

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4898**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1106, 1210, 2519, 2806, 3605, 3916, 3917,
3918, 3959, 3981, 3982, 3983, 5102, 5301, 5303, 5304, 5305, 5306a,
5310, 5311, 5313, 5314, 5507, 7103, 7105, 7110, 7302, 7402, 7506,
7604, and 7820a (MCL 700.1106, 700.1210, 700.2519, 700.2806,
700.3605, 700.3916, 700.3917, 700.3918, 700.3959, 700.3981,
700.3982, 700.3983, 700.5102, 700.5301, 700.5303, 700.5304,
700.5305, 700.5306a, 700.5310, 700.5311, 700.5313, 700.5314,
700.5507, 700.7103, 700.7105, 700.7110, 700.7302, 700.7402,
700.7506, 700.7604, and 700.7820a), section 1106 as amended by 2018
PA 555, sections 1210, 7302, 7402, and 7506 as amended by 2009 PA
46, section 2519 as amended by 2010 PA 325, section 3917 as amended

by 2004 PA 314, section 5301 as amended by 2005 PA 204, sections 5303 and 5305 as amended by 2017 PA 155, section 5306a as added by 2012 PA 173, section 5310 as amended by 2000 PA 54, section 5313 as amended by 2012 PA 545, section 5314 as amended by 2018 PA 594, section 5507 as amended by 2008 PA 41, sections 7103 and 7105 as amended by 2018 PA 664, sections 7110 and 7604 as added by 2009 PA 46, and section 7820a as added by 2012 PA 483, and by adding sections 1215, 1216, 5301c, 7408, 7409, and 7409a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1106. As used in this act:

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

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

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

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

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

17 (v) A physician's assistant licensed to practice in this state
18 under article 15 of the public health code, 1978 PA 368, MCL
19 333.16101 to 333.18838.

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

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

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

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

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

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

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

16 (h) "Nonresident decedent" means a decedent who was domiciled
17 in another jurisdiction at the time of his or her death.

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

23 (j) "Parent" includes, but is not limited to, an individual
24 entitled to take, or who would be entitled to take, as a parent
25 under this act by intestate succession from a child who dies
26 without a will and whose relationship is in question. Parent does
27 not include an individual who is only a stepparent, foster parent,
28 or grandparent.

29 (k) "Partial guardian" means that term as defined in section

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

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

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

9 (n) "Payor" means a trustee, insurer, business entity,
10 employer, government, governmental subdivision or agency, or other
11 person authorized or obligated by law or a governing instrument to
12 make payments.

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

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

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

22 (r) "Physician orders for scope of treatment form" means that
23 term as defined in section 5674 of the public health code, 1978 PA
24 368, MCL 333.5674.

25 (s) "Plenary guardian" means that term as defined in section
26 600 of the mental health code, 1974 PA 258, MCL 330.1600.

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

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

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

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

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

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

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

21 Sec. 1210. (1) The specific dollar amounts stated in sections
22 2102, 2402, 2404, 2405, and 3983 apply to decedents who die before
23 January 1, 2001. For decedents who die after December 31, 2000,
24 these specific dollar amounts ~~shall~~**must** be multiplied by the cost-
25 of-living adjustment factor for the calendar year in which the
26 decedent dies.

27 **(2) Before January 1, 2023, the specific amounts stated in**
28 **sections 2519, 3605, 3916, 3917, 3918, 3981, 3982, and 5102 apply**
29 **to those sections. Beginning January 1, 2023, those specific dollar**

1 amounts must be multiplied by the cost-of-living adjustment factor
2 for the calendar year in which the decedent dies.

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

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

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

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

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

18 (2) An organization that conducts activities through employees
19 has notice or knowledge of a fact only from the time the
20 information was received by an employee having responsibility to
21 act or from the time the information would have been brought to the
22 employee's attention if the organization had exercised reasonable
23 diligence. An organization exercises reasonable diligence if it
24 maintains reasonable routines for communicating significant
25 information to the employee having responsibility to act and there
26 is reasonable compliance with the routines. Reasonable diligence
27 does not require an employee of the organization to communicate
28 information unless the communication is part of the individual's
29 regular duties or the individual knows a matter that would be

1 materially affected by the information.

2 Sec. 1216. (1) Any part of a governing instrument that
3 directly or indirectly makes a substantial gift to an attorney who
4 drafted the governing instrument or a person related to the
5 attorney who drafted the governing instrument is void unless the
6 attorney who drafted the governing instrument or the person related
7 to the attorney who drafted the governing instrument is related to
8 the individual making the substantial gift.

9 (2) This section does not apply to a provision in a governing
10 instrument appointing the attorney who drafted the governing
11 instrument, or a person related to the attorney who drafted the
12 governing instrument, as a fiduciary.

13 (3) A provision in a governing instrument purporting to waive
14 or otherwise avoid the application of this section is
15 unenforceable.

16 (4) If a purchaser or lender for value acquires property
17 distributed in kind or a security interest in property from a
18 person that has received a substantial gift pursuant to a part of a
19 governing instrument that is void under subsection (1), the
20 purchaser or lender takes title free of any claims arising under,
21 and incurs no personal liability by reason of, this section. This
22 section does not directly or indirectly impose liability on a
23 person that honors or relies on a part of a governing instrument
24 that is void under subsection (1) and that contains or effectuates
25 a substantial gift, unless the person has knowledge that the part
26 of the governing instrument is void.

27 (5) If a part of a governing instrument is void under
28 subsection (1), the part that is void is severable and does not
29 affect any other part of the governing instrument that can be given

1 effect, including a term that makes an alternate or substitute
2 gift. If the part of the governing instrument that is void under
3 subsection (1) cannot be severed, the entire governing instrument
4 is void. For a power of appointment, this section does not affect
5 the power to appoint in favor of persons other than the attorney
6 who drafted the governing instrument or a person related to the
7 attorney who drafted the governing instrument.

8 (6) If the court determines that an attorney who drafted the
9 governing instrument disguised or attempted to disguise a
10 substantial gift, to the attorney who drafted the governing
11 instrument or a person related to the attorney who drafted the
12 governing instrument, as a conveyance for consideration for less
13 than fair market value, the court may find the conveyance void
14 under subsection (1).

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

19 (8) This section applies only to a governing instrument
20 executed after the effective date of the amendatory act that added
21 this section.

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

26 (a) A spouse of the individual.

27 (b) A lineal ascendant or descendant of the individual or the
28 individual's spouse.

29 (c) A sibling of the individual.

1 (d) A spouse of the individual described in subdivision (b) or
2 (c).

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

6 (11) As used in this section:

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

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

12 (ii) The individual directly or indirectly prepared or
13 supervised the preparation, execution, or both, of the governing
14 instrument. For purposes of this subparagraph, among other ways,
15 the individual is considered to have prepared, or supervised the
16 execution of, the governing instrument if the preparation, or
17 supervision of the execution, of the governing instrument was
18 performed by an employee, subordinate, partner, co-owner, or other
19 person or lawyer employed by the same firm or company as the
20 individual as of the time of preparation or execution, or both.

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

24 (i) Whether the gift or testamentary transfer is outright or in
25 trust.

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

27 (iii) Whether the power is held in a fiduciary or nonfiduciary
28 capacity.

29 (c) "Substantial gift" means a gift, the value of which

1 **exceeds \$5,000.00 as a result of a single governing instrument or 2**
2 **or more related governing instruments.**

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

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

10 MICHIGAN STATUTORY WILL NOTICE

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

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

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

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

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

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

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

1 where the will is kept.

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

5 INSTRUCTIONS:

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

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

13 MICHIGAN STATUTORY WILL OF _____

14 (Print or type your full name)

15 ARTICLE 1. DECLARATIONS

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

17 I live in _____ County, Michigan.

18 My spouse is _____.

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

20 My children now living are:

21 _____
22 _____
23 _____

24 (Insert names or write "none")

25 ARTICLE 2. DISPOSITION OF MY ASSETS

26 2.1 CASH GIFTS TO PERSONS OR CHARITIES.

27 (Optional)

28 I can leave no more than ~~two (2)~~ 2 cash gifts. I make the
29 following cash gifts to the persons or charities in the amount

1 stated here. Any transfer tax due upon my death shall be paid from
2 the balance of my estate and not from these gifts. Full name and
3 address of person or charity to receive cash gift (name only 1
4 person or charity here):

5 _____
6 (Insert name of person or charity)

7 _____
8 (Insert address)

9 AMOUNT OF GIFT (In figures): \$ _____

10 AMOUNT OF GIFT (In words): _____ Dollars

11 _____
12 (Your signature)

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

15 _____
16 (Insert name of person or charity)

17 _____
18 (Insert address)

19 AMOUNT OF GIFT (In figures): \$ _____

20 AMOUNT OF GIFT (In words): _____ Dollars

21 _____
22 (Your signature)

23 2.2 PERSONAL AND HOUSEHOLD ITEMS.

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

28 I give my spouse all my books, jewelry, clothing, automobiles,
29 furniture, and other personal and household items not included on

1 such a separate list or statement. If I am not married at the time
2 I sign this will or if my spouse dies before me, my personal
3 representative shall distribute those items, as equally as
4 possible, among my children who survive me. If no children survive
5 me, these items shall be distributed as set forth in paragraph 2.3.

6 2.3 ALL OTHER ASSETS.

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

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

17 (Select only 1)

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

21 _____
22 (Your signature)

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

25 _____
26 (Your signature)

27 ARTICLE 3. NOMINATIONS OF PERSONAL
28 REPRESENTATIVE, GUARDIAN, AND CONSERVATOR

29 Personal representatives, guardians, and conservators have a

1 great deal of responsibility. The role of a personal representative
2 is to collect your assets, pay debts and taxes from those assets,
3 and distribute the remaining assets as directed in the will. A
4 guardian is a person who will look after the physical well-being of
5 a child. A conservator is a person who will manage a child's assets
6 and make payments from those assets for the child's benefit. Select
7 them carefully. Also, before you select them, ask them whether they
8 are willing and able to serve.

9 3.1 PERSONAL REPRESENTATIVE.

10 (Name at least 1)

11 I nominate _____
12 (Insert name of person or eligible financial institution)
13 of _____ to serve as personal representative.
14 (Insert address)

15 If my first choice does not serve, I nominate _____
16 _____
17 (Insert name of person or eligible financial institution)
18 of _____ to serve as personal representative.
19 (Insert address)

20 3.2 GUARDIAN AND CONSERVATOR.

21 Your spouse may die before you. Therefore, if you have a child
22 under age 18, name an individual as guardian of the child, and an
23 individual or eligible financial institution as conservator of the
24 child's assets. The guardian and the conservator may, but need not
25 be, the same person.

26 If a guardian or conservator is needed for a child of
27 mine, I nominate _____
28 (Insert name of individual)
29 of _____ as guardian and

1 (Insert address)

2 _____

3 (Insert name of individual or eligible financial institution)

4 of _____ to serve as conservator.

5 (Insert address)

6 If my first choice cannot serve, I nominate

7 _____

8 (Insert name of individual)

9 of _____ as guardian and

10 (Insert address)

11 _____

12 (Insert name of individual or eligible financial institution)

13 of _____ to serve as conservator.

14 (Insert address)

15 3.3 BOND.

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

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

24 _____

25 (Your signature)

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

28 _____

29 (Your signature)

1 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

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

4 I sign my name to this Michigan statutory will on
5 _____, 20____.

6 _____
7 (Your signature)

8 NOTICE REGARDING WITNESSES

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

13 STATEMENT OF WITNESSES

14 We sign below as witnesses, declaring that the individual who
15 is making this will appears to have sufficient mental capacity to
16 make this will and appears to be making this will freely, without
17 duress, fraud, or undue influence, and that the individual making
18 this will acknowledges that he or she has read the will, or has had
19 it read to him or her, and understands the contents of this will.

20 _____
21 (Print Name)

22 _____
23 (Signature of witness)

24 _____
25 (Address)

26 _____
27 (City) (State) (Zip)

28 _____
29 (Print name)

1 _____
2 (Signature of witness)

3 _____
4 (Address)

5 _____
6 (City) (State) (Zip)

7 _____
8 (Print name)

9 _____
10 (Signature of witness)

11 _____
12 (Address)

13 _____
14 (City) (State) (Zip)

15 DEFINITIONS

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

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

21 (b) "Descendants" means your children, grandchildren, and
22 their descendants.

23 (c) "Descendants" or "children" includes individuals born or
24 conceived during marriage, individuals legally adopted, and
25 individuals born out of wedlock who would inherit if their parent
26 died without a will.

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

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

3 (f) Whenever a distribution under a Michigan statutory will is
4 to be made to an individual's descendants, the assets are to be
5 divided into as many equal shares as there are then living
6 descendants of the nearest degree of living descendants and
7 deceased descendants of that same degree who leave living
8 descendants. Each living descendant of the nearest degree ~~shall~~
9 **will** receive 1 share. The remaining shares, if any, are combined
10 and then divided in the same manner among the surviving descendants
11 of the deceased descendants as if the surviving descendants who
12 were allocated a share and their surviving descendants had
13 predeceased the descendant. In this manner, all descendants who are
14 in the same generation will take an equal share.

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

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

19 (i) Plural and singular words include each other, where
20 appropriate.

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

26 ADDITIONAL CLAUSES

27 Powers of personal representative

28 1. A personal representative has all powers of administration
29 given by Michigan law to personal representatives and, to the

1 extent ~~funds are~~ **money is** not needed to meet debts and expenses
 2 currently payable and ~~are~~ **is** not immediately distributable, the
 3 power to invest and reinvest the estate from time to time in
 4 accordance with the Michigan prudent investor rule. In dividing and
 5 distributing the estate, the personal representative may distribute
 6 partially or totally in kind, may determine the value of
 7 distributions in kind without reference to income tax bases, and
 8 may make non-pro rata distributions.

9 2. The personal representative may distribute estate assets
 10 otherwise distributable to a minor beneficiary to the minor's
 11 conservator or, in amounts not exceeding ~~\$5,000.00~~ **\$25,000.00** per
 12 year, either to the minor, if married; to a parent or another adult
 13 with whom the minor resides and who has the care, custody, or
 14 control of the minor; or to the guardian. The personal
 15 representative is free of liability and is discharged from further
 16 accountability for distributing assets in compliance with ~~the~~
 17 ~~provisions of~~ this paragraph.

18 POWERS OF GUARDIAN AND CONSERVATOR

19 A guardian named in this will has the same authority with
 20 respect to the child as a parent having legal custody would have. A
 21 conservator named in this will has all of the powers conferred by
 22 law.

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

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

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

29 (b) "Divorce or annulment" means a divorce or annulment, or a

1 dissolution or declaration of invalidity of a marriage, that would
2 exclude the spouse as a surviving spouse within the meaning of
3 section 2801. A decree of separation that does not terminate the
4 ~~status of husband and wife~~ **decedent's marriage** is not a divorce for
5 purposes of this section and sections 2807 to 2809.

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

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

11 (e) "Relative of the divorced individual's former spouse"
12 means an individual who is related to the divorced individual's
13 former spouse by blood, adoption, or affinity and who, after the
14 divorce or annulment, is not related to the divorced individual by
15 blood, adoption, or affinity.

16 (f) "Revocable" means, with respect to a disposition,
17 appointment, provision, or nomination, one under which the divorced
18 individual, at the time of the divorce or annulment, was alone
19 empowered, by law or under the governing instrument, to cancel the
20 designation in favor of his or her former spouse or former spouse's
21 relative, whether or not the divorced individual was then empowered
22 to designate himself or herself in place of his or her former
23 spouse or in place of his or her former spouse's relative and
24 whether or not the divorced individual then had the capacity to
25 exercise the power.

26 Sec. 3605. **(1)** A person apparently having an interest in the
27 estate worth in excess of ~~\$2,500.00~~ **\$25,000.00** or a creditor having
28 a claim against the estate in excess of ~~\$2,500.00~~ **\$25,000.00** may
29 make a written demand that a personal representative give bond. The

1 demand must be filed with the register, and if appointment and
 2 qualification have occurred, a copy must be mailed to the personal
 3 representative. Upon filing of the demand, bond is required, but
 4 the requirement ceases if the person demanding bond ceases to be
 5 interested in the estate or if bond is excused as provided in
 6 section 3603 or 3604. After receipt of notice and until the filing
 7 of the bond or cessation of the requirement of bond, the personal
 8 representative shall ~~refrain from exercising~~ **not exercise** any
 9 powers of the fiduciary office except as necessary to preserve the
 10 estate. Failure of the personal representative to meet a
 11 requirement of bond by giving suitable bond within 28 days after
 12 receipt of notice is cause for removal and appointment of a
 13 successor personal representative.

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

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

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

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

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

27 (2) As an alternative to deposit with the county treasurer
 28 under subsection (1), if the amount involved for a person described
 29 under subsection (1)(a) or (b) is ~~\$250.00~~ **\$1,000.00** or less, the

1 fiduciary may distribute the amount as part of the residue of the
 2 decedent's estate or to those entitled to the trust fund balance.
 3 If the fiduciary has property other than money that belongs to a
 4 person described in subsection (1)(a) or (b), the fiduciary may
 5 sell the property for the purpose of reducing it to money to be
 6 deposited with the county treasurer.

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

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

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

24 (2) For the care of the money received under authority of this
 25 act, the county treasurer may take 1% from the different amounts
 26 paid out under court order unless the amount paid out to a single
 27 individual exceeds ~~\$1,000.00~~, ~~-\$1,500.00~~, in which case the county
 28 treasurer shall take ~~\$10.00~~ ~~-\$15.00~~ plus 1/2 of 1% of the excess of
 29 the amount over ~~\$1,000.00~~ ~~-\$1,500.00~~.

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

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

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

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

25 (2) Unless contrary to an express provision in the will, the
 26 personal representative may discharge the personal representative's
 27 obligation to distribute to an individual under legal disability as
 28 authorized by section 5102 or another statute. If the personal
 29 representative knows that a conservator has been appointed for an

1 individual or that a proceeding for appointment of a conservator
 2 for the individual is pending, the personal representative is
 3 authorized to distribute only to the conservator. If the personal
 4 representative knows that a guardian of the estate of an individual
 5 with a developmental disability has been appointed under the mental
 6 health code, 1974 PA 258, MCL 330.1001 to 330.2106, or that a
 7 proceeding for appointment of a guardian of the estate for the
 8 individual with the developmental disability is pending, the
 9 personal representative is authorized to distribute only to the
 10 guardian of the estate.

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

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

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

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

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

21 (ii) The distribution is in amounts not exceeding ~~\$5,000.00~~
 22 **\$25,000.00** a year or property not exceeding ~~\$5,000.00~~**\$25,000.00** in
 23 value, unless the court authorizes a higher amount or value.

24 (4) A person receiving money or property for an individual
 25 under legal disability shall use the money or property only for
 26 that individual's support and for reimbursement of out-of-pocket
 27 expenses for goods and services necessary for that individual's
 28 support. Excess money and property ~~shall~~**must** be preserved for the
 29 individual's future support. The personal representative is not

1 responsible for the proper use of money or property by the
 2 recipient if distribution is made under the authority of this
 3 section.

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

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

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

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

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

20 Sec. 3981. **(1)** A hospital, convalescent or nursing home,
 21 morgue, or law enforcement agency holding ~~\$500.00~~ **\$1,000.00** or less
 22 and wearing apparel of a decedent may deliver the money and wearing
 23 apparel to an individual furnishing identification and a sworn
 24 statement that the individual is the decedent's spouse, child, or
 25 parent and that there is no application or petition pending for
 26 administration of the decedent's estate. The hospital, home,
 27 morgue, or law enforcement agency making the delivery is released
 28 to the same extent as if delivery were made to a legally qualified
 29 personal representative of the decedent's estate and is not

1 required to see to the property's disposition. The individual to
 2 whom delivery is made is answerable for the property to a person
 3 with a prior right and accountable to a personal representative of
 4 the decedent's estate appointed after the delivery.

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

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

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

23 (3) Other than a surviving spouse who qualifies for allowances
 24 under this act or the decedent's minor children, an heir who
 25 receives property through an order under this section is
 26 responsible, for 63 days after the date of the order, for any
 27 unsatisfied debt of the decedent up to the value of the property
 28 received through the order. The court shall state in the order the
 29 condition on the distribution of property provided by this

1 subsection.

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

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

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

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

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

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

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

28 (e) The name and address of each other person that is entitled
29 to a share of the property and the portion to which each is

1 entitled.

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

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

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

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

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

19 (c) A guardian of the minor.

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

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

27 (3) Other than the minor or a financial institution, an
28 individual receiving money or property for a minor is obligated to
29 apply the money to the minor's support and education, but shall not

1 pay himself or herself except by way of reimbursement for out-of-
 2 pocket expenses for goods and services necessary for the minor's
 3 support. An excess amount ~~shall~~**must** be preserved for the minor's
 4 future support and education. A balance not used for those purposes
 5 and property received for the minor ~~shall~~**must** be turned over to
 6 the minor when majority is attained. A person who pays or delivers
 7 money or property in accordance with this section is not
 8 responsible for the proper application of the money or property.

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

11 Sec. 5301. (1) If serving as guardian, the parent of an
 12 unmarried legally incapacitated individual may appoint by will, or
 13 other writing signed by the parent and attested by at least 2
 14 witnesses, a guardian for the legally incapacitated individual. If
 15 both parents are dead or the surviving parent is adjudged legally
 16 incapacitated, **and no standby guardian has been appointed under**
 17 **section 5301c, a parental appointment by will or other writing**
 18 becomes effective when, after having given 7 days' prior written
 19 notice of intention to do so to the legally incapacitated
 20 individual and to the person having the care of the legally
 21 incapacitated individual or to the nearest adult relative, the
 22 guardian files acceptance of appointment in the court in which the
 23 will containing the nomination is probated or, if the nomination is
 24 contained in a nontestamentary nominating instrument or the
 25 testator who made the nomination is not deceased, when the
 26 guardian's acceptance is filed in the court at the place where the
 27 legally incapacitated individual resides or is present. The notice
 28 must state that the appointment may be terminated by filing a
 29 written objection in the court as provided by subsection (4). If

1 both parents are dead, an effective appointment by the parent who
2 died later has priority.

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

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

23 (4) ~~Upon~~ **On** the filing of the legally incapacitated
24 individual's written objection to a guardian's appointment under
25 this section in either the court in which the will was probated or,
26 for a nontestamentary nominating instrument or a testamentary
27 nominating instrument made by a testator who is not deceased, the
28 court at the place where the legally incapacitated individual
29 resides or is present, the appointment is terminated. An objection

1 does not prevent appointment by the court in a proper proceeding of
2 the parental or spousal nominee or another suitable person ~~upon~~ on
3 an adjudication of incapacity in a proceeding under sections 5302
4 to 5317.

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

9 (2) The nominated standby guardian must receive a copy of the
10 petition nominating the person to serve, the court order
11 establishing or modifying guardianship, and the order designating
12 the standby guardian.

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

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

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

22 (a) The guardian dies.

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

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

25 (6) During an emergency affecting the legally incapacitated
26 individual's welfare when the guardian is unavailable, the standby
27 guardian may temporarily assume the powers and duties of the
28 guardian. A person may rely on the standby guardian's
29 representation that the standby guardian has the authority to act

1 if the person is given the order issued under subsection (2) and
2 acceptance filed under subsection (3). A person that acts in
3 reliance on the representations and documentation described in this
4 subsection without knowledge that the representations are incorrect
5 is not liable to any person for so acting and may assume without
6 further inquiry the existence of the standby guardian's authority.

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

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

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

26 (2) Before a petition is filed under this section, the court
27 shall provide the person intending to file the petition with
28 written information that sets forth alternatives to appointment of
29 a full guardian, including, but not limited to, a limited guardian,

1 conservator, patient advocate designation, do-not-resuscitate
 2 order, physician orders for scope of treatment form, or durable
 3 power of attorney with or without limitations on purpose,
 4 authority, or time period, and an explanation of each alternative.

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

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

22 (2) The alleged incapacitated individual has the right to
 23 secure an independent evaluation, at his or her own expense or, if
 24 indigent, at the expense of the state. Compensation for an
 25 independent evaluation at public expense ~~shall~~**must** be in an amount
 26 that, based ~~upon~~**on** time and expense, the court approves as
 27 reasonable.

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

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

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

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

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

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

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

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

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

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

- 1 (a) Personally visiting the individual.
- 2 (b) Explaining to the individual the nature, purpose, and
3 legal effects of a guardian's appointment.
- 4 (c) Explaining to the individual the hearing procedure and the
5 individual's rights in the hearing procedure, including, but not
6 limited to, all of the following:
- 7 (i) The right to contest the petition.
- 8 (ii) The right to request limits on the guardian's powers,
9 including a limitation on the guardian's power to execute on behalf
10 of the ward either of the following:
- 11 (A) A do-not-resuscitate order.
- 12 (B) A physician orders for scope of treatment form.
- 13 (iii) The right to object to a particular person being appointed
14 guardian **or designated as standby guardian.**
- 15 (iv) The right to be present at the hearing.
- 16 (v) The right to be represented by legal counsel.
- 17 (vi) The right to have legal counsel appointed for the
18 individual if he or she is unable to afford legal counsel.
- 19 (d) Informing the individual that if a guardian is appointed,
20 the guardian may have the power to execute a do-not-resuscitate
21 order on behalf of the individual and, if meaningful communication
22 is possible, discern if the individual objects to having a do-not-
23 resuscitate order executed on his or her behalf.
- 24 (e) Informing the individual that if a guardian is appointed,
25 the guardian may have the power to execute a physician orders for
26 scope of treatment form on behalf of the individual and, if
27 meaningful communication is possible, discern if the individual
28 objects to having a physician orders for scope of treatment form
29 executed on his or her behalf.

1 (f) Informing the individual of the name of each person known
2 to be seeking appointment as guardian **or designation as standby**
3 **guardian.**

4 (g) Asking the individual and the petitioner about the amount
5 of cash and property readily convertible into cash that is in the
6 individual's estate.

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

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

16 (A) Appointment of a limited guardian, including the specific
17 powers and limitation on those powers the guardian ad litem
18 believes appropriate.

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

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

28 (ii) Whether a disagreement or dispute related to the
29 guardianship petition might be resolved through court ordered

1 mediation.

2 (iii) Whether the individual wishes to be present at the
3 hearing.

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

5 (v) Whether the individual wishes limits placed on the
6 guardian's powers.

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

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

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

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

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

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

1 this state shall bear the expense of legal counsel.

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

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

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

10 (b) To have the guardianship proceeding commenced and
11 conducted in the place where the individual resides or is present
12 or, if the individual is admitted to an institution by a court, in
13 the county in which the court is located, as provided in section
14 5302.

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

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

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

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

28 (g) To be present at the hearing on the petition to appoint a
29 guardian **or designate a standby guardian** and to have all practical

1 steps taken to ensure this, including, if necessary, moving the
2 hearing site, as provided by section 5304.

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

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

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

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

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

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

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

21 (o) If a guardian ad litem is appointed, to be informed by the
22 guardian ad litem of the right to contest the petition, to request
23 limits on the guardian's powers, to object to a particular person
24 being appointed guardian **or designated as standby guardian**, to be
25 present at the hearing, to be represented by legal counsel, and to
26 have legal counsel appointed if the individual is unable to afford
27 legal counsel, as provided in section 5305.

28 (p) To be informed of the name of each person known to be
29 seeking appointment as guardian **or designation as standby guardian**,

1 including, if a guardian ad litem is appointed, to be informed of
2 the names by the guardian ad litem as provided in section 5305.

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

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

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

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

14 (u) To periodic review of the guardianship by the court,
15 including the right to a hearing and the appointment of an attorney
16 if issues arise upon the review of the guardianship, as provided in
17 section 5309.

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

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

24 (x) To the same rights on a petition for modification or
25 termination of the guardianship including the appointment of a
26 visitor as apply to a petition for appointment of a guardian, as
27 provided in section 5310.

28 (y) To personal notice of a petition for appointment or
29 removal of a guardian **or the designation or change in designation**

1 **of a standby guardian**, as provided in section 5311.

2 (z) To written notice of the nature, purpose, and legal
3 effects of the appointment of a guardian, as provided in section
4 5311.

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

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

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

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

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

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

23 (2) A guardian ad litem shall inform the ward in writing of
24 his or her rights enumerated in this section. The state court
25 administrative office and the ~~office of services to the aging~~
26 ~~created in section 5 of the older Michiganians act, 1981 PA 180,~~
27 ~~MCL 400.585,~~ **aging and adult services agency created under**
28 **Executive Reorganization Order No. 2015-1, MCL 400.227,** shall
29 promulgate a form to be used to give the written notice under this

1 section, which ~~shall~~**must** include space for the court to include
 2 information on how to contact the court or other relevant personnel
 3 with respect to the rights enumerated in this section.

4 Sec. 5310. (1) On petition of the guardian and subject to the
 5 filing and approval of a report prepared as required by section
 6 5314, the court shall accept the guardian's resignation and make
 7 any other order that is appropriate.

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

21 (3) Except as otherwise provided in the order finding
 22 incapacity, ~~upon~~**on** receiving a petition or request under this
 23 section, the court shall set a date for a hearing to be held within
 24 28 days after the receipt of the petition or request. An order
 25 finding incapacity may specify a minimum period, not exceeding 182
 26 days, during which a petition or request for a finding that a ward
 27 is no longer an incapacitated individual, or for an order removing
 28 the guardian, modifying the guardianship's terms, or terminating
 29 the guardianship, ~~shall~~**must** not be filed without special leave of

1 the court.

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

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

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

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

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

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

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

27 (2) Notice must be served personally on the alleged
28 incapacitated individual. Notice to all other persons must be given
29 as prescribed by court rule. Waiver of notice by the individual

1 alleged to be incapacitated is not effective unless the individual
2 attends the hearing or a waiver of notice is confirmed in an
3 interview with the visitor.

4 (3) In a proceeding for a guardian's appointment **or**
5 **designation of a standby guardian** under sections 5303 and 5304, a
6 copy of the petition must be attached to the hearing notice, and
7 the notice to the alleged incapacitated individual must contain all
8 of the following information:

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

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

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

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

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

28 (b) A person the individual subject to the petition chooses to
29 serve as guardian.

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

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

6 **(e) A person appointed by a parent or spouse of a legally**
7 **incapacitated individual by will or other writing under section**
8 **5301.**

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

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

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

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

21 (d) A relative of the legally incapacitated individual with
22 whom the individual has resided for more than 6 months before the
23 filing of the petition.

24 (e) A person nominated by a person who is caring for the
25 legally incapacitated individual or paying benefits to the legally
26 incapacitated individual.

27 (4) If none of the persons as designated or listed in
28 subsection (2) or (3) are suitable or willing to serve, the court
29 may appoint any competent person who is suitable and willing to

1 serve, including a professional guardian as provided in section
2 5106.

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

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

21 (b) If entitled to custody of the ward, the duty to make
22 provision for the ward's care, comfort, and maintenance and, when
23 appropriate, arrange for the ward's training and education. The
24 guardian shall secure services to restore the ward to the best
25 possible state of mental and physical well-being so that the ward
26 can return to self-management at the earliest possible time.
27 Without regard to custodial rights of the ward's person, the
28 guardian shall take reasonable care of the ward's clothing,
29 furniture, vehicles, and other personal effects and commence a

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

9 (c) The power to give the consent or approval that is
10 necessary to enable the ward to receive medical, mental health, or
11 other professional care, counsel, treatment, or service. However, a
12 guardian does not have and shall not exercise the power to give the
13 consent to or approval for inpatient hospitalization unless the
14 court expressly grants the power in its order. If the ward objects
15 or actively refuses mental health treatment, the guardian or any
16 other interested person must follow the procedures provided in
17 chapter 4 of the mental health code, 1974 PA 258, MCL 330.1400 to
18 330.1490, to petition the court for an order to provide involuntary
19 mental health treatment. The power of a guardian to execute a do-
20 not-resuscitate order under subdivision (d), execute a nonopioid
21 directive form under subdivision (f), or execute a physician orders
22 for scope of treatment form under subdivision (g) does not affect
23 or limit the power of a guardian to consent to a physician's order
24 to withhold resuscitative measures in a hospital. As used in this
25 subdivision, "involuntary mental health treatment" means that term
26 as defined in section 400 of the mental health code, 1974 PA 258,
27 MCL 330.1400.

28 (d) The power to execute, reaffirm, and revoke a do-not-
29 resuscitate order on behalf of a ward. However, a guardian shall

1 not execute a do-not-resuscitate order unless the guardian does all
2 of the following:

3 (i) Not more than 14 days before executing the do-not-
4 resuscitate order, visits the ward and, if meaningful communication
5 is possible, consults with the ward about executing the do-not-
6 resuscitate order.

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

10 (e) If a guardian executes a do-not-resuscitate order under
11 subdivision (d), not less than annually after the do-not-
12 resuscitate order is first executed, the duty to do all of the
13 following:

14 (i) Visit the ward and, if meaningful communication is
15 possible, consult with the ward about reaffirming the do-not-
16 resuscitate order.

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

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

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

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

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

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

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

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

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

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

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

28 (j) The duty to report the condition of the ward and the
29 ward's estate that is subject to the guardian's possession or

1 control, as required by the court, but not less often than
2 annually. The guardian shall also serve the report required under
3 this subdivision on the ward and interested persons as specified in
4 the Michigan court rules. A report under this subdivision must
5 contain all of the following:

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

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

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

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

13 (v) Medical treatment, including mental health treatment,
14 received by the ward.

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

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

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

24 (ix) Services received by the ward.

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

27 (xi) A recommendation as to the need for continued
28 guardianship.

1 **(xii) If a standby guardian has been designated, a statement**
2 **signed by the standby guardian that the standby guardian continues**
3 **to be willing to serve in the event of the unavailability, death,**
4 **incapacity, or resignation of the guardian.**

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

11 Sec. 5507. (1) A patient advocate designation may include a
12 statement of the patient's desires on care, custody, and medical
13 treatment or mental health treatment, or both. A patient advocate
14 designation may also include a statement of the patient's desires
15 on the making of an anatomical gift of all or part of the patient's
16 body under part 101 of the public health code, 1978 PA 368, MCL
17 333.10101 to 333.10123. The statement regarding an anatomical gift
18 under this subsection may include a statement of the patient's
19 desires regarding the resolution of a conflict between the terms of
20 the advance health care directive and the administration of means
21 necessary to ensure the medical suitability of the anatomical gift.
22 The patient may authorize the patient advocate to exercise 1 or
23 more powers concerning the patient's care, custody, medical
24 treatment, mental health treatment, the making of an anatomical
25 gift, or the resolution of a conflict between the terms of the
26 advance health care directive and the administration of means
27 necessary to ensure the medical suitability of the anatomical gift
28 that the patient could have exercised on his or her own behalf.

29 **(2) A patient advocate designation may also include the**

1 **patient's instructions about how the patient advocate is to make**
2 **decisions.**

3 (3) ~~(2)~~—A patient may designate in the patient advocate
4 designation a successor individual as a patient advocate who may
5 exercise the powers described in subsection (1) for the patient if
6 the first individual named as patient advocate does not accept, is
7 incapacitated, resigns, or is removed.

8 (4) ~~(3)~~—Before a patient advocate designation is implemented,
9 a copy of the patient advocate designation must be given to the
10 proposed patient advocate and must be given to a successor patient
11 advocate before the successor acts as patient advocate. Before
12 acting as a patient advocate, the proposed patient advocate must
13 sign an acceptance of the patient advocate designation.

14 (5) ~~(4)~~—The acceptance of a designation as a patient advocate
15 must include substantially all of the following statements:

16 1. This patient advocate designation is not effective unless
17 the patient is unable to participate in decisions regarding the
18 patient's medical or mental health, as applicable. If this patient
19 advocate designation includes the authority to make an anatomical
20 gift as described in section 5506, the authority remains
21 exercisable after the patient's death.

22 2. A patient advocate shall not exercise powers concerning the
23 patient's care, custody, and medical or mental health treatment
24 that the patient, if the patient were able to participate in the
25 decision, could not have exercised on his or her own behalf.

26 3. This patient advocate designation cannot be used to make a
27 medical treatment decision to withhold or withdraw treatment from a
28 patient who is pregnant that would result in the pregnant patient's
29 death.

1 4. A patient advocate may make a decision to withhold or
2 withdraw treatment that would allow a patient to die only if the
3 patient has expressed in a clear and convincing manner that the
4 patient advocate is authorized to make such a decision, and that
5 the patient acknowledges that such a decision could or would allow
6 the patient's death.

7 5. A patient advocate shall not receive compensation for the
8 performance of his or her authority, rights, and responsibilities,
9 but a patient advocate may be reimbursed for actual and necessary
10 expenses incurred in the performance of his or her authority,
11 rights, and responsibilities.

12 6. A patient advocate shall act in accordance with the
13 standards of care applicable to fiduciaries when acting for the
14 patient and shall act consistent with the patient's best interests.
15 The known desires of the patient expressed or evidenced while the
16 patient is able to participate in medical or mental health
17 treatment decisions are presumed to be in the patient's best
18 interests.

19 7. A patient may revoke his or her patient advocate
20 designation at any time and in any manner sufficient to communicate
21 an intent to revoke.

22 8. A patient may waive his or her right to revoke the patient
23 advocate designation as to the power to make mental health
24 treatment decisions, and if such a waiver is made, his or her
25 ability to revoke as to certain treatment will be delayed for 30
26 days after the patient communicates his or her intent to revoke.

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

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

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.

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

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

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

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

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

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

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

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

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

27 **(C)** ~~(iii)~~The trust beneficiary would be a distributee or
28 permissible distributee of trust income or principal if the trust
29 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)~~—**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

1 organization's qualification is being determined:

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

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

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

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

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

19 **(4)** ~~(3)~~—The attorney general of this state has the following
20 rights with respect to a charitable trust having its principal
21 place of administration in this state:

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

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

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

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

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

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

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

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

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

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

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

29 (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) ~~(e)~~**—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 7409a(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 Sec. 7820a. (1) If an irrevocable trust includes a
25 discretionary trust provision, the trustee of the trust may, unless
26 the terms of the first trust expressly provide otherwise,
27 distribute by written instrument all or part of the property
28 subject to that provision to the trustee of a second trust,
29 ~~provided that~~ **if** both of the following conditions are satisfied:

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

3 (b) If the governing instrument of the first trust expressly
4 indicates an intention that the first trust qualify for a tax
5 benefit or the terms of the first trust are clearly designed to
6 qualify the first trust for a tax benefit, and if the first trust
7 would qualify for the intended tax benefit, the governing
8 instrument of the second trust is not inconsistent with the tax
9 planning that informed the first trust.

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

13 (a) An increase in or a change in the method of determining
14 the compensation of a trustee, unless the increase or change has
15 been consented to in writing by all beneficiaries entitled to
16 receive reports regarding the first trust.

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

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

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

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

27 (a) In determining whether a trust is irrevocable, a settlor's
28 lack of capacity to exercise a power of revocation negates the
29 power unless an agent of the settlor under a durable power of

1 attorney, a conservator of the settlor, or a plenary guardian of
 2 the settlor is serving and the agent, conservator, or guardian is
 3 authorized to exercise the power of revocation.

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

9 (c) An increase in compensation arising solely because a
 10 **change of applicable law governing remoteness of vesting makes** the
 11 duration of the second trust ~~is~~ longer than the duration of the
 12 first trust does not constitute an increase in or a change in the
 13 method of determining the compensation of the trustee.

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

19 (5) The trustee of the second trust may be the trustee of the
 20 first trust, the second trust may be a trust under the governing
 21 instrument of the first trust or another governing instrument, the
 22 governing instrument may be created by the trustee of the first
 23 trust, and the governing instrument may be the instrument that
 24 exercises the power described in subsection (1).

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

27 (a) That assets of the first trust discovered after exercise
 28 of the power described in subsection (1) ~~shall~~ **will** be property of
 29 the first trust if that trust is to continue in existence after

1 exercise of the power, or that assets of the first trust discovered
2 after exercise of the power ~~shall~~**will** be property of the second
3 trust if the first trust terminates ~~upon~~**on** exercise of the power.

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

6 (7) A trustee of the first trust may exercise the power
7 described in subsection (1) without the consent of that trust's
8 settlor, any beneficiary, or a court. However, the trustee shall
9 give written notice of an intended exercise of the power to the
10 settlors of the first trust, if living, and qualified trust
11 beneficiaries no later than 63 days before exercise of the power.
12 The notice required by this section ~~shall~~**must** include a copy of
13 the proposed instrument of exercise. If the living settlors and
14 qualified trust beneficiaries waive the 63-day notice period in
15 writing, a distribution under subsection (1) may be made before
16 expiration of the notice period.

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

23 (9) This section ~~shall~~**does** not abridge the right of a trustee
24 ~~who~~**that** has a power to distribute trust property in further trust
25 under the terms of a trust instrument, any other statute, or the
26 common law. ~~The provisions of this~~**This** section ~~shall~~**does** not
27 abridge any right of a trustee ~~who~~**that** has a power to amend or
28 terminate a trust.

29 (10) As used in this section:

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

4 (b) "Tax benefit" means a federal or state tax deduction,
5 exemption, exclusion, or other particular tax attribute. ~~The term~~
6 ~~tax benefit~~ **Tax benefit** does not include grantor trust status. A
7 trust has grantor trust status to the extent that the assets of the
8 trust are treated, for federal income tax purposes, as owned by the
9 grantor or another person under sections 671 to 679 of the internal
10 revenue code **of 1986**, 26 USC 671 to 679.

11 Enacting section 1. Sections 2722 and 7104 of the estates and
12 protected individuals code, 1998 PA 386, MCL 700.2722 and 700.7104,
13 are repealed.