

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 461
(As amended May 30, 2012)

[A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 2802, 2803, 2804, 5314, 5315, 5410, 5422, and 5423 (MCL 700.2802, 700.2803, 700.2804, 700.5314, 700.5315, 700.5410, 700.5422, and 700.5423), section 5314 as amended by 2000 PA 469, and section 5423 as amended by 2005 PA 204, and by adding section 5306a and 5319.]

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2802. As used in this section and sections 2803 and 2804:

2 (A) "ABUSE, NEGLECT, OR EXPLOITATION" MEANS AN ACT, THE
3 COMMISSION OF WHICH IS A FELONY, UNDER ANY OF THE FOLLOWING:

4 (i) AN ACT THAT CONSTITUTES CHILD ABUSE UNDER SECTION 136B OF

1 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.136B.

2 (ii) A CRIMINAL ACT THAT IS AN OFFENSE UNDER CHAPTER XXA OF THE
3 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145M TO 750.145R.

4 (iii) A VIOLATION OF SECTION 174A OF THE MICHIGAN PENAL CODE,
5 1931 PA 328, MCL 750.174A.

6 (iv) A CRIMINAL ACT THAT IS AN OFFENSE INVOLVING DOMESTIC
7 VIOLENCE AS THAT TERM IS DEFINED IN SECTION 27B OF CHAPTER VIII OF
8 THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 768.27B.

9 (v) A CRIMINAL ACT THAT CONSTITUTES ABUSE, NEGLECT, OR
10 EXPLOITATION AS THOSE TERMS ARE DEFINED IN SECTION 11 OF THE SOCIAL
11 WELFARE ACT, 1939 PA 280, MCL 400.11.

12 (B) ~~(a)~~—"Disposition or appointment of property" includes, but
13 is not limited to, a transfer of an item of property or another
14 benefit to a beneficiary designated in a governing instrument.

15 (C) "FELON" MEANS THE INDIVIDUAL WHO WAS CONVICTED OF
16 COMMITTING THE ABUSE, NEGLECT, OR EXPLOITATION.

17 (D) ~~(b)~~—"Governing instrument" means a governing instrument
18 executed by the decedent.

19 (E) ~~(e)~~—"Revocable" means, with respect to a disposition,
20 appointment, provision, or nomination, one under which the
21 decedent, at the time of or immediately before death, was alone
22 empowered, by law or under the governing instrument, to cancel the
23 designation in favor of the killer **OR FELON**, whether or not the
24 decedent was then empowered to designate himself or herself in
25 place of his or her killer **OR FELON** and whether or not the decedent
26 then had the capacity to exercise the power.

27 Sec. 2803. (1) An individual who feloniously and intentionally

1 kills **OR WHO IS CONVICTED OF COMMITTING ABUSE, NEGLECT, OR**
2 **EXPLOITATION WITH RESPECT TO** the decedent forfeits all benefits
3 under this article with respect to the decedent's estate, including
4 an intestate share, an elective share, an omitted spouse's or
5 child's share, a homestead allowance, a family allowance, and
6 exempt property. If the decedent died intestate, the decedent's
7 intestate estate passes as if the killer **OR FELON** disclaimed his or
8 her intestate share.

9 (2) The felonious and intentional killing **OR THE CONVICTION OF**
10 **THE FELON FOR THE ABUSE, NEGLECT, OR EXPLOITATION** of the decedent
11 does all of the following:

12 (a) Revokes all of the following that are revocable:

13 (i) Disposition or appointment of property made by the decedent
14 to the killer **OR FELON** in a governing instrument.

15 (ii) Provision in a governing instrument conferring a general
16 or nongeneral power of appointment on the killer **OR FELON**.

17 (iii) Nomination of the killer **OR FELON** in a governing
18 instrument, nominating or appointing the killer **OR FELON** to serve
19 in a fiduciary or representative capacity, including a personal
20 representative, executor, trustee, or agent.

21 (b) Severs the interests of the decedent and killer **OR FELON**
22 in property held by them at the time of the killing, **ABUSE,**
23 **NEGLECT, OR EXPLOITATION** as joint tenants with the right of
24 survivorship, transforming the interests of the decedent and killer
25 **OR FELON** into tenancies in common.

26 (3) A severance under subsection (2)(b) does not affect a
27 third party interest in property acquired for value and in good

1 faith reliance on an apparent title by survivorship in the killer
2 **OR FELON** unless a writing declaring the severance has been noted,
3 registered, filed, or recorded in records appropriate to the kind
4 and location of the property that are relied upon, in the ordinary
5 course of transactions involving that type of property, as evidence
6 of ownership.

7 (4) A provision of a governing instrument is given effect as
8 if the killer **OR FELON** disclaimed all provisions revoked by this
9 section or, in the case of a revoked nomination in a fiduciary or
10 representative capacity, as if the killer **OR FELON** predeceased the
11 decedent.

12 (5) A killer's **OR FELON'S** wrongful acquisition of property or
13 interest not covered by this section shall be treated in accordance
14 with the principle that a killer **OR FELON** cannot profit from his or
15 her wrong.

16 (6) After all right to appeal has been exhausted, a judgment
17 of conviction establishing criminal accountability for the
18 felonious and intentional killing **OR THE ABUSE, NEGLECT, OR**
19 **EXPLOITATION** of the decedent conclusively establishes the convicted
20 individual as the decedent's killer **OR AS A FELON, AS APPLICABLE,**
21 for purposes of this section. ~~In~~**WITH RESPECT TO A CLAIM OF**
22 **FELONIOUS AND INTENTIONAL KILLING, IN** the absence of a conviction,
23 the court, upon the petition of an interested person, shall
24 determine whether, under the preponderance of evidence standard,
25 the individual would be found criminally accountable for the
26 felonious and intentional killing of the decedent. If the court
27 determines that, under that standard, the individual would be found

1 criminally accountable for the felonious and intentional killing of
2 the decedent, the determination conclusively establishes that
3 individual as the decedent's killer for purposes of this section.

4 **(7) THIS SECTION DOES NOT APPLY IF THE FORFEITURE, REVOCATION,**
5 **OR SEVERANCE WOULD OCCUR BECAUSE OF ABUSE, NEGLECT, OR EXPLOITATION**
6 **AND THE DECEDENT EXECUTED A GOVERNING INSTRUMENT AFTER THE DATE OF**
7 **THE CONVICTION EXPRESSING A SPECIFIC INTENT TO ALLOW THE FELON TO**
8 **INHERIT OR OTHERWISE RECEIVE THE ESTATE OR PROPERTY OF THE**
9 **DECEDENT.**

10 Sec. 2804. (1) Except as otherwise provided in this section, a
11 payor or other third party is not liable for having made a payment
12 or transferred an item of property or another benefit to a
13 beneficiary designated in a governing instrument affected by an
14 intentional and felonious killing **OR BY ABUSE, NEGLECT, OR**
15 **EXPLOITATION**, or for having taken another action in reliance on the
16 validity of the governing instrument, upon request and satisfactory
17 proof of the decedent's death. A payor or other third party is
18 liable for a payment made or other action taken ~~3-10~~ or more
19 business days after the payor or other third party actually
20 receives written notice of a claimed forfeiture or revocation under
21 section 2803. A payor or other third party is not obligated to
22 determine whether the decedent was the victim of felonious killing
23 **OR ABUSE, NEGLECT, OR EXPLOITATION** or to seek evidence relating to
24 such a killing **OR ABUSE, NEGLECT, OR EXPLOITATION** even if the
25 circumstances of the decedent's death are suspicious as to the
26 beneficiary's participation in such a killing **OR IF THERE IS**
27 **EVIDENCE THAT WOULD RAISE SUSPICIONS THAT THE DECEDENT WAS THE**

1 VICTIM OF ABUSE, NEGLECT, OR EXPLOITATION BY THE BENEFICIARY. A
2 recipient who incorrectly receives a payment, transfer of property,
3 or other benefit is liable for the payment or transfer received,
4 whether or not written notice of the claim is given.

5 (2) Written notice of a claimed forfeiture or revocation under
6 subsection (1) must be mailed to the payor's or other third party's
7 main office or home by registered or certified mail, return receipt
8 requested, or served upon the payor or other third party in the
9 same manner as a summons in a civil action. Notice to a sales
10 representative of a payor or other third party does not constitute
11 notice to the payor or other third party.

12 (3) The written notice under subsection (1) must include **ALL**
13 **OF** the **FOLLOWING INFORMATION:**

14 (A) **THE** decedent's name, ~~the~~ **AGE, AND DATE OF BIRTH, AND 1 OF**
15 **THE FOLLOWING:**

16 (i) **THE LAST 4 DIGITS OF THE DECEDENT'S SOCIAL SECURITY NUMBER.**

17 (ii) **THE DECEDENT'S LAST KNOWN ADDRESS.**

18 (B) **THE** name of the person asserting an interest. ~~the~~

19 (C) **THE** nature of the payment, item of property, or other
20 benefit. ~~and a~~

21 (D) **A** statement that a claim of forfeiture or revocation is
22 being made under section 2803.

23 (E) **IF THE CLAIM IS BASED ON A CONVICTION FOR ABUSE, NEGLECT,**
24 **OR EXPLOITATION, A COPY OF THE JUDGMENT OF CONVICTION.**

25 (4) Notice in a form or service in a manner other than that
26 described in this section does not impose liability on a payor or
27 other third party for an action taken in accordance with a

1 governing instrument.

2 (5) ~~(4)~~—Upon receipt of written notice of a claimed forfeiture
3 or revocation under this section, a payor or other third party may
4 pay an amount owed to the county treasurer of the county of the
5 court having jurisdiction of the probate proceedings relating to
6 the decedent's estate or, if no proceedings have been commenced, to
7 the county treasurer of the county of the decedent's residence.
8 With a payment under this section, the payor or other third party
9 shall file a copy of the written notice received by the payor or
10 other third party. A payment made to the county treasurer
11 discharges the payor or other third party from a claim for the
12 value of an amount paid to the county treasurer.

13 (6) ~~(5)~~—The county treasurer shall not charge a filing fee for
14 a payment to the county treasurer under this section. The county
15 treasurer shall hold the money in accordance with section 3917 and,
16 upon the court's determination under section 2803, shall disburse
17 the money in accordance with the determination.

18 (7) ~~(6)~~—The provision for payment to the county treasurer
19 under this section does not preclude a payor or other third party
20 from taking another action authorized by law or the governing
21 instrument.

22 **SEC. 5306A. (1) AN INDIVIDUAL FOR WHOM A GUARDIAN IS SOUGHT OR**
23 **HAS BEEN APPOINTED UNDER SECTION 5306 HAS ALL OF THE FOLLOWING**
24 **RIGHTS:**

25 (A) TO OBJECT TO THE APPOINTMENT OF A SUCCESSOR GUARDIAN BY
26 WILL OR OTHER WRITING, AS PROVIDED IN SECTION 5301.

27 (B) TO HAVE THE GUARDIANSHIP PROCEEDING COMMENCED AND

1 CONDUCTED IN THE PLACE WHERE THE INDIVIDUAL RESIDES OR IS PRESENT
2 OR, IF THE INDIVIDUAL IS ADMITTED TO AN INSTITUTION BY A COURT, IN
3 THE COUNTY IN WHICH THE COURT IS LOCATED, AS PROVIDED IN SECTION
4 5302.

5 (C) TO PETITION ON HIS OR HER OWN BEHALF FOR THE APPOINTMENT
6 OF A GUARDIAN, AS PROVIDED IN SECTION 5303.

7 (D) TO HAVE LEGAL COUNSEL OF HIS OR HER OWN CHOICE REPRESENT
8 HIM OR HER ON THE PETITION TO APPOINT A GUARDIAN, AS PROVIDED IN
9 SECTIONS 5303, 5304, AND 5305.

10 (E) IF HE OR SHE IS NOT REPRESENTED BY LEGAL COUNSEL, TO THE
11 APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INDIVIDUAL ON
12 THE PETITION TO APPOINT A GUARDIAN, AS PROVIDED IN SECTION 5303.

13 (F) TO AN INDEPENDENT EVALUATION OF HIS OR HER CAPACITY BY A
14 PHYSICIAN OR MENTAL HEALTH PROFESSIONAL, AT PUBLIC EXPENSE IF HE OR
15 SHE IS INDIGENT, AS PROVIDED IN SECTION 5304.

16 (G) TO BE PRESENT AT THE HEARING ON THE PETITION TO APPOINT A
17 GUARDIAN AND TO HAVE ALL PRACTICAL STEPS TAKEN TO ENSURE THIS,
18 INCLUDING, IF NECESSARY, MOVING THE HEARING SITE, AS PROVIDED BY
19 SECTION 5304.

20 (H) TO SEE OR HEAR ALL THE EVIDENCE PRESENTED IN THE HEARING
21 ON THE PETITION TO APPOINT A GUARDIAN, AS PROVIDED IN SECTION 5304.

22 (I) TO PRESENT EVIDENCE AND CROSS-EXAMINE WITNESSES IN THE
23 HEARING ON THE PETITION TO APPOINT A GUARDIAN, AS PROVIDED IN
24 SECTION 5304.

25 (J) TO A TRIAL BY JURY ON THE PETITION TO APPOINT A GUARDIAN,
26 AS PROVIDED IN SECTION 5304.

27 (K) TO A CLOSED HEARING ON THE PETITION TO APPOINT A GUARDIAN,

1 AS PROVIDED IN SECTION 5304.

2 (I) IF A GUARDIAN AD LITEM IS APPOINTED, TO BE PERSONALLY
3 VISITED BY THE GUARDIAN AD LITEM, AS PROVIDED IN SECTION 5305.

4 (M) IF A GUARDIAN AD LITEM IS APPOINTED, TO AN EXPLANATION BY
5 THE GUARDIAN AD LITEM OF THE NATURE, PURPOSE, AND LEGAL EFFECTS OF
6 A GUARDIAN'S APPOINTMENT, AS PROVIDED IN SECTION 5305.

7 (N) IF A GUARDIAN AD LITEM IS APPOINTED, TO AN EXPLANATION BY
8 THE GUARDIAN AD LITEM OF THE INDIVIDUAL'S RIGHTS IN THE HEARING
9 PROCEDURE, AS PROVIDED IN SECTION 5305.

10 (O) IF A GUARDIAN AD LITEM IS APPOINTED, TO BE INFORMED BY THE
11 GUARDIAN AD LITEM OF THE RIGHT TO CONTEST THE PETITION, TO REQUEST
12 LIMITS ON THE GUARDIAN'S POWERS, TO OBJECT TO A PARTICULAR PERSON
13 BEING APPOINTED GUARDIAN, TO BE PRESENT AT THE HEARING, TO BE
14 REPRESENTED BY LEGAL COUNSEL, AND TO HAVE LEGAL COUNSEL APPOINTED
15 IF THE INDIVIDUAL IS UNABLE TO AFFORD LEGAL COUNSEL, AS PROVIDED IN
16 SECTION 5305.

17 (P) TO BE INFORMED OF THE NAME OF EACH PERSON KNOWN TO BE
18 SEEKING APPOINTMENT AS GUARDIAN, INCLUDING, IF A GUARDIAN AD LITEM
19 IS APPOINTED, TO BE INFORMED OF THE NAMES BY THE GUARDIAN AD LITEM
20 AS PROVIDED IN SECTION 5305.

21 (Q) TO REQUIRE THAT PROOF OF INCAPACITY AND THE NEED FOR A
22 GUARDIAN BE PROVEN BY CLEAR AND CONVINCING EVIDENCE, AS PROVIDED IN
23 SECTION 5306.

24 (R) TO THE LIMITATION OF THE POWERS AND PERIOD OF TIME OF A
25 GUARDIANSHIP TO ONLY THE AMOUNT AND TIME THAT IS NECESSARY, AS
26 PROVIDED IN SECTION 5306.

27 (S) TO A GUARDIANSHIP DESIGNED TO ENCOURAGE THE DEVELOPMENT OF

1 MAXIMUM SELF-RELIANCE AND INDEPENDENCE AS PROVIDED IN SECTION 5306.

2 (T) TO PREVENT THE GRANT OF POWERS TO A GUARDIAN IF THOSE
3 POWERS ARE ALREADY HELD BY A VALID PATIENT ADVOCATE, AS PROVIDED IN
4 SECTION 5306.

5 (U) TO PERIODIC REVIEW OF THE GUARDIANSHIP BY THE COURT,
6 INCLUDING THE RIGHT TO A HEARING AND THE APPOINTMENT OF AN ATTORNEY
7 IF ISSUES ARISE UPON THE REVIEW OF THE GUARDIANSHIP, AS PROVIDED IN
8 SECTION 5309.

9 (V) TO, AT ANY TIME, SEEK MODIFICATION OR TERMINATION OF THE
10 GUARDIANSHIP BY INFORMAL LETTER TO THE JUDGE, AS PROVIDED IN
11 SECTION 5310.

12 (W) TO A HEARING WITHIN 28 DAYS OF REQUESTING A REVIEW,
13 MODIFICATION, OR TERMINATION OF THE GUARDIANSHIP, AS PROVIDED IN
14 SECTION 5310.

15 (X) TO THE SAME RIGHTS ON A PETITION FOR MODIFICATION OR
16 TERMINATION OF THE GUARDIANSHIP INCLUDING THE APPOINTMENT OF A
17 VISITOR AS APPLY TO A PETITION FOR APPOINTMENT OF A GUARDIAN, AS
18 PROVIDED IN SECTION 5310.

19 (Y) TO PERSONAL NOTICE OF A PETITION FOR APPOINTMENT OR
20 REMOVAL OF A GUARDIAN, AS PROVIDED IN SECTION 5311.

21 (Z) TO WRITTEN NOTICE OF THE NATURE, PURPOSE, AND LEGAL
22 EFFECTS OF THE APPOINTMENT OF A GUARDIAN, AS PROVIDED IN SECTION
23 5311.

24 (AA) TO CHOOSE THE PERSON WHO WILL SERVE AS GUARDIAN, IF THE
25 CHOSEN PERSON IS SUITABLE AND WILLING TO SERVE, AS PROVIDED IN
26 SECTION 5313.

27 (BB) TO CONSULT WITH THE GUARDIAN ABOUT MAJOR DECISIONS

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1 AFFECTING THE INDIVIDUAL, IF MEANINGFUL CONVERSATION IS POSSIBLE,
2 AS PROVIDED IN SECTION 5314.

3 (CC) TO QUARTERLY VISITS BY THE GUARDIAN, AS PROVIDED IN
4 SECTION 5314.

5 (DD) TO HAVE THE GUARDIAN NOTIFY THE COURT WITHIN 14 DAYS OF A
6 CHANGE IN THE INDIVIDUAL'S RESIDENCE, AS PROVIDED IN SECTION 5314.

7 (EE) TO HAVE THE GUARDIAN SECURE SERVICES TO RESTORE THE
8 INDIVIDUAL TO THE BEST POSSIBLE STATE OF MENTAL AND PHYSICAL WELL-
9 BEING SO THAT THE INDIVIDUAL CAN RETURN TO SELF-MANAGEMENT AT THE
10 EARLIEST POSSIBLE TIME, AS PROVIDED IN SECTION 5314.

11 (FF) TO HAVE THE GUARDIAN TAKE REASONABLE CARE OF THE
12 INDIVIDUAL'S CLOTHING, FURNITURE, VEHICLES, AND OTHER PERSONAL
13 EFFECTS, AS PROVIDED IN SECTION 5314.

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16 (2) A GUARDIAN AD LITEM SHALL INFORM THE WARD IN WRITING OF
17 HIS OR HER RIGHTS ENUMERATED IN THIS SECTION. THE STATE COURT
18 ADMINISTRATIVE OFFICE AND THE OFFICE OF SERVICES TO THE AGING
19 CREATED IN SECTION 5 OF THE OLDER MICHIGANIANS ACT, 1981 PA 180,
20 MCL 400.585, SHALL PROMULGATE A FORM TO BE USED TO GIVE THE WRITTEN
21 NOTICE UNDER THIS SECTION, WHICH SHALL INCLUDE SPACE FOR THE COURT
22 TO INCLUDE INFORMATION ON HOW TO CONTACT THE COURT OR OTHER
23 RELEVANT PERSONNEL WITH RESPECT TO THE RIGHTS ENUMERATED IN THIS
24 SECTION.

25 Sec. 5314. Whenever meaningful communication is possible, a
26 legally incapacitated individual's guardian shall consult with the
27 legally incapacitated individual before making a major decision

1 affecting the legally incapacitated individual. ~~Except as limited~~
2 **TO THE EXTENT A GUARDIAN OF A LEGALLY INCAPACITATED INDIVIDUAL IS**
3 **GRANTED POWERS BY THE COURT** under section 5306, a ~~legally~~
4 ~~incapacitated individual's~~ **THE** guardian is responsible for the
5 ward's care, custody, and control, but is not liable to third
6 persons by reason of that responsibility for the ward's acts. In
7 particular and without qualifying the previous sentences, a
8 guardian has all of the following powers and duties, ~~except as~~
9 ~~modified~~ **TO THE EXTENT GRANTED** by court order:

10 (a) ~~To the extent that it is consistent with the terms of an~~
11 ~~order by a court of competent jurisdiction relating to the ward's~~
12 ~~detention or commitment, the guardian is entitled to~~ **THE** custody of
13 the person of the guardian's ward and ~~may~~ **THE POWER TO** establish
14 the ward's place of residence within or without this state. A
15 ~~ward's~~ **THE** guardian shall visit the ward within 3 months after the
16 guardian's appointment and not less than once within 3 months after
17 each previous visit. The guardian ~~must~~ **SHALL** notify the court
18 within 14 days of a change in the ward's place of residence **OR A**
19 **CHANGE IN THE GUARDIAN'S PLACE OF RESIDENCE.**

20 (b) If entitled to custody of the ward, the ~~guardian must~~ **DUTY**
21 **TO** make provision for the ward's care, comfort, and maintenance
22 and, when appropriate, arrange for the ward's training and
23 education. The guardian shall secure services to restore the ward
24 to the best possible state of mental and physical well-being so
25 that the ward can return to self-management at the earliest
26 possible time. Without regard to custodial rights of the ward's
27 person, the guardian ~~must~~ **SHALL** take reasonable care of the ward's

1 clothing, furniture, vehicles, and other personal effects and
2 commence a protective proceeding if the ward's other property needs
3 protection. If a guardian commences a protective proceeding because
4 the guardian believes that it is in the ward's best interest to
5 sell or otherwise dispose of the ward's real property or interest
6 in real property, the court may appoint the guardian as special
7 conservator and authorize the special conservator to proceed under
8 section 5423(3). A guardian shall not otherwise sell the ward's
9 real property or interest in real property.

10 (c) ~~A guardian may~~ **THE POWER TO** give the consent or approval
11 that is necessary to enable the ward to receive medical or other
12 professional care, counsel, treatment, or service.

13 (d) If a conservator for the ward's estate is not appointed, a
14 ~~guardian may~~ **THE POWER TO** do any of the following:

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

18 (ii) Receive money and tangible property deliverable to the
19 ward and apply the money and property for the ward's support, care,
20 and education. The guardian shall not use money from the ward's
21 estate for room and board that the guardian or the guardian's
22 spouse, parent, or child have furnished the ward unless a charge
23 for the service is approved by court order made upon notice to at
24 least 1 of the ward's next of kin, if notice is possible. The
25 guardian shall exercise care to conserve any excess for the ward's
26 needs.

27 (e) The guardian shall report the condition of the ward and

1 the ward's estate that is subject to the guardian's possession or
2 control, as required by the court, but not less often than
3 annually. The guardian shall also serve the report required under
4 this subdivision on the ward and interested persons as specified in
5 the Michigan court rules. A report under this subdivision ~~must~~
6 **SHALL** contain all of the following:

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

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

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

12 (iv) Whether the guardian recommends a more suitable living
13 arrangement for the ward.

14 (v) Medical treatment received by the ward.

15 (vi) Services received by the ward.

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

18 (viii) A recommendation as to the need for continued
19 guardianship.

20 (f) If a conservator is appointed, the ~~guardian shall~~ **DUTY TO**
21 pay to the conservator, for management as provided in this act, the
22 amount of the ward's estate received by the guardian in excess of
23 the amount the guardian expends for the ward's current support,
24 care, and education. The guardian shall account to the conservator
25 for the amount expended.

26 Sec. 5315. (1) ~~A~~ **TO THE EXTENT GRANTED BY THE COURT UNDER**
27 **SECTION 5306, THE** guardian of an individual for whom a conservator

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1 also is appointed controls the ward's custody and care and is
2 entitled to receive reasonable amounts for those services and for
3 room and board furnished to the ward as agreed upon between the
4 guardian and the conservator if the amounts agreed upon are
5 reasonable under the circumstances. The guardian may request the
6 conservator to expend the ward's estate by payment to a third
7 person or institution for the ward's care and maintenance.

8 (2) If a ward dies while under guardianship and a conservator
9 has not been appointed for the ward's estate and if the guardian
10 has possession of money of the deceased ward, upon petition of the
11 guardian and with or without notice, the court may hear a claim for
12 burial expenses or any other claim as the court considers
13 advisable. Upon hearing the claim, the court may enter an order
14 allowing or disallowing the claim or a part of the claim and may
15 provide in the order of allowance that the claim or a part of it be
16 paid immediately if the payment can be made without injury or
17 serious inconvenience to the ward's estate.

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SEC. 5319. (1) IF THE COURT DETERMINES THAT FINANCIAL PROTECTION IS REQUIRED FOR THE WARD, THE COURT MAY ORDER THE GUARDIAN TO PETITION FOR THE APPOINTMENT OF A CONSERVATOR OR FOR ANOTHER PROTECTIVE ORDER UNDER PART 4 OF THIS ARTICLE IN RELATION TO THE WARD'S ESTATE.

(2) IF A CONSERVATOR HAS NOT BEEN APPOINTED FOR A WARD'S ESTATE AND THE GUARDIAN DETERMINES THAT THERE IS MORE CASH OR PROPERTY THAT IS READILY CONVERTIBLE INTO CASH IN THE WARD'S ESTATE THAN WAS ESTIMATED BY THE GUARDIAN AD LITEM AND REPORTED TO THE COURT, THE GUARDIAN SHALL REPORT THE AMOUNT OF THE ADDITIONAL CASH OR PROPERTY TO THE COURT.

Sec. 5410. (1) The court may require a conservator to furnish a bond. IF THE COURT DETERMINES THAT THE VALUE OF CASH AND PROPERTY THAT IS READILY CONVERTIBLE INTO CASH IN THE ESTATE AND IN THE CONSERVATOR'S CONTROL EXCEEDS THE LIMIT FOR ADMINISTERING A DECEDENT'S ESTATE UNDER SECTION 3982, ADJUSTED IN THE MANNER PROVIDED UNDER SECTION 1210 FOR THE YEAR IN WHICH THE CONSERVATOR IS APPOINTED, THE COURT SHALL REQUIRE THE CONSERVATOR TO FURNISH A BOND, UNLESS 1 OR MORE OF THE FOLLOWING APPLY:

(A) THE ESTATE CONTAINS NO PROPERTY READILY CONVERTIBLE TO CASH AND THE CASH IS IN A RESTRICTED ACCOUNT WITH A FINANCIAL INSTITUTION.

(B) THE CONSERVATOR HAS BEEN GRANTED TRUST POWERS UNDER SECTION 4401 OF THE BANKING CODE OF 1999, 1999 PA 276, MCL 487.14401.

1 (C) THE COURT DETERMINES THAT REQUIRING A BOND WOULD IMPOSE A
2 FINANCIAL HARDSHIP ON THE ESTATE.

3 (D) THE COURT STATES ON THE RECORD THE REASONS WHY A BOND IS
4 NOT NECESSARY.

5 (2) A BOND FURNISHED UNDER THIS SECTION SHALL BE conditioned
6 upon faithful discharge of all duties of the **CONSERVATOR'S** trust
7 according to law, with sureties as the court specifies. Unless
8 otherwise directed, the bond shall be in the amount of the
9 aggregate capital value of the estate property in the conservator's
10 control plus 1 year's estimated income minus the value of
11 securities deposited under arrangements requiring a court order for
12 their removal and the value of land that the fiduciary, by express
13 limitation of power, lacks power to sell or convey without court
14 authorization. Instead of sureties on a bond, the court may accept
15 other security for the performance of the bond, including a pledge
16 of securities or a mortgage of land.

17 Sec. 5422. (1) A person who in good faith either assists or
18 deals with a conservator for value in a transaction, other than
19 ~~those requiring~~ **A TRANSACTION THAT REQUIRES** a court order as
20 provided in section 5407 **OR 5423(3)**, is protected as if the
21 conservator properly exercised the power. ~~The~~ **EXCEPT AS PROVIDED IN**
22 **SUBSECTION (3), THE** fact that a person knowingly deals with a
23 conservator does not alone require the person to inquire into the
24 existence of a power or the propriety of its exercise, but a
25 restriction on a conservator's powers that is endorsed on letters
26 as provided in section 5427 is effective as to third persons. A
27 person is not bound to see to the proper application of estate

1 property paid or delivered to a conservator.

2 (2) The protection expressed in this section extends to a
3 procedural irregularity or jurisdictional defect that occurs in a
4 proceeding leading to the issuance of letters and is not a
5 substitution for protection provided by a comparable provision of
6 the law relating to a commercial transaction or to simplifying a
7 transfer of securities by a fiduciary.

8 (3) **A CONSERVATOR SHALL RECORD AN ORDER ALLOWING THE SALE,
9 DISPOSAL, MORTGAGE, OR PLEDGE OF OR PLACEMENT OF A LIEN ON REAL
10 PROPERTY UNDER SECTION 5423 IN THE RECORDS OF THE REGISTER OF DEEDS
11 FOR THE COUNTY IN WHICH THE REAL ESTATE IS LOCATED. UNLESS THE
12 ORDER HAS BEEN RECORDED OR A PERSON TO WHOM AN INTEREST IN THE REAL
13 ESTATE IS TRANSFERRED HAS BEEN GIVEN A COPY OF THE ORDER, THE
14 PERSON IS NOT ENTITLED TO PRESUME THAT THE CONSERVATOR HAS THE
15 POWER TO SELL OR OTHERWISE DISPOSE OF THE REAL PROPERTY, OR TO
16 MORTGAGE, PLEDGE, OR CAUSE A LIEN TO BE PLACED ON THE PROTECTED
17 INDIVIDUAL'S REAL PROPERTY, AS APPLICABLE.**

18 Sec. 5423. (1) Subject to a limitation imposed under section
19 5427, a conservator has all of the powers conferred in this section
20 and the additional powers conferred by law on trustees in this
21 state. In addition, a conservator of the estate of an unmarried
22 minor, as to whom no one has parental rights, has the powers,
23 responsibilities, and duties of a guardian described in section
24 5215 until the individual is no longer a minor or marries. The
25 parental rights conferred on a conservator by this section do not
26 preclude a guardian's appointment as provided in part 2.

27 (2) Acting reasonably in an effort to accomplish the purpose

1 of the appointment and without court authorization or confirmation,
2 a conservator may do any of the following:

3 (a) Collect, hold, or retain estate property, including land
4 in another state, until the conservator determines that disposition
5 of the property should be made. Property may be retained even
6 though it includes property in which the conservator is personally
7 interested.

8 (b) Receive an addition to the estate.

9 (c) Continue or participate in the operation of a business or
10 other enterprise.

11 (d) Acquire an undivided interest in estate property in which
12 the conservator, in a fiduciary capacity, holds an undivided
13 interest.

14 (e) Invest or reinvest estate property. If the conservator
15 exercises the power conferred by this subdivision, the conservator
16 must invest or reinvest the property in accordance with the
17 Michigan prudent investor rule.

18 (f) Deposit estate money in a state or federally insured
19 financial institution including one operated by the conservator.

20 (g) Except as provided in subsection (3), acquire or dispose
21 of estate property, including land in another state, for cash or on
22 credit, at public or private sale, or manage, develop, improve,
23 exchange, partition, change the character of, or abandon estate
24 property.

25 (h) Make an ordinary or extraordinary repair or alteration in
26 a building or other structure, demolish an improvement, or raze an
27 existing or erect a new party wall or building.

1 (i) Subdivide, develop, or dedicate land to public use; make
2 or obtain the vacation of a plat or adjust a boundary; adjust a
3 difference in valuation on exchange or partition by giving or
4 receiving consideration; or dedicate an easement to public use
5 without consideration.

6 (j) Enter for any purpose into a lease as lessor or lessee
7 with or without option to purchase or renew for a term within or
8 extending beyond the term of the conservatorship.

9 (k) Enter into a lease or arrangement for exploration and
10 removal of a mineral or other natural resource or enter into a
11 pooling or unitization agreement.

12 (l) Grant an option involving disposition of estate property or
13 take an option for the acquisition of property.

14 (m) Vote a security, in person or by general or limited proxy.

15 (n) Pay a call, assessment, or other amount chargeable or
16 accruing against or on account of a security.

17 (o) Sell or exercise stock subscription or conversion rights.

18 (p) Consent, directly or through a committee or other agent,
19 to the reorganization, consolidation, merger, dissolution, or
20 liquidation of a corporation or other business enterprise.

21 (q) Hold a security in the name of a nominee or in other form
22 without disclosure of the conservatorship so that title to the
23 security may pass by delivery. However, the conservator is liable
24 for an act of the nominee in connection with the stock so held.

25 (r) Insure the estate property against damage or loss or the
26 conservator against liability with respect to third persons.

27 (s) Borrow money to be repaid from estate property or

1 otherwise.

2 (t) Advance money for the protection of the estate or the
3 protected individual, and for all expense, loss, or liability
4 sustained in the estate's administration or because of the holding
5 or ownership of estate property. The conservator has a lien on the
6 estate as against the protected individual for such an advance.

7 (u) Pay or contest a claim; settle a claim by or against the
8 estate or the protected individual by compromise, arbitration, or
9 otherwise; and release, in whole or in part, a claim belonging to
10 the estate to the extent that the claim is uncollectible.

11 (v) Pay a tax, assessment, conservator's compensation, or
12 other expense incurred in the estate's collection, care,
13 administration, and protection.

14 (w) Allocate an item of income or expense to either estate
15 income or principal, as provided by law, including creation of a
16 reserve out of income for depreciation, obsolescence, or
17 amortization, or for depletion in ~~a~~-mineral or timber property.

18 (x) Pay money distributable to a protected individual or the
19 protected individual's dependent by paying the money to the
20 distributee or by paying the money for the use of the distributee
21 to the distributee's guardian, or if none, to a relative or other
22 person having custody of the distributee.

23 (y) Employ a person, including an auditor, investment advisor,
24 or agent, even though the person is associated with the
25 conservator, to advise or assist in the performance of an
26 administrative duty; act upon the person's recommendation without
27 independent investigation; and, instead of acting personally,

1 employ an agent to perform an act of administration, whether or not
2 discretionary.

3 (z) Employ an attorney to perform necessary legal services or
4 to advise or assist the conservator in the performance of the
5 conservator's administrative duties, even if the attorney is
6 associated with the conservator, and act without independent
7 investigation upon the attorney's recommendation. An attorney
8 employed under this subdivision shall receive reasonable
9 compensation for his or her employment.

10 (aa) Prosecute or defend an action, claim, or proceeding in
11 any jurisdiction for the protection of estate property and of the
12 conservator in the performance of a fiduciary duty.

13 (bb) Execute and deliver an instrument that will accomplish or
14 facilitate the exercise of a power vested in the conservator.

15 (cc) Respond to an environmental concern or hazard affecting
16 property as provided in section 5424.

17 (3) A conservator shall not sell or otherwise dispose of the
18 protected individual's **PRINCIPAL DWELLING**, real property, or
19 interest in real property **OR MORTGAGE, PLEDGE, OR CAUSE A LIEN TO**
20 **BE PLACED ON ANY SUCH PROPERTY** without approval of the court. The
21 court shall only approve the sale, ~~or other disposal,~~ **MORTGAGE, OR**
22 **PLEDGE** of **OR LIEN AGAINST** the **PRINCIPAL DWELLING**, real property, or
23 interest in real property if, after a hearing with notice to
24 interested persons as specified in the Michigan court rules, the
25 court considers evidence of the value of the ~~real property or~~
26 ~~interest in real property~~ and otherwise determines that the sale,
27 ~~or other disposal,~~ **MORTGAGE, PLEDGE, OR LIEN** is in the protected

Senate Bill No. 461 (H-2) as amended May 22, 2012

1 individual's best interest.

2 Enacting section 1. This amendatory act takes effect [October]

3 1, 2012.