

# SENATE BILL No. 273

March 6, 2001, Introduced by Senators STEIL, JOHNSON, BENNETT, MURPHY, KOIVISTO, JAYE 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 sections 5306 and 5314 (MCL 700.5306 and 700.5314),  
section 5306 as amended by 2000 PA 312 and section 5314 as  
amended by 2000 PA 469.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 5306. (1) The court may appoint a guardian if the  
2 court finds by clear and convincing evidence both that the indi-  
3 vidual for whom a guardian is sought is an incapacitated individ-  
4 ual and that the appointment is necessary as a means of providing  
5 continuing care and supervision of the incapacitated individual,  
6 with each finding supported separately on the record.  
7 Alternately, the court may dismiss the proceeding or enter  
8 another appropriate order.

1       (2) The court shall grant a guardian only those powers and  
2 only for that period of time as is necessary to provide for the  
3 demonstrated need of the incapacitated individual. The court  
4 shall design the guardianship to encourage the development of  
5 maximum self-reliance and independence in the individual. If the  
6 court is aware that an individual has executed a patient advocate  
7 designation under section 5506, the court shall not grant a  
8 guardian any of the same powers that are held by the patient  
9 advocate. A court order establishing a guardianship shall spec-  
10 ify any limitations on the guardian's powers and any time limits  
11 on the guardianship.

12       (3) If the court finds by clear and convincing evidence that  
13 an individual is incapacitated and lacks the capacity to do some,  
14 but not all, of the tasks necessary to care for himself or her-  
15 self, the court may appoint a limited guardian to provide guard-  
16 ianship services to the individual, but the court shall not  
17 appoint a full guardian.

18       (4) If the court finds by clear and convincing evidence that  
19 ~~the~~ AN individual is incapacitated and is totally without  
20 capacity to care for himself or herself, the court shall specify  
21 that finding of fact in an order and may appoint a full  
22 guardian.

23       (5) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE  
24 COURT SHALL NOT GRANT A GUARDIAN THE POWER OF CONSENT OVER THE  
25 WARD'S DECISION TO MARRY. THE COURT MAY GRANT A GUARDIAN THE  
26 POWER TO OBJECT TO THE WARD'S MARRIAGE AS PROVIDED IN SECTION  
27 5314. THE COURT MAY GRANT A GUARDIAN THE POWER OF CONSENT OVER

1 THE WARD'S DECISION TO MARRY IF, AT THE TIME OF THE GUARDIAN'S  
2 APPOINTMENT, THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE  
3 THAT THE INDIVIDUAL LACKS THE LEGAL CAPACITY TO CONTRACT MARRIAGE  
4 AND IS UNLIKELY EVER TO REGAIN THAT LEGAL CAPACITY.

5       (6) ~~—(5)—~~ If an individual executed a patient advocate des-  
6 ignation under section 5506 before the time the court determines  
7 that he or she became a legally incapacitated individual, a  
8 guardian does not have and shall not exercise the power or duty  
9 of making medical treatment decisions that the patient advocate  
10 is designated to make. If, however, a petition for guardianship  
11 or for modification under section 5310 alleges and the court  
12 finds that the patient advocate designation was not executed in  
13 compliance with section 5506, that the patient advocate is not  
14 complying with the terms of the designation or of sections 5506  
15 to 5512, or that the patient advocate is not acting consistent  
16 with the ward's best interests, the court may modify the  
17 guardianship's terms to grant those powers to the guardian.

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

1       (a) To the extent that it is consistent with the terms of an  
2 order by a court of competent jurisdiction relating to the ward's  
3 detention or commitment, the guardian is entitled to custody of  
4 the person of the guardian's ward and may establish the ward's  
5 place of residence within or without this state. A ward's guard-  
6 ian shall visit the ward within 3 months after the guardian's  
7 appointment and not less than once within 3 months after each  
8 previous visit. The guardian must notify the court within  
9 14 days of a change in the 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 shall secure services to restore the ward to the  
14 best possible state of mental and physical well-being so that the  
15 ward can return to self-management at the earliest possible  
16 time. Without regard to custodial rights of the ward's person,  
17 the guardian must take reasonable care of the ward's clothing,  
18 furniture, vehicles, and other personal effects and commence a  
19 protective proceeding if the ward's other property needs  
20 protection. If a guardian commences a protective proceeding  
21 because the guardian believes that it is in the ward's best  
22 interest to sell or otherwise dispose of the ward's real property  
23 or interest in real property, the court may appoint the guardian  
24 as special conservator and authorize the special conservator to  
25 proceed under section 5423(3). A guardian shall not otherwise  
26 sell the ward's real property or interest in real property.

1 (c) A guardian may give the consent or approval that is  
2 necessary to enable the ward to receive medical or other  
3 professional care, counsel, treatment, or service.

4 (d) If a conservator for the ward's estate is not appointed,  
5 a guardian may do any of the following:

6 (i) Institute a proceeding to compel a person under a duty  
7 to support the ward or to pay money for the ward's welfare to  
8 perform that duty.

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

18 (e) The guardian shall report the condition of the ward and  
19 the ward's estate that is subject to the guardian's possession or  
20 control, as required by the court, but not less often than  
21 annually. The guardian shall also serve the report required  
22 under this subdivision on the ward and interested persons as  
23 specified in the Michigan court rules. A report under this sub-  
24 division must contain all of the following:

25 (i) The ward's current mental, physical, and social  
26 condition.

1       (ii) Improvement or deterioration in the ward's mental,  
2 physical, and social condition that occurred during the past  
3 year.

4       (iii) The ward's present living arrangement and changes in  
5 his or her living arrangement that occurred during the past  
6 year.

7       (iv) Whether the guardian recommends a more suitable living  
8 arrangement for the ward.

9       (v) Medical treatment received by the ward.

10       (vi) Services received by the ward.

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

13       (viii) A recommendation as to the need for continued  
14 guardianship.

15       (f) If a conservator is appointed, the guardian shall pay to  
16 the conservator, for management as provided in this act, the  
17 amount of the ward's estate received by the guardian in excess of  
18 the amount the guardian expends for the ward's current support,  
19 care, and education. The guardian shall account to the conserva-  
20 tor for the amount expended.

21       (G) IF THE GUARDIAN DOES NOT HAVE THE POWER OF CONSENT OVER  
22 THE WARD'S DECISION TO MARRY, THE GUARDIAN MAY FILE OBJECTION TO  
23 THE MARRIAGE WITH THE COURT. IF A GUARDIAN FILES AN OBJECTION  
24 UNDER THIS SUBDIVISION, THE COURT SHALL HOLD A HEARING ON THE  
25 MATTER. THE WARD SHALL BE NOTIFIED OF THE HEARING AND IS ENTI-  
26 TLED TO BE PRESENT AT THE HEARING IN PERSON. IF THE WARD WISHES  
27 TO BE PRESENT AT THE HEARING, ALL PRACTICAL STEPS MUST BE TAKEN

1 TO ENSURE THE WARD'S PRESENCE INCLUDING, IF NECESSARY, MOVING THE  
2 SITE OF THE HEARING. IF IT APPEARS THAT THE WARD IS NOT ADE-  
3 QUATELY REPRESENTED, THE COURT MAY APPOINT A GUARDIAN AD LITEM TO  
4 REPRESENT THE WARD'S INTERESTS. AT THE HEARING, THE GUARDIAN HAS  
5 THE BURDEN OF PROVING THAT THE WARD LACKS THE LEGAL CAPACITY TO  
6 CONTRACT MARRIAGE OR THAT THE MARRIAGE IS NOT IN THE WARD'S BEST  
7 INTEREST.