

SENATE BILL No. 764

October 8, 2003, Introduced by Senators GARCIA, GOSCHKA, SANBORN, McMANUS, GILBERT and ALLEN and referred to the Committee on Families 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
469, and by adding section 5314a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5314. Whenever meaningful communication is possible, a
2 legally incapacitated individual's guardian shall consult with
3 the legally incapacitated individual before making a major
4 decision affecting the legally incapacitated individual. Except
5 as limited under section 5306, a legally incapacitated
6 individual's guardian is responsible for the ward's care,
7 custody, and control, but is not liable to third persons by
8 reason of that responsibility for the ward's acts. In particular
9 and without qualifying the previous sentences, a guardian has all
10 of the following powers and duties, except as modified by court

1 order:

2 (a) To the extent that it is consistent with the terms of an
3 order by a court of competent jurisdiction relating to the ward's
4 detention or commitment, the guardian is entitled to custody of
5 the person of the guardian's ward and may establish the ward's
6 place of residence within or without this state. A ward's
7 guardian shall visit the ward within 3 months after the
8 guardian's appointment and not less than once within 3 months
9 after each previous visit. The guardian must notify the court
10 within 14 days of a change in the ward's place of residence.

11 (b) If entitled to custody of the ward, the guardian must
12 make provision for the ward's care, comfort, and maintenance and,
13 when appropriate, arrange for the ward's training and education.
14 The guardian shall secure services to restore the ward to the
15 best possible state of mental and physical well-being so that the
16 ward can return to self-management at the earliest possible
17 time. Without regard to custodial rights of the ward's person,
18 the guardian must take reasonable care of the ward's clothing,
19 furniture, vehicles, and other personal effects and commence a
20 protective proceeding if the ward's other property needs
21 protection. If a guardian commences a protective proceeding
22 because the guardian believes that it is in the ward's best
23 interest to sell or otherwise dispose of the ward's real property
24 or interest in real property, the court may appoint the guardian
25 as special conservator and authorize the special conservator to
26 proceed under section 5423(3). A guardian shall not otherwise
27 sell the ward's real property or interest in real property.

1 (c) ~~—A~~ **Subject to section 5314a**, a guardian may give the
2 consent or approval that is necessary to enable the ward to
3 receive medical or other professional care, counsel, treatment,
4 or service.

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

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

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

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

26 (i) The ward's current mental, physical, and social
27 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 on
12 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
20 conservator for the amount expended.

21 **Sec. 5314a. (1) If medical care, treatment, or service for**
22 **a legally incapacitated individual presents a risk of injury to**
23 **or death of an unborn person, the legally incapacitated**
24 **individual's guardian shall report that risk to the court. The**
25 **court shall appoint a guardian ad litem to represent the interest**
26 **of the unborn person.**

27 (2) If he or she accepts the appointment under this section,

1 the guardian ad litem shall investigate and make a recommendation
2 concerning the medical care, treatment, or service. The guardian
3 ad litem shall make a report of the investigation and
4 recommendation in writing or recorded testimony.

5 (3) A person who has possession or control of information,
6 reports, or records regarding a legally incapacitated individual
7 shall give a guardian ad litem appointed under this section
8 access to the information, reports, or records.

9 (4) A guardian ad litem appointed under this section may
10 engage legal counsel and do whatever is necessary to defend and
11 protect the interests of the unborn person.