

HOUSE BILL No. 4996

September 20, 2017, Introduced by Rep. Kosowski 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) WITHIN 36 HOURS AFTER THE DEATH OF A WARD, IF THE GUARDIAN
4 KNOWS THE FUNERAL ARRANGEMENTS OF THE DECEDENT, THE GUARDIAN SHALL
5 PROVIDE WRITTEN OR ORAL NOTICE TO THE HEIRS ABOUT THE FUNERAL
6 ARRANGEMENTS.

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

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

18 (3) Except as otherwise provided in the order finding
19 incapacity, ~~upon~~**ON** receiving a petition or request under this
20 section, the court shall set a date for a hearing to be held within
21 28 days after the receipt of the petition or request. An order
22 finding incapacity may specify a minimum period, not exceeding 182
23 days, during which a petition or request for a finding that a ward
24 is no longer an incapacitated individual, or for an order removing
25 the guardian, modifying the guardianship's terms, or terminating
26 the guardianship, ~~shall~~**MUST** not be filed without special leave of
27 the court.

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

11 (5) ~~(4)~~ Before removing a guardian, appointing a successor
12 guardian, modifying the guardianship's terms, or terminating a
13 guardianship, and following the same procedures to safeguard the
14 ward's rights as apply to a petition for a guardian's appointment,
15 the court may send a visitor to the present guardian's residence
16 and to the place where the ward resides or is detained to observe
17 conditions and report in writing to the court.

18 Sec. 5314. ~~Whenever~~ **IF** meaningful communication is possible, a
19 legally incapacitated individual's guardian shall consult with the
20 legally incapacitated individual before making a major decision
21 affecting the legally incapacitated individual. To the extent a
22 guardian of a legally incapacitated individual is granted powers by
23 the court under section 5306, the guardian is responsible for the
24 ward's care, custody, and control, but is not liable to third
25 persons ~~by reason~~ **BECAUSE** of that responsibility for the ward's
26 acts. In particular and without qualifying the previous sentences,
27 a guardian has all of the following powers and duties, to the

1 extent granted by court order:

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

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

26 (c) The power to give the consent or approval that is
27 necessary to enable the ward to receive medical or other

1 professional care, counsel, treatment, or service. The power of a
2 guardian to execute a do-not-resuscitate order under subdivision
3 (d) does not affect or limit the power of a guardian to consent to
4 a physician's order to withhold resuscitative measures in a
5 hospital.

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

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

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

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

21 (i) Visit the ward and, if meaningful communication is
22 possible, consult with the ward about reaffirming the do-not-
23 resuscitate order.

24 (ii) Consult directly with the ward's attending physician as
25 to specific medical indications that may warrant reaffirming the
26 do-not-resuscitate order.

27 (f) If a conservator for the ward's estate is not appointed,

1 the power to do any of the following:

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

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

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

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

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

24 (iii) The ward's present living arrangement and changes in his
25 or her living arrangement that occurred during the 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) Whether the guardian has executed, reaffirmed, or revoked
3 a do-not-resuscitate order on behalf of the ward during the past
4 year.

5 (vii) Services received by the ward.

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

8 (ix) A recommendation as to the need for continued
9 guardianship.

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

16 **(I) THE DUTY TO NOTIFY THE INTERESTED PERSONS AS SPECIFIED IN**
17 **THE MICHIGAN COURT RULES IF THE WARD HAS BEEN ADMITTED TO A**
18 **HOSPITAL FOR ACUTE CARE FOR 3 OR MORE DAYS. A NOTICE UNDER THIS**
19 **SUBDIVISION MAY BE WRITTEN OR ORAL. AS USED IN THIS SUBDIVISION,**
20 **"HOSPITAL" MEANS THAT TERM AS DEFINED IN SECTION 20106 OF THE**
21 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20106.**