

HOUSE BILL NO. 6510

December 15, 2020, Introduced by Rep. Filler 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, 3206, 3605, 3916,
3917, 3918, 3959, 3981, 3982, 3983, 5102, 5301, 5303, 5304, 5305,
5306a, 5310, 5311, 5313, 5314, 5506, 5507, 5508, 5510, 5511, 7103,
7105, 7110, 7302, 7402, 7506, and 7604 (MCL 700.1106, 700.1210,
700.2519, 700.2806, 700.3206, 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, 700.5506, 700.5507, 700.5508,

700.5510, 700.5511, 700.7103, 700.7105, 700.7110, 700.7302, 700.7402, 700.7506, and 700.7604), 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 3206 as amended by 2016 PA 57, 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, sections 5506, 5507, 5508, and 5510 as amended by 2008 PA 41, section 5511 as amended by 2004 PA 532, and sections 7103 and 7105 as amended by 2018 PA 664, and by adding sections 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

1 333.18838.

2 (v) A physician's assistant licensed to practice in this state
3 under article 15 of the public health code, 1978 PA 368, MCL
4 333.16101 to 333.18838.

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

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

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

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

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

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

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

20 (h) "Nonresident decedent" means a decedent who was domiciled
21 in another jurisdiction at the time of his or her 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

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

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

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

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

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

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

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

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

Sec. 1210. (1) The specific dollar amounts stated in sections 2102, 2402, 2404, 2405, and 3983 apply to decedents who die before January 1, 2001. For decedents who die after December 31, 2000, these specific dollar amounts ~~shall~~**must** be multiplied by the cost-of-living adjustment factor for the calendar year in which the

1 decedent dies.

2 (2) Before January 1, 2021, the specific amounts stated in
3 sections 2519, 3605, 3916, 3917, 3918, 3981, 3982, and 5102 apply
4 to those sections. Beginning January 1, 2021, those specific dollar
5 amounts must be multiplied by the cost-of-living adjustment factor
6 for the calendar year in which the decedent dies.

7 (3) ~~(2)~~ Before February 1, 2001, and annually after 2001, the
8 department of treasury shall publish the cost-of-living adjustment
9 factor to be applied to the specific dollar amounts referred to in
10 ~~subsection~~ **subsections** (1) and (2) for decedents who die during
11 that calendar year and in section 7414 for trusts the value of the
12 property of which is insufficient to justify the cost of
13 administration. A product resulting from application of the cost-
14 of-living adjustment factor to a specific dollar amount ~~shall~~ **must**
15 be rounded to the nearest \$1,000.00 amount.

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

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

23 MICHIGAN STATUTORY WILL NOTICE

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

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

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

4. This will has no effect on jointly held assets, on retirement plan benefits, or on life insurance on your life if you have named a beneficiary who survives you.

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

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

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

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

INSTRUCTIONS:

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

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

MICHIGAN STATUTORY WILL OF _____

(Print or type your full name)

ARTICLE 1. DECLARATIONS

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

I live in _____ County, Michigan.

My spouse is _____.

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

My children now living are:

(Insert names or write "none")

ARTICLE 2. DISPOSITION OF MY ASSETS

2.1 CASH GIFTS TO PERSONS OR CHARITIES.

(Optional)

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

(Insert name of person or charity)

(Insert address)

AMOUNT OF GIFT (In figures): \$ _____

AMOUNT OF GIFT (In words): _____ Dollars

(Your signature)

Full name and address of person or charity to receive cash gift

(Name only 1 person or charity):

(Insert name of person or charity)

1 _____
 2 (Insert address)
 3 AMOUNT OF GIFT (In figures): \$ _____
 4 AMOUNT OF GIFT (In words): _____ Dollars
 5 _____
 6 (Your signature)

7 2.2 PERSONAL AND HOUSEHOLD ITEMS.

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

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

19 2.3 ALL OTHER ASSETS.

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

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

1 (Select only 1)

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

5 _____
6 (Your signature)

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

9 _____
10 (Your signature)

11 ARTICLE 3. NOMINATIONS OF PERSONAL
12 REPRESENTATIVE, GUARDIAN, AND CONSERVATOR

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

22 3.1 PERSONAL REPRESENTATIVE.

23 (Name at least 1)

24 I nominate _____

25 (Insert name of person or eligible financial institution)
26 of _____ to serve as personal representative.

27 (Insert address)

28 If my first choice does not serve, I nominate _____

29 _____

1 (Insert name of person or eligible financial institution)
 2 of _____ to serve as personal representative.
 3 (Insert address)

4 3.2 GUARDIAN AND CONSERVATOR.

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

10 If a guardian or conservator is needed for a child of
 11 mine, I nominate _____
 12 (Insert name of individual)
 13 of _____ as guardian and
 14 (Insert address)

15 _____
 16 (Insert name of individual or eligible financial institution)
 17 of _____ to serve as conservator.
 18 (Insert address)

19 If my first choice cannot serve, I nominate

20 _____
 21 (Insert name of individual)
 22 of _____ as guardian and
 23 (Insert address)

24 _____
 25 (Insert name of individual or eligible financial institution)
 26 of _____ to serve as conservator.
 27 (Insert address)

28 3.3 BOND.

29 A bond is a form of insurance in case your personal

representative or a conservator performs improperly and jeopardizes your assets. A bond is not required. You may choose whether you wish to require your personal representative and any conservator to serve with or without bond. Bond premiums would be paid out of your assets. (Select only 1)

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

(Your signature)

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

(Your signature)

3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

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

I sign my name to this Michigan statutory will on

_____, 20____.

(Your signature)

NOTICE REGARDING WITNESSES

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

STATEMENT OF WITNESSES

We sign below as witnesses, declaring that the individual who is making this will appears to have sufficient mental capacity to make this will and appears to be making this will freely, without

duress, fraud, or undue influence, and that the individual making this will acknowledges that he or she has read the will, or has had it read to him or her, and understands the contents of this will.

(Print Name)

(Signature of witness)

(Address)

(City)

(State)

(Zip)

(Print name)

(Signature of witness)

(Address)

(City)

(State)

(Zip)

(Print name)

(Signature of witness)

(Address)

(City)

(State)

(Zip)

DEFINITIONS

The following definitions and rules of construction apply to

1 this Michigan statutory will:

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

5 (b) "Descendants" means your children, grandchildren, and
6 their descendants.

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

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

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

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

28 (g) "Heirs" means those persons who would have received your
29 assets if you had died without a will, domiciled in Michigan, under

1 the laws that are then in effect.

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

3 (i) Plural and singular words include each other, where
4 appropriate.

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

10 ADDITIONAL CLAUSES

11 Powers of personal representative

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

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

1 ~~provisions of~~ this paragraph.

2 POWERS OF GUARDIAN AND CONSERVATOR

3 A guardian named in this will has the same authority with
4 respect to the child as a parent having legal custody would have. A
5 conservator named in this will has all of the powers conferred by
6 law.

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

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

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

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

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

21 (d) "Governing instrument" means a governing instrument
22 executed by a divorced individual before the divorce from, or
23 annulment of his or her marriage to, his or her former spouse.

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

29 (f) "Revocable" means, with respect to a disposition,

1 appointment, provision, or nomination, one under which the divorced
2 individual, at the time of the divorce or annulment, was alone
3 empowered, by law or under the governing instrument, to cancel the
4 designation in favor of his or her former spouse or former spouse's
5 relative, whether or not the divorced individual was then empowered
6 to designate himself or herself in place of his or her former
7 spouse or in place of his or her former spouse's relative and
8 whether or not the divorced individual then had the capacity to
9 exercise the power.

10 Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216,
11 part 28 and article 10 of the public health code, 1978 PA 368, MCL
12 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection
13 (12), a funeral representative designated under subsection (2), a
14 person with priority under subsections (3) to (5) or a person
15 acting under subsection (6), (7), (8), or (9) is presumed to have
16 the right and power to make decisions about funeral arrangements
17 and the handling, disposition, or disinterment of a decedent's
18 body, including, but not limited to, decisions about cremation, and
19 the right to retrieve from the funeral establishment and possess
20 cremated remains of the decedent immediately after cremation. The
21 handling, disposition, or disinterment of a body must be under the
22 supervision of a person licensed to practice mortuary science in
23 this state.

24 (2) Except as otherwise provided in this subsection and
25 subject to the priority in subsection (3), an individual 18 years
26 of age or older who is of sound mind at the time a funeral
27 representative designation is made may designate in writing another
28 individual who is 18 years of age or older and who is of sound mind
29 to have the rights and powers under subsection (1). All of the

1 following apply to a funeral representative designation under this
2 subsection:

3 (a) For purposes of this section and sections 3206a and 3206b,
4 an individual who is named in a funeral representative designation
5 to have the rights and powers described in subsection (1) is known
6 as a funeral representative and an individual who makes a funeral
7 representative designation is known as a declarant.

8 (b) A funeral representative designation under this subsection
9 must be in writing, dated, and signed voluntarily by the declarant
10 or signed by a notary public on the declarant's behalf under
11 section 33 of the Michigan ~~notary public act~~, **law on notarial acts**,
12 2003 PA 238, MCL 55.293. A funeral representative designation may
13 be included in the declarant's will, patient advocate designation,
14 or other writing. If a funeral representative designation is
15 contained in an individual's will, the will is not required to be
16 admitted to probate for the funeral representative designation to
17 be valid. A funeral representative designation must be 1 or both of
18 the following:

19 (i) Signed in the presence of and signed by 2 witnesses. A
20 witness under this section may not be the funeral representative or
21 an individual described in subdivision (c) (ii) to (iv). A witness
22 shall not sign the funeral representative designation unless the
23 declarant appears to be of sound mind and under no duress, fraud,
24 or undue influence.

25 (ii) Acknowledged by the declarant before a notary public, who
26 endorses on the funeral representative designation a certificate of
27 the acknowledgment and the true date of taking the acknowledgment.

28 (c) The following individuals may not act as a funeral
29 representative for the declarant unless the individual is the

1 surviving spouse or is a relative of the declarant:

2 (i) An officer, partner, member, shareholder, owner,
3 representative, or employee of a funeral establishment that will
4 provide services to the declarant.

5 (ii) A health professional, or an employee of or volunteer at a
6 health facility or veterans facility, who provided medical
7 treatment or nursing care to the declarant during the final illness
8 or immediately before the declarant's death, or a partner, member,
9 shareholder, owner, or representative of the health facility where
10 medical treatment or nursing care was provided.

11 (iii) An officer, partner, member, shareholder, owner,
12 representative, or employee of a cemetery at which the declarant's
13 body will be interred, entombed, or inurned.

14 (iv) An officer, partner, member, shareholder, owner,
15 representative, or employee of a crematory that will provide the
16 declarant's cremation services.

17 (3) The following have the rights and powers under subsection
18 (1) in the following order of priority:

19 (a) If the decedent was a service member at the time of the
20 decedent's death, a person designated to direct the disposition of
21 the service member's remains according to a statute of the United
22 States or regulation, policy, directive, or instruction of the
23 Department of Defense.

24 (b) A funeral representative designated under subsection (2).

25 (c) The surviving spouse.

26 (d) Subject to subdivision (e), the individual or individuals
27 18 years of age or older in the following order of priority:

28 (i) The decedent's children.

29 (ii) The decedent's grandchildren.

1 (iii) The decedent's parents.

2 (iv) The decedent's grandparents.

3 (v) The decedent's siblings.

4 (vi) A descendant of the decedent's parents who first notifies
5 the funeral establishment in possession of the decedent's body of
6 the descendant's decision to exercise his or her rights under
7 subsection (1).

8 (vii) A descendant of the decedent's grandparents who first
9 notifies the funeral establishment in possession of the decedent's
10 body of the descendant's decision to exercise his or her rights
11 under subsection (1).

12 (e) If an individual described in subdivision (d) had the
13 right to dispose of the decedent's body under subsection (1), but
14 affirmatively declined to exercise his or her right or failed to
15 exercise his or her right within 48 hours after receiving
16 notification of the decedent's death, the individual does not have
17 the right to make a decision about the disinterment of the
18 decedent's body or possession of the decedent's cremated remains.

19 (4) If the individual or individuals with the highest priority
20 as determined under subsection (3) cannot be located after a good-
21 faith effort to contact and inform them of the decedent's death,
22 affirmatively decline to exercise their rights or powers under
23 subsection (1), or fail to exercise their rights or powers under
24 subsection (1) within 48 hours after receiving notification of the
25 decedent's death, the rights and powers under subsection (1) may be
26 exercised by the individual or individuals in the same order of
27 priority under subsection (3). If the individual or each of the
28 individuals in an order of priority as determined under this
29 subsection similarly affirmatively declines or fails to exercise

1 his or her rights or powers within 48 hours after receiving
2 notification that he or she may act under this subsection or cannot
3 be located, the rights or powers under subsection (1) pass to the
4 next order of priority under subsection (3). For purposes of this
5 subsection only, "exercise their rights or powers under subsection
6 (1)" means notifying the funeral establishment in possession of the
7 decedent's body of an individual's decision to exercise his or her
8 rights or powers under subsection (1).

9 (5) If 2 or more individuals share the rights and powers
10 described in subsection (1) as determined under subsection (3) or
11 (4), the rights and powers shall be exercised as decided by a
12 majority of the individuals who can be located after reasonable
13 efforts. If a majority cannot agree, any of the individuals may
14 file a petition under section 3207.

15 (6) If no individual described in subsections (3) and (4)
16 exists, exercises the rights or powers under subsection (1), or can
17 be located after a sufficient attempt as described in subsection
18 (10), and if subsection (7) does not apply, then the personal
19 representative or nominated personal representative may exercise
20 the rights and powers under subsection (1), either before or after
21 his or her appointment.

22 (7) If no individual described in subsections (3) and (4)
23 exists, exercises the rights or powers under subsection (1), or can
24 be located after a sufficient attempt as described in subsection
25 (10), and if the decedent was under a guardianship at the time of
26 death, the guardian may exercise the rights and powers under
27 subsection (1) and may make a claim for the reimbursement of burial
28 expenses as provided in section 5216 or 5315, as applicable.

29 (8) If no individual described in subsections (3) and (4)

1 exists, exercises the rights or powers under subsection (1), or can
2 be located after a sufficient attempt as described in subsection
3 (10), if the decedent died intestate, and if subsection (7) does
4 not apply, a special fiduciary appointed under section 1309 or a
5 special personal representative appointed under section 3614(c) may
6 exercise the rights and powers under subsection (1).

7 (9) If there is no person under subsections (3) to (8) to
8 exercise the rights and powers under subsection (1), 1 of the
9 following, as applicable, shall exercise the rights and powers
10 under subsection (1):

11 (a) Unless subdivision (b) applies, the medical examiner for
12 the county where the decedent was domiciled at the time of his or
13 her death.

14 (b) If the decedent was incarcerated in a state correctional
15 facility at the time of his or her death, the director of the
16 department of corrections or the designee of the director.

17 (10) An attempt to locate a person described in subsection (3)
18 or (4) is sufficient if a reasonable attempt is made in good faith
19 by a family member, personal representative, or nominated personal
20 representative of the decedent to contact the person at his or her
21 last known address, telephone number, or electronic mail address.

22 (11) This section does not void or otherwise affect an
23 anatomical gift made under part 101 of the public health code, 1978
24 PA 368, MCL 333.10101 to 333.10123.

25 (12) An individual who has been criminally charged with the
26 intentional killing of the decedent shall not exercise a right
27 under subsection (1) while the charges are pending.

28 (13) Except as otherwise provided in this subsection, a person
29 who has the rights and powers under subsection (1) and who

1 exercises the right over the disposition of the decedent's body
2 must ensure payment for the costs of the disposition through a
3 trust, insurance, a commitment by another person, a prepaid
4 contract under the prepaid funeral and cemetery sales act, 1986 PA
5 255, MCL 328.211 to 328.235, or other effective and binding means.
6 To the extent payment is not ensured under this subsection, the
7 person described in this subsection is liable for the costs of the
8 disposition. This subsection does not apply to a person who
9 exercises the rights and powers under subsection (1) as provided in
10 subsection (8) or (9).

11 (14) As used in this section:

12 (a) "Armed forces" means ~~that term as defined in section 2 of~~
13 ~~the veteran right to employment services act, 1994 PA 39, MCL~~
14 ~~35.1092.~~ **the Army, Air Force, Navy, Marine Corps, Coast Guard, or**
15 **other military force designated by Congress as a part of the Armed**
16 **Forces of the United States.**

17 (b) "Health facility" means that term as defined in section
18 5653 of the public health code, 1978 PA 368, MCL 333.5653.

19 (c) "Health professional" means that term as defined in
20 section 5883 of the public health code, 1978 PA 368, MCL 333.5883.

21 (d) "Medical treatment" means that term as defined in section
22 5653 of the public health code, 1978 PA 368, MCL 333.5653.

23 (e) "Michigan National Guard" means that term as defined in
24 section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

25 (f) "Nominated personal representative" means a person
26 nominated to act as personal representative in a will that the
27 nominated person reasonably believes to be the valid will of the
28 decedent.

29 (g) "Service member" means a member of the armed forces, a

1 reserve branch of the armed forces, or the Michigan National Guard.

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

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

21 Sec. 3916. (1) In exchange for suitable receipts and following
 22 a court order if the administration is supervised, a fiduciary
 23 making final distribution shall deposit with the county treasurer
 24 the money or personal property the fiduciary has that belongs to
 25 any of the following:

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

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

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

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

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

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

19 Sec. 3917. (1) The county treasurer shall receive and safely
20 keep money deposited under authority of this act in a separate fund
21 and keep a separate account for each distributee or claim. The
22 county treasurer shall deposit the money in a county depository at
23 the current rate of interest, shall pay out from the fund upon the
24 order of the court, and shall turn over any surplus left in the
25 treasurer's hands at the termination of the treasurer's term of
26 office to the treasurer's successor. The county treasurer shall, at
27 the end of each year, render to the court, and to the county board
28 of commissioners, a true account of that money.

29 (2) For the care of the money received under authority of this

act, the county treasurer may take 1% from the different amounts paid out under court order unless the amount paid out to a single individual exceeds ~~\$1,000.00,~~ **\$1,500.00**, in which case the county treasurer shall take ~~\$10.00~~ **\$15.00** plus 1/2 of 1% of the excess of the amount over ~~\$1,000.00.~~ **\$1,500.00.**

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

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

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

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

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

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

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

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

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

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

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

(4) A person receiving money or property for an individual

1 under legal disability shall use the money or property only for
 2 that individual's support and for reimbursement of out-of-pocket
 3 expenses for goods and services necessary for that individual's
 4 support. Excess money and property ~~shall~~**must** be preserved for the
 5 individual's future support. The personal representative is not
 6 responsible for the proper use of money or property by the
 7 recipient if distribution is made under the authority of this
 8 section.

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

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

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

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

20 **(2) The** court may appoint the same or a successor personal
 21 representative to administer the subsequently discovered estate. If
 22 a new appointment is made, unless the court orders otherwise, the
 23 provisions of this act apply as appropriate. A claim previously
 24 barred ~~shall~~**must** not be asserted in the subsequent administration.

25 Sec. 3981. **(1)** A hospital, convalescent or nursing home,
 26 morgue, or law enforcement agency holding ~~\$500.00~~**\$1,000.00** or less
 27 and wearing apparel of a decedent may deliver the money and wearing
 28 apparel to an individual furnishing identification and a sworn
 29 statement that the individual is the decedent's spouse, child, or

parent and that there is no application or petition pending for administration of the decedent's estate. The hospital, home, morgue, or law enforcement agency making the delivery is released to the same extent as if delivery were made to a legally qualified personal representative of the decedent's estate and is not required to see to the property's disposition. The individual to whom delivery is made is answerable for the property to a person with a prior right and accountable to a personal representative of the decedent's estate appointed after the delivery.

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

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

(2) ~~Upon~~ On a showing of evidence, satisfactory to the court, that the decedent's funeral or burial expenses are unpaid or were paid by a person other than the estate, and if the balance of the gross estate after payment of the expenses would consist of property of the value of ~~\$15,000.00~~ **\$25,000.00** or less, the court shall order that the property be first used to pay the unpaid funeral and burial expenses, or to reimburse the person that paid those expenses, and may order that the balance be turned over to the surviving spouse or, if there is not a spouse, to the decedent's heirs.

(3) Other than a surviving spouse who qualifies for allowances under this act or the decedent's minor children, an heir who

1 receives property through an order under this section is
2 responsible, for 63 days after the date of the order, for any
3 unsatisfied debt of the decedent up to the value of the property
4 received through the order. The court shall state in the order the
5 condition on the distribution of property provided by this
6 subsection.

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

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

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

23 (a) The estate does not include real property and the value of
24 the entire estate, wherever located, net of liens and encumbrances,
25 does not exceed ~~\$15,000.00,~~ **\$25,000.00**, adjusted as provided in
26 section 1210.

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

28 (c) An application or petition for the appointment of a
29 personal representative is not pending or has not been granted in

1 any jurisdiction.

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

4 (e) The name and address of each other person that is entitled
5 to a share of the property and the portion to which each is
6 entitled.

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

11 (3) The state court administrative office shall develop and
12 make available a standardized form for use as a sworn statement
13 that can be used for the procedure authorized under subsection (1).
14 The form ~~shall~~**must** include a notice that a false statement may
15 subject the person swearing to the statement to prosecution for
16 perjury.

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

21 (a) The minor if he or she is married.

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

24 (c) A guardian of the minor.

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

28 (2) This section does not apply if the person making payment
29 or delivery knows that a conservator has been appointed or a

1 proceeding for appointment of a conservator of the minor's estate
2 is pending.

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

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

16 Sec. 5301. (1) If serving as guardian, the parent of an
17 unmarried legally incapacitated individual may appoint by will, or
18 other writing signed by the parent and attested by at least 2
19 witnesses, a guardian for the legally incapacitated individual. If
20 both parents are dead or the surviving parent is adjudged legally
21 incapacitated, **and no standby guardian has been appointed under**
22 **section 5301c**, a parental appointment **by will or other writing**
23 becomes effective when, after having given 7 days' prior written
24 notice of intention to do so to the legally incapacitated
25 individual and to the person having the care of the legally
26 incapacitated individual or to the nearest adult relative, the
27 guardian files acceptance of appointment in the court in which the
28 will containing the nomination is probated or, if the nomination is
29 contained in a nontestamentary nominating instrument or the

testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4). If both parents are dead, an effective appointment by the parent who died later has priority.

(2) If serving as guardian, the spouse of a married legally incapacitated individual may appoint by will, or other writing signed by the spouse and attested by at least 2 witnesses, a guardian of the legally incapacitated individual. ~~The~~ **If no standby guardian has been appointed under section 5301c, the appointment by will or other writing** becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4).

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

(4) ~~Upon~~ **On** the filing of the legally incapacitated individual's written objection to a guardian's appointment under

1 this section in either the court in which the will was probated or,
2 for a nontestamentary nominating instrument or a testamentary
3 nominating instrument made by a testator who is not deceased, the
4 court at the place where the legally incapacitated individual
5 resides or is present, the appointment is terminated. An objection
6 does not prevent appointment by the court in a proper proceeding of
7 the parental or spousal nominee or another suitable person ~~upon~~ on
8 an adjudication of incapacity in a proceeding under sections 5302
9 to 5317.

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

14 (2) The nominated standby guardian must receive a copy of the
15 petition nominating the person to serve, the court order
16 establishing or modifying guardianship, and the order designating
17 the standby guardian.

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

21 (4) If the standby guardian is unable or unwilling to serve,
22 the standby guardian shall promptly notify the court and interested
23 persons in writing.

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

27 (a) The guardian dies.

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

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

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

12 (7) A standby guardian's appointment as guardian is effective,
13 without further proceedings or reiteration of acceptance,
14 immediately on the guardian's unavailability as described in
15 subsection (5). The standby guardian has the same powers and duties
16 as the prior guardian.

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

24 Sec. 5303. (1) An individual in his or her own behalf, or any
25 person interested in the individual's welfare, may petition for a
26 finding of incapacity and appointment of a guardian **or designation**
27 **of a standby guardian**. The petition must contain specific facts
28 about the individual's condition and specific examples of the
29 individual's recent conduct that demonstrate the need for a

1 guardian's appointment.

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

10 (3) ~~Upon~~**On** the filing of a petition under subsection (1), the
11 court shall set a date for hearing on the issue of incapacity.
12 Unless the allegedly incapacitated individual has legal counsel of
13 his or her own choice, the court shall appoint a guardian ad litem
14 to represent the ~~person~~**individual** in the proceeding.

15 Sec. 5304. (1) If necessary, the court may order that an
16 individual alleged to be incapacitated be examined by a physician
17 or mental health professional appointed by the court who shall
18 submit a report in writing to the court at least 5 days before the
19 hearing set under section 5303. A report prepared as provided in
20 this subsection ~~shall~~**must** not be made a part of the proceeding's
21 public record, but ~~shall~~**must** be available to the court or an
22 appellate court in which the proceeding is subject to review, to
23 the alleged incapacitated individual, to the petitioner, to their
24 respective legal counsels, and to other persons as the court
25 directs. The report may be used as provided in the Michigan rules
26 of evidence.

27 (2) The alleged incapacitated individual has the right to
28 secure an independent evaluation, at his or her own expense or, if
29 indigent, at the expense of the state. Compensation for an

1 independent evaluation at public expense ~~shall~~**must** be in an amount
2 that, based ~~upon~~**on** time and expense, the court approves as
3 reasonable.

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

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

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

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

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

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

18 (4) The individual alleged to be incapacitated is entitled to
19 be present at the hearing **to appoint a guardian or designate a**
20 **standby guardian** in person, and to see or hear all evidence bearing
21 ~~upon~~**on** the individual's condition. If the individual wishes to be
22 present at the hearing, all practical steps ~~shall~~**must** be taken to
23 ensure his or her presence, including, if necessary, moving the
24 hearing site.

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

29 (6) The issue of incapacity may be determined at a closed

1 hearing without a jury if requested by the individual alleged to be
2 incapacitated or that individual's legal counsel.

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

6 (a) Personally visiting the individual.

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

9 (c) Explaining to the individual the hearing procedure and the
10 individual's rights in the hearing procedure, including, but not
11 limited to, all of the following:

12 (i) The right to contest the petition.

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

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

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

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

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

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

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

24 (d) Informing the individual that if a guardian is appointed,
25 the guardian may have the power to execute a do-not-resuscitate
26 order on behalf of the individual and, if meaningful communication
27 is possible, discern if the individual objects to having a do-not-
28 resuscitate order executed on his or her behalf.

29 (e) Informing the individual that if a guardian is appointed,

1 the guardian may have the power to execute a physician orders for
2 scope of treatment form on behalf of the individual and, if
3 meaningful communication is possible, discern if the individual
4 objects to having a physician orders for scope of treatment form
5 executed on his or her behalf.

6 (f) Informing the individual of the name of each person known
7 to be seeking appointment as guardian **or designation as standby**
8 **guardian.**

9 (g) Asking the individual and the petitioner about the amount
10 of cash and property readily convertible into cash that is in the
11 individual's estate.

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

14 (i) Whether there are 1 or more appropriate alternatives to the
15 appointment of a full guardian or whether 1 or more actions should
16 be taken in addition to the appointment of a guardian. Before
17 informing the court of his or her determination under this
18 subparagraph, the guardian ad litem shall consider the
19 appropriateness of at least each of the following as alternatives
20 or additional actions:

21 (A) Appointment of a limited guardian, including the specific
22 powers and limitation on those powers the guardian ad litem
23 believes appropriate.

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

29 (C) Execution of a patient advocate designation, do-not-

1 resuscitate order, physician orders for scope of treatment form, or
2 durable power of attorney with or without limitations on purpose,
3 authority, or duration.

4 (ii) Whether a disagreement or dispute related to the
5 guardianship petition might be resolved through court ordered
6 mediation.

7 (iii) Whether the individual wishes to be present at the
8 hearing.

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

10 (v) Whether the individual wishes limits placed on the
11 guardian's powers.

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

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

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

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

22 (3) If the individual alleged to be incapacitated wishes to
23 contest the petition, to have limits placed on the guardian's
24 powers, or to object to a particular person being appointed
25 guardian **or designated as standby guardian** and if legal counsel has
26 not been secured, the court shall appoint legal counsel to
27 represent the individual alleged to be incapacitated. If the
28 individual alleged to be incapacitated is indigent, this state
29 shall bear the expense of legal counsel.

1 (4) If the individual alleged to be incapacitated requests
2 legal counsel or the guardian ad litem determines it is in the
3 individual's best interest to have legal counsel, and if legal
4 counsel has not been secured, the court shall appoint legal
5 counsel. If the individual alleged to be incapacitated is indigent,
6 this state shall bear the expense of legal counsel.

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

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

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

15 (b) To have the guardianship proceeding commenced and
16 conducted in the place where the individual resides or is present
17 or, if the individual is admitted to an institution by a court, in
18 the county in which the court is located, as provided in section
19 5302.

20 (c) To petition on his or her own behalf for the appointment
21 of a guardian **or designation of a standby guardian**, as provided in
22 section 5303.

23 (d) To have legal counsel of his or her own choice represent
24 him or her on the petition to appoint a guardian **or designate a**
25 **standby guardian**, as provided in sections 5303, 5304, and 5305.

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

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

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

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

11 (i) To present evidence and cross-examine witnesses in the
12 hearing on the petition to appoint a guardian **or designate a**
13 **standby guardian**, as provided in section 5304.

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

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

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

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

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

26 (o) If a guardian ad litem is appointed, to be informed by the
27 guardian ad litem of the right to contest the petition, to request
28 limits on the guardian's powers, to object to a particular person
29 being appointed guardian **or designated as standby guardian**, to be

1 present at the hearing, to be represented by legal counsel, and to
2 have legal counsel appointed if the individual is unable to afford
3 legal counsel, as provided in section 5305.

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

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

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

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

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

19 (u) To periodic review of the guardianship by the court,
20 including the right to a hearing and the appointment of an attorney
21 if issues arise upon the review of the guardianship, as provided in
22 section 5309.

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

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

29 (x) To the same rights on a petition for modification or

1 termination of the guardianship including the appointment of a
2 visitor as apply to a petition for appointment of a guardian, as
3 provided in section 5310.

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

7 (z) To written notice of the nature, purpose, and legal
8 effects of the appointment of a guardian, as provided in section
9 5311.

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

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

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

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

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

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

28 (2) A guardian ad litem shall inform the ward in writing of
29 his or her rights enumerated in this section. The state court

1 administrative office and the ~~office of services to the aging~~
2 ~~created in section 5 of the older Michiganians act, 1981 PA 180,~~
3 ~~MCL 400.585,~~ **aging and adult services agency created under**
4 **Executive Reorganization Order No. 2015-1, MCL 400.227,** shall
5 promulgate a form to be used to give the written notice under this
6 section, which ~~shall~~ **must** include space for the court to include
7 information on how to contact the court or other relevant personnel
8 with respect to the rights enumerated in this section.

9 Sec. 5310. (1) On petition of the guardian and subject to the
10 filing and approval of a report prepared as required by section
11 5314, the court shall accept the guardian's resignation and make
12 any other order that is appropriate.

13 (2) The ward, **a person appointed guardian in a will or other**
14 **writing by a parent or spouse under section 5301, or a** ~~any other~~
15 person interested in the ward's welfare may petition for an order
16 removing the guardian, **changing the designated standby guardian,**
17 appointing a successor guardian, modifying the guardianship's
18 terms, or terminating the guardianship. A request for this order
19 may be made by informal letter to the court or judge. **If a request**
20 **under this subsection is made by the person appointed by will or**
21 **other writing under section 5301, the person shall also present**
22 **proof of the person's appointment by will or other writing.** A
23 person who knowingly interferes with the transmission of this kind
24 of request to the court or judge is subject to a finding of
25 contempt of court.

26 (3) Except as otherwise provided in the order finding
27 incapacity, ~~upon~~ **on** receiving a petition or request under this
28 section, the court shall set a date for a hearing to be held within
29 28 days after the receipt of the petition or request. An order

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

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

15 Sec. 5311. (1) In a proceeding for the appointment or removal
 16 of an incapacitated individual's guardian, other than the
 17 appointment of a temporary guardian or temporary suspension of a
 18 guardian, **or to designate a standby guardian or change the**
 19 **designated standby guardian**, notice of hearing must be given to
 20 each of the following:

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

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

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

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

29 **(e) ~~(d)~~** If no other person is notified under subdivision (a),

1 (b), ~~or (c)~~, **or (d)**, at least 1 of the individual's closest adult
2 relatives, if any can be found.

3 (2) Notice must be served personally on the alleged
4 incapacitated individual. Notice to all other persons must be given
5 as prescribed by court rule. Waiver of notice by the individual
6 alleged to be incapacitated is not effective unless the individual
7 attends the hearing or a waiver of notice is confirmed in an
8 interview with the visitor.

9 (3) In a proceeding for a guardian's appointment **or**
10 **designation of a standby guardian** under sections 5303 and 5304, a
11 copy of the petition must be attached to the hearing notice, and
12 the notice to the alleged incapacitated individual must contain all
13 of the following information:

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

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

18 Sec. 5313. (1) The court may appoint a competent person as
19 guardian of a legally incapacitated individual. The court shall not
20 appoint as a guardian an agency, public or private, that
21 financially benefits from directly providing housing, medical,
22 mental health, or social services to the legally incapacitated
23 individual. If the court determines that the ward's property needs
24 protection, the court shall order the guardian to furnish a bond or
25 shall include restrictions in the letters of guardianship as
26 necessary to protect the property.

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

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

4 (b) A person the individual subject to the petition chooses to
 5 serve as guardian.

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

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

11 **(e) A person appointed by a parent or spouse of a legally**
 12 **incapacitated individual by will or other writing under section**
 13 **5301.**

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

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

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

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

26 (d) A relative of the legally incapacitated individual with
 27 whom the individual has resided for more than 6 months before the
 28 filing of the petition.

29 (e) A person nominated by a person who is caring for the

1 legally incapacitated individual or paying benefits to the legally
2 incapacitated individual.

3 (4) If none of the persons as designated or listed in
4 subsection (2) or (3) are suitable or willing to serve, the court
5 may appoint any competent person who is suitable and willing to
6 serve, including a professional guardian as provided in section
7 5106.

8 Sec. 5314. If meaningful communication is possible, a legally
9 incapacitated individual's guardian shall consult with the legally
10 incapacitated individual before making a major decision affecting
11 the legally incapacitated individual. To the extent a guardian of a
12 legally incapacitated individual is granted powers by the court
13 under section 5306, the guardian is responsible for the ward's
14 care, custody, and control, but is not liable to third persons
15 because of that responsibility for the ward's acts. In particular
16 and without qualifying the previous sentences, a guardian has all
17 of the following powers and duties, to the extent granted by court
18 order:

19 (a) The custody of the person of the ward and the power to
20 establish the ward's place of residence in or outside this state.
21 The guardian shall visit the ward within 3 months after the
22 guardian's appointment and not less than once within 3 months after
23 each previous visit. The guardian shall notify the court within 14
24 days of a change in the ward's place of residence or a change in
25 the guardian's place of residence.

26 (b) If entitled to custody of the ward, the duty to make
27 provision for the ward's care, comfort, and maintenance and, when
28 appropriate, arrange for the ward's training and education. The
29 guardian shall secure services to restore the ward to the best

1 possible state of mental and physical well-being so that the ward
2 can return to self-management at the earliest possible time.
3 Without regard to custodial rights of the ward's person, the
4 guardian shall take reasonable care of the ward's clothing,
5 furniture, vehicles, and other personal effects and commence a
6 protective proceeding if the ward's other property needs
7 protection. If a guardian commences a protective proceeding because
8 the guardian believes that it is in the ward's best interest to
9 sell or otherwise dispose of the ward's real property or interest
10 in real property, the court may appoint the guardian as special
11 conservator and authorize the special conservator to proceed under
12 section 5423(3). A guardian shall not otherwise sell the ward's
13 real property or interest in real property.

14 (c) The power to give the consent or approval that is
15 necessary to enable the ward to receive medical, mental health, or
16 other professional care, counsel, treatment, or service. However, a
17 guardian does not have and shall not exercise the power to give the
18 consent to or approval for inpatient hospitalization unless the
19 court expressly grants the power in its order. If the ward objects
20 or actively refuses mental health treatment, the guardian or any
21 other interested person must follow the procedures provided in
22 chapter 4 of the mental health code, 1974 PA 258, MCL 330.1400 to
23 330.1490, to petition the court for an order to provide involuntary
24 mental health treatment. The power of a guardian to execute a do-
25 not-resuscitate order under subdivision (d), execute a nonopioid
26 directive form under subdivision (f), or execute a physician orders
27 for scope of treatment form under subdivision (g) does not affect
28 or limit the power of a guardian to consent to a physician's order
29 to withhold resuscitative measures in a hospital. As used in this

1 subdivision, "involuntary mental health treatment" means that term
2 as defined in section 400 of the mental health code, 1974 PA 258,
3 MCL 330.1400.

4 (d) The power to execute, reaffirm, and revoke a do-not-
5 resuscitate order on behalf of a ward. However, a guardian shall
6 not execute a do-not-resuscitate order unless the guardian does all
7 of the following:

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

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

15 (e) If a guardian executes a do-not-resuscitate order under
16 subdivision (d), not less than annually after the do-not-
17 resuscitate order is first executed, the duty to do all of the
18 following:

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

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

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

27 (g) The power to execute, reaffirm, and revoke a physician
28 orders for scope of treatment form on behalf of a ward. However, a
29 guardian shall not execute a physician orders for scope of

1 treatment form unless the guardian does all of the following:

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

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

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

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

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

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

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

24 (ii) Receive money and tangible property deliverable to the
25 ward and apply the money and property for the ward's support, care,
26 and education. The guardian shall not use money from the ward's
27 estate for room and board that the guardian or the guardian's
28 spouse, parent, or child have furnished the ward unless a charge
29 for the service is approved by court order made on notice to at

1 least 1 of the ward's next of kin, if notice is possible. The
2 guardian shall exercise care to conserve any excess for the ward's
3 needs.

4 (j) The duty to report the condition of the ward and the
5 ward's estate that is subject to the guardian's possession or
6 control, as required by the court, but not less often than
7 annually. The guardian shall also serve the report required under
8 this subdivision on the ward and interested persons as specified in
9 the Michigan court rules. A report under this subdivision must
10 contain all of the following:

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

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

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

16 (iv) Whether the guardian recommends a more suitable living
17 arrangement for the ward.

18 (v) Medical treatment, including mental health treatment,
19 received by the ward.

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

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

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

1 (ix) Services received by the ward.

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

4 (xi) A recommendation as to the need for continued
5 guardianship.

6 **(xii) If a standby guardian has been designated, a statement**
7 **signed by the standby guardian that the standby guardian continues**
8 **to be willing to serve in the event of the unavailability, death,**
9 **incapacity, or resignation of the guardian.**

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

16 Sec. 5506. (1) An individual 18 years of age or older who is
17 of sound mind at the time a patient advocate designation is made
18 may designate in writing another individual who is 18 years of age
19 or older to exercise powers concerning care, custody, and medical
20 or mental health treatment decisions for the individual making the
21 patient advocate designation. An individual making a patient
22 advocate designation under this subsection may include in the
23 patient advocate designation the authority for the designated
24 individual to make an anatomical gift of all or part of the
25 individual's body in accordance with this act and part 101 of the
26 public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The
27 authority regarding an anatomical gift under this subsection may
28 include the authority to resolve a conflict between the terms of
29 the advance health care directive and the administration of means

1 necessary to ensure the medical suitability of the anatomical gift.
2 **If more than 1 individual is designated as a patient advocate to**
3 **serve at the same time, a person providing care, custody, or**
4 **medical or mental health treatment may rely on the representations**
5 **of any designated patient advocate without further inquiry.**

6 (2) For purposes of this section and sections 5507 to 5515, an
7 individual who is named in a patient advocate designation to
8 exercise powers concerning care, custody, and medical or mental
9 health treatment decisions is known as a patient advocate and an
10 individual who makes a patient advocate designation is known as a
11 patient.

12 (3) A patient advocate designation under this section must be
13 in writing, signed, witnessed as provided in subsection (4), dated,
14 executed voluntarily, and, before its implementation, made part of
15 the patient's medical record with, as applicable, the patient's
16 attending physician, the mental health professional providing
17 treatment to the patient, the facility where the patient is
18 located, or the community mental health services program or
19 hospital that is providing mental health services to the patient.
20 The patient advocate designation must include a statement that the
21 authority conferred under this section is exercisable only when the
22 patient is unable to participate in medical or mental health
23 treatment decisions, as applicable, and, in the case of the
24 authority to make an anatomical gift as described in subsection
25 (1), a statement that the authority remains exercisable after the
26 patient's death.

27 (4) A patient advocate designation under this section must be
28 executed in the presence of and signed by 2 witnesses. A witness
29 under this section shall not be the patient's spouse, parent,

1 child, grandchild, sibling, presumptive heir, known devisee at the
2 time of the witnessing, physician, or patient advocate or an
3 employee of a life or health insurance provider for the patient, of
4 a health facility that is treating the patient, or of a home for
5 the aged as defined in section 20106 of the public health code,
6 1978 PA 368, MCL 333.20106, where the patient resides, or of a
7 community mental health services program or hospital that is
8 providing mental health services to the patient. A witness shall
9 not sign the patient advocate designation unless the patient
10 appears to be of sound mind and under no duress, fraud, or undue
11 influence.

12 (5) As used in this section, "community mental health services
13 program or hospital" means a community mental health services
14 program as that term is defined in section 100a of the mental
15 health code, 1974 PA 258, MCL 330.1100a, or a hospital as that term
16 is defined in section 100b of the mental health code, 1974 PA 258,
17 MCL 330.1100b.

18 Sec. 5507. (1) A patient advocate designation may include a
19 statement of the patient's desires on care, custody, and medical
20 treatment or mental health treatment, or both. A patient advocate
21 designation may also include a statement of the patient's desires
22 on the making of an anatomical gift of all or part of the patient's
23 body under part 101 of the public health code, 1978 PA 368, MCL
24 333.10101 to 333.10123. The statement regarding an anatomical gift
25 under this subsection may include a statement of the patient's
26 desires regarding the resolution of a conflict between the terms of
27 the advance health care directive and the administration of means
28 necessary to ensure the medical suitability of the anatomical gift.
29 The patient may authorize the patient advocate to exercise 1 or

1 more powers concerning the patient's care, custody, medical
2 treatment, mental health treatment, the making of an anatomical
3 gift, or the resolution of a conflict between the terms of the
4 advance health care directive and the administration of means
5 necessary to ensure the medical suitability of the anatomical gift
6 that the patient could have exercised on his or her own behalf.

7 **(2) A patient advocate designation may also include the**
8 **patient's instructions about how the patient advocate is to make**
9 **decisions.**

10 **(3) ~~(2)~~**—A patient may designate in the patient advocate
11 designation a successor individual as a patient advocate who may
12 exercise the powers described in subsection (1) for the patient if
13 the first individual named as patient advocate does not accept, is
14 incapacitated, resigns, or is removed.

15 **(4) ~~(3)~~**—Before a patient advocate designation is implemented,
16 a copy of the patient advocate designation must be given to the
17 proposed patient advocate and must be given to a successor patient
18 advocate before the successor acts as patient advocate. Before
19 acting as a patient advocate, the proposed patient advocate must
20 sign an acceptance of the patient advocate designation.

21 **(5) ~~(4)~~**—The acceptance of a designation as a patient advocate
22 must include substantially all of the following statements:

23 1. This patient advocate designation is not effective unless
24 the patient is unable to participate in decisions regarding the
25 patient's medical or mental health, as applicable. If this patient
26 advocate designation includes the authority to make an anatomical
27 gift as described in section 5506, the authority remains
28 exercisable after the patient's death.

29 2. A patient advocate shall not exercise powers concerning the

1 patient's care, custody, and medical or mental health treatment
2 that the patient, if the patient were able to participate in the
3 decision, could not have exercised on his or her own behalf.

4 3. This patient advocate designation cannot be used to make a
5 medical treatment decision to withhold or withdraw treatment from a
6 patient who is pregnant that would result in the pregnant patient's
7 death.

8 4. A patient advocate may make a decision to withhold or
9 withdraw treatment that would allow a patient to die only if the
10 patient has expressed in a clear and convincing manner that the
11 patient advocate is authorized to make such a decision, and that
12 the patient acknowledges that such a decision could or would allow
13 the patient's death.

14 5. A patient advocate shall not receive compensation for the
15 performance of his or her authority, rights, and responsibilities,
16 but a patient advocate may be reimbursed for actual and necessary
17 expenses incurred in the performance of his or her authority,
18 rights, and responsibilities.

19 6. A patient advocate shall act in accordance with the
20 standards of care applicable to fiduciaries when acting for the
21 patient and shall act consistent with the patient's best interests.
22 The known desires of the patient expressed or evidenced while the
23 patient is able to participate in medical or mental health
24 treatment decisions are presumed to be in the patient's best
25 interests.

26 7. A patient may revoke his or her patient advocate
27 designation at any time and in any manner sufficient to communicate
28 an intent to revoke.

29 8. A patient may waive his or her right to revoke the patient

1 advocate designation as to the power to make mental health
2 treatment decisions, and if such a waiver is made, his or her
3 ability to revoke as to certain treatment will be delayed for 30
4 days after the patient communicates his or her intent to revoke.

5 9. A patient advocate may revoke his or her acceptance of the
6 patient advocate designation at any time and in any manner
7 sufficient to communicate an intent to revoke.

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

11 Sec. 5508. (1) Except as provided under subsection (3), the
12 authority under a patient advocate designation is exercisable by a
13 patient advocate only when the patient is unable to participate in
14 medical treatment or, as applicable, mental health treatment
15 decisions. The patient's attending ~~physician~~**medical professional**
16 and another ~~physician~~**medical professional** or licensed psychologist
17 shall determine upon examination of the patient whether the patient
18 is unable to participate in medical treatment decisions, shall put
19 the determination in writing, shall make the determination part of
20 the patient's medical record, and shall review the determination
21 not less than annually. If the patient's religious beliefs prohibit
22 an examination and this is stated in the designation, the patient
23 must indicate in the designation how the determination under this
24 subsection ~~shall~~**must** be made. The determination of the patient's
25 ability to make mental health treatment decisions ~~shall~~**must** be
26 made under section 5515.

27 (2) If a dispute arises as to whether the patient is unable to
28 participate in medical or mental health treatment decisions, a
29 petition may be filed with the court in the county in which the

1 patient resides or is located requesting the court's determination
2 as to whether the patient is unable to participate in decisions
3 regarding medical treatment or mental health treatment, as
4 applicable. If a petition is filed under this subsection, the court
5 shall appoint a guardian ad litem to represent the patient for the
6 purposes of this subsection. The court shall conduct a hearing on a
7 petition under this subsection as soon as possible and not later
8 than 7 days after the court receives the petition. As soon as
9 possible and not later than 7 days after the hearing, the court
10 shall determine whether or not the patient is able to participate
11 in decisions regarding medical treatment or mental health
12 treatment, as applicable. If the court determines that the patient
13 is unable to participate in the decisions, the patient advocate's
14 authority, rights, and responsibilities are effective. If the court
15 determines that the patient is able to participate in the
16 decisions, the patient advocate's authority, rights, and
17 responsibilities are not effective.

18 (3) ~~In the case of~~ **For** a patient advocate designation that
19 authorizes a patient advocate to make an anatomical gift of all or
20 part of the patient's body, the patient advocate shall act on the
21 patient's behalf in accordance with part 101 of the public health
22 code, 1978 PA 368, MCL 333.10101 to 333.10123, and may do so only
23 after the patient has been declared unable to participate in
24 medical treatment decisions as provided in subsection (1) or
25 declared dead by a licensed physician. The patient advocate's
26 authority to make an anatomical gift remains exercisable after the
27 patient's death.

28 (4) **As used in this section:**

29 (a) **"Attending medical professional" means a medical**

1 professional who has primary responsibility for the treatment and
2 care of the patient.

3 (b) "Medical professional" means any of the following:

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

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

10 (iii) A certified nurse practitioner under part 172 of the
11 public health code, 1978 PA 368, MCL 333.17201 to 333.17242.

12 Sec. 5510. (1) A patient advocate designation is revoked by 1
13 or more of the following:

14 (a) The patient's death, except that part of the patient
15 advocate designation, if any, that authorizes the patient advocate
16 to make an anatomical gift of all or part of the deceased patient's
17 body in accordance with this act and part 101 of the public health
18 code, 1978 PA 368, MCL 333.10101 to 333.10123.

19 (b) An order of removal by the probate court under section
20 ~~5511(5)~~. **5511(6)** .

21 (c) The patient advocate's resignation or removal by the
22 court, unless a successor patient advocate has been designated.

23 (d) The patient's revocation of the patient advocate
24 designation. Subject to section 5515, even if the patient is unable
25 to participate in medical treatment decisions, a patient may revoke
26 a patient advocate designation at any time and in any manner by
27 which he or she is able to communicate an intent to revoke the
28 patient advocate designation. If there is a dispute as to the
29 intent of the patient to revoke the patient advocate designation,

1 the court may make a determination on the patient's intent to
2 revoke the patient advocate designation. If the revocation is not
3 in writing, an individual who witnesses a revocation of a patient
4 advocate designation shall describe in writing the circumstances of
5 the revocation, must sign the writing, and shall notify, if
6 possible, the patient advocate of the revocation. If the patient's
7 physician, mental health professional, or health facility has
8 notice of the patient's revocation of a patient advocate
9 designation, the physician, mental health professional, or health
10 facility shall note the revocation in the patient's records and
11 bedside chart and shall notify the patient advocate.

12 (e) A subsequent patient advocate designation that revokes the
13 prior patient advocate designation either expressly or by
14 inconsistency.

15 (f) The occurrence of a provision for revocation contained in
16 the patient advocate designation.

17 (g) If a patient advocate designation is executed during a
18 patient's marriage naming the patient's spouse as the patient
19 advocate, the patient advocate designation is suspended during the
20 pendency of an action for separate maintenance, annulment, or
21 divorce and is revoked upon the entry of a judgment of separate
22 maintenance, annulment, or divorce, unless the patient has named a
23 successor individual to serve as a patient advocate. If a successor
24 patient advocate is named, that individual acts as the patient
25 advocate.

26 (2) The revocation of a patient advocate designation under
27 subsection (1) does not revoke or terminate the agency as to the
28 patient advocate or other person who acts in good faith under the
29 patient advocate designation and without actual knowledge of the

1 revocation. Unless the action is otherwise invalid or
2 unenforceable, an action taken without knowledge of the revocation
3 binds the patient and his or her heirs, devisees, and personal
4 representatives. A sworn statement executed by the patient advocate
5 stating that, at the time of doing an act in accordance with the
6 patient advocate designation, he or she did not have actual
7 knowledge of the revocation of the patient advocate designation is,
8 in the absence of fraud, conclusive proof that the patient advocate
9 did not have actual knowledge of the revocation at the time of the
10 act.

11 Sec. 5511. (1) Irrespective of a previously expressed or
12 evidenced desire, a current desire by a patient to have provided,
13 and not withheld or withdrawn, a specific life-extending care,
14 custody, or medical treatment is binding on the patient advocate,
15 if known by the patient advocate, regardless of the then ability or
16 inability of the patient to participate in care, custody, or
17 medical treatment decisions or the patient's competency.

18 (2) A person providing, performing, withholding, or
19 withdrawing care, custody, or medical or mental health treatment as
20 a result of the decision of an individual who is reasonably
21 believed to be a patient advocate and who is reasonably believed to
22 be acting within the authority granted by the designation is liable
23 in the same manner and to the same extent as if the patient had
24 made the decision on his or her own behalf.

25 (3) A person providing care, custody, or medical or mental
26 health treatment to a patient is bound by sound medical or, if
27 applicable, mental health treatment practice and by a patient
28 advocate's instructions if the patient advocate complies with
29 sections 5506 to 5515, but is not bound by the patient advocate's

1 instructions if the patient advocate does not comply with these
2 sections.

3 (4) A person providing care, custody, or medical or mental
4 health treatment to a patient is not required to determine if a
5 patient advocate complies with any of the patient's instructions
6 under section 5507(2). A person providing care, custody, or medical
7 or mental health treatment to a patient is not liable if the
8 patient advocate fails to comply with any of the patient's
9 instructions under section 5507(2).

10 (5) ~~(4)~~—A mental health professional who provides mental
11 health treatment to a patient shall comply with the desires of the
12 patient as expressed in the designation. If 1 or more of the
13 following apply to a desire of the patient as expressed in the
14 designation, the mental health professional is not bound to follow
15 that desire, but shall follow the patient's other desires as
16 expressed in the designation:

17 (a) In the opinion of the mental health professional,
18 compliance is not consistent with generally accepted community
19 practice standards of treatment.

20 (b) The treatment requested is not reasonably available.

21 (c) Compliance is not consistent with applicable law.

22 (d) Compliance is not consistent with court-ordered treatment.

23 (e) In the opinion of the mental health professional, there is
24 a psychiatric emergency endangering the life of the patient or
25 another individual and compliance is not appropriate under the
26 circumstances.

27 (6) ~~(5)~~—If a dispute arises as to whether a patient advocate
28 is acting consistent with the patient's best interests or is not
29 complying with sections 5506 to 5515, a petition may be filed with

1 the court in the county in which the patient resides or is located
2 requesting the court's determination as to the continuation of the
3 designation or the removal of the patient advocate.

4 Sec. 7103. As used in this article:

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

7 (b) "Ascertainable standard" means a standard relating to an
8 individual's health, education, support, or maintenance within the
9 meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal
10 revenue code of 1986, 26 USC 2041 and 2514.

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

14 (d) "Discretionary trust provision" means a provision in a
15 trust, regardless of whether the terms of the trust provide a
16 standard for the exercise of the trustee's discretion and
17 regardless of whether the trust contains a spendthrift provision,
18 that provides that the trustee has discretion, or words of similar
19 import, to determine 1 or more of the following:

20 (i) Whether to distribute to or for the benefit of an
21 individual or a class of beneficiaries the income or principal or
22 both of the trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (ii) If on the date a trust beneficiary's qualification is
2 determined there is no trust beneficiary described in subparagraph
3 (i), a trust beneficiary to whom 1 or more of the following apply on
4 the date the trust beneficiary's qualification is determined:

5 (A) The trust beneficiary is a distributee or permissible
6 distributee of trust income or principal.

7 (B) The trust beneficiary would be a distributee or
8 permissible distributee of trust income or principal if the
9 interests of the distributees under the trust described in sub-
10 subparagraph (A) terminated on that date without causing the trust
11 to terminate.

12 (C) The trust beneficiary would be a distributee or
13 permissible distributee of trust income or principal if the trust
14 terminated on that date.

15 (h) "Revocable", as applied to a trust, means revocable by the
16 settlor without the consent of the trustee or a person holding an
17 adverse interest. A trust's characterization as revocable is not
18 affected by the settlor's lack of capacity to exercise the power of
19 revocation, regardless of whether an agent of the settlor under a
20 durable power of attorney, a conservator of the settlor, or a
21 plenary guardian of the settlor is serving.

22 (i) "Settlor" means a person, including a testator or a
23 trustee, who creates a trust. If more than 1 person creates a
24 trust, each person is a settlor of the portion of the trust
25 property attributable to that person's contribution. The lapse,
26 release, or waiver of a power of appointment does not cause the
27 holder of a power of appointment to be treated as a settlor of the
28 trust.

29 (j) "Spendthrift provision" means a term of a trust that

1 restrains either the voluntary or involuntary transfer of a trust
2 beneficiary's interest.

3 (k) "Support provision" means a provision in a trust that
4 provides the trustee shall distribute income or principal or both
5 for the health, education, support, or maintenance of a trust
6 beneficiary, or language of similar import. A provision in a trust
7 that provides a trustee has discretion whether to distribute income
8 or principal or both for these purposes or to select from among a
9 class of beneficiaries to receive distributions under the trust
10 provision is not a support provision, but rather is a discretionary
11 trust provision.

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

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

16 (ii) The person holds a power of appointment over trust
17 property in a capacity other than that of trustee or trust
18 director.

19 (m) "Trust director" means that term as defined in section
20 7703a.

21 (n) "Trust instrument" means a governing instrument that
22 contains the terms of the trust, including any amendment to a term
23 of the trust.

24 Sec. 7105. (1) Except as otherwise provided in the terms of
25 the trust, this article governs the duties and powers of a trustee,
26 relations among trustees, and the rights and interests of a trust
27 beneficiary.

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

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

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

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

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

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

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

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

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

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

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

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

24 **(i)** ~~(h)~~—The obligations imposed on a trust director in section
25 7703a(4) and (5).

26 **(j)** ~~(i)~~ ~~The~~ **Except as provided in section 7409a, the** duty
27 under section 7814(2) (a) to (c) to provide beneficiaries with the
28 terms of the trust and information about the trust's property, and
29 to notify qualified trust beneficiaries of an irrevocable trust of

1 the existence of the trust and the identity of the trustee.

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

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

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

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

10 (o) ~~(n)~~—Periods of limitation under this article for
11 commencing a judicial proceeding.

12 (p) ~~(o)~~—The power of the court to take action and exercise
13 jurisdiction.

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

16 (r) ~~(q)~~—The requirement under section 7113 that a provision in
17 a trust that purports to penalize an interested person for
18 contesting the trust or instituting another proceeding relating to
19 the trust ~~shall~~**must** not be given effect if probable cause exists
20 for instituting a proceeding contesting the trust or another
21 proceeding relating to the trust.

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

25 Sec. 7110. (1) A charitable organization expressly named in
26 the terms of a trust to receive distributions under the terms of a
27 charitable trust has the rights of a qualified trust beneficiary
28 under this article if 1 or more of the following are applicable to
29 the charitable organization on the date the charitable

organization's qualification is being determined:

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

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

(c) The charitable organization would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

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

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

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

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

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

Sec. 7302. **(1) ~~The~~ To the extent there is no conflict of interest between the holder of a power of appointment and the person represented with respect to a particular question or dispute, the holder of a ~~power of revocation or amendment or a~~**

~~presently exercisable or testamentary general or special~~ power of appointment, **including a power of appointment in the form of a power of amendment or revocation**, may represent and bind a person ~~whose to the extent the person's~~ interest, as a permissible appointee, taker in default, or otherwise, is subject to the power. For the purpose, however, of granting consent or approval to modification or termination of a trust or to deviation from its terms, including consent or approval to a settlement agreement described in section 7111, only the holder of a presently exercisable or testamentary general power of appointment may represent and bind such a person.

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

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

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

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

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

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

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

(c) The trust has a definite beneficiary or is either of the

1 following:

2 (i) A charitable trust.

3 (ii) A trust for a noncharitable purpose **under section 7409** or
4 **a trust** for the care of an animal ~~, as provided in section~~
5 ~~2722.~~**under section 7408.**

6 (d) The trustee has duties to perform.

7 (e) The same person is not the sole trustee and sole
8 beneficiary.

9 (2) A trust beneficiary is definite if the trust beneficiary
10 can be ascertained now or in the future, subject to any applicable
11 rule against perpetuities.

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

14 **Sec. 7408. (1) A trust may be created to provide for the care**
15 **of a designated domestic pet or animal alive during the settlor's**
16 **lifetime. A trust created under this subsection terminates on the**
17 **death of the animal or, if the trust was created to provide for the**
18 **care of more than 1 domestic or pet animal alive during the**
19 **settlor's lifetime, on the death of the last surviving animal.**

20 (2) A trust authorized under this section may be enforced by a
21 person appointed in the terms of the trust or, if there is not a
22 person appointed in the terms of the trust, by a person appointed
23 by the court. A person that has an interest in the welfare of an
24 animal for which the trust is created may request the court to
25 appoint a person to enforce the trust or to remove a person
26 appointed in the terms of the trust.

27 (3) Property of a trust authorized by this section may be
28 applied only to its intended use, except to the extent the court
29 determines that the value of the trust property exceeds the amount

1 required for the intended use. Except as otherwise provided in the
2 terms of the trust, property not required for the intended use must
3 be distributed to the settlor, if then living, or otherwise to the
4 settlor's successors in interest.

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

7 (a) A trust may be created for a noncharitable purpose without
8 a definite or definitely ascertainable beneficiary or for a
9 noncharitable but otherwise valid purpose to be selected by the
10 trustee. A trust created under this section may be performed by the
11 trustee according to the terms of the trust for not more than 25
12 years whether or not the terms of the trust contemplate a longer
13 duration.

14 (b) A trust authorized by this section may be enforced by a
15 person appointed in the terms of the trust or, if there is not a
16 person appointed in the terms of the trust, by a person appointed
17 by the court.

18 (c) 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. 7409a. (1) If the terms of a trust other than a
26 charitable trust are embodied in a trust instrument that clearly
27 express the settlor's intent that 1 or more items of prime
28 disclosure information should be withheld, generally or in
29 specified circumstances, from 1 or more of the trust beneficiaries,

1 both of the following apply:

2 (a) During the nondisclosure period all of the following
3 apply:

4 (i) To the extent necessary to effectuate the settlor's
5 expressed intent, the trustee does not have the duty under section
6 7814(2) (a) to (c) to provide beneficiaries with the terms of the
7 trust and information about the trust's property and to notify
8 qualified trust beneficiaries of the existence of the trust and the
9 identity of the trustee.

10 (ii) The trustee may administer the trust in accordance with
11 the settlor's expressed intent regarding nondisclosure of primary
12 disclosure information to the extent made practicable by the terms
13 of the trust given the circumstances of the beneficiaries and any
14 reporting obligations imposed on the trustee by law other than this
15 act.

16 (iii) If the trust instrument grants a nondisclosure correlative
17 right, the trustee has a duty to administer the trust in accordance
18 with the settlor's expressed intent regarding nondisclosure of
19 primary disclosure information, but only to the extent made
20 practicable by the terms of the trust given the circumstances of
21 the beneficiaries and any reporting obligations imposed on the
22 trustee by law other than this act.

23 (iv) Any purported appointment or distribution of assets of the
24 instant trust to another undisclosed trust is ineffective to the
25 extent it could cause the appointed or distributed assets to be
26 administered continuously under the authority of this section for a
27 period ending after the date on which the instant trust's maximum
28 nondisclosure period ends.

29 (b) The trustee or any holder of either a nondisclosure

1 correlative right or a protection power is not liable to any trust
2 beneficiary because of the trustee's failure to follow the terms of
3 the trust prescribing nondisclosure of prime disclosure
4 information. The trustee's duty, if any, to follow the terms of the
5 trust prescribing nondisclosure of prime disclosure information
6 during the trust's nondisclosure period is owed solely to the
7 holders, if any, of nondisclosure correlative rights, and the sole
8 remedy of a nondisclosure correlative right holder for the
9 trustee's breach of that duty is removal.

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

13 (a) On the reasonable request of a nondisclosure correlative
14 right holder or protection power holder at any time during the
15 trust's nondisclosure period, the trustee shall promptly furnish to
16 the right or power holder a copy of the terms of the trust that
17 describe or affect the holder's right or power.

18 (b) Within 63 days after accepting trusteeship of an
19 undisclosed trust, the trustee shall notify all nondisclosure
20 correlative right holders and protection power holders of the
21 acceptance, of the court in which the trust is registered, if it is
22 registered, and of the trustee's name, address, and telephone
23 number.

24 (c) Within 63 days after the date the trustee acquires
25 knowledge of the creation of an undisclosed trust of which the
26 trustee is trustee or the date the trustee acquires knowledge that
27 a formerly revocable trust of which the trustee is trustee has, by
28 becoming irrevocable, whether by the death of the settlor or
29 otherwise, become an undisclosed trust, the trustee shall notify

1 all nondisclosure correlative right holders and protection power
2 holders of the trust's existence, of the identity of the settlor or
3 settlors, of the court in which the trust is registered, if it is
4 registered, and of the right to request a copy of the terms of the
5 trust that describe or affect the power holders' rights or powers.

6 (3) On the date on which the nondisclosure period ends, the
7 trust ceases to be an undisclosed trust and to the extent terms of
8 the trust are inconsistent with the duty under section 7814(2) (a)
9 to (c) to provide beneficiaries with the terms of the trust and
10 information about the trust's property and to notify qualified
11 trust beneficiaries of the existence of the trust and the identity
12 of the trustee, those terms cease to be effective.

13 (4) To the extent the trustee has not already provided the
14 notice of the trust required under section 7814(2) by the end of
15 the trust's nondisclosure period, the trustee is deemed for that
16 purpose to have accepted the trust and to have acquired knowledge
17 of the trust's creation on the date on which the nondisclosure
18 period ends, and the identities of the qualified trust
19 beneficiaries are determined for that purpose as of the time
20 immediately preceding the end of the nondisclosure period.

21 (5) As used in this section:

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

26 (b) "Nondisclosure correlative right" means a right granted by
27 the terms of a trust that allows the right holder to remove a
28 trustee of the trust for the trustee's failure during the trust's
29 nondisclosure period to follow, to the extent practicable, the

1 terms of the trust prescribing nondisclosure of prime disclosure
2 information.

3 (c) "Nondisclosure period" means the shorter of the trust's
4 maximum nondisclosure period or the period from the beginning of
5 the maximum nondisclosure period to the trust's termination.

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

9 (e) "Protection power" means a power granted by the terms of a
10 trust that allows the power holder, acting in a fiduciary capacity,
11 to direct the trustee of the trust for the benefit of the trust
12 beneficiaries during the trust's nondisclosure period. A protection
13 power may authorize the power holder to represent the trust
14 beneficiaries in the sense described in section 7301(1) to (2)
15 without regard to the application of sections 7302 to 7304.

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

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

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

22 (b) After the death of a settlor, and subject to the settlor's
23 right to direct the source from which liabilities will be paid, the
24 property of a trust that at the settlor's death was revocable by
25 the settlor, either alone or in conjunction with another person, is
26 subject to expenses, claims, and allowances as provided in section
27 7605.

28 (c) With respect to an irrevocable trust, a creditor or
29 assignee of the settlor may reach no more than the lesser of the

1 following:

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

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

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

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

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

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

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

20 ~~(b) The trust is treated as qualified terminable interest~~
21 ~~property under section 2523(f) of the internal revenue code, 26 USC~~
22 ~~2523.~~

23 (a) During the lifetime of the individual's spouse, the only
24 distributees or permissible distributees of the trust income or
25 principal are either of the following:

26 (i) The individual's spouse.

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

28 (A) The individual's issue.

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

1 **(b) ~~(c)~~**—The individual retains a beneficial interest in the
 2 trust income, trust principal, or both, which beneficial interest
 3 follows the termination of the individual's spouse's prior
 4 beneficial interest in the trust.

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

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

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

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

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

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

19 (i) The trust's existence.

20 (ii) The date of the trust instrument.

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

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

24 (v) The settlor's name.

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

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

27 **(2) If a trust that was revocable at the settlor's death**
 28 **becomes an undisclosed trust as that term is defined in section**
 29 **7409a, a person from whom information described in section**

1 7814(2) (a) to (c) is withheld under section 7409a(1) (a) (i) during
2 the 2-year period following the settlor's death may commence a
3 judicial proceeding to contest the validity of the trust within the
4 earlier of the following:

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

9 (b) Six months after the trustee sent the person a notice
10 described in subsection (1) (b) .

11 (3) ~~(2)~~—Upon the death of the settlor of a trust that was
12 revocable at the settlor's death, the trustee may proceed to
13 distribute the trust property in accordance with the terms of the
14 trust. The trustee is not subject to liability for doing so unless
15 either of the following applies:

16 (a) The trustee knows of a pending judicial proceeding
17 contesting the validity of the trust.

18 (b) A potential contestant has notified the trustee in writing
19 of a possible judicial proceeding to contest the trust and a
20 judicial proceeding is commenced within 63 days after the
21 contestant sent the notification.

22 (4) ~~(3)~~—A beneficiary of a trust that is determined to have
23 been invalid is liable to return any distribution received.

24 Enacting section 1. Section 2722 of the estates and protected
25 individuals code, 1998 PA 386, MCL 700.2722, is repealed.