



# HOUSE BILL No. 5919

June 21, 2000, Introduced by Reps. Richner, Woronchak, Hart, Shulman and Julian and referred to the Committee on Family and Civil Law.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5306, 5313, 5314, and 5417 (MCL 700.5306, 700.5313, 700.5314, and 700.5417), sections 5313 and 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 BOTH  
3 that the individual for whom a guardian is sought is an incapacitated  
4 individual ~~—~~, and that the appointment is necessary as a  
5 means of providing continuing care and supervision of the incapacitated  
6 individual, WITH EACH FINDING SUPPORTED SEPARATELY ON  
7 THE RECORD. THE FORM FOR RECORDING FINDINGS UNDER THIS  
8 SUBSECTION SHALL REFLECT THE REQUIREMENT FOR SEPARATE FINDINGS ON  
9 THESE ISSUES. Alternately, the court may dismiss the proceeding

1 ~~or~~ or may enter Alternately, the court may dismiss the  
2 proceeding or enter another appropriate order.

3 (2) ~~A guardian shall be granted~~ THE COURT SHALL GRANT A  
4 GUARDIAN only those powers and only for that period of time as is  
5 necessary to provide for the demonstrated need of the incapacitated individual. ~~and the guardianship shall be designed~~ THE  
6 COURT SHALL DESIGN THE GUARDIANSHIP to encourage the development  
7 of maximum self-reliance and independence in the individual.  
8 EXCEPT AS PROVIDED IN SUBSECTION (5), A COURT SHALL NOT GRANT A  
9 GUARDIAN THE SAME POWERS THAT ARE HELD BY A PATIENT ADVOCATE  
10 UNDER A DESIGNATION UNDER SECTION 5506. A court order establishing  
11 a guardianship shall specify any limitations on the  
12 guardian's powers and any time limits on the guardianship.  
13 EXCEPT AS PROVIDED IN SECTION 5407, THE COURT SHALL NOT AUTHORIZE  
14 A GUARDIAN TO, AND A GUARDIAN DOES NOT HAVE THE POWER TO, SELL A  
15 WARD'S REAL PROPERTY.  
16

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

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

1 (5) IF THE GUARDIAN'S WARD EXECUTES A PATIENT ADVOCATE  
2 DESIGNATION IN COMPLIANCE WITH SECTION 5506 AND NAMES A PERSON  
3 OTHER THAN THE GUARDIAN AS HIS OR HER PATIENT ADVOCATE, FOR THOSE  
4 TIME PERIODS WHEN THE PATIENT ADVOCATE'S AUTHORITY, RIGHTS, AND  
5 RESPONSIBILITIES ARE EFFECTIVE AS PROVIDED IN SECTIONS 5506 TO  
6 5512, THE COURT SHALL NOT GRANT AND THE GUARDIAN SHALL NOT EXER-  
7 CISE A POWER THAT THE DESIGNATION GIVES TO THE PATIENT ADVOCATE  
8 REGARDING THE WARD'S CARE, CUSTODY, OR MEDICAL TREATMENT. IF,  
9 HOWEVER, A PETITION FOR GUARDIANSHIP OR FOR MODIFICATION UNDER  
10 SECTION 5310 ALLEGES AND THE COURT FINDS THAT THE PATIENT ADVO-  
11 CATE DESIGNATION WAS NOT EXECUTED IN COMPLIANCE WITH SECTION  
12 5506, THAT THE PATIENT ADVOCATE IS NOT COMPLYING WITH THE TERMS  
13 OF THE DESIGNATION OR OF SECTIONS 5506 TO 5512, OR THAT THE  
14 PATIENT ADVOCATE IS NOT ACTING CONSISTENT WITH THE WARD'S BEST  
15 INTERESTS, THE COURT MAY MODIFY THE GUARDIANSHIP'S TERMS TO GRANT  
16 THOSE POWERS TO THE GUARDIAN.

17 Sec. 5313. (1) ~~A~~ THE COURT MAY APPOINT A competent  
18 person, including a nonprofit corporation described in section  
19 5106, ~~may be appointed~~ AS guardian of a legally incapacitated  
20 individual. The court shall not appoint as a guardian an agency,  
21 public or private, that financially benefits from directly pro-  
22 viding housing, medical, or social services to the legally inca-  
23 pacitated individual. IF THE COURT DETERMINES THAT THE WARD'S  
24 PROPERTY NEEDS PROTECTION, THE COURT SHALL ORDER THE GUARDIAN TO  
25 FURNISH A BOND OR SHALL INCLUDE RESTRICTIONS IN THE LETTERS OF  
26 GUARDIANSHIP AS NECESSARY TO PROTECT THE PROPERTY.

1           (2) In appointing a guardian under this section, the court  
2 shall appoint a person, if suitable and willing to serve,  
3 designated by the individual who is the subject of the petition,  
4 including a designation made in a durable power of attorney. If  
5 a specific designation is not made or a person designated is not  
6 suitable or willing to serve, the court may appoint as a guardian  
7 a person named as attorney in fact through a durable power of  
8 attorney.

9           (3) If a person is not designated under subsection (2) or a  
10 person designated under subsection (2) is not suitable or willing  
11 to serve, the court may appoint as a guardian an individual who  
12 is related to the subject of the petition in the following order  
13 of preference:

14           (a) The legally incapacitated individual's spouse. This  
15 subdivision shall be considered to include a person nominated by  
16 will or other writing signed by a deceased spouse.

17           (b) An adult child of the legally incapacitated individual.

18           (c) A parent of the legally incapacitated individual. This  
19 subdivision shall be considered to include a person nominated by  
20 will or other writing signed by a deceased parent.

21           (d) A relative of the legally incapacitated individual with  
22 whom the individual has resided for more than 6 months before the  
23 filing of the petition.

24           (e) A person nominated by the person who is caring for the  
25 individual or paying benefits to the individual.

1 (4) If none of the persons listed in subsection (3) is  
2 suitable or willing to serve, the court may appoint any competent  
3 person who is suitable and willing to serve.

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

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

22 (b) If entitled to custody of the ward, the guardian ~~must~~  
23 ~~make provision~~ SHALL PROVIDE for the ward's care, comfort, and  
24 maintenance and, when appropriate, arrange for the ward's train-  
25 ing and education. The guardian has the responsibility of secur-  
26 ing services to restore the ward to the best possible state of  
27 mental and physical well-being so that the ward can return to

1 self-management at the earliest possible time. Without regard to  
2 custodial rights of the ward's person, the guardian ~~must~~ SHALL  
3 take reasonable care of the ward's clothing, furniture, vehicles,  
4 and other personal effects and commence a protective proceeding  
5 if the ward's other property ~~is in need of~~ NEEDS protection.

6 (c) A guardian may give the consent or approval that may be  
7 necessary to enable the ward to receive medical or other profes-  
8 sional care, counsel, treatment, or service.

9 (d) If a conservator for the ward's estate is not appointed,  
10 a guardian may:

11 (i) Institute a proceeding to compel a person under a duty  
12 to support the ward or to pay sums for the ward's welfare to per-  
13 form that duty.

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

23 (e) The guardian shall report the WARD'S condition ~~of the~~  
24 ~~ward and the ward's estate that is subject to the guardian's pos-~~  
25 ~~session or control,~~ as required by the court, but not less often  
26 than annually. A report under this subdivision ~~must~~ SHALL  
27 contain all of the following:

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

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

6 (iii) The ward's present living arrangement and ~~any~~  
7 changes in his or her living arrangement that occurred during the  
8 past 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 (G) IF A CONSERVATOR IS NOT APPOINTED FOR THE WARD AND THE  
24 GUARDIAN HAS CONTROL OF ANY OF THE WARD'S ESTATE, WITHIN 63 DAYS  
25 AFTER APPOINTMENT, THE GUARDIAN SHALL PREPARE AND FILE WITH THE  
26 APPOINTING COURT A COMPLETE INVENTORY OF THE ESTATE THAT IS  
27 SUBJECT TO THE GUARDIANSHIP.

1 (H) IF A CONSERVATOR IS NOT APPOINTED FOR THE WARD, THE  
2 GUARDIAN SHALL FILE AN ACCOUNT WITH THE COURT OF ALL INCOME AND  
3 ASSETS IN THE GUARDIAN'S CONTROL. THE GUARDIAN SHALL FILE THE  
4 ACCOUNT AS REQUIRED BY THE COURT, BUT NOT LESS THAN ANNUALLY.  
5 THE COURT, OR STAFF ASSIGNED BY THE COURT, SHALL REVIEW THE  
6 ACCOUNTING.

7 Sec. 5417. (1) Within 63 days after appointment or within  
8 another time period specified by court rule, a conservator ~~must~~  
9 SHALL prepare and file with the appointing court a complete  
10 inventory AND ACCOUNTING of the PROTECTED INDIVIDUAL'S estate  
11 subject to the conservatorship together with an oath or affirma-  
12 tion that the inventory ~~is~~ AND ACCOUNTING ARE believed to be  
13 complete and accurate so far as information permits. THE COURT,  
14 OR STAFF ASSIGNED BY THE COURT, SHALL REVIEW THE ACCOUNTING.

15 (2) The conservator ~~must~~ SHALL provide a copy of the  
16 inventory AND ACCOUNTING to the protected individual if the  
17 ~~individaul~~ INDIVIDUAL can be located, ~~and if the individual~~  
18 is 14 years of age or older, and has sufficient mental capacity  
19 to understand ~~the arrangement. A copy must also be provided~~  
20 THESE MATTERS. THE CONSERVATOR SHALL ALSO PROVIDE A COPY to a  
21 parent or guardian with whom the protected individual resides.

22 (3) ~~(2)~~ The conservator must keep suitable records of the  
23 administration and exhibit those records on the request of an  
24 interested person.