

**SUBSTITUTE FOR  
SENATE BILL NO. 713**

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending sections 1108, 1301, 1403, 5101, 5104, 5305, 5306,  
5306a, 5310, and 5314 (MCL 700.1108, 700.1301, 700.1403, 700.5101,  
700.5104, 700.5305, 700.5306, 700.5306a, 700.5310, and 700.5314),  
section 1403 as amended by 2009 PA 46, sections 5101 and 5310 as  
amended by 2000 PA 54, sections 5305 and 5314 as amended by 2017 PA  
155, section 5306 as amended by 2004 PA 532, and section 5306a as  
added by 2012 PA 173, and by adding part 6 to article V.

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

1       Sec. 1108. As used in this act:

2       (A) "VULNERABLE" MEANS THAT TERM AS DEFINED IN SECTION 11 OF  
3       THE SOCIAL WELFARE ACT, 1939 PA 280, MCL 400.11.

4       (B) "VULNERABLE ADULT" MEANS AN INDIVIDUAL WHO IS 18 YEARS OF

1 AGE OR OLDER, INCLUDING A WARD, AND WHO IS VULNERABLE.

2 (C) ~~(a)~~ "Ward" means an individual for whom a guardian is  
3 appointed.

4 (D) ~~(b)~~ "Will" includes, but is not limited to, a codicil and  
5 a testamentary instrument that appoints a personal representative,  
6 revokes or revises another will, nominates a guardian, or expressly  
7 excludes or limits the right of an individual or class to succeed  
8 to the decedent's property that is passing by intestate succession.

9 Sec. 1301. Except as otherwise provided in this act, this act  
10 applies to all of the following:

11 (a) The affairs and estate of a decedent, missing individual,  
12 or protected individual who is domiciled in this state.

13 (b) A nonresident's property that is located in this state or  
14 property coming into the control of a fiduciary that is subject to  
15 the laws of this state.

16 (c) An incapacitated individual, **VULNERABLE ADULT**, or minor in  
17 this state.

18 (d) Survivorship and related accounts in this state.

19 (e) A trust subject to administration in this state.

20 Sec. 1403. In a formal proceeding that involves an estate of a  
21 decedent, minor, protected individual, or incapacitated individual  
22 or in a judicially supervised settlement relating to such matters,  
23 the following apply:

24 (a) An interest to be affected ~~shall~~ **MUST** be described in  
25 pleadings that give reasonable information to owners by name or  
26 class, by reference to the instrument that creates the interests,  
27 or in another appropriate manner.

1 (b) A person is bound by an order binding others in each of  
2 the following cases:

3 (i) An order that binds the holder of a power of revocation or  
4 amendment or a presently exercisable or testamentary general or  
5 special power of appointment binds another person to the extent the  
6 person's interest, as a permissible appointee, taker in default, or  
7 otherwise, is subject to the power.

8 (ii) To the extent there is no conflict of interest between  
9 the persons represented, as follows:

10 (A) An order that binds a conservator, plenary guardian, or  
11 partial guardian binds the estate that the conservator, plenary  
12 guardian, or partial guardian controls.

13 (B) An order that binds an agent under a durable power of  
14 attorney having authority to act binds the principal if a  
15 conservator, plenary guardian, or partial guardian has not been  
16 appointed.

17 (C) An order that binds a guardian having authority to act  
18 with respect to the matter binds the ward if a conservator of the  
19 ward's estate has not been appointed and no agent under a durable  
20 power of attorney has authority to act.

21 (D) An order that binds a trustee binds beneficiaries of the  
22 trust.

23 (E) An order that binds a personal representative binds a  
24 person interested in the undistributed assets of a decedent's  
25 estate in an action or proceeding by or against the estate.

26 (F) An order that binds a parent who represents his or her  
27 minor or unborn child binds that minor or unborn child if a

1 conservator or plenary guardian has not been appointed.

2 (iii) A minor, incapacitated, or unborn individual or a person  
3 whose identity or location is unknown and not reasonably  
4 ascertainable and who is not otherwise represented is bound by an  
5 order that binds another party that has a substantially identical  
6 interest in the proceeding, but only to the extent there is no  
7 conflict of interest between the representation and the person  
8 represented.

9 (c) Notice is required as follows:

10 (i) Notice as prescribed by section 1401 shall be given to  
11 every interested person or to one who can bind an interested person  
12 as described in subdivision (b) (i) or (ii). Notice may be given  
13 both to a person and to another who may bind the person.

14 (ii) Notice is given to an unborn or unascertained person, who  
15 is not represented under subdivision (b) (i) or (ii), by giving  
16 notice to all known persons whose interests in the proceedings are  
17 substantially identical to those of the unborn or unascertained  
18 person.

19 (d) At any point in a proceeding, the court may appoint a  
20 guardian ad litem to represent the interest of a minor, **A**  
21 **VULNERABLE ADULT**, an incapacitated individual, an unborn or  
22 unascertained person, or a person whose identity or address is  
23 unknown, if the court determines that representation of the  
24 interest otherwise would be inadequate. If not precluded by a  
25 conflict of interest, a guardian ad litem may be appointed to  
26 represent several persons or interests. The court shall set out the  
27 reasons for appointing a guardian ad litem as a part of the record

1 of the proceeding. If he or she accepts the appointment, the  
2 guardian ad litem shall report ~~of~~ his or her investigation and  
3 recommendation concerning the matters for which he or she is  
4 appointed in writing or recorded testimony. In making  
5 recommendations, a guardian ad litem may consider the general  
6 benefit accruing to living members of the individual's family.  
7 After the attorney general files an appearance as required by law  
8 in an estate proceeding on behalf of an unknown or unascertained  
9 heir at law, the attorney general represents the interest of the  
10 heir at law, and the court shall not appoint a guardian ad litem.  
11 If a guardian ad litem was previously appointed for the interest,  
12 the appointment of the guardian ad litem terminates.

13 Sec. 5101. As used in ~~parts 1 to 4 of~~ this article:

14 (a) "Best interests of the minor" means the sum total of the  
15 following factors to be considered, evaluated, and determined by  
16 the court:

17 (i) The love, affection, and other emotional ties existing  
18 between the parties involved and the child.

19 (ii) The capacity and disposition of the parties involved to  
20 give the child love, affection, and guidance and to continue  
21 educating and raising the child in the child's religion or creed,  
22 if any.

23 (iii) The capacity and disposition of the parties involved to  
24 provide the child with food, clothing, medical care or other  
25 remedial care recognized and permitted under the laws of this state  
26 in place of medical care, and other material needs.

27 (iv) The length of time the child has lived in a stable,

1 satisfactory environment, and the desirability of maintaining  
2 continuity.

3 (v) The permanence, as a family unit, of the existing or  
4 proposed custodial home.

5 (vi) The moral fitness of the parties involved.

6 (vii) The mental and physical health of the parties involved.

7 (viii) The child's home, school, and community record.

8 (ix) The child's reasonable preference, if the court considers  
9 the child to be of sufficient age to express a preference.

10 (x) The party's willingness and ability to facilitate and  
11 encourage a close and continuing parent-child relationship between  
12 the child and his or her parent or parents.

13 (xi) Domestic violence regardless of whether the violence is  
14 directed against or witnessed by the child.

15 (xii) Any other factor considered by the court to be relevant  
16 to a particular dispute regarding termination of a guardianship,  
17 removal of a guardian, or parenting time.

18 (b) "Claim" includes, in respect to a protected individual, a  
19 liability of the protected individual, whether arising in contract,  
20 tort, or otherwise, and a liability of the estate that arises at or  
21 after the appointment of a conservator, including expenses of  
22 administration.

23 (c) "Conservator" includes, but is not limited to, a limited  
24 conservator described in section 5419(1).

25 **(D) "EXISTING RELATIONSHIP" MEANS EITHER OF THE FOLLOWING:**

26 **(i) CONTACT IN PERSON, BY TELEPHONE, OR BY MAIL WITH A PERSON**  
27 **NOT LESS THAN 4 TIMES WITHIN THE YEAR BEFORE THE FILING OF A**

1 PETITION UNDER SECTION 5603 REQUESTING COMMUNICATION OR VISITATION,  
2 OR BOTH.

3 (ii) SUBSTANTIAL CONTACT THAT THE COURT DETERMINES CREATES AN  
4 EXISTING RELATIONSHIP.

5 (E) "FAMILY MEMBER" MEANS ANY OF THE FOLLOWING:

6 (i) SPOUSE.

7 (ii) PARENT.

8 (iii) CHILD.

9 (iv) STEPCHILD.

10 (v) GRANDCHILD.

11 (vi) SIBLING.

12 (vii) HALF-SIBLING.

13 (F) ~~(d)~~—"Visitor" means an individual appointed in a  
14 guardianship or protective proceeding who is trained in law,  
15 nursing, or social work, is an officer, employee, or special  
16 appointee of the court, and has no personal interest in the  
17 proceeding.

18 Sec. 5104. (1) An interested person who desires to be notified  
19 before an order is made in a guardianship proceeding, including a  
20 proceeding subsequent to the appointment of a guardian under  
21 section 5312, ~~or~~ in a protective proceeding under section 5401, **OR**  
22 **IN A PROTECTIVE ARRANGEMENT CONCERNING A VULNERABLE ADULT UNDER**  
23 **SECTION 5603**, must file a request for notice with the register of  
24 the court in which the proceeding is pending and with the attorney  
25 of record of the guardian or conservator or, if none, with the  
26 guardian or conservator, if any. A request is not effective unless  
27 it contains a statement showing the interest of the person making

1 it and the address of that person or an attorney to whom notice is  
2 to be given. The request is effective only as to a proceeding that  
3 occurs after the filing. If a guardianship or protective proceeding  
4 is not pending at the time a person files a request for notice as  
5 authorized by this subsection, the person shall pay a fee for  
6 filing the request, which fee ~~shall~~**MUST** be in the same amount as,  
7 but is separate from, the fee required to commence ~~such a~~**THE**  
8 proceeding.

9 (2) A governmental agency paying benefits to the individual to  
10 be protected or before whom an application for benefits is pending  
11 is an interested person in a protective proceeding.

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

15 (a) Personally visiting the individual.

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

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

21 (i) The right to contest the petition.

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

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

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

27 (iii) The right to object to a particular person being



1 appointed guardian.

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

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

4 (vi) The right to have legal counsel appointed for the  
5 individual if he or she is unable to afford legal counsel.

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

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

17 (f) Informing the individual of the name of each person known  
18 to be seeking appointment as guardian.

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

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

24 (i) Whether there are 1 or more appropriate alternatives to  
25 the appointment of a full guardian or whether 1 or more actions  
26 should be taken in addition to the appointment of a guardian.

27 Before informing the court of his or her determination under this

1 subparagraph, the guardian ad litem shall consider the  
2 appropriateness of at least each of the following as alternatives  
3 or additional actions:

4 (A) Appointment of a limited guardian, including the specific  
5 powers and ~~limitation~~**LIMITATIONS** on those powers **THAT** the guardian  
6 ad litem believes **TO BE** appropriate.

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

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

16 (ii) Whether a disagreement or dispute related to the  
17 guardianship petition might be resolved through court ordered  
18 mediation.

19 (iii) Whether the individual wishes to be present at the  
20 hearing.

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

22 (v) Whether the individual wishes limits placed on the  
23 guardian's powers.

24 (vi) Whether the individual objects to having a do-not-  
25 resuscitate order executed on his or her behalf.

26 (vii) Whether the individual objects to having a physician  
27 orders for scope of treatment form executed on his or her behalf.

1 (viii) Whether the individual objects to a particular person  
2 being appointed guardian.

3 (ix) WITH WHOM THE INDIVIDUAL WISHES TO COMMUNICATE OR VISIT,  
4 OR BOTH, IF THE INDIVIDUAL IS ABLE TO COMMUNICATE HIS OR HER  
5 WISHES. IF THE INDIVIDUAL IS NOT ABLE TO COMMUNICATE HIS OR HER  
6 WISHES UNDER THIS SUBPARAGRAPH, EACH PERSON WHO WISHES TO  
7 COMMUNICATE OR VISIT, OR BOTH, WITH THE INDIVIDUAL.

8 (x) WHETHER COMMUNICATION OR VISITATION, OR BOTH, BETWEEN THE  
9 PERSON DESCRIBED IN SUBPARAGRAPH (ix) IS LIKELY TO PLACE THE  
10 INDIVIDUAL AT SERIOUS RISK OF PHYSICAL, PSYCHOLOGICAL, OR FINANCIAL  
11 HARM, AND WHETHER SOME FORM OF RESTRICTION OR SUPERVISION ON  
12 COMMUNICATION OR VISITATION, OR BOTH, IS APPROPRIATE.

13 (2) The court shall not order compensation of the guardian ad  
14 litem unless the guardian ad litem states on the record or in the  
15 guardian ad litem's written report that he or she has complied with  
16 subsection (1).

17 (3) If the individual alleged to be incapacitated wishes to  
18 contest the petition, to have limits placed on the guardian's  
19 powers, or to object to a particular person being appointed  
20 guardian and if legal counsel has not been secured, the court shall  
21 appoint legal counsel to represent the individual alleged to be  
22 incapacitated. If the individual alleged to be incapacitated is  
23 indigent, this state shall bear the expense of legal counsel.

24 (4) If the individual alleged to be incapacitated requests  
25 legal counsel or the guardian ad litem determines it is in the  
26 individual's best interest to have legal counsel, and if legal  
27 counsel has not been secured, the court shall appoint legal

1 counsel. If the individual alleged to be incapacitated is indigent,  
2 this state shall bear the expense of legal counsel.

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

6 Sec. 5306. (1) The court may appoint a guardian if the court  
7 finds by clear and convincing evidence both that the individual for  
8 whom a guardian is sought is an incapacitated individual and that  
9 the appointment is necessary as a means of providing continuing  
10 care and supervision of the incapacitated individual, with each  
11 finding supported separately on the record. Alternately, the court  
12 may dismiss the proceeding or enter another appropriate order.

13 (2) The court shall grant a guardian only those powers and  
14 only for that period of time as is necessary to provide for the  
15 demonstrated need of the incapacitated individual. The court shall  
16 design the guardianship to encourage the development of maximum  
17 self-reliance and independence in the individual **AND PROMOTE THE**  
18 **INDIVIDUAL'S SOCIAL WELL-BEING. IN DESIGNING THE GUARDIANSHIP, THE**  
19 **COURT MAY CONSIDER MEASURES THAT WILL CONTINUE THE INDIVIDUAL'S**  
20 **RELATIONSHIPS WITH PERSONS WITH WHOM THE INDIVIDUAL HAS AN EXISTING**  
21 **RELATIONSHIP.** If the court is aware that an individual has executed  
22 a patient advocate designation under section 5506, the court shall  
23 not grant a guardian any of the same powers that are held by the  
24 patient advocate. A court order establishing a guardianship ~~shall~~  
25 **MUST** specify any limitations on the guardian's powers and any time  
26 limits on the guardianship.

27 (3) If the court finds by clear and convincing evidence that

1 an individual is incapacitated and lacks the capacity to do some,  
2 but not all, of the tasks necessary to care for himself or herself,  
3 the court may appoint a limited guardian to provide guardianship  
4 services to the individual, but the court shall not appoint a full  
5 guardian.

6 (4) If the court finds by clear and convincing evidence that  
7 the individual is incapacitated and is totally without capacity to  
8 care for himself or herself, the court shall specify that finding  
9 of fact in an order and may appoint a full guardian.

10 (5) If an individual executed a patient advocate designation  
11 under section 5506 before the time the court determines that he or  
12 she became a legally incapacitated individual, a guardian does not  
13 have and shall not exercise the power or duty of making medical or  
14 mental health treatment decisions that the patient advocate is  
15 designated to make. If, however, a petition for guardianship or for  
16 modification under section 5310 alleges and the court finds that  
17 the patient advocate designation was not executed in compliance  
18 with section 5506, that the patient advocate is not complying with  
19 the terms of the designation or with the applicable provisions of  
20 sections 5506 to 5515, or that the patient advocate is not acting  
21 consistent with the ward's best interests, the court may modify the  
22 guardianship's terms to grant those powers to the guardian.

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

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

1 (b) To have the guardianship proceeding commenced and  
2 conducted in the place where the individual resides or is present  
3 or, if the individual is admitted to an institution by a court, in  
4 the county in which the court is located, as provided in section  
5 5302.

6 (c) To petition on his or her own behalf for the appointment  
7 of a guardian, as provided in section 5303.

8 (d) To have legal counsel of his or her own choice represent  
9 him or her on the petition to appoint a guardian, as provided in  
10 sections 5303, 5304, and 5305.

11 (e) If he or she is not represented by legal counsel, to the  
12 appointment of a guardian ad litem to represent the individual on  
13 the petition to appoint a guardian, as provided in section 5303.

14 (f) To an independent evaluation of his or her capacity by a  
15 physician or mental health professional, at public expense if he or  
16 she is indigent, as provided in section 5304.

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

21 (h) To see or hear all the evidence presented in the hearing  
22 on the petition to appoint a guardian, as provided in section 5304.

23 (i) To present evidence and cross-examine witnesses in the  
24 hearing on the petition to appoint a guardian, as provided in  
25 section 5304.

26 (j) To a trial by jury on the petition to appoint a guardian,  
27 as provided in section 5304.

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

3 (l) If a guardian ad litem is appointed, to be personally  
4 visited by the guardian ad litem, as provided in section 5305.

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

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

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

18 (p) To be informed of the name of each person known to be  
19 seeking appointment as guardian, including, if a guardian ad litem  
20 is appointed, to be informed of the names by the guardian ad litem  
21 as provided in section 5305.

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

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

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

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

6           (u) To periodic review of the guardianship by the court,  
7 including the right to a hearing and the appointment of an attorney  
8 if issues arise upon the review of the guardianship, as provided in  
9 section 5309.

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

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

16          (x) To the same rights on a petition for modification or  
17 termination of the guardianship including the appointment of a  
18 visitor as apply to a petition for appointment of a guardian, as  
19 provided in section 5310.

20          (y) To personal notice of a petition for appointment or  
21 removal of a guardian, as provided in section 5311.

22          (z) To written notice of the nature, purpose, and legal  
23 effects of the appointment of a guardian, as provided in section  
24 5311.

25          (aa) To choose the person who will serve as guardian, if the  
26 chosen person is suitable and willing to serve, as provided in  
27 section 5313.



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

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

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

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

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

15 (GG) IF THE INDIVIDUAL IS ABLE TO EXPRESS HIS OR HER  
16 PREFERENCE, TO VISIT OR COMMUNICATE, OR BOTH, WITH PERSONS OF HIS  
17 OR HER CHOICE. IF THE INDIVIDUAL IS UNABLE TO EXPRESS HIS OR HER  
18 PREFERENCES, TO COMMUNICATE OR VISIT, OR BOTH, WITH PERSONS WITH  
19 WHOM THE INDIVIDUAL HAS EXISTING RELATIONSHIPS.

20 (2) A guardian ad litem shall inform the ward in writing of  
21 his or her rights enumerated in this section. The state court  
22 administrative office and the ~~office of services to the aging~~ **AND**  
23 **ADULT SERVICES AGENCY** created in section 5 of the older  
24 Michiganians act, 1981 PA 180, MCL 400.585, shall promulgate a form  
25 to be used to give the written notice under this section, which  
26 ~~shall~~ **MUST** include space for the court to include information on  
27 how to contact the court or other relevant personnel with respect

1 to the rights enumerated in this section.

2       Sec. 5310. (1) On petition of the guardian and subject to the  
3 filing and approval of a report prepared as required by section  
4 5314, the court shall accept the guardian's resignation and make  
5 any other order that is appropriate.

6       (2) The ward or a person interested in the ward's welfare may  
7 petition **THE COURT** for an order removing the guardian, appointing a  
8 successor guardian, modifying the guardianship's terms, or  
9 terminating the guardianship. A request for this order may be made  
10 by informal letter to the court or judge. A person who knowingly  
11 interferes with the transmission of this kind of request to the  
12 court or judge is subject to a finding of contempt of court. **THE**  
13 **COURT MAY REMOVE THE GUARDIAN, APPOINT A SUCCESSOR GUARDIAN, MODIFY**  
14 **THE GUARDIANSHIP'S TERMS, OR TERMINATE THE GUARDIANSHIP UNDER THIS**  
15 **SUBSECTION IF THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE**  
16 **ANY OF THE FOLLOWING:**

17       **(A) THE GUARDIAN FAILED TO IMPLEMENT THE COURT'S DESIGN OF THE**  
18 **GUARDIANSHIP AS DESCRIBED IN SECTION 5306(2) .**

19       **(B) THE GUARDIAN FAILED TO ENFORCE THE WARD'S RIGHTS AS**  
20 **DESCRIBED IN SECTION 5306A.**

21       **(C) THE GUARDIAN FAILED TO SATISFY THE GUARDIAN'S DUTIES UNDER**  
22 **SECTION 5314.**

23       **(D) ANY OTHER GROUND THAT DEMONSTRATES THAT THE GUARDIAN IS NO**  
24 **LONGER SUITABLE TO SERVE.**

25       (3) Except as otherwise provided in the order finding  
26 incapacity, ~~upon~~**ON** receiving a petition or request under this  
27 section, the court shall set a date for a hearing to be held within

1 28 days after the receipt of the petition or request. An order  
2 finding incapacity may specify a minimum period, not exceeding 182  
3 days, during which a petition or request for a finding that a ward  
4 is no longer an incapacitated individual, or for an order removing  
5 the guardian, modifying the guardianship's terms, or terminating  
6 the guardianship, ~~shall~~**MUST** not be filed without special leave of  
7 the court.

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

15 (5) **A PERSON INTERESTED IN THE WELFARE OF THE WARD MAY**  
16 **PETITION THE COURT FOR A FINDING THAT THE WARD IS A VULNERABLE**  
17 **ADULT AND FOR AN ORDER OF VISITATION OR COMMUNICATION, OR BOTH,**  
18 **WITH THE WARD UNDER SECTION 5603. A PERSON INTERESTED IN THE**  
19 **WELFARE OF THE WARD MAY ALSO PETITION THE COURT FOR AN ORDER THAT**  
20 **REQUIRES THE GUARDIAN TO NOTIFY THE PETITIONER IN WRITING WITHIN 14**  
21 **DAYS AFTER EITHER OF THE FOLLOWING EVENTS:**

22 (A) **A CHANGE OF THE WARD'S RESIDENCE.**

23 (B) **THE WARD'S ADMISSION TO A HOSPITAL OR SKILLED NURSING**  
24 **FACILITY. AS USED IN THIS SUBDIVISION, "SKILLED NURSING FACILITY"**  
25 **MEANS THAT TERM AS DEFINED IN SECTION 20109 OF THE PUBLIC HEALTH**  
26 **CODE, 1978 PA 368, MCL 333.20109.**

27 Sec. 5314. If meaningful communication is possible, a legally

1 incapacitated individual's guardian shall consult with the legally  
2 incapacitated individual before making a major decision affecting  
3 the legally incapacitated individual. To the extent a guardian of a  
4 legally incapacitated individual is granted powers by the court  
5 under section 5306, the guardian is responsible for the ward's  
6 care, custody, and control, but is not liable to third persons  
7 because of that responsibility for the ward's acts. In particular  
8 and without qualifying the previous sentences, a guardian has all  
9 of the following powers and duties, to the extent granted by court  
10 order:

11 (a) The custody of the person of the ward and the power to  
12 establish the ward's place of residence in or outside this state.  
13 The guardian shall visit the ward within 3 months after the  
14 guardian's appointment and not less than once within 3 months after  
15 each previous visit. The guardian shall notify, **IN WRITING**, the  
16 court **AND EACH PERSON THE COURT HAS GRANTED COMMUNICATION OR**  
17 **VISITATION, OR BOTH, WITH THE WARD** within 14 days of a change in  
18 the ward's place of residence or a change in the guardian's place  
19 of residence.

20 (b) If entitled to custody of the ward, the duty to make  
21 provision for the ward's care, comfort, ~~and maintenance~~, **AND SOCIAL**  
22 **WELL-BEING, INCLUDING MAKING REASONABLE EFFORTS TO FACILITATE**  
23 **RELATIONSHIPS AND SERVICES FOR THE WARD** and, when appropriate,  
24 arrange for the ward's training and education. The guardian shall  
25 secure services to restore the ward to the best possible state of  
26 mental and physical well-being so that the ward can return to self-  
27 management at the earliest possible time. Without regard to

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

12 (c) The power to give the consent or approval that is  
13 necessary to enable the ward to receive medical or other  
14 professional care, counsel, treatment, or service. The power of a  
15 guardian to execute a do-not-resuscitate order under subdivision  
16 (d) or execute a physician orders for scope of treatment form under  
17 subdivision (f) does not affect or limit the power of a guardian to  
18 consent to a physician's order to withhold resuscitative measures  
19 in a hospital.

20 (d) The power to execute, reaffirm, and revoke a do-not-  
21 resuscitate order on behalf of a ward. However, a guardian shall  
22 not execute a do-not-resuscitate order unless the guardian does all  
23 of the following:

24 (i) Not more than 14 days before executing the do-not-  
25 resuscitate order, visits the ward and, if meaningful communication  
26 is possible, consults with the ward about executing the do-not-  
27 resuscitate order.

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

4           (e) If a guardian executes a do-not-resuscitate order under  
5 subdivision (d), not less than annually after the do-not-  
6 resuscitate order is first executed, the duty to do all of the  
7 following:

8           (i) Visit the ward and, if meaningful communication is  
9 possible, consult with the ward about reaffirming the do-not-  
10 resuscitate order.

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

14           (f) The power to execute, reaffirm, and revoke a physician  
15 orders for scope of treatment form on behalf of a ward. However, a  
16 guardian shall not execute a physician orders for scope of  
17 treatment form unless the guardian does all of the following:

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

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

25           (g) If a guardian executes a physician orders for scope of  
26 treatment form under subdivision (f), not less than annually after  
27 the physician orders for scope of treatment is first executed, the

1 duty to do all of the following:

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

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

8 (h) If a conservator for the ward's estate is not appointed,  
9 the power to do any of the following:

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

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

22 (i) The duty to report the condition of the ward and the  
23 ward's estate that is subject to the guardian's possession or  
24 control, as required by the court, but not less often than  
25 annually. The guardian shall also serve the report required under  
26 this subdivision on the ward and interested persons as specified in  
27 the Michigan court rules. A report under this subdivision must

1 contain all of the following:

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

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

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

7 (iv) Whether the guardian recommends a more suitable living  
8 arrangement for the ward.

9 (v) Medical treatment received by the ward.

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

13 (vii) Whether the guardian has executed, reaffirmed, or  
14 revoked a physician orders for scope of treatment form on behalf of  
15 the ward during the past year.

16 (viii) Services received by the ward.

17 **(ix) WHETHER THE GUARDIAN HAS ANY CONCERNS ABOUT THE WARD'S**  
18 **COMMUNICATION AND VISITATION WITH A PERSON OTHER THAN THE GUARDIAN.**

19 **(x) ~~(ix)~~** A list of the guardian's visits with, and activities  
20 on behalf of, the ward.

21 **(xi) ~~(x)~~** A recommendation as to the need for continued  
22 guardianship.

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



1 amount expended.

2 PART 6

3 PROTECTIVE ARRANGEMENTS FOR VULNERABLE ADULTS

4 SEC. 5601. THE VENUE FOR A PROCEEDING UNDER SECTION 5603 IS IN  
5 THE COUNTY WHERE THE ALLEGEDLY VULNERABLE ADULT RESIDES OR IS  
6 PRESENT.

7 SEC. 5603. (1) AN INDIVIDUAL WHO IS 18 YEARS OF AGE OR OLDER  
8 AND WHO BELIEVES HIS OR HER RIGHT TO COMMUNICATE OR VISIT, OR BOTH,  
9 WITH A PERSON OF HIS OR HER CHOICE HAS BEEN DENIED MAY PETITION THE  
10 COURT FOR A PROTECTIVE ARRANGEMENT FOR COMMUNICATION OR VISITATION,  
11 OR BOTH. A REQUEST UNDER THIS SECTION MAY BE MADE BY INFORMAL  
12 LETTER TO THE COURT.

13 (2) A PERSON WHO IS NOT LESS THAN 18 YEARS OF AGE AND WHO IS  
14 INTERESTED IN THE WELFARE OF AN ALLEGEDLY VULNERABLE ADULT MAY  
15 PETITION THE COURT FOR A FINDING THAT THE INDIVIDUAL IS A  
16 VULNERABLE ADULT AND FOR A PROTECTIVE ARRANGEMENT AS FOLLOWS:

17 (A) FOR COMMUNICATION OR VISITATION, OR BOTH, WITH THE  
18 VULNERABLE ADULT AND THE RIGHT TO RECEIVE WRITTEN NOTIFICATION OF A  
19 CHANGE IN THE VULNERABLE ADULT'S RESIDENCE.

20 (B) TO DENY, RESTRICT, OR SUPERVISE COMMUNICATION OR  
21 VISITATION, OR BOTH, BETWEEN THE VULNERABLE ADULT AND A PERSON  
22 WHOSE ACCESS PLACES THE VULNERABLE ADULT AT SERIOUS RISK OF  
23 PHYSICAL, MENTAL, OR FINANCIAL HARM.

24 (3) A PETITION UNDER THIS SECTION MUST INCLUDE ALL OF THE  
25 FOLLOWING:

26 (A) THE RESIDENCE OF THE ALLEGEDLY VULNERABLE ADULT OR WHERE  
27 HE OR SHE IS PRESENT.

1 (B) IF THE PETITION REQUESTS THAT THE COURT ORDER  
2 COMMUNICATION OR VISITATION, OR BOTH, SPECIFIC FACTS DESCRIBING  
3 BOTH OF THE FOLLOWING:

4 (i) THAT THE INDIVIDUAL IS A VULNERABLE ADULT.

5 (ii) THAT THE INDIVIDUAL'S RIGHT TO COMMUNICATE OR VISIT, OR  
6 BOTH, WITH A PERSON WITH WHOM THE INDIVIDUAL HAS AN EXISTING  
7 RELATIONSHIP HAS BEEN OR IS BEING DENIED OR RESTRICTED.

8 (C) IF THE PETITION REQUESTS THE COURT TO RESTRICT A PERSON'S  
9 ACCESS TO THE ALLEGEDLY VULNERABLE ADULT, SPECIFIC FACTS DESCRIBING  
10 THE RISK OF PHYSICAL, MENTAL, OR FINANCIAL HARM THAT IS OR MAY  
11 HAPPEN TO THE ALLEGEDLY VULNERABLE ADULT AS A RESULT OF THE PERSON  
12 COMMUNICATING OR VISITING, OR BOTH, WITH THE INDIVIDUAL.

13 (D) THE IDENTITY OF THE PETITIONER.

14 (4) IN A PROCEEDING UNDER THIS SECTION, NOTICE OF HEARING MUST  
15 BE GIVEN TO EACH OF THE FOLLOWING:

16 (A) THE ALLEGEDLY VULNERABLE ADULT.

17 (B) THE RESPONDENT.

18 (5) NOTICE MUST BE SERVED PERSONALLY ON THE ALLEGEDLY  
19 VULNERABLE ADULT. NOTICE TO ALL OTHER PERSONS MUST BE GIVEN AS  
20 PRESCRIBED BY COURT RULE.

21 (6) A COPY OF THE PETITION UNDER THIS SECTION MUST BE ATTACHED  
22 TO THE NOTICE OF HEARING.

23 (7) ALL OF THE FOLLOWING APPLY ON THE FILING OF A PETITION  
24 UNDER THIS SECTION:

25 (A) THE COURT MAY DO 1 OR MORE OF THE FOLLOWING:

26 (i) ORDER THE PARTIES INVOLVED IN THE DISPUTE TO ENGAGE IN  
27 MEDIATION.

1           (ii) REQUEST THE COUNTY DEPARTMENT OF SOCIAL SERVICES TO  
2 INVESTIGATE THE DISPUTE, WITH THE PURPOSE OF ATTEMPTING TO RESOLVE  
3 THE DISPUTE BEFORE THE COURT PROCEEDS TO GRANT A HEARING ON THE  
4 DISPUTE.

5           (B) THE COURT MAY APPOINT A GUARDIAN AD LITEM FOR THE  
6 ALLEGEDLY VULNERABLE ADULT.

7           (C) THE COURT MAY ORDER THE ALLEGEDLY VULNERABLE ADULT TO BE  
8 EXAMINED BY A LICENSED PHYSICIAN, PSYCHOLOGIST, OR SOCIAL WORKER.

9           (D) THE ALLEGEDLY VULNERABLE ADULT HAS THE RIGHT TO TESTIFY AT  
10 THE HEARING, SPEAK PRIVATELY WITH THE COURT, AND BE REPRESENTED BY  
11 LEGAL COUNSEL.

12           (E) IF THE PETITION REQUESTS THAT THE COURT ORDER  
13 COMMUNICATION OR VISITATION, OR BOTH, THE PETITIONER HAS THE BURDEN  
14 OF PROOF BY A PREPONDERANCE OF THE EVIDENCE. IT IS PRESUMED THAT IT  
15 IS IN THE BEST INTEREST OF AN ALLEGEDLY VULNERABLE ADULT TO  
16 COMMUNICATE OR VISIT, OR BOTH, WITH A PERSON WITH WHOM THE  
17 INDIVIDUAL HAS AN EXISTING RELATIONSHIP. THE RESPONDENT MAY REBUT  
18 THE PRESUMPTION UNDER THIS SUBDIVISION WITH A PREPONDERANCE OF THE  
19 EVIDENCE OF ANY OF THE FOLLOWING:

20           (i) THAT THE PETITIONER COMMITTED MENTAL, PHYSICAL, OR  
21 FINANCIAL ABUSE AGAINST THE ALLEGEDLY VULNERABLE ADULT.

22           (ii) THAT COMMUNICATION OR VISITATION, OR BOTH, BETWEEN THE  
23 PETITIONER AND THE ALLEGEDLY VULNERABLE ADULT WOULD BE HARMFUL TO  
24 THE ALLEGEDLY VULNERABLE ADULT'S HEALTH OR MENTAL OR FINANCIAL  
25 WELL-BEING.

26           (F) IF THE PETITION REQUESTS THAT THE COURT ORDER  
27 COMMUNICATION OR VISITATION, OR BOTH, AND THE COURT FINDS BY A

1 PREPONDERANCE OF THE EVIDENCE THAT THE RESPONDENT HAS DENIED  
2 COMMUNICATION OR VISITATION, OR BOTH, BETWEEN THE VULNERABLE ADULT  
3 AND A PERSON WITH WHOM THE VULNERABLE ADULT HAS AN EXISTING  
4 RELATIONSHIP, THE COURT MAY ENTER AN ORDER THAT DOES ANY OF THE  
5 FOLLOWING:

6 (i) ESTABLISHES REASONABLE TIMES AND METHODS FOR THE  
7 PETITIONER TO COMMUNICATE OR VISIT, OR BOTH, WITH THE VULNERABLE  
8 ADULT WITH REASONABLE RESTRICTIONS OR SUPERVISION, OR BOTH, IF  
9 APPROPRIATE.

10 (ii) REQUIRES THE RESPONDENT OR WHOEVER HAS CUSTODY OF THE  
11 VULNERABLE ADULT TO NOTIFY THE PETITIONER WITHIN 14 DAYS AFTER ANY  
12 OF THE FOLLOWING:

13 (A) A CHANGE IN THE VULNERABLE ADULT'S RESIDENCE.

14 (B) THE VULNERABLE ADULT'S ADMISSION TO A HOSPITAL OR SKILLED  
15 NURSING FACILITY. AS USED IN THIS SUB-SUBPARAGRAPH, "SKILLED  
16 NURSING FACILITY" MEANS THAT TERM AS DEFINED IN SECTION 20109 OF  
17 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20109.

18 (G) IF THE PETITIONER REQUESTS THAT THE COURT RESTRICT ACCESS  
19 TO THE ALLEGEDLY VULNERABLE ADULT, AND THE COURT AGREES WITH THE  
20 PETITION, THE COURT MAY ENTER AN ORDER THAT RESTRICTS, SUPERVISES,  
21 OR DENIES COMMUNICATION BETWEEN THE VULNERABLE ADULT AND THE  
22 RESPONDENT.

23 (H) A PERSON MAY NOT FILE A PETITION UNDER THIS SECTION DURING  
24 THE PENDENCY OF A PETITION FOR GUARDIANSHIP UNDER SECTION 5303.

25 (I) A PERSON MAY NOT FILE A PETITION FOR GUARDIANSHIP UNDER  
26 SECTION 5303 DURING THE PENDENCY OF A PETITION UNDER THIS SECTION.

27 (8) IF AN ALLEGEDLY VULNERABLE ADULT WHO IS THE SUBJECT OF A

1 PETITION UNDER THIS SECTION OBJECTS TO VISITATION WITH THE  
2 PETITIONER, THE PETITIONER MUST DEMONSTRATE BY A PREPONDERANCE OF  
3 THE EVIDENCE THAT THE ALLEGEDLY VULNERABLE ADULT'S OBJECTION  
4 RESULTED FROM THE RESPONDENT'S UNDUE INFLUENCE OVER THE ALLEGEDLY  
5 VULNERABLE ADULT. IF THE PETITIONER DEMONSTRATES EVIDENCE BY A  
6 PREPONDERANCE UNDER THIS SUBSECTION, THE COURT SHALL GRANT THE  
7 PETITIONER REASONABLE COMMUNICATION OR VISITATION, OR BOTH, AND  
8 NOTICE OF CHANGE IN RESIDENCY AS PROVIDED IN SUBSECTION (7) (F).

9 (9) AT THE CONCLUSION OF A PROCEEDING UNDER THIS SECTION, THE  
10 COURT MAY ASSESS COSTS AND ATTORNEY FEES UNDER SECTION 2591 OF THE  
11 REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.2591, OR COURT  
12 RULE AND MAY ASSESS COSTS AND ATTORNEY FEES AS FOLLOWS:

13 (A) IF THE COURT DETERMINES THAT A PETITIONER FILED A PETITION  
14 UNDER THIS SECTION IN BAD FAITH, THE COURT MAY ASSESS REASONABLE  
15 ATTORNEY FEES INCURRED BY THE RESPONDENT AND ANY COST AGAINST THE  
16 PETITIONER.

17 (B) IF THE COURT GRANTS THE PETITIONER'S PETITION, THE COURT  
18 MAY ASSESS COSTS AGAINST THE RESPONDENT.

19 (10) AS USED IN THIS SECTION, "RESPONDENT" MEANS A PERSON  
20 DESCRIBED IN SUBSECTION (3) (B) (ii) OR (C).