

# HOUSE BILL NO. 4416

April 13, 2023, Introduced by Reps. Filler, Breen and Paiz and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1106, 1210, 2519, 2806, 3605, 3916, 3917, 3918, 3959, 3981, 3982, 3983, 5102, 5301, 5303, 5304, 5305, 5306a, 5310, 5311, 5313, 5314, 5507, 7103, 7105, 7110, 7302, 7402, 7506, 7604, and 7820a (MCL 700.1106, 700.1210, 700.2519, 700.2806, 700.3605, 700.3916, 700.3917, 700.3918, 700.3959, 700.3981, 700.3982, 700.3983, 700.5102, 700.5301, 700.5303, 700.5304, 700.5305, 700.5306a, 700.5310, 700.5311, 700.5313, 700.5314, 700.5507, 700.7103, 700.7105, 700.7110, 700.7302, 700.7402,

700.7506, 700.7604, and 700.7820a), section 1106 as amended by 2018 PA 555, sections 1210, 7302, 7402, and 7506 as amended and sections 7110 and 7604 as added by 2009 PA 46, section 2519 as amended by 2010 PA 325, section 3917 as amended by 2004 PA 314, section 5301 as amended by 2005 PA 204, sections 5303 and 5305 as amended by 2017 PA 155, section 5306a as added by 2012 PA 173, section 5310 as amended by 2000 PA 54, section 5313 as amended by 2012 PA 545, section 5314 as amended by 2018 PA 594, section 5507 as amended by 2008 PA 41, sections 7103 and 7105 as amended by 2018 PA 664, and section 7820a as added by 2012 PA 483, and by adding sections 1215, 1216, 5301c, 7408, 7409, and 7409a; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1106. As used in this act:

2           (a) "Mental health professional" means an individual who is  
3 trained and experienced in the area of mental illness or  
4 developmental disabilities and who is 1 of the following:

5           (i) A physician who is licensed to practice medicine or  
6 osteopathic medicine and surgery in this state under article 15 of  
7 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

8           (ii) A psychologist licensed to practice in this state under  
9 article 15 of the public health code, 1978 PA 368, MCL 333.16101 to  
10 333.18838.

11           (iii) A registered professional nurse licensed to practice in  
12 this state under article 15 of the public health code, 1978 PA 368,  
13 MCL 333.16101 to 333.18838.

14           (iv) A licensed master's social worker licensed under article  
15 15 of the public health code, 1978 PA 368, MCL 333.16101 to  
16 333.18838.

1 (v) A physician's assistant licensed to practice in this state  
2 under article 15 of the public health code, 1978 PA 368, MCL  
3 333.16101 to 333.18838.

4 (vi) A licensed professional counselor licensed under part 181  
5 of the public health code, 1978 PA 368, MCL 333.18101 to 333.18117.

6 (b) "Michigan prudent investor rule" means the fiduciary  
7 investment and management rule prescribed by part 5 of this  
8 article.

9 (c) "Minor" means an individual who is less than 18 years of  
10 age.

11 (d) "Minor ward" means a minor for whom a guardian is  
12 appointed solely because of minority.

13 (e) "Money" means legal tender or a note, draft, certificate  
14 of deposit, stock, bond, check, or credit card.

15 (f) "Mortgage" means a conveyance, agreement, or arrangement  
16 in which property is encumbered or used as security.

17 (g) "Nonopioid directive form" means that term as defined in  
18 section 9145 of the public health code, 1978 PA 368, MCL 333.9145.

19 (h) "Nonresident decedent" means a decedent who was domiciled  
20 in another jurisdiction at the time of ~~his or her~~ **the decedent's**  
21 death.

22 (i) "Organization" means a corporation, business trust,  
23 estate, trust, partnership, limited liability company, association,  
24 or joint venture; governmental subdivision, agency, or  
25 instrumentality; public corporation; or another legal or commercial  
26 entity.

27 (j) "Parent" includes, but is not limited to, an individual  
28 entitled to take, or who would be entitled to take, as a parent  
29 under this act by intestate succession from a child who dies

1 without a will and whose relationship is in question. Parent does  
2 not include an individual who is only a stepparent, foster parent,  
3 or grandparent.

4 (k) "Partial guardian" means that term as defined in section  
5 600 of the mental health code, 1974 PA 258, MCL 330.1600.

6 (l) "Patient advocate" means an individual designated to  
7 exercise powers concerning another individual's care, custody, and  
8 medical or mental health treatment or authorized to make an  
9 anatomical gift on behalf of another individual, or both, as  
10 provided in section 5506.

11 (m) "Patient advocate designation" means the written document  
12 executed and with the effect as described in sections 5506 to 5515.

13 (n) "Payor" means a trustee, insurer, business entity,  
14 employer, government, governmental subdivision or agency, or other  
15 person authorized or obligated by law or a governing instrument to  
16 make payments.

17 (o) "Person" means an individual or an organization.

18 (p) "Personal representative" includes, but is not limited to,  
19 an executor, administrator, successor personal representative, and  
20 special personal representative, and any other person, other than a  
21 trustee of a trust subject to article VII, who performs  
22 substantially the same function under the law governing that  
23 person's status.

24 (q) "Petition" means a written request to the court for an  
25 order after notice.

26 (r) "Physician orders for scope of treatment form" means that  
27 term as defined in section 5674 of the public health code, 1978 PA  
28 368, MCL 333.5674.

29 (s) "Plenary guardian" means that term as defined in section

1 600 of the mental health code, 1974 PA 258, MCL 330.1600.

2 (t) **"Power of appointment" means that term as defined in**  
3 **section 2 of the powers of appointment act of 1967, 1967 PA 224,**  
4 **MCL 556.112.**

5 (u) ~~(t)~~—"Proceeding" includes an application and a petition,  
6 and may be an action at law or a suit in equity. A proceeding may  
7 be denominated a civil action under court rules.

8 (v) ~~(u)~~—"Professional conservator" means a person that  
9 provides conservatorship services for a fee. Professional  
10 conservator does not include a person who is an individual who is  
11 related to all but 2 of the protected individuals for whom he or  
12 she is appointed as conservator.

13 (w) ~~(v)~~—"Professional guardian" means a person that provides  
14 guardianship services for a fee. Professional guardian does not  
15 include a person who is an individual who is related to all but 2  
16 of the wards for whom he or she is appointed as guardian.

17 (x) ~~(w)~~—"Property" means anything that may be the subject of  
18 ownership, and includes both real and personal property or an  
19 interest in real or personal property.

20 (y) ~~(x)~~—"Protected individual" means a minor or other  
21 individual for whom a conservator has been appointed or other  
22 protective order has been made as provided in part 4 of article V.

23 (z) ~~(y)~~—"Protective proceeding" means a proceeding under ~~the~~  
24 ~~provisions of~~ part 4 of article V.

25 Sec. 1210. (1) The specific dollar amounts stated in sections  
26 2102, 2402, 2404, **and 2405, and the specific dollar amounts stated**  
27 **in sections 3982 and 3983 before those sections were amended by the**  
28 **amendatory act that added section 1215, apply to decedents who die**  
29 **before January 1, 2001. For decedents who die after December 31,**

1 2000 and, as to the dollar amounts stated in sections 3982 and  
2 3983, before January 1, 2024, these specific dollar amounts ~~shall~~  
3 **must** be multiplied by the cost-of-living adjustment factor for the  
4 calendar year in which the decedent dies.

5 (2) Before January 1, 2024, the specific amounts stated in  
6 sections 2519, 3605, 3916, 3917, 3918, 3981, and 5102, and the  
7 specific amounts stated in sections 3982 and 3983 as amended by the  
8 amendatory act that added section 1215, apply to those sections.  
9 Beginning January 1, 2024, those specific dollar amounts must be  
10 multiplied by the cost-of-living adjustment factor for the calendar  
11 year in which the decedent dies.

12 (3) ~~(2)~~—Before February 1, 2001, and annually after 2001, the  
13 department of treasury shall publish the cost-of-living adjustment  
14 factor to be applied to the specific dollar amounts referred to in  
15 ~~subsection~~**subsections (1) and (2)** for decedents who die during  
16 that calendar year and in section 7414 for trusts the value of the  
17 property of which is insufficient to justify the cost of  
18 administration. A product resulting from application of the cost-  
19 of-living adjustment factor to a specific dollar amount ~~shall~~**must**  
20 be rounded to the nearest \$1,000.00 amount.

21 **Sec. 1215. (1) Subject to subsection (2), a person has**  
22 **knowledge of a fact if 1 or more of the following apply:**

23 (a) The person has actual knowledge of it.

24 (b) The person has received a notice or notification of it.

25 (c) From all the facts and circumstances known to the person  
26 at the time in question, the person has reason to know it.

27 (2) An organization that conducts activities through employees  
28 has notice or knowledge of a fact only from the time the  
29 information was received by an employee having responsibility to

1 act or from the time the information would have been brought to the  
2 employee's attention if the organization had exercised reasonable  
3 diligence. An organization exercises reasonable diligence if it  
4 maintains reasonable routines for communicating significant  
5 information to the employee having responsibility to act and there  
6 is reasonable compliance with the routines. Reasonable diligence  
7 does not require an employee of the organization to communicate  
8 information unless the communication is part of the individual's  
9 regular duties or the individual knows a matter that would be  
10 materially affected by the information.

11 Sec. 1216. (1) Any part of a governing instrument that  
12 directly or indirectly makes a substantial gift to an attorney who  
13 drafted the governing instrument or a person related to the  
14 attorney who drafted the governing instrument is void unless the  
15 attorney who drafted the governing instrument or the person related  
16 to the attorney who drafted the governing instrument is related to  
17 the individual making the substantial gift.

18 (2) This section does not apply to a provision in a governing  
19 instrument appointing the attorney who drafted the governing  
20 instrument, or a person related to the attorney who drafted the  
21 governing instrument, as a fiduciary.

22 (3) A provision in a governing instrument purporting to waive  
23 or otherwise avoid the application of this section is  
24 unenforceable.

25 (4) If a purchaser or lender for value acquires property  
26 distributed in kind or a security interest in property from a  
27 person that has received a substantial gift pursuant to a part of a  
28 governing instrument that is void under subsection (1), the  
29 purchaser or lender takes title free of any claims arising under,

1 and incurs no personal liability by reason of, this section. This  
2 section does not directly or indirectly impose liability on a  
3 person that honors or relies on a part of a governing instrument  
4 that is void under subsection (1) and that contains or effectuates  
5 a substantial gift, unless the person has knowledge that the part  
6 of the governing instrument is void.

7 (5) If a part of a governing instrument is void under  
8 subsection (1), the part that is void is severable and does not  
9 affect any other part of the governing instrument that can be given  
10 effect, including a term that makes an alternate or substitute  
11 gift. If the part of the governing instrument that is void under  
12 subsection (1) cannot be severed, the entire governing instrument  
13 is void. For a power of appointment, this section does not affect  
14 the power to appoint in favor of persons other than the attorney  
15 who drafted the governing instrument or a person related to the  
16 attorney who drafted the governing instrument.

17 (6) If the court determines that an attorney who drafted the  
18 governing instrument disguised or attempted to disguise a  
19 substantial gift, to the attorney who drafted the governing  
20 instrument or a person related to the attorney who drafted the  
21 governing instrument, as a conveyance for consideration for less  
22 than fair market value, the court may find the conveyance void  
23 under subsection (1).

24 (7) The rights and remedies granted in this section are in  
25 addition to any other rights or remedies a person may have at law.  
26 A part of a governing instrument that is not void under subsection  
27 (1) may be challenged under other legal grounds.

28 (8) This section applies only to a governing instrument  
29 executed after the effective date of the amendatory act that added



1 this section.

2 (9) For purposes of this section, a person is related to an  
3 individual if, at the time the attorney who drafted the governing  
4 instrument prepared or supervised the preparation or execution of  
5 the governing instrument, the person is any of the following:

6 (a) A spouse of the individual.

7 (b) A lineal ascendant or descendant of the individual or the  
8 individual's spouse.

9 (c) A sibling of the individual.

10 (d) A spouse of the individual described in subdivision (b) or  
11 (c).

12 (10) For purposes of this section, an organization is related  
13 to an attorney if the attorney owns a 50% or greater interest in  
14 the organization or otherwise controls the organization.

15 (11) As used in this section:

16 (a) "Attorney who drafted the governing instrument" means an  
17 individual to whom both of the following apply:

18 (i) The individual is or was licensed to practice law in this  
19 state or any other state, before or at the time the governing  
20 instrument was prepared or executed, or both.

21 (ii) The individual directly or indirectly prepared or  
22 supervised the preparation, execution, or both, of the governing  
23 instrument. For purposes of this subparagraph, among other ways,  
24 the individual is considered to have prepared, or supervised the  
25 execution of, the governing instrument if the preparation, or  
26 supervision of the execution, of the governing instrument was  
27 performed by an employee, subordinate, partner, co-owner, or other  
28 person or lawyer employed by the same firm or company as the  
29 individual as of the time of preparation or execution, or both.

1 (b) "Gift" includes an inter vivos gift, a testamentary  
2 transfer of property, and the power to make the testamentary  
3 transfer regardless of any of the following:

4 (i) Whether the gift or testamentary transfer is outright or in  
5 trust.

6 (ii) When the gift or testamentary transfer is to take effect.

7 (iii) Whether the power is held in a fiduciary or nonfiduciary  
8 capacity.

9 (c) "Substantial gift" means a gift, the value of which  
10 exceeds \$5,000.00 as a result of a single governing instrument or 2  
11 or more related governing instruments.

12 Sec. 2519. (1) A will executed in the form prescribed by  
13 subsection (2) and otherwise in compliance with the terms of the  
14 Michigan statutory will form is a valid will. A person printing and  
15 distributing the Michigan statutory will shall print and distribute  
16 the form verbatim as it appears in subsection (2). The notice  
17 provisions ~~shall~~**must** be printed in 10-point boldfaced type.

18 (2) The form of the Michigan statutory will is as follows:

19 MICHIGAN STATUTORY WILL NOTICE

20 1. An individual age 18 or older who has sufficient mental  
21 capacity may make a will.

22 2. There are several kinds of wills. If you choose to complete  
23 this form, you will have a Michigan statutory will. If this will  
24 does not meet your wishes in any way, you should talk with a lawyer  
25 before choosing a Michigan statutory will.

26 3. Warning! It is strongly recommended that you do not add or  
27 cross out any words on this form except for filling in the blanks  
28 because all or part of this will may not be valid if you do so.

29 4. This will has no effect on jointly held assets, on

1 retirement plan benefits, or on life insurance on your life if you  
2 have named a beneficiary who survives you.

3 5. This will is not designed to reduce estate taxes.

4 6. This will treats adopted children and children born outside  
5 of wedlock who would inherit if their parent died without a will  
6 the same way as children born or conceived during marriage.

7 7. You should keep this will in your safe deposit box or other  
8 safe place. By paying a small fee, you may file this will in your  
9 county's probate court for safekeeping. You should tell your family  
10 where the will is kept.

11 8. You may make and sign a new will at any time. If you marry  
12 or divorce after you sign this will, you should make and sign a new  
13 will.

14 INSTRUCTIONS:

15 1. To have a Michigan statutory will, you must complete the  
16 blanks on the will form. You may do this yourself, or direct  
17 someone to do it for you. You must either sign the will or direct  
18 someone else to sign it in your name and in your presence.

19 2. Read the entire Michigan statutory will carefully before  
20 you begin filling in the blanks. If there is anything you do not  
21 understand, you should ask a lawyer to explain it to you.

22 MICHIGAN STATUTORY WILL OF \_\_\_\_\_

23 (Print or type your full name)

24 ARTICLE 1. DECLARATIONS

25 This is my will and I revoke any prior wills and codicils.

26 I live in \_\_\_\_\_ County, Michigan.

27 My spouse is \_\_\_\_\_.

28 (Insert spouse's name or write "none")

29 My children now living are:

1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_

4 (Insert names or write "none")

5 ARTICLE 2. DISPOSITION OF MY ASSETS

6 2.1 CASH GIFTS TO PERSONS OR CHARITIES.

7 (Optional)

8 I can leave no more than ~~two (2)~~ **2** cash gifts. I make the  
 9 following cash gifts to the persons or charities in the amount  
 10 stated here. Any transfer tax due upon my death shall be paid from  
 11 the balance of my estate and not from these gifts. Full name and  
 12 address of person or charity to receive cash gift (name only 1  
 13 person or charity here):

14 \_\_\_\_\_  
 15 (Insert name of person or charity)

16 \_\_\_\_\_  
 17 (Insert address)

18 AMOUNT OF GIFT (In figures): \$ \_\_\_\_\_

19 AMOUNT OF GIFT (In words): \_\_\_\_\_ Dollars

20 \_\_\_\_\_  
 21 (Your signature)

22 Full name and address of person or charity to receive cash gift  
 23 (Name only 1 person or charity):

24 \_\_\_\_\_  
 25 (Insert name of person or charity)

26 \_\_\_\_\_  
 27 (Insert address)

28 AMOUNT OF GIFT (In figures): \$ \_\_\_\_\_

29 AMOUNT OF GIFT (In words): \_\_\_\_\_ Dollars

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

\_\_\_\_\_  
(Your signature)

2.2 PERSONAL AND HOUSEHOLD ITEMS.

I may leave a separate list or statement, either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

I give my spouse all my books, jewelry, clothing, automobiles, furniture, and other personal and household items not included on such a separate list or statement. If I am not married at the time I sign this will or if my spouse dies before me, my personal representative shall distribute those items, as equally as possible, among my children who survive me. If no children survive me, these items shall be distributed as set forth in paragraph 2.3.

2.3 ALL OTHER ASSETS.

I give everything else I own to my spouse. If I am not married at the time I sign this will or if my spouse dies before me, I give these assets to my children and the descendants of any deceased child. If no spouse, children, or descendants of children survive me, I choose 1 of the following distribution clauses by signing my name on the line after that clause. If I sign on both lines, if I fail to sign on either line, or if I am not now married, these assets will go under distribution clause (b).

Distribution clause, if no spouse, children, or descendants of children survive me.

(Select only 1)

(a) One-half to be distributed to my heirs as if I did not have a will, and one-half to be distributed to my spouse's heirs as if my spouse had died just after me without a will.

1 \_\_\_\_\_  
2 (Your signature)

3 (b) All to be distributed to my heirs as if I did not have a  
4 will.

5 \_\_\_\_\_  
6 (Your signature)

7 ARTICLE 3. NOMINATIONS OF PERSONAL  
8 REPRESENTATIVE, GUARDIAN, AND CONSERVATOR

9 Personal representatives, guardians, and conservators have a  
10 great deal of responsibility. The role of a personal representative  
11 is to collect your assets, pay debts and taxes from those assets,  
12 and distribute the remaining assets as directed in the will. A  
13 guardian is a person who will look after the physical well-being of  
14 a child. A conservator is a person who will manage a child's assets  
15 and make payments from those assets for the child's benefit. Select  
16 them carefully. Also, before you select them, ask them whether they  
17 are willing and able to serve.

18 3.1 PERSONAL REPRESENTATIVE.

19 (Name at least 1)

20 I nominate \_\_\_\_\_  
21 (Insert name of person or eligible financial institution)  
22 of \_\_\_\_\_ to serve as personal representative.

23 (Insert address)

24 If my first choice does not serve, I nominate \_\_\_\_\_

25 \_\_\_\_\_  
26 (Insert name of person or eligible financial institution)

27 of \_\_\_\_\_ to serve as personal representative.

28 (Insert address)

29 3.2 GUARDIAN AND CONSERVATOR.

1 Your spouse may die before you. Therefore, if you have a child  
2 under age 18, name an individual as guardian of the child, and an  
3 individual or eligible financial institution as conservator of the  
4 child's assets. The guardian and the conservator may, but need not  
5 be, the same person.

6 If a guardian or conservator is needed for a child of  
7 mine, I nominate \_\_\_\_\_  
8 (Insert name of individual)  
9 of \_\_\_\_\_ as guardian and  
10 (Insert address)  
11 \_\_\_\_\_  
12 (Insert name of individual or eligible financial institution)  
13 of \_\_\_\_\_ to serve as conservator.  
14 (Insert address)

15 If my first choice cannot serve, I nominate  
16 \_\_\_\_\_  
17 (Insert name of individual)  
18 of \_\_\_\_\_ as guardian and  
19 (Insert address)  
20 \_\_\_\_\_  
21 (Insert name of individual or eligible financial institution)  
22 of \_\_\_\_\_ to serve as conservator.  
23 (Insert address)

24 3.3 BOND.

25 A bond is a form of insurance in case your personal  
26 representative or a conservator performs improperly and jeopardizes  
27 your assets. A bond is not required. You may choose whether you  
28 wish to require your personal representative and any conservator to  
29 serve with or without bond. Bond premiums would be paid out of your

1 assets. (Select only 1)

2 (a) My personal representative and any conservator I have  
3 named shall serve with bond.

4 \_\_\_\_\_

5 (Your signature)

6 (b) My personal representative and any conservator I have  
7 named shall serve without bond.

8 \_\_\_\_\_

9 (Your signature)

10 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

11 Definitions and additional clauses found at the end of this  
12 form are part of this will.

13 I sign my name to this Michigan statutory will on

14 \_\_\_\_\_ , 20\_\_\_\_.

15 \_\_\_\_\_

16 (Your signature)

17 NOTICE REGARDING WITNESSES

18 You must use 2 adults as witnesses. It is preferable to have 3  
19 adult witnesses. All the witnesses must observe you sign the will,  
20 have you tell them you signed the will, or have you tell them the  
21 will was signed at your direction in your presence.

22 STATEMENT OF WITNESSES

23 We sign below as witnesses, declaring that the individual who  
24 is making this will appears to have sufficient mental capacity to  
25 make this will and appears to be making this will freely, without  
26 duress, fraud, or undue influence, and that the individual making  
27 this will acknowledges that ~~he or she~~ **the individual** has read the  
28 will, or has had it read to ~~him or her,~~ **the individual**, and  
29 understands the contents of this will.



1 \_\_\_\_\_  
 2 (Print Name)  
 3 \_\_\_\_\_  
 4 (Signature of witness)  
 5 \_\_\_\_\_  
 6 (Address)  
 7 \_\_\_\_\_  
 8 (City) (State) (Zip)  
 9 \_\_\_\_\_  
 10 (Print name)  
 11 \_\_\_\_\_  
 12 (Signature of witness)  
 13 \_\_\_\_\_  
 14 (Address)  
 15 \_\_\_\_\_  
 16 (City) (State) (Zip)  
 17 \_\_\_\_\_  
 18 (Print name)  
 19 \_\_\_\_\_  
 20 (Signature of witness)  
 21 \_\_\_\_\_  
 22 (Address)  
 23 \_\_\_\_\_  
 24 (City) (State) (Zip)

DEFINITIONS

The following definitions and rules of construction apply to this Michigan statutory will:

(a) "Assets" means all types of property you can own, such as real estate, stocks and bonds, bank accounts, business interests,

1 furniture, and automobiles.

2 (b) "Descendants" means your children, grandchildren, and  
3 their descendants.

4 (c) "Descendants" or "children" includes individuals born or  
5 conceived during marriage, individuals legally adopted, and  
6 individuals born out of wedlock who would inherit if their parent  
7 died without a will.

8 (d) "Jointly held assets" means those assets to which  
9 ownership is transferred automatically upon the death of 1 of the  
10 owners to the remaining owner or owners.

11 (e) "Spouse" means your ~~husband or wife~~ **spouse** at the time you  
12 sign this will.

13 (f) Whenever a distribution under a Michigan statutory will is  
14 to be made to an individual's descendants, the assets are to be  
15 divided into as many equal shares as there are then living  
16 descendants of the nearest degree of living descendants and  
17 deceased descendants of that same degree who leave living  
18 descendants. Each living descendant of the nearest degree ~~shall~~  
19 **will** receive 1 share. The remaining shares, if any, are combined  
20 and then divided in the same manner among the surviving descendants  
21 of the deceased descendants as if the surviving descendants who  
22 were allocated a share and their surviving descendants had  
23 predeceased the descendant. In this manner, all descendants who are  
24 in the same generation will take an equal share.

25 (g) "Heirs" means those persons who would have received your  
26 assets if you had died without a will, domiciled in Michigan, under  
27 the laws that are then in effect.

28 (h) "Person" includes individuals and institutions.

29 (i) Plural and singular words include each other, where

1 appropriate.

2 (j) If a Michigan statutory will states that a person shall  
3 perform an act, the person is required to perform that act. If a  
4 Michigan statutory will states that a person may do an act, the  
5 person's decision to do or not to do the act ~~shall~~**must** be made in  
6 ~~good faith~~**good-faith** exercise of the person's powers.

7 ADDITIONAL CLAUSES

8 Powers of personal representative

9 1. A personal representative has all powers of administration  
10 given by Michigan law to personal representatives and, to the  
11 extent ~~funds are~~**money is** not needed to meet debts and expenses  
12 currently payable and ~~are~~**is** not immediately distributable, the  
13 power to invest and reinvest the estate from time to time in  
14 accordance with the Michigan prudent investor rule. In dividing and  
15 distributing the estate, the personal representative may distribute  
16 partially or totally in kind, may determine the value of  
17 distributions in kind without reference to income tax bases, and  
18 may make non-pro rata distributions.

19 2. The personal representative may distribute estate assets  
20 otherwise distributable to a minor beneficiary to the minor's  
21 conservator or, in amounts not exceeding ~~\$5,000.00~~**\$25,000.00** per  
22 year, either to the minor, if married; to a parent or another adult  
23 with whom the minor resides and who has the care, custody, or  
24 control of the minor; or to the guardian. The personal  
25 representative is free of liability and is discharged from further  
26 accountability for distributing assets in compliance with ~~the~~  
27 ~~provisions of~~ this paragraph.

28 POWERS OF GUARDIAN AND CONSERVATOR

29 A guardian named in this will has the same authority with

1 respect to the child as a parent having legal custody would have. A  
2 conservator named in this will has all of the powers conferred by  
3 law.

4 **(3) The dollar amount described in this section must be**  
5 **adjusted as provided in section 1210.**

6 Sec. 2806. As used in this section and sections 2807 to 2809:

7 (a) "Disposition or appointment of property" includes, but is  
8 not limited to, a transfer of an item of property or another  
9 benefit to a beneficiary designated in a governing instrument.

10 (b) "Divorce or annulment" means a divorce or annulment, or a  
11 dissolution or declaration of invalidity of a marriage, that would  
12 exclude the spouse as a surviving spouse within the meaning of  
13 section 2801. A decree of separation that does not terminate the  
14 ~~status of husband and wife~~ **decedent's marriage** is not a divorce for  
15 purposes of this section and sections 2807 to 2809.

16 (c) "Divorced individual" includes, but is not limited to, an  
17 individual whose marriage has been annulled.

18 (d) "Governing instrument" means a governing instrument  
19 executed by a divorced individual before the divorce from, or  
20 annulment of ~~his or her~~ **the individual's** marriage to, ~~his or her~~  
21 **the individual's** former spouse.

22 (e) "Relative of the divorced individual's former spouse"  
23 means an individual who is related to the divorced individual's  
24 former spouse by blood, adoption, or affinity and who, after the  
25 divorce or annulment, is not related to the divorced individual by  
26 blood, adoption, or affinity.

27 (f) "Revocable" means, with respect to a disposition,  
28 appointment, provision, or nomination, one under which the divorced  
29 individual, at the time of the divorce or annulment, was alone

1 empowered, by law or under the governing instrument, to cancel the  
 2 designation in favor of ~~his or her~~ **the individual's** former spouse  
 3 or former spouse's relative, whether or not the divorced individual  
 4 was then empowered to designate himself or herself in place of ~~his~~  
 5 ~~or her~~ **the individual's** former spouse or in place of ~~his or her~~ **the**  
 6 **individual's** former spouse's relative and whether or not the  
 7 divorced individual then had the capacity to exercise the power.

8       Sec. 3605. **(1)** A person apparently having an interest in the  
 9 estate worth in excess of ~~\$2,500.00~~ **\$25,000.00** or a creditor having  
 10 a claim against the estate in excess of ~~\$2,500.00~~ **\$25,000.00** may  
 11 make a written demand that a personal representative give bond. The  
 12 demand must be filed with the register, and if appointment and  
 13 qualification have occurred, a copy must be mailed to the personal  
 14 representative. Upon filing of the demand, bond is required, but  
 15 the requirement ceases if the person demanding bond ceases to be  
 16 interested in the estate or if bond is excused as provided in  
 17 section 3603 or 3604. After receipt of notice and until the filing  
 18 of the bond or cessation of the requirement of bond, the personal  
 19 representative shall ~~refrain from exercising~~ **not exercise** any  
 20 powers of the fiduciary office except as necessary to preserve the  
 21 estate. Failure of the personal representative to meet a  
 22 requirement of bond by giving suitable bond within 28 days after  
 23 receipt of notice is cause for removal and appointment of a  
 24 successor personal representative.

25       **(2) The dollar amount described in this section must be**  
 26 **adjusted as provided in section 1210.**

27       Sec. 3916. (1) In exchange for suitable receipts and following  
 28 a court order if the administration is supervised, a fiduciary  
 29 making final distribution shall deposit with the county treasurer

1 the money or personal property the fiduciary has that belongs to  
2 any of the following:

3 (a) An heir, devisee, trust beneficiary, or claimant whose  
4 whereabouts the fiduciary cannot ascertain after diligent inquiry.

5 (b) An heir, devisee, trust beneficiary, or claimant who  
6 declines to accept the money awarded to the person.

7 (c) A person if the right of the person is the subject of  
8 appeal from an order of the court.

9 (2) As an alternative to deposit with the county treasurer  
10 under subsection (1), if the amount involved for a person described  
11 under subsection (1)(a) or (b) is ~~\$250.00~~ **\$1,000.00** or less, the  
12 fiduciary may distribute the amount as part of the residue of the  
13 decedent's estate or to those entitled to the trust fund balance.  
14 If the fiduciary has property other than money that belongs to a  
15 person described in subsection (1)(a) or (b), the fiduciary may  
16 sell the property for the purpose of reducing it to money to be  
17 deposited with the county treasurer.

18 (3) The fiduciary shall retain or file the county treasurer's  
19 receipt for property deposited under this section in the same  
20 fashion as though the fiduciary paid or delivered the money or  
21 property to, and received a receipt from, the heir, devisee, trust  
22 beneficiary, or claimant.

23 **(4) The dollar amount described in this section must be**  
24 **adjusted as provided in section 1210.**

25 Sec. 3917. (1) The county treasurer shall receive and safely  
26 keep money deposited under authority of this act in a separate fund  
27 and keep a separate account for each distributee or claim. The  
28 county treasurer shall deposit the money in a county depository at  
29 the current rate of interest, shall pay out from the fund upon the

1 order of the court, and shall turn over any surplus left in the  
 2 treasurer's hands at the termination of the treasurer's term of  
 3 office to the treasurer's successor. The county treasurer shall, at  
 4 the end of each year, render to the court, and to the county board  
 5 of commissioners, a true account of that money.

6 (2) For the care of the money received under authority of this  
 7 act, the county treasurer may take 1% from the different amounts  
 8 paid out under court order unless the amount paid out to a single  
 9 individual exceeds ~~\$1,000.00~~, **\$1,500.00**, in which case the county  
 10 treasurer shall take ~~\$10.00~~ **\$15.00** plus 1/2 of 1% of the excess of  
 11 the amount over ~~\$1,000.00~~ **\$1,500.00**.

12 (3) A person entitled to the money may petition the court  
 13 having jurisdiction for an order directing the county treasurer to  
 14 pay over money that is deposited with the county treasurer. ~~Upon~~ **On**  
 15 receiving the petition, the court shall make an order as to notice  
 16 of the hearing as the court considers proper. ~~Upon~~ **On** satisfactory  
 17 proof being made to the court of the claimant's right to the money,  
 18 the court shall order the county treasurer to pay the money and  
 19 interest earned on the money, less the fee of the county treasurer,  
 20 to the claimant.

21 (4) If a person whose whereabouts are unknown or who declined  
 22 to accept the money does not make a claim to money deposited by a  
 23 fiduciary before the expiration of 3 years after the deposit date,  
 24 the money and interest earned on the money that would be  
 25 distributed under this section to the person, if alive, less  
 26 expenses, ~~shall~~ **must** be distributed by court order to each person  
 27 who would be entitled to the money if the person had died before  
 28 the date that he or she became entitled to the money, and the  
 29 person is forever barred from all claim or right to the money.

1           **(5) The dollar amounts described in this section must be**  
 2 **adjusted as provided in section 1210.**

3           Sec. 3918. (1) A personal representative may discharge the  
 4 personal representative's obligation to distribute to an individual  
 5 under legal disability by distributing in a manner expressly  
 6 provided in the will.

7           (2) Unless contrary to an express provision in the will, the  
 8 personal representative may discharge the personal representative's  
 9 obligation to distribute to an individual under legal disability as  
 10 authorized by section 5102 or another statute. If the personal  
 11 representative knows that a conservator has been appointed for an  
 12 individual or that a proceeding for appointment of a conservator  
 13 for the individual is pending, the personal representative is  
 14 authorized to distribute only to the conservator. If the personal  
 15 representative knows that a guardian of the estate of an individual  
 16 with a developmental disability has been appointed under the mental  
 17 health code, 1974 PA 258, MCL 330.1001 to 330.2106, or that a  
 18 proceeding for appointment of a guardian of the estate for the  
 19 individual with the developmental disability is pending, the  
 20 personal representative is authorized to distribute only to the  
 21 guardian of the estate.

22           (3) If the heir or devisee is under legal disability other  
 23 than minority, the personal representative is authorized to  
 24 distribute to any of the following:

25           (a) A trustee appointed by the court under section 3915(4).

26           (b) An attorney in fact who has authority under a power of  
 27 attorney to receive property for that ~~person~~**individual**.

28           (c) The spouse, parent, or other close relative with whom the  
 29 individual under legal disability resides if both of the following



1 are true:

2 (i) A conservator has not been appointed for the individual.

3 (ii) The distribution is in amounts not exceeding ~~\$5,000.00~~  
 4 **\$25,000.00** a year or property not exceeding ~~\$5,000.00~~ **\$25,000.00** in  
 5 value, unless the court authorizes a higher amount or value.

6 (4) A person receiving money or property for an individual  
 7 under legal disability shall use the money or property only for  
 8 that individual's support and for reimbursement of out-of-pocket  
 9 expenses for goods and services necessary for that individual's  
 10 support. Excess money and property ~~shall~~ **must** be preserved for the  
 11 individual's future support. The personal representative is not  
 12 responsible for the proper use of money or property by the  
 13 recipient if distribution is made under the authority of this  
 14 section.

15 (5) **The dollar amounts described in this section must be**  
 16 **adjusted as provided in section 1210.**

17 Sec. 3959. (1) ~~If estate~~ **The court may reopen an estate if**  
 18 **either of the following applies:**

19 (a) **Estate** property is discovered after an estate is settled  
 20 and either the personal representative is discharged or 1 year has  
 21 expired after a closing statement is filed. ~~, or if there~~

22 (b) **There** is other good cause to reopen a previously  
 23 administered estate, including an estate administratively closed,  
 24 ~~upon~~ **on** petition of an interested person and notice as the court  
 25 directs. ~~, the~~

26 (2) **The** court may appoint the same or a successor personal  
 27 representative to administer the subsequently discovered estate. If  
 28 a new appointment is made, unless the court orders otherwise, the  
 29 provisions of this act apply as appropriate. A claim previously

1 barred ~~shall~~**must** not be asserted in the subsequent administration.

2       Sec. 3981. **(1)** A hospital, convalescent or nursing home,  
3 morgue, or law enforcement agency holding ~~\$500.00~~**\$1,000.00** or less  
4 and wearing apparel of a decedent may deliver the money and wearing  
5 apparel to an individual furnishing identification and a sworn  
6 statement that the individual is the decedent's spouse, child, or  
7 parent and that there is no application or petition pending for  
8 administration of the decedent's estate. The hospital, home,  
9 morgue, or law enforcement agency making the delivery is released  
10 to the same extent as if delivery were made to a legally qualified  
11 personal representative of the decedent's estate and is not  
12 required to see to the property's disposition. The individual to  
13 whom delivery is made is answerable for the property to a person  
14 with a prior right and accountable to a personal representative of  
15 the decedent's estate appointed after the delivery.

16       **(2) The dollar amount described in this section must be**  
17 **adjusted as provided in section 1210.**

18       Sec. 3982. (1) ~~Upon~~**On** a showing of evidence, satisfactory to  
19 the court, of payment of the expenses for the decedent's funeral  
20 and burial and if the balance of a decedent's gross estate consists  
21 of property of the value of ~~\$15,000.00~~**\$25,000.00** or less, the  
22 court may order that the property be turned over to the surviving  
23 spouse or, if there is not a spouse, to the decedent's heirs.

24       (2) ~~Upon~~**On** a showing of evidence, satisfactory to the court,  
25 that the decedent's funeral or burial expenses are unpaid or were  
26 paid by a person other than the estate, and if the balance of the  
27 gross estate after payment of the expenses would consist of  
28 property of the value of ~~\$15,000.00~~**\$25,000.00** or less, the court  
29 shall order that the property be first used to pay the unpaid

1 funeral and burial expenses, or to reimburse the person that paid  
2 those expenses, and may order that the balance be turned over to  
3 the surviving spouse or, if there is not a spouse, to the  
4 decedent's heirs.

5 (3) Other than a surviving spouse who qualifies for allowances  
6 under this act or the decedent's minor children, an heir who  
7 receives property through an order under this section is  
8 responsible, for 63 days after the date of the order, for any  
9 unsatisfied debt of the decedent up to the value of the property  
10 received through the order. The court shall state in the order the  
11 condition on the distribution of property provided by this  
12 subsection.

13 (4) If a decedent's estate meets the criteria for using the  
14 procedure under either this section or section 3983 and if a person  
15 is authorized by this act to use either procedure, a person, other  
16 than the court, shall not require the authorized person to use 1  
17 procedure rather than the other.

18 (5) A dollar amount prescribed by this section ~~shall~~**must** be  
19 adjusted as provided in section 1210.

20 Sec. 3983. (1) After 28 days after a decedent's death, a  
21 person indebted to the decedent or having possession of tangible  
22 personal property or an instrument evidencing a debt, obligation,  
23 stock, or chose in action belonging to the decedent shall pay the  
24 indebtedness or deliver the tangible personal property or the  
25 instrument to a person claiming to be the decedent's successor ~~upon~~  
26 **on** being presented with the decedent's death certificate and a  
27 sworn statement made by or on behalf of the successor stating all  
28 of the following:

29 (a) The estate does not include real property and the value of

1 the entire estate, wherever located, net of liens and encumbrances,  
 2 does not exceed ~~\$15,000.00~~, **\$25,000.00**, adjusted as provided in  
 3 section 1210.

4 (b) Twenty-eight days have elapsed since the decedent's death.

5 (c) An application or petition for the appointment of a  
 6 personal representative is not pending or has not been granted in  
 7 any jurisdiction.

8 (d) The claiming successor is entitled to payment or delivery  
 9 of the property.

10 (e) The name and address of each other person that is entitled  
 11 to a share of the property and the portion to which each is  
 12 entitled.

13 (2) A transfer agent of a security shall change the registered  
 14 ownership on the books of a corporation from the decedent to the  
 15 successor or successors upon the presentation of a sworn statement  
 16 as provided in subsection (1).

17 (3) The state court administrative office shall develop and  
 18 make available a standardized form for use as a sworn statement  
 19 that can be used for the procedure authorized under subsection (1).  
 20 The form ~~shall~~**must** include a notice that a false statement may  
 21 subject the person swearing to the statement to prosecution for  
 22 perjury.

23 Sec. 5102. (1) A person under a duty to pay or deliver money  
 24 or personal property to a minor may perform this duty by paying or  
 25 delivering the money or property, in an aggregate value that does  
 26 not exceed ~~\$5,000.00~~**\$25,000.00** each year, to any of the following:

27 (a) The minor if ~~he or she~~**the minor** is married.

28 (b) An individual having the care and custody of the minor  
 29 with whom the minor resides.

1 (c) A guardian of the minor.

2 (d) A financial institution incident to a deposit in a state  
3 or federally insured savings account in the sole name of the minor  
4 with notice of the deposit to the minor.

5 (2) This section does not apply if the person making payment  
6 or delivery knows that a conservator has been appointed or a  
7 proceeding for appointment of a conservator of the minor's estate  
8 is pending.

9 (3) Other than the minor or a financial institution, an  
10 individual receiving money or property for a minor is obligated to  
11 apply the money to the minor's support and education, but shall not  
12 pay himself or herself except by way of reimbursement for out-of-  
13 pocket expenses for goods and services necessary for the minor's  
14 support. An excess amount ~~shall~~**must** be preserved for the minor's  
15 future support and education. A balance not used for those purposes  
16 and property received for the minor ~~shall~~**must** be turned over to  
17 the minor when majority is attained. A person who pays or delivers  
18 money or property in accordance with this section is not  
19 responsible for the proper application of the money or property.

20 **(4) The dollar amount described in this section must be**  
21 **adjusted as provided in section 1210.**

22 Sec. 5301. (1) If serving as guardian, the parent of an  
23 unmarried legally incapacitated individual may appoint by will, or  
24 other writing signed by the parent and attested by at least 2  
25 witnesses, a guardian for the legally incapacitated individual. If  
26 both parents are dead or the surviving parent is adjudged legally  
27 incapacitated, **and no standby guardian has been appointed under**  
28 **section 5301c**, a parental appointment **by will or other writing**  
29 becomes effective when, after having given 7 days' prior written

1 notice of intention to do so to the legally incapacitated  
2 individual and to the person having the care of the legally  
3 incapacitated individual or to the nearest adult relative, the  
4 guardian files acceptance of appointment in the court in which the  
5 will containing the nomination is probated or, if the nomination is  
6 contained in a nontestamentary nominating instrument or the  
7 testator who made the nomination is not deceased, when the  
8 guardian's acceptance is filed in the court at the place where the  
9 legally incapacitated individual resides or is present. The notice  
10 must state that the appointment may be terminated by filing a  
11 written objection in the court as provided by subsection (4). If  
12 both parents are dead, an effective appointment by the parent who  
13 died later has priority.

14 (2) If serving as guardian, the spouse of a married legally  
15 incapacitated individual may appoint by will, or other writing  
16 signed by the spouse and attested by at least 2 witnesses, a  
17 guardian of the legally incapacitated individual. ~~The~~ **If no standby**  
18 **guardian has been appointed under section 5301c, the** appointment by  
19 **will or other writing** becomes effective when, after having given 7  
20 days' prior written notice of intention to do so to the legally  
21 incapacitated individual and to the person having care of the  
22 legally incapacitated individual or to the nearest adult relative,  
23 the guardian files acceptance of appointment in the court in which  
24 the will containing the nomination is probated or, if the  
25 nomination is contained in a nontestamentary nominating instrument  
26 or the testator who made the nomination is not deceased, when the  
27 guardian's acceptance is filed in the court at the place where the  
28 legally incapacitated individual resides or is present. The notice  
29 must state that the appointment may be terminated by filing a

1 written objection in the court as provided by subsection (4).

2 (3) An appointment effected by filing the guardian's  
3 acceptance under a will probated in the state of the decedent's  
4 domicile is effective in this state.

5 (4) ~~Upon~~**On** the filing of the legally incapacitated  
6 individual's written objection to a guardian's appointment under  
7 this section in either the court in which the will was probated or,  
8 for a nontestamentary nominating instrument or a testamentary  
9 nominating instrument made by a testator who is not deceased, the  
10 court at the place where the legally incapacitated individual  
11 resides or is present, the appointment is terminated. An objection  
12 does not prevent appointment by the court in a proper proceeding of  
13 the parental or spousal nominee or another suitable person ~~upon~~**on**  
14 an adjudication of incapacity in a proceeding under sections 5302  
15 to 5317.

16 **Sec. 5301c. (1) At a hearing convened under this part, the**  
17 **court may designate 1 or more standby guardians. The court may**  
18 **designate as standby guardian a competent person that is suitable**  
19 **and willing to serve in the order of priority under section 5313.**

20 (2) **The nominated standby guardian must receive a copy of the**  
21 **petition nominating the person to serve, the court order**  
22 **establishing or modifying guardianship, and the order designating**  
23 **the standby guardian.**

24 (3) **A standby guardian shall file an acceptance of the**  
25 **person's designation under subsection (2) within 28 days after**  
26 **receiving notice of the order designating the standby guardian.**

27 (4) **If the standby guardian is unable or unwilling to serve,**  
28 **the standby guardian shall promptly notify the court and interested**  
29 **persons in writing.**

1           (5) A standby guardian does not have authority to act unless  
2 the guardian is unavailable for any reason, including any of the  
3 following:

4           (a) The guardian dies.

5           (b) The guardian is permanently or temporarily unavailable.

6           (c) The court removes or suspends the guardian.

7           (6) During an emergency affecting the legally incapacitated  
8 individual's welfare when the guardian is unavailable, the standby  
9 guardian may temporarily assume the powers and duties of the  
10 guardian. A person may rely on the standby guardian's  
11 representation that the standby guardian has the authority to act  
12 if the person is given the order issued under subsection (2) and  
13 acceptance filed under subsection (3). A person that acts in  
14 reliance on the representations and documentation described in this  
15 subsection without knowledge that the representations are incorrect  
16 is not liable to any person for so acting and may assume without  
17 further inquiry the existence of the standby guardian's authority.

18           (7) A standby guardian's appointment as guardian is effective,  
19 without further proceedings or reiteration of acceptance,  
20 immediately on the guardian's unavailability as described in  
21 subsection (5). The standby guardian has the same powers and duties  
22 as the prior guardian.

23           (8) On assuming office, the standby guardian shall promptly  
24 notify the court, any known agent appointed under a power of  
25 attorney executed under section 5103, and interested persons. On  
26 receiving notice under this subsection, the court may enter an  
27 order appointing a standby guardian as guardian without the need  
28 for additional proceedings. The guardian appointed under this  
29 subsection shall serve the court's order on the interested persons.



1           Sec. 5303. (1) An individual in ~~his or her~~ **the individual's**  
 2 own behalf, or any person interested in the individual's welfare,  
 3 may petition for a finding of incapacity and appointment of a  
 4 guardian **or designation of a standby guardian**. The petition must  
 5 contain specific facts about the individual's condition and  
 6 specific examples of the individual's recent conduct that  
 7 demonstrate the need for a guardian's appointment.

8           (2) Before a petition is filed under this section, the court  
 9 shall provide the person intending to file the petition with  
 10 written information that sets forth alternatives to appointment of  
 11 a full guardian, including, but not limited to, a limited guardian,  
 12 conservator, patient advocate designation, do-not-resuscitate  
 13 order, physician orders for scope of treatment form, or durable  
 14 power of attorney with or without limitations on purpose,  
 15 authority, or time period, and an explanation of each alternative.

16           (3) ~~Upon~~ **On** the filing of a petition under subsection (1), the  
 17 court shall set a date for hearing on the issue of incapacity.  
 18 Unless the allegedly incapacitated individual has legal counsel of  
 19 ~~his or her~~ **the individual's** own choice, the court shall appoint a  
 20 guardian ad litem to represent the ~~person~~ **individual** in the  
 21 proceeding.

22           Sec. 5304. (1) If necessary, the court may order that an  
 23 individual alleged to be incapacitated be examined by a physician  
 24 or mental health professional appointed by the court who shall  
 25 submit a report in writing to the court at least 5 days before the  
 26 hearing set under section 5303. A report prepared as provided in  
 27 this subsection ~~shall~~ **must** not be made a part of the proceeding's  
 28 public record, but ~~shall~~ **must** be available to the court or an  
 29 appellate court in which the proceeding is subject to review, to

1 the alleged incapacitated individual, to the petitioner, to their  
 2 respective legal counsels, and to other persons as the court  
 3 directs. The report may be used as provided in the Michigan rules  
 4 of evidence.

5 (2) The alleged incapacitated individual has the right to  
 6 secure an independent evaluation, at ~~his or her~~ **the individual's**  
 7 own expense or, if indigent, at the expense of the state.  
 8 Compensation for an independent evaluation at public expense ~~shall~~  
 9 **must** be in an amount that, based ~~upon~~ **on** time and expense, the  
 10 court approves as reasonable.

11 (3) A report prepared under this section ~~shall~~ **must** contain  
 12 all of the following:

13 (a) A detailed description of the individual's physical or  
 14 psychological infirmities.

15 (b) An explanation of how and to what extent each infirmity  
 16 interferes with the individual's ability to receive or evaluate  
 17 information in making decisions.

18 (c) A listing of all medications the individual is receiving,  
 19 the dosage of each medication, and a description of the effects  
 20 each medication has ~~upon~~ **on** the individual's behavior.

21 (d) A prognosis for improvement in the individual's condition  
 22 and a recommendation for the most appropriate rehabilitation plan.

23 (e) The signatures of all individuals who performed the  
 24 evaluations ~~upon~~ **on** which the report is based.

25 (4) The individual alleged to be incapacitated is entitled to  
 26 be present at the hearing **to appoint a guardian or designate a**  
 27 **standby guardian** in person, and to see or hear all evidence bearing  
 28 ~~upon~~ **on** the individual's condition. If the individual wishes to be  
 29 present at the hearing, all practical steps ~~shall~~ **must** be taken to

1 ensure ~~his or her~~ **the individual's** presence, including, if  
 2 necessary, moving the hearing site.

3 (5) The individual is entitled to be represented by legal  
 4 counsel, to present evidence, to cross-examine witnesses, including  
 5 the court-appointed physician or mental health professional and the  
 6 visitor, and to trial by jury.

7 (6) The issue of incapacity may be determined at a closed  
 8 hearing without a jury if requested by the individual alleged to be  
 9 incapacitated or that individual's legal counsel.

10 Sec. 5305. (1) The duties of a guardian ad litem appointed for  
 11 an individual alleged to be incapacitated include all of the  
 12 following:

13 (a) Personally visiting the individual.

14 (b) Explaining to the individual the nature, purpose, and  
 15 legal effects of a guardian's appointment.

16 (c) Explaining to the individual the hearing procedure and the  
 17 individual's rights in the hearing procedure, including, but not  
 18 limited to, all of the following:

19 (i) The right to contest the petition.

20 (ii) The right to request limits on the guardian's powers,  
 21 including a limitation on the guardian's power to execute on behalf  
 22 of the ward either of the following:

23 (A) A do-not-resuscitate order.

24 (B) A physician orders for scope of treatment form.

25 (iii) The right to object to a particular person being appointed  
 26 guardian **or designated as standby guardian.**

27 (iv) The right to be present at the hearing.

28 (v) The right to be represented by legal counsel.

29 (vi) The right to have legal counsel appointed for the

1 individual if ~~he or she~~ **the individual** is unable to afford legal  
2 counsel.

3 (d) Informing the individual that if a guardian is appointed,  
4 the guardian may have the power to execute a do-not-resuscitate  
5 order on behalf of the individual and, if meaningful communication  
6 is possible, discern if the individual objects to having a do-not-  
7 resuscitate order executed on ~~his or her~~ **the individual's** behalf.

8 (e) Informing the individual that if a guardian is appointed,  
9 the guardian may have the power to execute a physician orders for  
10 scope of treatment form on behalf of the individual and, if  
11 meaningful communication is possible, discern if the individual  
12 objects to having a physician orders for scope of treatment form  
13 executed on ~~his or her~~ **the individual's** behalf.

14 (f) Informing the individual of the name of each person known  
15 to be seeking appointment as guardian **or designation as standby**  
16 **guardian.**

17 (g) Asking the individual and the petitioner about the amount  
18 of cash and property readily convertible into cash that is in the  
19 individual's estate.

20 (h) Making determinations, and informing the court of those  
21 determinations, on all of the following:

22 (i) Whether there are 1 or more appropriate alternatives to the  
23 appointment of a full guardian or whether 1 or more actions should  
24 be taken in addition to the appointment of a guardian. Before  
25 informing the court of ~~his or her~~ **the guardian ad litem's**  
26 determination under this subparagraph, the guardian ad litem shall  
27 consider the appropriateness of at least each of the following as  
28 alternatives or additional actions:

29 (A) Appointment of a limited guardian, including the specific

1 powers and limitation on those powers the guardian ad litem  
2 believes appropriate.

3 (B) Appointment of a conservator or another protective order  
4 under part 4 of this article. In the report informing the court of  
5 the determinations under this subdivision, the guardian ad litem  
6 shall include an estimate of the amount of cash and property  
7 readily convertible into cash that is in the individual's estate.

8 (C) Execution of a patient advocate designation, do-not-  
9 resuscitate order, physician orders for scope of treatment form, or  
10 durable power of attorney with or without limitations on purpose,  
11 authority, or duration.

12 (ii) Whether a disagreement or dispute related to the  
13 guardianship petition might be resolved through court ordered  
14 mediation.

15 (iii) Whether the individual wishes to be present at the  
16 hearing.

17 (iv) Whether the individual wishes to contest the petition.

18 (v) Whether the individual wishes limits placed on the  
19 guardian's powers.

20 (vi) Whether the individual objects to having a do-not-  
21 resuscitate order executed on ~~his or her~~ **the individual's** behalf.

22 (vii) Whether the individual objects to having a physician  
23 orders for scope of treatment form executed on ~~his or her~~ **the**  
24 **individual's** behalf.

25 (viii) Whether the individual objects to a particular person  
26 being appointed guardian **or designated a standby guardian.**

27 (2) The court shall not order compensation of the guardian ad  
28 litem unless the guardian ad litem states on the record or in the  
29 guardian ad litem's written report that ~~he or she~~ **the guardian ad**

1 **litem** has complied with subsection (1).

2 (3) If the individual alleged to be incapacitated wishes to  
3 contest the petition, to have limits placed on the guardian's  
4 powers, or to object to a particular person being appointed  
5 guardian **or designated as standby guardian** and if legal counsel has  
6 not been secured, the court shall appoint legal counsel to  
7 represent the individual alleged to be incapacitated. If the  
8 individual alleged to be incapacitated is indigent, this state  
9 shall bear the expense of legal counsel.

10 (4) If the individual alleged to be incapacitated requests  
11 legal counsel or the guardian ad litem determines it is in the  
12 individual's best interest to have legal counsel, and if legal  
13 counsel has not been secured, the court shall appoint legal  
14 counsel. If the individual alleged to be incapacitated is indigent,  
15 this state shall bear the expense of legal counsel.

16 (5) If the individual alleged to be incapacitated has legal  
17 counsel appointed under subsection (3) or (4), the appointment of a  
18 guardian ad litem terminates.

19 Sec. 5306a. (1) An individual for whom a guardian is sought or  
20 has been appointed under section 5306 has all of the following  
21 rights:

22 (a) To object to the appointment of a successor guardian by  
23 will or other writing, as provided in section 5301.

24 (b) To have the guardianship proceeding commenced and  
25 conducted in the place where the individual resides or is present  
26 or, if the individual is admitted to an institution by a court, in  
27 the county in which the court is located, as provided in section  
28 5302.

29 (c) To petition on ~~his or her~~ **the individual's** own behalf for

1 the appointment of a guardian **or designation of a standby guardian,**  
2 as provided in section 5303.

3 (d) To have legal counsel of ~~his or her~~ **the individual's** own  
4 choice represent him or her on the petition to appoint a guardian  
5 **or designate a standby guardian,** as provided in sections 5303,  
6 5304, and 5305.

7 (e) If ~~he or she~~ **the individual** is not represented by legal  
8 counsel, to the appointment of a guardian ad litem to represent the  
9 individual on the petition to appoint a guardian **or designate a**  
10 **standby guardian,** as provided in section 5303.

11 (f) To an independent evaluation of ~~his or her~~ **the**  
12 **individual's** capacity by a physician or mental health professional,  
13 at public expense if ~~he or she~~ **the individual** is indigent, as  
14 provided in section 5304.

15 (g) To be present at the hearing on the petition to appoint a  
16 guardian **or designate a standby guardian** and to have all practical  
17 steps taken to ensure this, including, if necessary, moving the  
18 hearing site, as provided by section 5304.

19 (h) To see or hear all the evidence presented in the hearing  
20 on the petition to appoint a guardian **or designate a standby**  
21 **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 **or designate a**  
24 **standby guardian,** as provided in section 5304.

25 (j) To a trial by jury on the petition to appoint a guardian  
26 **or designate a standby guardian,** as provided in section 5304.

27 (k) To a closed hearing on the petition to appoint a guardian,  
28 as provided in section 5304.

29 (l) If a guardian ad litem is appointed, to be personally

1 visited by the guardian ad litem, as provided in section 5305.

2 (m) If a guardian ad litem is appointed, to an explanation by  
3 the guardian ad litem of the nature, purpose, and legal effects of  
4 a guardian's appointment, as provided in section 5305.

5 (n) If a guardian ad litem is appointed, to an explanation by  
6 the guardian ad litem of the individual's rights in the hearing  
7 procedure, as provided in section 5305.

8 (o) If a guardian ad litem is appointed, to be informed by the  
9 guardian ad litem of the right to contest the petition, to request  
10 limits on the guardian's powers, to object to a particular person  
11 being appointed guardian **or designated as standby guardian**, to be  
12 present at the hearing, to be represented by legal counsel, and to  
13 have legal counsel appointed if the individual is unable to afford  
14 legal counsel, as provided in section 5305.

15 (p) To be informed of the name of each person known to be  
16 seeking appointment as guardian **or designation as standby guardian**,  
17 including, if a guardian ad litem is appointed, to be informed of  
18 the names by the guardian ad litem as provided in section 5305.

19 (q) To require that proof of incapacity and the need for a  
20 guardian be proven by clear and convincing evidence, as provided in  
21 section 5306.

22 (r) To the limitation of the powers and period of time of a  
23 guardianship to only the amount and time that is necessary, as  
24 provided in section 5306.

25 (s) To a guardianship designed to encourage the development of  
26 maximum self-reliance and independence as provided in section 5306.

27 (t) To prevent the grant of powers to a guardian if those  
28 powers are already held by a valid patient advocate, as provided in  
29 section 5306.



1 (u) To periodic review of the guardianship by the court,  
2 including the right to a hearing and the appointment of an attorney  
3 if issues arise upon the review of the guardianship, as provided in  
4 section 5309.

5 (v) To, at any time, seek modification or termination of the  
6 guardianship by informal letter to the judge, as provided in  
7 section 5310.

8 (w) To a hearing within 28 days of requesting a review,  
9 modification, or termination of the guardianship, as provided in  
10 section 5310.

11 (x) To the same rights on a petition for modification or  
12 termination of the guardianship including the appointment of a  
13 visitor as apply to a petition for appointment of a guardian, as  
14 provided in section 5310.

15 (y) To personal notice of a petition for appointment or  
16 removal of a guardian **or the designation or change in designation**  
17 **of a standby guardian**, as provided in section 5311.

18 (z) To written notice of the nature, purpose, and legal  
19 effects of the appointment of a guardian, as provided in section  
20 5311.

21 (aa) To choose the person who will serve as guardian **and the**  
22 **person designated as standby guardian**, if the chosen person is  
23 suitable and willing to serve, as provided in ~~section~~**sections** 5313  
24 **and 5301c, as applicable.**

25 (bb) To consult with the guardian about major decisions  
26 affecting the individual, if meaningful conversation is possible,  
27 as provided in section 5314.

28 (cc) To quarterly visits by the guardian, as provided in  
29 section 5314.

1 (dd) To have the guardian notify the court within 14 days of a  
2 change in the individual's residence, as provided in section 5314.

3 (ee) To have the guardian secure services to restore the  
4 individual to the best possible state of mental and physical well-  
5 being so that the individual can return to self-management at the  
6 earliest possible time, as provided in section 5314.

7 (ff) To have the guardian take reasonable care of the  
8 individual's clothing, furniture, vehicles, and other personal  
9 effects, as provided in section 5314.

10 (2) A guardian ad litem shall inform the ward in writing of  
11 ~~his or her~~ **the ward's** rights enumerated in this section. The state  
12 court administrative office and the ~~office of services to the aging~~  
13 ~~created in section 5 of the older Michiganians act, 1981 PA 180,~~  
14 ~~MCL 400.585,~~ **health and aging services administration created under**  
15 **Executive Reorganization Order No. 2021-2, MCL 400.562,** shall  
16 promulgate a form to be used to give the written notice under this  
17 section, which ~~shall~~ **must** include space for the court to include  
18 information on how to contact the court or other relevant personnel  
19 with respect to the rights enumerated in this section.

20 Sec. 5310. (1) On petition of the guardian and subject to the  
21 filing and approval of a report prepared as required by section  
22 5314, the court shall accept the guardian's resignation and make  
23 any other order that is appropriate.

24 (2) The ward, **a person appointed guardian in a will or other**  
25 **writing by a parent or spouse under section 5301,** or ~~a~~ **any other**  
26 person interested in the ward's welfare may petition for an order  
27 removing the guardian, **changing the designated standby guardian,**  
28 appointing a successor guardian, modifying the guardianship's  
29 terms, or terminating the guardianship. A request for this order

1 may be made by informal letter to the court or judge. **If a request**  
2 **under this subsection is made by the person appointed by will or**  
3 **other writing under section 5301, the person shall also present**  
4 **proof of the person's appointment by will or other writing.** A  
5 person who knowingly interferes with the transmission of this kind  
6 of request to the court or judge is subject to a finding of  
7 contempt of court.

8 (3) Except as otherwise provided in the order finding  
9 incapacity, ~~upon~~**on** receiving a petition or request under this  
10 section, the court shall set a date for a hearing to be held within  
11 28 days after the receipt of the petition or request. An order  
12 finding incapacity may specify a minimum period, not exceeding 182  
13 days, during which a petition or request for a finding that a ward  
14 is no longer an incapacitated individual, or for an order removing  
15 the guardian, modifying the guardianship's terms, or terminating  
16 the guardianship, ~~shall~~**must** not be filed without special leave of  
17 the court.

18 (4) Before removing a guardian, appointing a successor  
19 guardian, **changing the designated standby guardian**, modifying the  
20 guardianship's terms, or terminating a guardianship, and following  
21 the same procedures to safeguard the ward's rights as apply to a  
22 petition for a guardian's appointment, the court may send a visitor  
23 to the present guardian's residence and to the place where the ward  
24 resides or is detained to observe conditions and report in writing  
25 to the court.

26 Sec. 5311. (1) In a proceeding for the appointment or removal  
27 of an incapacitated individual's guardian, other than the  
28 appointment of a temporary guardian or temporary suspension of a  
29 guardian, **or to designate a standby guardian or change the**

1 **designated standby guardian**, notice of hearing must be given to  
2 each of the following:

3 (a) The ward or the individual alleged to be incapacitated and  
4 that individual's spouse, parents, and adult children.

5 (b) A person who is serving as the guardian or conservator or  
6 who has the individual's care and custody.

7 (c) If known, a person named as attorney in fact under a  
8 durable power of attorney.

9 **(d) The standby guardian or the person nominated to be**  
10 **designated as standby guardian.**

11 **(e)** ~~(d)~~—If no other person is notified under subdivision (a),  
12 (b), ~~or~~(c), **or (d)**, at least 1 of the individual's closest adult  
13 relatives, if any can be found.

14 (2) Notice must be served personally on the alleged  
15 incapacitated individual. Notice to all other persons must be given  
16 as prescribed by court rule. Waiver of notice by the individual  
17 alleged to be incapacitated is not effective unless the individual  
18 attends the hearing or a waiver of notice is confirmed in an  
19 interview with the visitor.

20 (3) In a proceeding for a guardian's appointment **or**  
21 **designation of a standby guardian** under sections 5303 and 5304, a  
22 copy of the petition must be attached to the hearing notice, and  
23 the notice to the alleged incapacitated individual must contain all  
24 of the following information:

25 (a) The nature, purpose, and legal effects of the appointment  
26 of a guardian **or designation of a standby guardian.**

27 (b) The alleged incapacitated individual's rights in the  
28 proceeding, including the right to appointed legal counsel.

29 Sec. 5313. (1) The court may appoint a competent person as

1 guardian of a legally incapacitated individual. The court shall not  
2 appoint as a guardian an agency, public or private, that  
3 financially benefits from directly providing housing, medical,  
4 mental health, or social services to the legally incapacitated  
5 individual. If the court determines that the ward's property needs  
6 protection, the court shall order the guardian to furnish a bond or  
7 shall include restrictions in the letters of guardianship as  
8 necessary to protect the property.

9 (2) In appointing a guardian under this section, the court  
10 shall appoint a person, if suitable and willing to serve, in the  
11 following order of priority:

12 (a) A person previously appointed, qualified, and serving in  
13 good standing as guardian for the legally incapacitated individual  
14 in **this state or** another state.

15 (b) A person the individual subject to the petition chooses to  
16 serve as guardian.

17 (c) A person nominated as guardian in a durable power of  
18 attorney or other writing by the individual subject to the  
19 petition.

20 (d) A person named by the individual as a patient advocate or  
21 attorney in fact in a durable power of attorney.

22 **(e) A person appointed by a parent or spouse of a legally**  
23 **incapacitated individual by will or other writing under section**  
24 **5301.**

25 (3) If there is no person chosen, nominated, or named under  
26 subsection (2), or if none of the persons listed in subsection (2)  
27 are suitable or willing to serve, the court may appoint as a  
28 guardian an individual who is related to the individual who is the  
29 subject of the petition in the following order of preference:

1 (a) The legally incapacitated individual's spouse. This  
2 subdivision ~~shall be~~ **is** considered to include a person nominated by  
3 will or other writing signed by a deceased spouse.

4 (b) An adult child of the legally incapacitated individual.

5 (c) A parent of the legally incapacitated individual. This  
6 subdivision ~~shall be~~ **is** considered to include a person nominated by  
7 will or other writing signed by a deceased parent.

8 (d) A relative of the legally incapacitated individual with  
9 whom the individual has resided for more than 6 months before the  
10 filing of the petition.

11 (e) A person nominated by a person who is caring for the  
12 legally incapacitated individual or paying benefits to the legally  
13 incapacitated individual.

14 (4) If none of the persons as designated or listed in  
15 subsection (2) or (3) are suitable or willing to serve, the court  
16 may appoint any competent person who is suitable and willing to  
17 serve, including a professional guardian as provided in section  
18 5106.

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

1           (a) The custody of the person of the ward and the power to  
2 establish the ward's place of residence in or outside this state.  
3 The guardian shall visit the ward within 3 months after the  
4 guardian's appointment and not less than once within 3 months after  
5 each previous visit. The guardian shall notify the court within 14  
6 days of a change in the ward's place of residence or a change in  
7 the guardian's place of residence.

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

25           (c) The power to give the consent or approval that is  
26 necessary to enable the ward to receive medical, mental health, or  
27 other professional care, counsel, treatment, or service. However, a  
28 guardian does not have and shall not exercise the power to give the  
29 consent to or approval for inpatient hospitalization unless the

1 court expressly grants the power in its order. If the ward objects  
2 or actively refuses mental health treatment, the guardian or any  
3 other interested person must follow the procedures provided in  
4 chapter 4 of the mental health code, 1974 PA 258, MCL 330.1400 to  
5 330.1490, to petition the court for an order to provide involuntary  
6 mental health treatment. The power of a guardian to execute a do-  
7 not-resuscitate order under subdivision (d), execute a nonopioid  
8 directive form under subdivision (f), or execute a physician orders  
9 for scope of treatment form under subdivision (g) does not affect  
10 or limit the power of a guardian to consent to a physician's order  
11 to withhold resuscitative measures in a hospital. As used in this  
12 subdivision, "involuntary mental health treatment" means that term  
13 as defined in section 400 of the mental health code, 1974 PA 258,  
14 MCL 330.1400.

15 (d) The power to execute, reaffirm, and revoke a do-not-  
16 resuscitate order on behalf of a ward. However, a guardian shall  
17 not execute a do-not-resuscitate order unless the guardian does all  
18 of the following:

19 (i) Not more than 14 days before executing the do-not-  
20 resuscitate order, visits the ward and, if meaningful communication  
21 is possible, consults with the ward about executing the do-not-  
22 resuscitate order.

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

26 (e) If a guardian executes a do-not-resuscitate order under  
27 subdivision (d), not less than annually after the do-not-  
28 resuscitate order is first executed, the duty to do all of the  
29 following:



1 (i) Visit the ward and, if meaningful communication is  
 2 possible, consult with the ward about reaffirming the do-not-  
 3 resuscitate order.

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

7 (f) The power to execute, reaffirm, and revoke a nonopioid  
 8 directive form on behalf of a ward.

9 (g) The power to execute, reaffirm, and revoke a physician  
 10 orders for scope of treatment form on behalf of a ward. However, a  
 11 guardian shall not execute a physician orders for scope of  
 12 treatment form unless the guardian does all of the following:

13 (i) Not more than 14 days before executing the physician orders  
 14 for scope of treatment form, visits the ward and, if meaningful  
 15 communication is possible, consults with the ward about executing  
 16 the physician orders for scope of treatment form.

17 (ii) Consults directly with the ward's attending physician as  
 18 to the specific medical indications that warrant the physician  
 19 orders for scope of treatment form.

20 (h) If a guardian executes a physician orders for scope of  
 21 treatment form under subdivision ~~(f)~~, **(g)**, not less than annually  
 22 after the physician orders for scope of treatment **form** is first  
 23 executed, the duty to do all of the following:

24 (i) Visit the ward and, if meaningful communication is  
 25 possible, consult with the ward about reaffirming the physician  
 26 orders for scope of treatment form.

27 (ii) Consult directly with the ward's attending physician as to  
 28 specific medical indications that may warrant reaffirming the  
 29 physician orders for scope of treatment form.

1 (i) If a conservator for the ward's estate is not appointed,  
2 the power to do any of the following:

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

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

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

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

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

25 (iii) The ward's present living arrangement and changes in ~~his~~  
26 ~~or her~~ **the ward's** living arrangement that occurred during the past  
27 year.

28 (iv) Whether the guardian recommends a more suitable living  
29 arrangement for the ward.

1 (v) Medical treatment, including mental health treatment,  
2 received by the ward.

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

6 (vii) Whether the guardian has executed, reaffirmed, or revoked  
7 a nonopioid directive form on behalf of the ward during the past  
8 year.

9 (viii) Whether the guardian has executed, reaffirmed, or revoked  
10 a physician orders for scope of treatment form on behalf of the  
11 ward during the past year.

12 (ix) Services received by the ward.

13 (x) A list of the guardian's visits with, and activities on  
14 behalf of, the ward.

15 (xi) A recommendation as to the need for continued  
16 guardianship.

17 **(xii) If a standby guardian has been designated, a statement**  
18 **signed by the standby guardian that the standby guardian continues**  
19 **to be willing to serve in the event of the unavailability, death,**  
20 **incapacity, or resignation of the guardian.**

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

27 Sec. 5507. (1) A patient advocate designation may include a  
28 statement of the patient's desires on care, custody, and medical  
29 treatment or mental health treatment, or both. A patient advocate

1 designation may also include a statement of the patient's desires  
2 on the making of an anatomical gift of all or part of the patient's  
3 body under part 101 of the public health code, 1978 PA 368, MCL  
4 333.10101 to 333.10123. The statement regarding an anatomical gift  
5 under this subsection may include a statement of the patient's  
6 desires regarding the resolution of a conflict between the terms of  
7 the advance health care directive and the administration of means  
8 necessary to ensure the medical suitability of the anatomical gift.  
9 The patient may authorize the patient advocate to exercise 1 or  
10 more powers concerning the patient's care, custody, medical  
11 treatment, mental health treatment, the making of an anatomical  
12 gift, or the resolution of a conflict between the terms of the  
13 advance health care directive and the administration of means  
14 necessary to ensure the medical suitability of the anatomical gift  
15 that the patient could have exercised on ~~his or her~~ **the patient's**  
16 own behalf.

17 **(2) A patient advocate designation may also include the**  
18 **patient's instructions about how the patient advocate is to make**  
19 **decisions.**

20 **(3)** ~~(2)~~—A patient may designate in the patient advocate  
21 designation a successor individual as a patient advocate who may  
22 exercise the powers described in subsection (1) for the patient if  
23 the first individual named as patient advocate does not accept, is  
24 incapacitated, resigns, or is removed.

25 **(4)** ~~(3)~~—Before a patient advocate designation is implemented,  
26 a copy of the patient advocate designation must be given to the  
27 proposed patient advocate and must be given to a successor patient  
28 advocate before the successor acts as patient advocate. Before  
29 acting as a patient advocate, the proposed patient advocate must

1 sign an acceptance of the patient advocate designation.

2 (5) ~~(4)~~—The acceptance of a designation as a patient advocate  
3 must include substantially all of the following statements:

4 1. This patient advocate designation is not effective unless  
5 the patient is unable to participate in decisions regarding the  
6 patient's medical or mental health, as applicable. If this patient  
7 advocate designation includes the authority to make an anatomical  
8 gift as described in section 5506, the authority remains  
9 exercisable after the patient's death.

10 2. A patient advocate shall not exercise powers concerning the  
11 patient's care, custody, and medical or mental health treatment  
12 that the patient, if the patient were able to participate in the  
13 decision, could not have exercised on ~~his or her~~ **the patient's** own  
14 behalf.

15 3. This patient advocate designation cannot be used to make a  
16 medical treatment decision to withhold or withdraw treatment from a  
17 patient who is pregnant that would result in the pregnant patient's  
18 death.

19 4. A patient advocate may make a decision to withhold or  
20 withdraw treatment that would allow a patient to die only if the  
21 patient has expressed in a clear and convincing manner that the  
22 patient advocate is authorized to make such a decision, and that  
23 the patient acknowledges that such a decision could or would allow  
24 the patient's death.

25 5. A patient advocate shall not receive compensation for the  
26 performance of ~~his or her~~ **the patient advocate's** authority, rights,  
27 and responsibilities, but a patient advocate may be reimbursed for  
28 actual and necessary expenses incurred in the performance of ~~his or~~  
29 ~~her~~ **the patient advocate's** authority, rights, and responsibilities.

1           6. A patient advocate shall act in accordance with the  
 2 standards of care applicable to fiduciaries when acting for the  
 3 patient and shall act consistent with the patient's best interests.  
 4 The known desires of the patient expressed or evidenced while the  
 5 patient is able to participate in medical or mental health  
 6 treatment decisions are presumed to be in the patient's best  
 7 interests.

8           7. A patient may revoke ~~his or her~~ **the patient's** patient  
 9 advocate designation at any time and in any manner sufficient to  
 10 communicate an intent to revoke.

11           8. A patient may waive ~~his or her~~ **the patient's** right to  
 12 revoke the patient advocate designation as to the power to make  
 13 mental health treatment decisions, and if ~~such a~~ **the** waiver is  
 14 made, ~~his or her~~ **the patient's** ability to revoke as to certain  
 15 treatment will be delayed for 30 days after the patient  
 16 communicates ~~his or her~~ **the patient's** intent to revoke.

17           9. A patient advocate may revoke ~~his or her~~ **the patient**  
 18 **advocate's** acceptance of the patient advocate designation at any  
 19 time and in any manner sufficient to communicate an intent to  
 20 revoke.

21           10. A patient admitted to a health facility or agency has the  
 22 rights enumerated in section 20201 of the public health code, 1978  
 23 PA 368, MCL 333.20201.

24           Sec. 7103. As used in this article:

25           (a) "Action", with respect to a trustee, includes an act or a  
 26 failure to act.

27           (b) "Ascertainable standard" means a standard relating to an  
 28 individual's health, education, support, or maintenance within the  
 29 meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal

1 revenue code of 1986, 26 USC 2041 and 2514.

2 (c) "Charitable trust" means a trust, or portion of a trust,  
3 created for a charitable purpose described in section 7405(1) **if**  
4 **the charitable purpose is a material purpose of the trust.**

5 (d) "Discretionary trust provision" means a provision in a  
6 trust, regardless of whether the terms of the trust provide a  
7 standard for the exercise of the trustee's discretion and  
8 regardless of whether the trust contains a spendthrift provision,  
9 that provides that the trustee has discretion, or words of similar  
10 import, to determine 1 or more of the following:

11 (i) Whether to distribute to or for the benefit of an  
12 individual or a class of beneficiaries the income or principal or  
13 both of the trust.

14 (ii) The amount, if any, of the income or principal or both of  
15 the trust to distribute to or for the benefit of an individual or a  
16 class of beneficiaries.

17 (iii) Who, if any, among a class of beneficiaries will receive  
18 income or principal or both of the trust.

19 (iv) Whether the distribution of trust property is from income  
20 or principal or both of the trust.

21 (v) When to pay income or principal, except that a power to  
22 determine when to distribute income or principal within or with  
23 respect to a calendar or taxable year of the trust is not a  
24 discretionary trust provision if the distribution must be made.

25 (e) "Interests of the trust beneficiaries" means the  
26 beneficial interests provided in the terms of the trust.

27 (f) "Power of withdrawal" means a presently exercisable  
28 general power of appointment other than a power that is either of  
29 the following:

1 (i) Exercisable by a trustee and limited by an ascertainable  
2 standard.

3 (ii) Exercisable by another person only on consent of the  
4 trustee or a person holding an adverse interest.

5 (g) "Qualified trust beneficiary" means ~~a~~**either of the**  
6 **following:**

7 (i) **A** trust beneficiary ~~to~~**whom the settlor intends to benefit**  
8 **as a material purpose of the trust and to whom** 1 or more of the  
9 following apply on the date the trust beneficiary's qualification  
10 is determined:

11 (A) ~~(i)~~The trust beneficiary is a distributee or permissible  
12 distributee of trust income or principal.

13 (B) ~~(ii)~~The trust beneficiary would be a distributee or  
14 permissible distributee of trust income or principal if the  
15 interests of the distributees under the trust described in  
16 ~~subparagraph (i)~~**sub-subparagraph (A)** terminated on that date  
17 without causing the trust to terminate.

18 (C) ~~(iii)~~The trust beneficiary would be a distributee or  
19 permissible distributee of trust income or principal if the trust  
20 terminated on that date.

21 (ii) **If on the date a trust beneficiary's qualification is**  
22 **determined there is no trust beneficiary described in subparagraph**  
23 **(i), a trust beneficiary to whom 1 or more of the following apply on**  
24 **the date the trust beneficiary's qualification is determined:**

25 (A) **The trust beneficiary is a distributee or permissible**  
26 **distributee of trust income or principal.**

27 (B) **The trust beneficiary would be a distributee or**  
28 **permissible distributee of trust income or principal if the**  
29 **interests of the distributees under the trust described in sub-**



1    **subparagraph (A) terminated on that date without causing the trust**  
2    **to terminate.**

3           **(C) The trust beneficiary would be a distributee or**  
4    **permissible distributee of trust income or principal if the trust**  
5    **terminated on that date.**

6           (h) "Revocable", as applied to a trust, means revocable by the  
7    settlor without the consent of the trustee or a person holding an  
8    adverse interest. A trust's characterization as revocable is not  
9    affected by the settlor's lack of capacity to exercise the power of  
10   revocation, regardless of whether an agent of the settlor under a  
11   durable power of attorney, a conservator of the settlor, or a  
12   plenary guardian of the settlor is serving.

13          (i) "Settlor" means a person, including a testator or a  
14   trustee, who creates a trust. If more than 1 person creates a  
15   trust, each person is a settlor of the portion of the trust  
16   property attributable to that person's contribution. The lapse,  
17   release, or waiver of a power of appointment does not cause the  
18   holder of a power of appointment to be treated as a settlor of the  
19   trust.

20          (j) "Spendthrift provision" means a term of a trust that  
21   restrains either the voluntary or involuntary transfer of a trust  
22   beneficiary's interest.

23          (k) "Support provision" means a provision in a trust that  
24   provides the trustee shall distribute income or principal or both  
25   for the health, education, support, or maintenance of a trust  
26   beneficiary, or language of similar import. A provision in a trust  
27   that provides a trustee has discretion whether to distribute income  
28   or principal or both for these purposes or to select from among a  
29   class of beneficiaries to receive distributions under the trust

1 provision is not a support provision, but rather is a discretionary  
2 trust provision.

3 (l) "Trust beneficiary" means a person to whom 1 or both of the  
4 following apply:

5 (i) The person has a present or future beneficial interest in a  
6 trust, vested or contingent.

7 (ii) The person holds a power of appointment over trust  
8 property in a capacity other than that of trustee or trust  
9 director.

10 (m) "Trust director" means that term as defined in section  
11 7703a.

12 (n) "Trust instrument" means a governing instrument that  
13 contains the terms of the trust, including any amendment to a term  
14 of the trust.

15 Sec. 7105. (1) Except as otherwise provided in the terms of  
16 the trust, this article governs the duties and powers of a trustee,  
17 relations among trustees, and the rights and interests of a trust  
18 beneficiary.

19 (2) The terms of a trust prevail over any provision of this  
20 article except the following:

21 (a) The requirements under sections 7401 and 7402(1)(e) for  
22 creating a trust.

23 (b) Except as otherwise provided in sections 7703a and 7703b,  
24 the duty of a trustee to administer a trust in accordance with  
25 section 7801.

26 (c) The requirement under section 7404 that the trust have a  
27 purpose that is lawful, not contrary to public policy, and possible  
28 to achieve.

29 (d) **The duration limits specified in all of the following:**

1           **(i) Section 7408 for the care of animals.**

2           **(ii) Section 7409 for other noncharitable purpose trusts.**

3           **(iii) Section 7409a for nondisclosure periods.**

4           **(e)** ~~(d)~~—The power of the court to modify or terminate a trust  
5 under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.

6           **(f)** ~~(e)~~—The effect of a spendthrift provision, a support  
7 provision, and a discretionary trust provision on the rights of  
8 certain creditors and assignees to reach a trust as provided in  
9 part 5.

10          **(g)** ~~(f)~~—The power of the court under section 7702 to require,  
11 dispense with, or modify or terminate a bond.

12          **(h)** ~~(g)~~—The power of the court under section 7708(2) to adjust  
13 a trustee's compensation specified in the terms of the trust that  
14 is unreasonably low or high.

15          **(i)** ~~(h)~~—The obligations imposed on a trust director in section  
16 7703a(4) and (5).

17          **(j)** ~~(i)~~—**Except as provided in section 7409a, the** duty  
18 under section 7814(2) (a) to (c) to provide beneficiaries with the  
19 terms of the trust and information about the trust's property, and  
20 to notify qualified trust beneficiaries of an irrevocable trust of  
21 the existence of the trust and the identity of the trustee.

22          **(k)** ~~(j)~~—The power of the court to order the trustee to provide  
23 statements of account and other information under section 7814(4).

24          **(l)** ~~(k)~~—The effect of an exculpatory term under section  
25 7703a(5) (b) or 7908.

26          **(m)** ~~(l)~~—The effect of a release of a trustee or trust director  
27 from liability for breach of trust under section 7703a(8).

28          **(n)** ~~(m)~~—The rights under sections 7910 to 7913 of a person  
29 other than a trustee or beneficiary.

1           **(o)** ~~(n)~~—Periods of limitation under this article for  
2 commencing a judicial proceeding.

3           **(p)** ~~(o)~~—The power of the court to take action and exercise  
4 jurisdiction.

5           **(q)** ~~(p)~~—The subject-matter jurisdiction of the court and venue  
6 for commencing a proceeding as provided in sections 7203 and 7204.

7           **(r)** ~~(q)~~—The requirement under section 7113 that a provision in  
8 a trust that purports to penalize an interested person for  
9 contesting the trust or instituting another proceeding relating to  
10 the trust ~~shall~~**must** not be given effect if probable cause exists  
11 for instituting a proceeding contesting the trust or another  
12 proceeding relating to the trust.

13           **(s)** ~~(r)~~—The requirement under section 7703b(2)(d) regarding  
14 the eligibility of a trust's sole beneficiary to be a separate  
15 trustee as that term is defined in section 7703b.

16           Sec. 7110. (1) A charitable organization expressly named in  
17 the terms of a trust to receive distributions under the terms of a  
18 charitable trust has the rights of a qualified trust beneficiary  
19 under this article if 1 or more of the following are applicable to  
20 the charitable organization on the date the charitable  
21 organization's qualification is being determined:

22           (a) The charitable organization is a distributee or  
23 permissible distributee of trust income or principal.

24           (b) The charitable organization would be a distributee or  
25 permissible distributee of trust income or principal on the  
26 termination of the interests of other distributees or permissible  
27 distributees then receiving or eligible to receive distributions.

28           (c) The charitable organization would be a distributee or  
29 permissible distributee of trust income or principal if the trust

1 terminated on that date.

2 (2) A person appointed to enforce a trust created for the care  
3 of an animal **under section 7408** or another noncharitable ~~purpose as~~  
4 ~~provided in section 2722~~ **trust under section 7409** has the rights of  
5 a qualified trust beneficiary under this article.

6 **(3) During the nondisclosure period of a trust described in**  
7 **section 7409a, a person granted a nondisclosure correlative right**  
8 **or protection power over the trust has the rights of a qualified**  
9 **trust beneficiary under this article.**

10 **(4)** ~~(3)~~The attorney general of this state has the following  
11 rights with respect to a charitable trust having its principal  
12 place of administration in this state:

13 (a) The rights provided in the supervision of trustees for  
14 charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

15 (b) The right to notice of any judicial proceeding and any  
16 nonjudicial settlement agreement under section 7111.

17 Sec. 7302. **(1) ~~The~~To the extent there is no conflict of**  
18 **interest between the holder of a power of appointment and the**  
19 **person represented with respect to a particular question or**  
20 **dispute, the** holder of a ~~power of revocation or amendment or a~~  
21 ~~presently exercisable or testamentary general or special~~ power of  
22 appointment, **including a power of appointment in the form of a**  
23 **power of amendment or revocation,** may represent and bind a person  
24 ~~whose~~ **to the extent the person's** interest, as a permissible  
25 appointee, taker in default, or otherwise, is subject to the power.  
26 For the purpose, however, of granting consent or approval to  
27 modification or termination of a trust or to deviation from its  
28 terms, including consent or approval to a settlement agreement  
29 described in section 7111, only the holder of a presently

1 exercisable or testamentary general power of appointment may  
2 represent and bind such a person.

3 (2) For purposes of subsection (1), both of the following  
4 apply:

5 (a) There is no conflict of interest between the holder of a  
6 nonfiduciary power of appointment and a person whose interest is  
7 subject to the power to the extent the subject interest is liable  
8 to be extinguished by an exercise of the power.

9 (b) If a power of appointment is subject to a condition  
10 precedent other than the death of the holder in the case of a  
11 testamentary power, no interest is subject to the power until the  
12 condition precedent is satisfied.

13 (3) As used in this section, "nonfiduciary" means, with  
14 respect to a power of appointment, that the power is not held in a  
15 fiduciary capacity.

16 Sec. 7402. (1) A trust is created only if all of the following  
17 apply:

18 (a) The settlor has capacity to create a trust.

19 (b) The settlor indicates an intention to create the trust.

20 (c) The trust has a definite beneficiary or is either of the  
21 following:

22 (i) A charitable trust.

23 (ii) A trust for a noncharitable purpose **under section 7409** or  
24 **a trust** for the care of an animal ~~as provided in section~~  
25 ~~2722~~ **under section 7408**.

26 (d) The trustee has duties to perform.

27 (e) The same person is not the sole trustee and sole  
28 beneficiary.

29 (2) A trust beneficiary is definite if the trust beneficiary

1 can be ascertained now or in the future, subject to any applicable  
2 rule against perpetuities.

3 (3) A power in a trustee to select a trust beneficiary from an  
4 indefinite class is valid only in a charitable trust.

5 **Sec. 7408. (1) A trust may be created to provide for the care**  
6 **of a designated domestic pet or animal alive during the settlor's**  
7 **lifetime. A trust created under this subsection terminates on the**  
8 **death of the animal or, if the trust was created to provide for the**  
9 **care of more than 1 domestic or pet animal alive during the**  
10 **settlor's lifetime, on the death of the last surviving animal.**

11 (2) A trust authorized under this section may be enforced by a  
12 person appointed in the terms of the trust or, if there is not a  
13 person appointed in the terms of the trust, by a person appointed  
14 by the court. A person that has an interest in the welfare of an  
15 animal for which the trust is created may request the court to  
16 appoint a person to enforce the trust or to remove a person  
17 appointed in the terms of the trust.

18 (3) Property of a trust authorized by this section may be  
19 applied only to its intended use, except to the extent the court  
20 determines that the value of the trust property exceeds the amount  
21 required for the intended use. Except as otherwise provided in the  
22 terms of the trust, property not required for the intended use must  
23 be distributed to the settlor, if then living, or otherwise to the  
24 settlor's successors in interest.

25 **Sec. 7409. Except as otherwise provided in section 7408 or any**  
26 **other law, the following rules apply:**

27 (a) A trust may be created for a noncharitable purpose without  
28 a definite or definitely ascertainable beneficiary or for a  
29 noncharitable but otherwise valid purpose to be selected by the

1 trustee. A trust created under this section may be performed by the  
2 trustee according to the terms of the trust for not more than 25  
3 years whether or not the terms of the trust contemplate a longer  
4 duration.

5 (b) A trust authorized by this section may be enforced by a  
6 person appointed in the terms of the trust or, if there is not a  
7 person appointed in the terms of the trust, by a person appointed  
8 by the court.

9 (c) Property of a trust authorized by this section may be  
10 applied only to its intended use, except to the extent the court  
11 determines that the value of the trust property exceeds the amount  
12 required for the intended use. Except as otherwise provided in the  
13 terms of the trust, property not required for the intended use must  
14 be distributed to the settlor, if then living, or otherwise to the  
15 settlor's successors in interest.

16 Sec. 7409a. (1) If the terms of a trust other than a  
17 charitable trust are embodied in a trust instrument that clearly  
18 express the settlor's intent that 1 or more items of prime  
19 disclosure information should be withheld, generally or in  
20 specified circumstances, from 1 or more of the trust beneficiaries,  
21 both of the following apply:

22 (a) During the nondisclosure period all of the following  
23 apply:

24 (i) To the extent necessary to effectuate the settlor's  
25 expressed intent, the trustee does not have the duty under section  
26 7814(2) (a) to (c) to provide beneficiaries with the terms of the  
27 trust and information about the trust's property and to notify  
28 qualified trust beneficiaries of the existence of the trust and the  
29 identity of the trustee.



1           (ii) The trustee may administer the trust in accordance with  
2 the settlor's expressed intent regarding nondisclosure of primary  
3 disclosure information to the extent made practicable by the terms  
4 of the trust given the circumstances of the beneficiaries and any  
5 reporting obligations imposed on the trustee by law other than this  
6 act.

7           (iii) If the trust instrument grants a nondisclosure correlative  
8 right, the trustee has a duty to administer the trust in accordance  
9 with the settlor's expressed intent regarding nondisclosure of  
10 primary disclosure information, but only to the extent made  
11 practicable by the terms of the trust given the circumstances of  
12 the beneficiaries and any reporting obligations imposed on the  
13 trustee by law other than this act.

14           (iv) Any purported appointment or distribution of assets of the  
15 instant trust to another undisclosed trust is ineffective to the  
16 extent it could cause the appointed or distributed assets to be  
17 administered continuously under the authority of this section for a  
18 period ending after the date on which the instant trust's maximum  
19 nondisclosure period ends.

20           (b) The trustee or any holder of either a nondisclosure  
21 correlative right or a protection power is not liable to any trust  
22 beneficiary because of the trustee's failure to follow the terms of  
23 the trust prescribing nondisclosure of prime disclosure  
24 information. The trustee's duty, if any, to follow the terms of the  
25 trust prescribing nondisclosure of prime disclosure information  
26 during the trust's nondisclosure period is owed solely to the  
27 holders, if any, of nondisclosure correlative rights, and the sole  
28 remedy of a nondisclosure correlative right holder for the  
29 trustee's breach of that duty is removal.

1           (2) If the trust instrument grants either a nondisclosure  
2 correlative right or a protection power, all of the following  
3 apply:

4           (a) On the reasonable request of a nondisclosure correlative  
5 right holder or protection power holder at any time during the  
6 trust's nondisclosure period, the trustee shall promptly furnish to  
7 the right or power holder a copy of the terms of the trust that  
8 describe or affect the holder's right or power.

9           (b) Within 63 days after accepting trusteeship of an  
10 undisclosed trust, the trustee shall notify all nondisclosure  
11 correlative right holders and protection power holders of the  
12 acceptance, of the court in which the trust is registered, if it is  
13 registered, and of the trustee's name, address, and telephone  
14 number.

15           (c) Within 63 days after the date the trustee acquires  
16 knowledge of the creation of an undisclosed trust of which the  
17 trustee is trustee or the date the trustee acquires knowledge that  
18 a formerly revocable trust of which the trustee is trustee has, by  
19 becoming irrevocable, whether by the death of the settlor or  
20 otherwise, become an undisclosed trust, the trustee shall notify  
21 all nondisclosure correlative right holders and protection power  
22 holders of the trust's existence, of the identity of the settlor or  
23 settlors, of the court in which the trust is registered, if it is  
24 registered, and of the right to request a copy of the terms of the  
25 trust that describe or affect the power holders' rights or powers.

26           (3) On the date on which the nondisclosure period ends, the  
27 trust ceases to be an undisclosed trust and to the extent terms of  
28 the trust are inconsistent with the duty under section 7814(2) (a)  
29 to (c) to provide beneficiaries with the terms of the trust and

1 information about the trust's property and to notify qualified  
2 trust beneficiaries of the existence of the trust and the identity  
3 of the trustee, those terms cease to be effective.

4 (4) To the extent the trustee has not already provided the  
5 notice of the trust required under section 7814(2) by the end of  
6 the trust's nondisclosure period, the trustee is deemed for that  
7 purpose to have accepted the trust and to have acquired knowledge  
8 of the trust's creation on the date on which the nondisclosure  
9 period ends, and the identities of the qualified trust  
10 beneficiaries are determined for that purpose as of the time  
11 immediately preceding the end of the nondisclosure period.

12 (5) As used in this section:

13 (a) "Maximum nondisclosure period" means a period of 25 years  
14 from the later of the first date on which property becomes subject  
15 to the terms of the trust or the date on which the trust ceases to  
16 be revocable by the settlor.

17 (b) "Nondisclosure correlative right" means a right granted by  
18 the terms of a trust that allows the right holder to remove a  
19 trustee of the trust for the trustee's failure during the trust's  
20 nondisclosure period to follow, to the extent practicable, the  
21 terms of the trust prescribing nondisclosure of prime disclosure  
22 information.

23 (c) "Nondisclosure period" means the shorter of the trust's  
24 maximum nondisclosure period or the period from the beginning of  
25 the maximum nondisclosure period to the trust's termination.

26 (d) "Prime disclosure information" concerning a trust means  
27 the fact of the trust's existence, the identity of the trustee, the  
28 terms of the trust, or the nature or extent of the trust property.

29 (e) "Protection power" means a power granted by the terms of a

1 trust that allows the power holder, acting in a fiduciary capacity,  
 2 to direct the trustee of the trust for the benefit of the trust  
 3 beneficiaries during the trust's nondisclosure period. A protection  
 4 power may authorize the power holder to represent the trust  
 5 beneficiaries in the sense described in section 7301(1) to (2)  
 6 without regard to the application of sections 7302 to 7304.

7 (f) "Undisclosed trust" means a trust administered under this  
 8 section during the nondisclosure period.

9 Sec. 7506. (1) Whether or not the terms of a trust contain a  
 10 spendthrift provision, the following rules apply:

11 (a) During the lifetime of the settlor, the property of a  
 12 revocable trust is subject to claims of the settlor's creditors.

13 (b) After the death of a settlor, and subject to the settlor's  
 14 right to direct the source from which liabilities will be paid, the  
 15 property of a trust that at the settlor's death was revocable by  
 16 the settlor, either alone or in conjunction with another person, is  
 17 subject to expenses, claims, and allowances as provided in section  
 18 7605.

19 (c) With respect to an irrevocable trust, a creditor or  
 20 assignee of the settlor may reach no more than the lesser of the  
 21 following:

22 (i) The claim of the creditor or assignee.

23 (ii) The maximum amount that can be distributed to or for the  
 24 settlor's benefit exclusive of sums to pay the settlor's taxes  
 25 during the settlor's lifetime.

26 (2) If a trust has more than 1 settlor, the amount a creditor  
 27 or assignee of a particular settlor may reach under subsection

28 (1)(c) ~~shall~~**must** not exceed the settlor's interest in the portion  
 29 of the trust attributable to that settlor's contribution.

1           (3) A trust beneficiary is not considered a settlor merely  
2 because of a lapse, waiver, or release of a power of withdrawal  
3 over the trust property.

4           (4) An individual who creates a trust ~~shall~~**is** not be  
5 considered a settlor with regard to the individual's retained  
6 beneficial interest in the trust that follows the termination of  
7 the individual's spouse's prior beneficial interest in the trust if  
8 all of the following apply:

9           ~~(a) The individual creates, or has created, the trust for the~~  
10 ~~benefit of the individual's spouse.~~

11           ~~(b) The trust is treated as qualified terminable interest~~  
12 ~~property under section 2523(f) of the internal revenue code, 26 USC~~  
13 ~~2523.~~

14           **(a) During the lifetime of the individual's spouse, the only**  
15 **distributees or permissible distributees of the trust income or**  
16 **principal are either of the following:**

17           **(i) The individual's spouse.**

18           **(ii) The individual's spouse and either of the following:**

19           **(A) The individual's issue.**

20           **(B) The issue of the individual's spouse.**

21           **(b) ~~(e)~~The individual retains a beneficial interest in the**  
22 **trust income, trust principal, or both, which beneficial interest**  
23 **follows the termination of the individual's spouse's prior**  
24 **beneficial interest in the trust.**

25           **(5) An individual is not considered a settlor of a trust for**  
26 **the benefit of the individual:**

27           **(a) If the settlor is the individual's spouse, regardless of**  
28 **whether or when the individual was the settlor of a trust for the**  
29 **benefit of that spouse.**

1           **(b) To the extent that the property of trust was subject to a**  
2 **general power of appointment in another individual.**

3           Sec. 7604. (1) ~~A~~**Except as provided in subsection (2), a**  
4 person may commence a judicial proceeding to contest the validity  
5 of a trust that was revocable at the settlor's death within the  
6 earlier of the following:

7           (a) Two years after the settlor's death.

8           (b) Six months after the trustee sent the person a notice  
9 informing the person of all of the following:

10           (i) The trust's existence.

11           (ii) The date of the trust instrument.

12           (iii) The date of any amendments known to the trustee.

13           (iv) A copy of relevant portions of the terms of the trust that  
14 describe or affect the person's interest in the trust, if any.

15           (v) The settlor's name.

16           (vi) The trustee's name and address.

17           (vii) The time allowed for commencing a proceeding.

18           **(2) If a trust that was revocable at the settlor's death**  
19 **becomes an undisclosed trust as that term is defined in section**  
20 **7409a, a person from whom information described in section**  
21 **7814(2) (a) to (c) is withheld under section 7409a(1) (a) (i) during**  
22 **the 2-year period following the settlor's death may commence a**  
23 **judicial proceeding to contest the validity of the trust within the**  
24 **earlier of the following:**

25           (a) Two years after the trustee provided the person the  
26 information described in section 7814(2) (a) to (c) that was  
27 withheld under section 7409a(1) (a) (i) from the person during the 2-  
28 year period following the settlor's death.

29           (b) Six months after the trustee sent the person a notice

1 **described in subsection (1) (b) .**

2 (3) ~~(2)~~—Upon the death of the settlor of a trust that was  
3 revocable at the settlor's death, the trustee may proceed to  
4 distribute the trust property in accordance with the terms of the  
5 trust. The trustee is not subject to liability for doing so unless  
6 either of the following applies:

7 (a) The trustee knows of a pending judicial proceeding  
8 contesting the validity of the trust.

9 (b) A potential contestant has notified the trustee in writing  
10 of a possible judicial proceeding to contest the trust and a  
11 judicial proceeding is commenced within 63 days after the  
12 contestant sent the notification.

13 (4) ~~(3)~~—A beneficiary of a trust that is determined to have  
14 been invalid is liable to return any distribution received.

15 Sec. 7820a. (1) If an irrevocable trust includes a  
16 discretionary trust provision, the trustee of the trust may, unless  
17 the terms of the first trust expressly provide otherwise,  
18 distribute by written instrument all or part of the property  
19 subject to that provision to the trustee of a second trust,  
20 ~~provided that~~ **if** both of the following conditions are satisfied:

21 (a) The terms of the second trust do not materially change the  
22 beneficial interests of the beneficiaries of the first trust.

23 (b) If the governing instrument of the first trust expressly  
24 indicates an intention that the first trust qualify for a tax  
25 benefit or the terms of the first trust are clearly designed to  
26 qualify the first trust for a tax benefit, and if the first trust  
27 would qualify for the intended tax benefit, the governing  
28 instrument of the second trust is not inconsistent with the tax  
29 planning that informed the first trust.

1           (2) A distribution of property to the trustee of a second  
2 trust under subsection (1) ~~shall~~**must** not result in any of the  
3 following:

4           (a) An increase in or a change in the method of determining  
5 the compensation of a trustee, unless the increase or change has  
6 been consented to in writing by all beneficiaries entitled to  
7 receive reports regarding the first trust.

8           (b) A charge of a fee or commission on the transfer of assets  
9 from the first trust to the second trust, unless the fee or  
10 commission has been consented to in writing by all beneficiaries  
11 entitled to receive reports regarding the first trust.

12           (c) A reduction in the standard of care applicable to the  
13 trustee's actions or an expansion of exoneration of the trustee.

14           (d) A diminution in the authority of a person ~~who~~**that** has a  
15 power exercisable in a fiduciary capacity to direct or remove the  
16 trustee.

17           (3) For purposes of this section, all of the following apply:

18           (a) In determining whether a trust is irrevocable, a settlor's  
19 lack of capacity to exercise a power of revocation negates the  
20 power unless an agent of the settlor under a durable power of  
21 attorney, a conservator of the settlor, or a plenary guardian of  
22 the settlor is serving and the agent, conservator, or guardian is  
23 authorized to exercise the power of revocation.

24           (b) ~~An~~**If an** increase in the maximum period during which the  
25 vesting of a future interest may be ~~suspended or postponed~~ **under is**  
26 **due solely to a change of** applicable law **governing remoteness of**  
27 **vesting, the increase** does not constitute a material change in the  
28 interest of a beneficiary.

29           (c) An increase in compensation arising solely because a



1 **change of applicable law governing remoteness of vesting makes** the  
 2 duration of the second trust ~~is~~ longer than the duration of the  
 3 first trust does not constitute an increase in or a change in the  
 4 method of determining the compensation of the trustee.

5 (4) The distribution power described in subsection (1) ~~shall~~  
 6 **must** not be exercised over any portion of the first trust as to  
 7 which the exercising trustee is the settlor, unless the exercising  
 8 trustee was acting in a fiduciary capacity when ~~he or she~~ **the**  
 9 **trustee** created the first trust.

10 (5) The trustee of the second trust may be the trustee of the  
 11 first trust, the second trust may be a trust under the governing  
 12 instrument of the first trust or another governing instrument, the  
 13 governing instrument may be created by the trustee of the first  
 14 trust, and the governing instrument may be the instrument that  
 15 exercises the power described in subsection (1).

16 (6) The second trust instrument may provide 1 or both of the  
 17 following:

18 (a) That assets of the first trust discovered after exercise  
 19 of the power described in subsection (1) ~~shall~~ **will** be property of  
 20 the first trust if that trust is to continue in existence after  
 21 exercise of the power, or that assets of the first trust discovered  
 22 after exercise of the power ~~shall~~ **will** be property of the second  
 23 trust if the first trust terminates ~~upon~~ **on** exercise of the power.

24 (b) For indemnification of the trustee of the first trust,  
 25 except as limited by section 7908.

26 (7) A trustee of the first trust may exercise the power  
 27 described in subsection (1) without the consent of that trust's  
 28 settlor, any beneficiary, or a court. However, the trustee shall  
 29 give written notice of an intended exercise of the power to the

1 settlors of the first trust, if living, and qualified trust  
2 beneficiaries ~~no~~**not** later than 63 days before exercise of the  
3 power. The notice required by this section ~~shall~~**must** include a  
4 copy of the proposed instrument of exercise. If the living settlors  
5 and qualified trust beneficiaries waive the 63-day notice period in  
6 writing, a distribution under subsection (1) may be made before  
7 expiration of the notice period.

8 (8) The period during which the vesting of a future interest  
9 may be suspended or postponed by the exercise of the power  
10 described in subsection (1) is determined under the powers of  
11 appointment act of 1967, 1967 PA 224, MCL 556.111 to 556.133,  
12 treating the power under subsection (1) as a power of appointment  
13 for purposes of this subsection.

14 (9) This section ~~shall~~**does** not abridge the right of a trustee  
15 ~~who~~**that** has a power to distribute trust property in further trust  
16 under the terms of a trust instrument, any other statute, or the  
17 common law. ~~The provisions of this~~**This** section ~~shall~~**does** not  
18 abridge any right of a trustee ~~who~~**that** has a power to amend or  
19 terminate a trust.

20 (10) As used in this section:

21 (a) "First trust" means an irrevocable trust that has a  
22 discretionary trust provision that is exercised as described in  
23 subsection (1).

24 (b) "Tax benefit" means a federal or state tax deduction,  
25 exemption, exclusion, or other particular tax attribute. ~~The term~~  
26 ~~tax benefit~~**Tax benefit** does not include grantor trust status. A  
27 trust has grantor trust status to the extent that the assets of the  
28 trust are treated, for federal income tax purposes, as owned by the  
29 grantor or another person under sections 671 to 679 of the internal

1 revenue code **of 1986**, 26 USC 671 to 679.

2 Enacting section 1. Sections 2722 and 7104 of the estates and  
3 protected individuals code, 1998 PA 386, MCL 700.2722 and 700.7104,  
4 are repealed.