the performance of the
15 conservator's administrative duties. An attorney employed under
16 this subdivision shall receive reasonable compensation for that
17 employment.

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

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

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

25 (3) A CONSERVATOR SHALL NOT SELL OR OTHERWISE DISPOSE OF THE
26 PROTECTED INDIVIDUAL'S REAL PROPERTY OR INTEREST IN REAL PROPERTY
27 WITHOUT APPROVAL OF THE COURT. THE COURT SHALL ONLY APPROVE THE

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1 SALE OR OTHER DISPOSAL OF THE REAL PROPERTY OR INTEREST IN REAL
2 PROPERTY IF, AFTER A HEARING WITH NOTICE TO INTERESTED PERSONS AS
3 SPECIFIED IN THE MICHIGAN COURT RULES, THE COURT CONSIDERS EVI-
4 DENCE OF THE VALUE OF THE REAL PROPERTY OR INTEREST IN REAL PROP-
5 ERTY AND OTHERWISE DETERMINES THAT THE SALE OR OTHER DISPOSAL IS
6 IN THE PROTECTED INDIVIDUAL'S BEST INTEREST.

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