

# SENATE BILL No. 1388

September 27, 2000, Introduced by Senators HAMMERSTROM, JOHNSON, STEIL, BULLARD, GOSCHKA, HART and SHUGARS 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 section 5314 (MCL 700.5314), as amended by 2000 PA 54.

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

1       Sec. 5314. ~~Whenever meaningful communication is possible,~~  
2       ~~a~~ A legally incapacitated individual's guardian ~~should~~ SHALL  
3       consult with the legally incapacitated individual before making a  
4       major decision affecting the legally incapacitated individual.  
5       Except as limited under section 5306, a legally incapacitated  
6       individual's guardian is responsible for the ward's care, custo-  
7       dy, and control, but is not liable to third persons by reason of  
8       that responsibility for the ward's acts. In particular and  
9       without qualifying the ~~foregoing~~ PROVISIONS IN THE PREVIOUS

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

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

12 (b) If entitled to custody of the ward, the guardian must  
13 make provision for the ward's care, comfort, and maintenance and,  
14 when appropriate, arrange for the ward's training and education.  
15 The guardian ~~has the responsibility of securing~~ SHALL SECURE  
16 services to restore the ward to the best possible state of mental  
17 and physical well-being so that the ward can return to  
18 self-management at the earliest possible time. Without regard to  
19 custodial rights of the ward's person, the guardian must take  
20 reasonable care of the ward's clothing, furniture, vehicles, and  
21 other personal effects and commence a protective proceeding if  
22 the ward's other property ~~is in need of~~ NEEDS protection.

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

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

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

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

13           (e) The guardian shall report the condition of the ward and  
14 the ward's estate that is subject to the guardian's possession or  
15 control, as required by the court, but not less often than  
16 annually. THE GUARDIAN SHALL PROVIDE A COPY OF THE REPORT TO THE  
17 WARD AND TO EACH INTERESTED PERSON. A report under this subdivi-  
18 sion must contain all of the following:

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

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

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

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

3           (v) Medical treatment received by the ward.

4           (vi) Services received by the ward.

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

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

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