



HOUSE BILL No. 5236

January 25, 2000, Introduced by Rep. Martinez 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 section 5314 (MCL 700.5314).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5314. (1) IN EXERCISING A GUARDIANSHIP POWER, A GUARD-
2 IAN SHALL BE GUIDED BY WISHES EXPRESSED BY THE GUARDIAN'S WARD
3 BEFORE THE WARD BECAME LEGALLY INCAPACITATED. THIS REQUIREMENT
4 INCLUDES THE GUARDIAN'S COMPLIANCE WITH A DURABLE POWER OF ATTOR-
5 NEY OR OTHER ADVANCE DIRECTIVE. Whenever meaningful communication
6 is possible, an incapacitated individual's guardian should con-
7 sult with the incapacitated individual before making a major
8 decision affecting the incapacitated individual.

9 (2) Except as limited under THIS SECTION AND section 5306,
10 an incapacitated individual's guardian is responsible for the
11 ward's care, custody, and control, but is not liable to third

1 persons by reason of that responsibility for the ward's acts. In
2 particular and without qualifying the foregoing, a guardian has
3 all of the following powers and duties, except as modified by
4 court order:

5 (a) To the extent that it is consistent with the terms of an
6 order by a court of competent jurisdiction relating to detention
7 or commitment of the ward, the guardian is entitled to custody of
8 the person of the guardian's ward and may establish the ward's
9 place of residence within or without this state. The guardian
10 must notify the court within 14 days of a change in the ward's
11 place of residence.

12 (b) If entitled to custody of the ward, the guardian ~~must~~
13 ~~make provision~~ SHALL PROVIDE for the ward's care, comfort, and
14 maintenance and, when appropriate, arrange for the ward's train-
15 ing and education. The guardian has the responsibility of secur-
16 ing services to restore the ward to the best possible state of
17 mental 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 for the ward's welfare to per-
3 form 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 or deterioration in the ward's mental,
21 physical, and social condition that occurred during the past
22 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.