

SENATE BILL No. 1392

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 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, 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,

1 a guardian has all of the following powers and duties, except as
2 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. The
8 guardian must notify the court within 14 days of a change in the
9 ward's place of residence.

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

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 (G) IF A GUARDIAN'S WARD DOES NOT HAVE A CONSERVATOR, WITHIN
14 63 DAYS AFTER THE GUARDIAN'S APPOINTMENT, THE GUARDIAN SHALL PRE-
15 PARE AND FILE WITH THE APPOINTING COURT AN INVENTORY OF THE
16 WARD'S ESTATE. THE INVENTORY SHALL INCLUDE BOTH THE REAL AND
17 PERSONAL PROPERTY OF THE WARD. UNLESS SUBDIVISION (F) BECOMES
18 APPLICABLE TO A GUARDIAN, THE GUARDIAN SHALL FILE AN INVENTORY
19 WITHIN 1 YEAR AFTER EACH OF THE GUARDIAN'S PREVIOUS INVENTORY
20 FILINGS OR AS OFTEN AS THE COURT DIRECTS.

21 Enacting section 1. If a guardianship was in effect before
22 the effective date of this amendatory act, the guardian shall
23 comply with the requirement to file an inventory within 63 days
24 after the effective date of this amendatory act.