

HOUSE BILL No. 5310

February 3, 2016, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5308, 5310, and 5314 (MCL 700.5308, 700.5310,
and 700.5314), section 5308 as amended by 2005 PA 204, section 5310
as amended by 2000 PA 54, and section 5314 as amended by 2013 PA
157.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5308. (1) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION**
2 (2), A guardian's authority and responsibility for a legally
3 incapacitated individual terminates ~~upon~~ **ON** the death of the
4 guardian or ward, ~~upon~~ **ON** the determination of incapacity of the
5 guardian, or ~~upon~~ **ON** removal or resignation as provided in section
6 5310. Testamentary appointment of a guardian under an unprobated

1 will or a will informally probated under article III terminates if
2 the will is later denied probate in a formal testacy proceeding.

3 (2) ON THE DEATH OF A WARD, IF THE GUARDIAN KNOWS THE FUNERAL
4 ARRANGEMENTS OF THE DECEDENT, THE GUARDIAN SHALL INFORM THE HEIRS
5 ABOUT THE FUNERAL ARRANGEMENT WITHIN 24 HOURS AFTER THE GUARDIAN
6 RECEIVES NOTICE OF THE WARD'S DEATH. THE GUARDIAN MAY INFORM AN
7 HEIR UNDER THIS SUBSECTION AT THE HEIR'S LAST KNOWN ADDRESS,
8 TELEPHONE NUMBER, OR ELECTRONIC MAIL ADDRESS.

9 Sec. 5310. (1) On petition of the guardian and subject to the
10 filing and approval of a report prepared as required by section
11 5314, the court shall accept the guardian's resignation and make
12 any other order that is appropriate.

13 (2) The ward or a person interested in the ward's welfare may
14 petition **THE COURT** for an order removing the guardian, appointing a
15 successor guardian, modifying the guardianship's terms, or
16 terminating the guardianship. A request for this order may be made
17 by informal letter to the court or judge. A person who knowingly
18 interferes with the transmission of this kind of request to the
19 court or judge is subject to a finding of contempt of court.

20 (3) Except as otherwise provided in the order finding
21 incapacity, ~~upon~~**ON** receiving a petition or request under this
22 section, the court shall set a date for a hearing to be held within
23 28 days after the receipt of the petition or request. An order
24 finding incapacity may specify a minimum period, not exceeding 182
25 days, during which a petition or request for a finding that a ward
26 is no longer an incapacitated individual, or for an order removing
27 the guardian, modifying the guardianship's terms, or terminating

1 the guardianship, shall not be filed without special leave of the
2 court.

3 (4) A RELATIVE OF THE WARD MAY PETITION THE COURT FOR AN ORDER
4 MODIFYING THE TERMS OF THE GUARDIANSHIP TO GRANT THE RELATIVE
5 ACCESS TO THE WARD, INCLUDING VISITATION AND COMMUNICATION WITH THE
6 WARD. IF THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT
7 THE GUARDIAN PREVIOUSLY DENIED THE RELATIVE ACCESS TO THE WARD AND
8 THAT THE WARD DESIRES CONTACT WITH THE RELATIVE OR THAT CONTACT
9 WITH THE RELATIVE IS IN THE WARD'S BEST INTEREST, THE COURT SHALL
10 ISSUE AN ORDER PROHIBITING THE GUARDIAN FROM DENYING ACCESS TO THE
11 WARD. AN ORDER ISSUED UNDER THIS SUBSECTION MUST SPECIFY THE
12 FREQUENCY, TIME, LOCATION, AND ANY OTHER TERMS OF ACCESS.

13 (5) ~~(4)~~—Before removing a guardian, appointing a successor
14 guardian, modifying the guardianship's terms, or terminating a
15 guardianship, and **EXCEPT FOR THE STANDARD OF PROOF FOR MODIFYING A**
16 **GUARDIANSHIP UNDER SUBSECTION (4)**, following the same procedures to
17 safeguard the ward's rights as apply to a petition for a guardian's
18 appointment, the court may send a visitor to the present guardian's
19 residence and to the place where the ward resides or is detained to
20 observe conditions and report in writing to the court.

21 Sec. 5314. ~~Whenever~~**IF** meaningful communication is possible, a
22 legally incapacitated individual's guardian shall consult with the
23 legally incapacitated individual before making a major decision
24 affecting the legally incapacitated individual. To the extent a
25 guardian of a legally incapacitated individual is granted powers by
26 the court under section 5306, the guardian is responsible for the
27 ward's care, custody, and control, but is not liable to third

1 persons ~~by reason~~ **BECAUSE** of that responsibility for the ward's
2 acts. In particular and without qualifying the previous sentences,
3 a guardian has all of the following powers and duties, to the
4 extent granted by court order:

5 (a) The custody of the person of the ward and the power to
6 establish the ward's place of residence within or without this
7 state. The guardian shall visit the ward within 3 months after the
8 guardian's appointment and not less than once within 3 months after
9 each previous visit. The guardian shall notify the court within 14
10 days of a change in the ward's place of residence or a change in
11 the guardian's place of residence.

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

1 real property or interest in real property.

2 (c) The power to give the consent or approval that is
3 necessary to enable the ward to receive medical or other
4 professional care, counsel, treatment, or service. The power of a
5 guardian to execute a do-not-resuscitate order under subdivision
6 (d) does not affect or limit the power of a guardian to consent to
7 a physician's order to withhold resuscitative measures in a
8 hospital.

9 (d) The power of a guardian to execute, reaffirm, and revoke a
10 do-not-resuscitate order on behalf of a ward is subject to this
11 subdivision. A guardian shall not execute a do-not-resuscitate
12 order unless the guardian does all of the following:

13 (i) Not more than 14 days before executing the do-not-
14 resuscitate order, ~~the guardian~~ visits the ward and, if meaningful
15 communication is possible, consults with the ward about executing
16 the do-not-resuscitate order.

17 (ii) ~~The guardian consults~~ **CONSULTS** directly with the ward's
18 attending physician as to the specific medical indications that
19 warrant the do-not-resuscitate order.

20 (e) If a guardian executes a do-not-resuscitate order under
21 subdivision (d), not less than annually after the do-not-
22 resuscitate order is first executed, the ~~guardian shall~~ **DUTY TO** do
23 all of the following:

24 (i) Visit the ward and, if meaningful communication is
25 possible, consult with the ward about reaffirming the do-not-
26 resuscitate order.

27 (ii) Consult directly with the ward's attending physician as

1 to specific medical indications that may warrant reaffirming the
2 do-not-resuscitate order.

3 (f) If a conservator for the ward's estate is not appointed,
4 the power to do any of the following:

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

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

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

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

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

27 (iii) The ward's present living arrangement and changes in his

1 or her living arrangement that occurred during the past year.

2 (iv) Whether the guardian recommends a more suitable living
3 arrangement for the ward.

4 (v) Medical treatment received by the ward.

5 (vi) Whether the guardian has executed, reaffirmed, or revoked
6 a do-not-resuscitate order on behalf of the ward during the past
7 year.

8 (vii) Services received by the ward.

9 (viii) A list of the guardian's visits with, and activities on
10 behalf of, the ward.

11 (ix) A recommendation as to the need for continued
12 guardianship.

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

19 (I) IF THE WARD IS ADMITTED TO A HOSPITAL FOR ACUTE CARE FOR 3
20 OR MORE DAYS, THE DUTY TO GIVE NOTICE TO ALL INTERESTED PERSONS OF
21 THE ADMISSION. THE NOTICE MUST INCLUDE THE HOSPITAL'S ADDRESS AND
22 THE DATE OF ADMISSION. THE GUARDIAN SHALL FILE A PROOF OF SERVICE
23 OF THE NOTICE WITH THE COURT. AS USED IN THIS SUBDIVISION,
24 "HOSPITAL" MEANS THAT TERM AS DEFINED IN SECTION 20106 OF THE
25 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20106.