

# SENATE BILL No. 1390

September 27, 2000, Introduced by Senators STEIL, HAMMERSTROM, BULLARD, JOHNSON, 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 5215, 5314, and 5423 (MCL 700.5215, 700.5314, and 700.5423), section 5314 as amended by 2000 PA 54, and by adding section 5108.

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

1 SEC. 5108. (1) IF A CONSERVATOR OR, WITH THE COURT'S AUTHO-  
2 RIZATION UNDER SECTION 5215 OR 5314, A GUARDIAN DECIDES TO SELL  
3 OR OTHERWISE DISPOSE OF A PROTECTED INDIVIDUAL'S OR WARD'S REAL  
4 PROPERTY OR INTEREST IN REAL PROPERTY, THE CONSERVATOR OR GUARD-  
5 IAN SHALL DO ALL OF THE FOLLOWING:

6 (A) SERVE NOTICE ON THE WARD OR PROTECTED INDIVIDUAL AND  
7 EACH INTERESTED PERSON, SENDING WITH THE NOTICE A COPY OF A  
8 CERTIFIED APPRAISER'S APPRAISAL OF THE REAL PROPERTY OR INTEREST  
9 IN REAL PROPERTY.

1 (B) FILE WITH THE COURT A PETITION REQUESTING APPROVAL OF  
2 THE SALE OR OTHER DISPOSITION, ALONG WITH THE APPRAISAL, A STATE-  
3 MENT OF 1 OR MORE BASES FOR THE SALE OR OTHER DISPOSAL, AND PROOF  
4 OF SERVICE.

5 (C) IF THE COURT APPROVES, AND THE SALE OR OTHER DISPOSITION  
6 IS COMPLETED, FILE A REPORT WITH THE COURT THAT DETAILS THE SALE  
7 OR OTHER DISPOSITION.

8 (2) IF, AFTER A HEARING ON A PETITION FILED UNDER THIS SEC-  
9 TION, THE COURT DETERMINES THE SALE OR OTHER DISPOSITION IS IN  
10 THE WARD'S OR PROTECTED INDIVIDUAL'S BEST INTEREST, THE COURT  
11 SHALL ISSUE ITS APPROVAL.

12 Sec. 5215. A minor's guardian has the powers and responsi-  
13 bilities of a parent who is not deprived of custody of the  
14 parent's minor and unemancipated child, except that a guardian is  
15 not legally obligated to provide for the ward from the guardian's  
16 own money and is not liable to third persons by reason of the  
17 parental relationship for the ward's acts. A guardian has all of  
18 the following powers and duties:

19 (a) The guardian shall take reasonable care of a ward's per-  
20 sonal effects and commence a protective proceeding if necessary  
21 to protect the ward's other property. IF A GUARDIAN COMMENCES A  
22 PROTECTIVE PROCEEDING BECAUSE THE GUARDIAN BELIEVES THAT IT IS IN  
23 THE WARD'S BEST INTEREST TO SELL OR OTHERWISE DISPOSE OF THE  
24 WARD'S REAL PROPERTY OR INTEREST IN REAL PROPERTY, WITHOUT  
25 APPOINTING A CONSERVATOR, THE COURT MAY AUTHORIZE THE GUARDIAN TO  
26 PROCEED UNDER SECTION 5108.

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

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

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

25 (e) Subject to the conditions and restrictions of chapter X  
26 of THE PROBATE CODE OF 1939, 1939 PA 288, MCL 710.21 to 710.70, a

1 guardian may consent to marriage or adoption of a minor ward or  
2 to the release of a minor ward for adoption.

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

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

14 Sec. 5314. Whenever meaningful communication is possible, a  
15 legally incapacitated individual's guardian should consult with  
16 the legally incapacitated individual before making a major deci-  
17 sion affecting the legally incapacitated individual. Except as  
18 limited under section 5306, a legally incapacitated individual's  
19 guardian is responsible for the ward's care, custody, and con-  
20 trol, but is not liable to third persons by reason of that  
21 responsibility for the ward's acts. In particular and without  
22 qualifying the ~~foregoing~~ PROVISIONS IN THE PREVIOUS SENTENCES,  
23 a guardian has all of the following powers and duties, except as  
24 modified by court order:

25 (a) To the extent that it is consistent with the terms of an  
26 order by a court of competent jurisdiction relating to THE WARD'S  
27 detention or commitment, ~~of the ward,~~ the guardian is entitled

1 to custody of the person of the guardian's ward and may establish  
2 the ward's place of residence within or without this state. The  
3 guardian must notify the court within 14 days of a change in the  
4 ward's place of residence.

5 (b) If entitled to custody of the ward, the guardian must  
6 make provision for the ward's care, comfort, and maintenance and,  
7 when appropriate, arrange for the ward's training and education.  
8 The guardian ~~has the responsibility of securing~~ SHALL SECURE  
9 services to restore the ward to the best possible state of mental  
10 and physical well-being so that the ward can return to  
11 self-management at the earliest possible time. Without regard to  
12 custodial rights of the ward's person, the guardian must take  
13 reasonable care of the ward's clothing, furniture, vehicles, and  
14 other personal effects and commence a protective proceeding if  
15 the ward's other property ~~is in need of~~ NEEDS protection. IF A  
16 GUARDIAN COMMENCES A PROTECTIVE PROCEEDING BECAUSE THE GUARDIAN  
17 BELIEVES THAT IT IS IN THE WARD'S BEST INTEREST TO SELL OR OTHER-  
18 WISE DISPOSE OF THE WARD'S REAL PROPERTY OR INTEREST IN REAL  
19 PROPERTY, WITHOUT APPOINTING A CONSERVATOR, THE COURT MAY AUTHO-  
20 RIZE THE GUARDIAN TO PROCEED UNDER SECTION 5108.

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

24 (d) If a conservator for the ward's estate is not appointed,  
25 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. A report under this subdivision must contain all of  
17 the following:

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

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

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

26           (iv) Whether the guardian recommends a more suitable living  
27 arrangement for the ward.

1 (v) Medical treatment received by the ward.

2 (vi) Services received by the ward.

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

5 (viii) A recommendation as to the need for continued  
6 guardianship.

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

13 Sec. 5423. (1) Subject to a limitation provided in section  
14 5427, a conservator has all of the powers conferred in this sec-  
15 tion and the additional powers conferred by law on trustees in  
16 this state. In addition, a conservator of the estate of an  
17 unmarried minor, as to whom no one has parental rights, has the  
18 powers, responsibilities, and duties of a guardian described in  
19 section 5215 until the individual is no longer a minor or  
20 marries. The parental rights conferred on a conservator by this  
21 section do not preclude a guardian's appointment as provided in  
22 part 2.

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

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

5 (b) Receive an addition to the estate.

6 (c) Continue or participate in the operation of a business  
7 or other enterprise.

8 (d) Acquire an undivided interest in estate property in  
9 which the conservator, in a fiduciary capacity, holds an undi-  
10 vided interest.

11 (e) Invest or reinvest estate property. If the conservator  
12 exercises the power conferred by this subdivision, the conserva-  
13 tor must invest or reinvest the property in accordance with the  
14 Michigan prudent investor rule.

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

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

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



1 (i) Subdivide, develop, or dedicate land to public use; make  
2 or obtain the vacation of a plat or adjust a boundary; adjust a  
3 difference in valuation on exchange or partition by giving or  
4 receiving consideration; or dedicate an easement to public use  
5 without consideration.

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

9 (k) Enter into a lease or arrangement for exploration and  
10 removal of a mineral or other natural resource or enter into a  
11 pooling or unitization agreement.

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

14 (m) Vote a security, in person or by general or limited  
15 proxy.

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

18 (o) Sell or exercise stock subscription or conversion  
19 rights.

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

23 (q) Hold a security in the name of a nominee or in other  
24 form without disclosure of the conservatorship so that title to  
25 the security may pass by delivery. However, the conservator is  
26 liable for an act of the nominee in connection with the stock so  
27 held.

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

3 (s) Borrow money to be repaid from estate property or  
4 otherwise.

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

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

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

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

22 (x) Pay money distributable to a protected individual or the  
23 protected individual's dependent by paying the money to the dis-  
24 tributee or by paying the money for the use of the distributee to  
25 the distributee's guardian, or if none, to a relative or other  
26 person having custody of the distributee.

1           (y) Employ a person, including an auditor, investment  
2 advisor, or agent, even though the person is associated with the  
3 conservator, to advise or assist in the performance of an admin-  
4 istrative duty; act upon the person's recommendation without  
5 independent investigation; and, instead of acting personally,  
6 employ an agent to perform an act of administration, whether or  
7 not discretionary.

8           (z) Employ an attorney to perform necessary legal services  
9 or to advise or assist the conservator in the performance of the  
10 conservator's administrative duties. An attorney employed under  
11 this subdivision shall receive reasonable compensation for that  
12 employment.

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

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

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