

HOUSE BILL No. 6014

June 9, 2004, Introduced by Rep. Moolenaar and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5204, 5205, 5208, 5210, and 5215 (MCL 700.5204, 700.5205, 700.5208, 700.5210, and 700.5215), section 5204 as amended by 2000 PA 54 and section 5215 as amended by 2000 PA 469.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5204. (1) A person interested in the welfare of a
2 minor, or a minor if 14 years of age or older, may petition for
3 the appointment of a guardian for the minor. The court may order
4 the family independence agency or a court employee or agent to
5 conduct an investigation of the proposed guardianship and file a
6 written report of the investigation.

7 (2) The court may appoint a guardian for an unmarried minor
8 if any of the following circumstances exist:

1 (a) The parental rights of both parents or the surviving
2 parent are terminated or suspended by prior court order, by
3 judgment of divorce or separate maintenance, by death, by
4 judicial determination of mental incompetency, by disappearance,
5 or by confinement in a place of detention.

6 (b) The parent or parents permit the minor to reside with
7 another person and do not provide the other person with legal
8 authority for the minor's care and maintenance, and the minor is
9 not residing with his or her parent or parents when the petition
10 is filed.

11 (c) All of the following:

12 (i) The minor's biological parents have never been married to
13 one another.

14 (ii) The minor's parent who has custody of **or sole parenting**
15 **time with** the minor dies or is missing and the other parent has
16 not been granted ~~legal custody~~ **parenting time** under court
17 order.

18 (iii) The person whom the petition asks to be appointed
19 guardian is related to the minor within the fifth degree by
20 marriage, blood, or adoption.

21 (3) A minor's limited guardian may petition to be appointed a
22 guardian for that minor, except that the petition shall not be
23 based upon suspension of parental rights by the order that
24 appointed that person the limited guardian for that minor.

25 (4) A guardian appointed under section 5202 whose appointment
26 is not prevented or nullified under section 5203 has priority
27 over a guardian who may be appointed by the court. The court may

1 proceed with an appointment upon a finding that the testamentary
2 guardian has failed to accept the appointment within 28 days
3 after the notice of the guardianship proceeding.

4 (5) For the minor ward's welfare, the court may at any time
5 order the minor ward's parents to pay reasonable support and
6 order reasonable parenting time and contact of the minor ward
7 with his or her parents.

8 Sec. 5205. (1) The court may appoint a limited guardian for
9 an unmarried minor upon the petition of the minor's parent or
10 parents if all of the following requirements are met:

11 (a) The parents ~~with custody~~ of the minor consent or, in
12 the case of only 1 parent having custody of **or parenting time**
13 **with** the minor, the sole parent consents to the appointment of a
14 limited guardian.

15 (b) The parent or parents voluntarily consent to the
16 suspension of their parental rights.

17 (c) The court approves a limited guardianship placement plan
18 agreed to by both of the following parties:

19 (i) The parents ~~with custody~~ of the minor or, in the case
20 of only 1 parent having custody of **or parenting time with** the
21 minor, the sole parent who has custody of **or parenting time with**
22 the minor.

23 (ii) The person or persons whom the court will appoint as the
24 minor's limited guardian.

25 (2) A minor's parent or parents who desire to have the court
26 appoint a limited guardian for that minor and the person or
27 persons who desire to be appointed limited guardian for that

1 minor must develop a limited guardianship placement plan. The
2 parties must use a limited guardianship placement plan form
3 prescribed by the state court administrator. A limited
4 guardianship placement plan form must include a notice that
5 informs a parent who is a party to the plan that substantial
6 failure to comply with the plan without good cause may result in
7 the termination of the parent's parental rights under chapter
8 XIIIA of 1939 PA 288, MCL 712A.1 to 712A.32. The proposed limited
9 guardianship placement plan shall be attached to the petition
10 requesting the court to appoint a limited guardian. The limited
11 guardianship placement plan shall include provisions concerning
12 all of the following:

13 (a) The reason the parent or parents are requesting the court
14 to appoint a limited guardian for the minor.

15 (b) Parenting time and contact with the minor by his or her
16 parent or parents sufficient to maintain a parent and child
17 relationship.

18 (c) The duration of the limited guardianship.

19 (d) Financial support for the minor.

20 (e) Any other provisions that the parties agree to include in
21 the plan.

22 Sec. 5208. (1) A minor's parent or parents may petition the
23 court to terminate a guardianship for the minor as follows:

24 (a) If the guardianship is a limited guardianship, the
25 parents or the sole parent with ~~a right to~~ custody of **or**
26 **parenting time with** the minor.

27 (b) If the guardianship was established under section 5204,

1 the minor's parent or parents.

2 (2) If a petition is filed to terminate a guardianship under
3 this section, the court may do 1 or more of the following:

4 (a) Order the family independence agency or a court employee
5 or agent to conduct an investigation and file a written report of
6 the investigation regarding the best interests of the minor or
7 give testimony concerning the investigation.

8 (b) Utilize the community resources in behavioral sciences
9 and other professions in the investigation and study of the best
10 interests of the minor and consider their recommendations for the
11 disposition of the petition.

12 (c) Appoint a guardian ad litem or attorney to represent the
13 minor.

14 (d) Take any other action considered necessary in a
15 particular case.

16 (3) This section and section 5209 apply to all guardianships
17 established before, on, or after the effective date of this
18 section.

19 Sec. 5210. Upon receipt of a copy of a judgment or an order
20 of disposition in a ~~child custody~~ **parenting time** action
21 regarding a minor that is sent to the court as provided in
22 section 6b of the ~~child custody act of 1970~~ **parenting time act**,
23 1970 PA 91, MCL 722.26b, the court shall terminate the
24 guardianship or limited guardianship for that minor.

25 Sec. 5215. A minor's guardian has the powers and
26 responsibilities of a parent who is not deprived of ~~custody of~~
27 **parenting time with** the parent's minor and unemancipated child,

1 except that a guardian is not legally obligated to provide for
2 the ward from the guardian's own money and is not liable to third
3 persons by reason of the parental relationship for the ward's
4 acts. A guardian has all of the following powers and duties:

5 (a) The guardian shall take reasonable care of a ward's
6 personal effects and commence a protective proceeding if
7 necessary to protect the ward's other property. If a guardian
8 commences a protective proceeding because the guardian believes
9 that it is in the ward's best interest to sell or otherwise
10 dispose of the ward's real property or interest in real property,
11 the court may appoint the guardian as special conservator and
12 authorize the special conservator to proceed under section
13 5423(3). A guardian shall not otherwise sell the ward's real
14 property or interest in real property.

15 (b) The guardian may receive money payable for the ward's
16 support to the ward's parent, guardian, or custodian under the
17 terms of a statutory benefit or insurance system, or a private
18 contract, devise, trust, conservatorship, or custodianship. The
19 guardian may receive the ward's money or property paid or
20 delivered under section 5102. Money or property received under
21 that section shall be applied to the ward's current needs for
22 support, care, and education. The guardian shall exercise due
23 care to conserve any excess for the ward's future needs unless a
24 conservator is appointed for the ward's estate, in which case the
25 excess shall be paid over at least annually to the conservator.
26 The guardian shall not use that money or property for
27 compensation for the guardian's services except as approved by

1 court order or as determined by a duly appointed conservator
2 other than the guardian. A guardian may institute a proceeding
3 to compel a person's performance of a duty to support the ward or
4 to pay money for the ward's welfare.

5 (c) The guardian shall facilitate the ward's education and
6 social or other activities, and shall authorize medical or other
7 professional care, treatment, or advice. A guardian is not
8 liable by reason of this consent for injury to the ward resulting
9 from the negligence or acts of third persons unless it would be
10 illegal for a parent to have consented.

11 (d) A guardian may consent to a minor ward's marriage.

12 (e) Subject to the conditions and restrictions of chapter X
13 of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, a
14 guardian may consent to marriage or adoption of a minor ward or
15 to the release of a minor ward for adoption.

16 (f) A guardian must report the condition of the ward and of
17 the ward's estate that is subject to the guardian's possession or
18 control as ordered by the court on petition of a person
19 interested in the minor's welfare or as required by court rule.
20 The report must detail the condition of the ward, medical or
21 mental health treatment or care to which the ward was subjected,
22 and what reason, if any, exists for the continuation of the
23 guardianship.

24 (g) Within 14 days after a change in the ward's place of
25 residence, the guardian shall give to the court notice of the
26 ward's new address.

27 Enacting section 1. This amendatory act takes effect

1 January 1, 2005.

2 Enacting section 2. This amendatory act does not take
3 effect unless House Bill No. 5949 of the 92nd Legislature is
4 enacted into law.