

SENATE BILL No. 461

June 15, 2011, Introduced by Senators SCHUITMAKER, ROCCA, JONES, NOFS, HANSEN, HILDENBRAND, EMMONS, PROOS, KAHN and MARLEAU and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 2802, 2803, 2804, 5305, 5306, 5314, 5315, 5316, 5410, 5422, 5423, and 5501 (MCL 700.2802, 700.2803, 700.2804, 700.5305, 700.5306, 700.5314, 700.5315, 700.5316, 700.5410, 700.5422, 700.5423, and 700.5501), section 5305 as amended by 2000 PA 464, section 5306 as amended by 2004 PA 532, section 5314 as amended by 2000 PA 469, section 5316 as amended by 2000 PA 54, and section 5423 as amended by 2005 PA 204, and by adding sections 5306a and 5319.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (A) "ABUSE, NEGLECT, OR EXPLOITATION" MEANS ANY OF THE
3 FOLLOWING:

4 (i) AN INTENTIONAL ACT, THE COMMISSION OF WHICH IS A FELONY,

1 PROHIBITED UNDER CHAPTER XXA OF THE MICHIGAN PENAL CODE, 1931 PA
2 328, MCL 750.145M TO 750.145R.

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

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

8 (iv) AN ACT THAT CONSTITUTES CHILD ABUSE UNDER SECTION 136B OF
9 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.136B.

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

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

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

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

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

1 Sec. 2803. (1) An individual who feloniously and intentionally
2 kills **OR WHO IS CONVICTED OF COMMITTING ABUSE, NEGLECT, OR**
3 **EXPLOITATION WITH RESPECT TO** the decedent forfeits all benefits
4 under this article with respect to the decedent's estate, including
5 an intestate share, an elective share, an omitted spouse's or
6 child's share, a homestead allowance, a family allowance, and
7 exempt property. If the decedent died intestate, the decedent's
8 intestate estate passes as if the killer **OR FELON** disclaimed his or
9 her intestate share.

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

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

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

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

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

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

27 (3) A severance under subsection (2)(b) does not affect a

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

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

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

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

1 determines that, under that standard, the individual would be found
2 criminally accountable for the felonious and intentional killing of
3 the decedent, the determination conclusively establishes that
4 individual as the decedent's killer for purposes of this section.

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

11 Sec. 2804. (1) Except as otherwise provided in this section, a
12 payor or other third party is not liable for having made a payment
13 or transferred an item of property or another benefit to a
14 beneficiary designated in a governing instrument affected by an
15 intentional and felonious killing **OR BY ABUSE, NEGLECT, OR**
16 **EXPLOITATION**, or for having taken another action in reliance on the
17 validity of the governing instrument, upon request and satisfactory
18 proof of the decedent's death. A payor or other third party is
19 liable for a payment made or other action taken 3-7 or more
20 business days after the payor or other third party actually
21 receives written notice of a claimed forfeiture or revocation under
22 section 2803. A payor or other third party is not obligated to
23 determine whether the decedent was the victim of felonious killing
24 **OR ABUSE, NEGLECT, OR EXPLOITATION** or to seek evidence relating to
25 such a killing **OR ABUSE, NEGLECT, OR EXPLOITATION** even if the
26 circumstances of the decedent's death are suspicious as to the
27 beneficiary's participation in such a killing **OR IF THERE IS**

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

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

13 (3) The written notice under subsection (1) must include the
14 decedent's name, the name of the person asserting an interest, the
15 nature of the payment, item of property, or other benefit, ~~and~~
16 statement that a claim of forfeiture or revocation is being made
17 under section 2803, **AND, IF THE CLAIM IS BASED ON A CONVICTION FOR**
18 **ABUSE, NEGLECT, OR EXPLOITATION, A COPY OF THE JUDGMENT OF**
19 **CONVICTION.** Notice in a form or service in a manner other than that
20 described in this section does not impose liability on a payor or
21 other third party for an action taken in accordance with a
22 governing instrument.

23 (4) Upon receipt of written notice of a claimed forfeiture or
24 revocation under this section, a payor or other third party may pay
25 an amount owed to the county treasurer of the county of the court
26 having jurisdiction of the probate proceedings relating to the
27 decedent's estate or, if no proceedings have been commenced, to the

1 county treasurer of the county of the decedent's residence. With a
2 payment under this section, the payor or other third party shall
3 file a copy of the written notice received by the payor or other
4 third party. A payment made to the county treasurer discharges the
5 payor or other third party from a claim for the value of an amount
6 paid to the county treasurer.

7 (5) The county treasurer shall not charge a filing fee for a
8 payment to the county treasurer under this section. The county
9 treasurer shall hold the money in accordance with section 3917 and,
10 upon the court's determination under section 2803, shall disburse
11 the money in accordance with the determination.

12 (6) The provision for payment to the county treasurer under
13 this section does not preclude a payor or other third party from
14 taking another action authorized by law or the governing
15 instrument.

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

19 (a) Personally visiting the individual.

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

22 (c) Explaining to the individual the hearing procedure and the
23 individual's rights in the hearing procedure, including, but not
24 limited to, the right to contest the petition, to request limits on
25 the guardian's powers, to object to a particular person being
26 appointed guardian, to be present at the hearing, to be represented
27 by legal counsel, and to have legal counsel appointed for the

1 individual if he or she is unable to afford legal counsel.

2 (d) Informing the individual of the name of each person known
3 to be seeking appointment as guardian.

4 **(E) 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 **(F)** ~~(e)~~ Making determinations, and informing the court of
8 those 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 declaration, or durable power of attorney with or
26 without limitations on purpose, authority, or duration.

27 (ii) Whether a disagreement or dispute related to the

1 guardianship petition might be resolved through court ordered
2 mediation.

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

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

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

8 (vi) Whether the individual objects to a particular person
9 being appointed guardian.

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

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

21 (4) If the individual alleged to be incapacitated requests
22 legal counsel or the guardian ad litem determines it is in the
23 individual's best interest to have legal counsel, and if legal
24 counsel has not been secured, the court shall appoint legal
25 counsel. If the individual alleged to be incapacitated is indigent,
26 the state shall bear the expense of legal counsel.

27 (5) If the individual alleged to be incapacitated has legal

1 counsel appointed under subsection (3) or (4), the appointment of a
2 guardian ad litem terminates.

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

10 (2) The court shall grant a guardian only those powers and
11 only for that period of time as is necessary to provide for the
12 demonstrated need of the incapacitated individual. The court shall
13 design the guardianship to encourage the development of maximum
14 self-reliance and independence in the individual. If the court is
15 aware that an individual has executed a patient advocate
16 designation under section 5506, the court shall not grant a
17 guardian any of the same powers that are held by the patient
18 advocate. A court order establishing a guardianship shall specify
19 **WHAT POWERS ARE GRANTED TO THE GUARDIAN**, any limitations on the
20 guardian's powers, and any time limits on the guardianship. **THE**
21 **INCAPACITATED INDIVIDUAL RETAINS ALL RIGHTS AND POWERS NOT**
22 **EXPRESSLY OR IMPLIEDLY TRANSFERRED TO THE GUARDIAN BY COURT ORDER.**

23 (3) If the court finds by clear and convincing evidence that
24 an individual is incapacitated and lacks the capacity to do some,
25 but not all, of the tasks necessary to care for himself or herself,
26 the court may appoint a limited guardian to provide guardianship
27 services to the individual, but the court shall not appoint a full

1 guardian.

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

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

19 **SEC. 5306A. (1) AN INDIVIDUAL FOR WHOM A GUARDIAN IS APPOINTED**
20 **UNDER SECTION 5306 HAS ALL OF THE FOLLOWING RIGHTS:**

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

23 (B) TO HAVE THE GUARDIANSHIP PROCEEDING COMMENCED AND
24 CONDUCTED IN THE PLACE WHERE THE INDIVIDUAL RESIDES OR IS PRESENT
25 OR, IF THE INDIVIDUAL IS ADMITTED TO AN INSTITUTION BY A COURT, IN
26 THE COUNTY IN WHICH THE COURT IS LOCATED, AS PROVIDED IN SECTION
27 5302.

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

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

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

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

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

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

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

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

23 (K) TO A CLOSED HEARING ON THE PETITION TO APPOINT A GUARDIAN,
24 AS PROVIDED IN SECTION 5304.

25 (l) IF A GUARDIAN AD LITEM IS APPOINTED, TO BE PERSONALLY
26 VISITED BY THE GUARDIAN AD LITEM, AS PROVIDED IN SECTION 5305.

27 (M) IF A GUARDIAN AD LITEM IS APPOINTED, TO AN EXPLANATION BY

1 THE GUARDIAN AD LITEM OF THE NATURE, PURPOSE, AND LEGAL EFFECTS OF
2 A GUARDIAN'S APPOINTMENT, AS PROVIDED IN SECTION 5305.

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

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

13 (P) TO BE INFORMED OF THE NAME OF EACH PERSON KNOWN TO BE
14 SEEKING APPOINTMENT AS GUARDIAN, INCLUDING, IF A GUARDIAN AD LITEM
15 IS APPOINTED, TO BE INFORMED OF THE NAMES BY THE GUARDIAN AD LITEM
16 AS PROVIDED IN SECTION 5305.

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

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

23 (S) TO A GUARDIANSHIP DESIGNED TO ENCOURAGE THE DEVELOPMENT OF
24 MAXIMUM SELF-RELIANCE AND INDEPENDENCE AS PROVIDED IN SECTION 5306.

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

1 (U) TO PERIODIC REVIEW OF THE GUARDIANSHIP BY THE COURT,
2 INCLUDING THE RIGHT TO A HEARING AND THE APPOINTMENT OF AN ATTORNEY
3 IF ISSUES ARISE UPON THE REVIEW OF THE GUARDIANSHIP, AS PROVIDED IN
4 SECTION 5309.

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

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

11 (X) TO THE SAME RIGHTS ON A PETITION FOR MODIFICATION OR
12 TERMINATION OF THE GUARDIANSHIP WITH RESPECT TO THE APPOINTMENT OF
13 A VISITOR AS APPLY TO A PETITION FOR APPOINTMENT OF A GUARDIAN, AS
14 PROVIDED IN SECTION 5310.

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

17 (Z) TO WRITTEN NOTICE OF THE NATURE, PURPOSE, AND LEGAL
18 EFFECTS OF THE APPOINTMENT OF A GUARDIAN, AS PROVIDED IN SECTION
19 5311.

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

23 (BB) TO CONSULT WITH THE GUARDIAN ABOUT MAJOR DECISIONS
24 AFFECTING THE INDIVIDUAL, IF MEANINGFUL CONVERSATION IS POSSIBLE,
25 AS PROVIDED IN SECTION 5314.

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

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

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

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

10 (GG) TO PARTIALLY SELF-MANAGE HIS OR HER PROPERTY TO ENCOURAGE
11 SELF-RELIANCE AND INDEPENDENCE, AS PROVIDED IN SECTION 5316.

12 (2) WITHIN 7 DAYS AFTER BEING APPOINTED, A GUARDIAN SHALL
13 INFORM THE WARD IN WRITING OF HIS OR HER RIGHTS ENUMERATED IN THIS
14 SECTION. THE GUARDIAN SHALL SIGN AND DATE THE ADVICE OF RIGHTS
15 NOTICE. THE WARD SHALL SIGN AND DATE AN ACKNOWLEDGMENT THAT THE
16 WARD HAS RECEIVED THE ADVICE OF RIGHTS NOTICE. THE SIGNED ADVICE OF
17 RIGHTS NOTICE AND ACKNOWLEDGMENT SHALL BE FILED WITH THE COURT.
18 WITHIN 180 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
19 ADDED THIS SECTION, THE STATE COURT ADMINISTRATIVE OFFICE AND THE
20 OFFICE OF SERVICES TO THE AGING CREATED IN SECTION 5 OF THE OLDER
21 MICHIGANIANS ACT, 1981 PA 180, MCL 400.585, SHALL PROMULGATE A FORM
22 TO BE USED TO GIVE THE WRITTEN NOTICE UNDER THIS SECTION, WHICH
23 SHALL INCLUDE SPACE FOR THE COURT TO INCLUDE INFORMATION ON HOW TO
24 CONTACT THE COURT OR OTHER RELEVANT PERSONNEL WITH RESPECT TO THE
25 RIGHTS ENUMERATED IN THIS SECTION.

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

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

11 (a) ~~To the extent that it is consistent with the terms of an~~
12 ~~order by a court of competent jurisdiction relating to the ward's~~
13 ~~detention or commitment, the guardian is entitled to~~ **THE** custody of
14 the person of the ~~guardian's~~ ward and ~~may~~ **THE POWER TO** establish
15 the ward's place of residence within or without this state. A
16 ~~ward's~~ **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 ~~must~~ **SHALL** notify the court
19 within 14 days of a change in the ward's place of residence.

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

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

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

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

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

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

27 (e) The ~~guardian shall~~ **DUTY TO** report the condition of the

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

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

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

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

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

14 (v) Medical treatment received by the ward.

15 (vi) Services received by the ward.

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

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

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

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

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

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

18 Sec. 5316. ~~To encourage self-reliance and independence in~~
 19 **EXCEPT TO THE EXTENT THE COURT GRANTS THE GUARDIAN OR CONSERVATOR**
 20 **OF** a legally incapacitated individual **THE POWER TO CONTROL THE**
 21 **INDIVIDUAL'S MONEY OR PROPERTY,** ~~the court may authorize the~~
 22 individual ~~to function~~ **MAY HANDLE HIS OR HER MONEY OR PROPERTY**
 23 without the consent or supervision of the individual's guardian or
 24 conservator, ~~in handling part of his or her money or property,~~
 25 including ~~authorizing the individual to maintain~~ **MAINTAINING** an
 26 account with a financial institution. To the extent the individual
 27 ~~is authorized~~ **HAS THE POWER** to function autonomously, a person may

1 deal with the individual as though the individual is mentally
2 competent.

3 SEC. 5319. (1) IF A COURT DETERMINES THAT THE TOTAL AMOUNT OF
4 CASH AND PROPERTY THAT IS READILY CONVERTIBLE INTO CASH IN A WARD'S
5 ESTATE EXCEEDS THE LIMIT FOR ADMINISTERING A DECEDENT'S ESTATE
6 UNDER SECTION 3982, ADJUSTED FOR THE YEAR IN WHICH THE GUARDIAN IS
7 APPOINTED IN THE MANNER PROVIDED UNDER SECTION 1210 FOR CERTAIN
8 DOLLAR AMOUNTS APPLICABLE TO DECEDENTS' ESTATES, OR IF THE COURT
9 DETERMINES THAT FINANCIAL PROTECTION IS REQUIRED FOR THE WARD FOR
10 ANOTHER REASON, THE COURT MAY ORDER THE GUARDIAN TO PETITION FOR
11 THE APPOINTMENT OF A CONSERVATOR OR FOR ANOTHER PROTECTIVE ORDER
12 FOR THE WARD'S ESTATE.

13 (2) IF A CONSERVATOR HAS NOT BEEN APPOINTED FOR A WARD'S
14 ESTATE AND THE GUARDIAN DETERMINES THAT THERE IS MORE CASH OR
15 PROPERTY THAT IS READILY CONVERTIBLE INTO CASH IN THE WARD'S ESTATE
16 THAN WAS REPORTED BY THE GUARDIAN AD LITEM UNDER SECTION
17 5305(1)(F), THE GUARDIAN SHALL REPORT THE AMOUNT OF THE ADDITIONAL
18 CASH OR PROPERTY TO THE COURT.

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

27 (A) THE ESTATE CONTAINS NO PROPERTY READILY CONVERTIBLE TO

1 CASH AND THE CASH IS IN A RESTRICTED ACCOUNT WITH A FINANCIAL
2 INSTITUTION.

3 (B) THE CONSERVATOR HAS BEEN GRANTED TRUST POWERS UNDER
4 SECTION 4401 OF THE BANKING CODE OF 1999, 1999 PA 276, MCL
5 487.14401.

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

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

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

22 Sec. 5422. (1) A person who in good faith either assists or
23 deals with a conservator for value in a transaction, other than
24 ~~those requiring~~ **A TRANSACTION THAT REQUIRES** a court order as
25 provided in section 5407 **OR 5423(3)**, is protected as if the
26 conservator properly exercised the power. ~~The~~ **EXCEPT AS PROVIDED IN**
27 **SUBSECTION (3), THE** fact that a person knowingly deals with a

1 conservator does not alone require the person to inquire into the
2 existence of a power or the propriety of its exercise, but a
3 restriction on a conservator's powers that is endorsed on letters
4 as provided in section 5427 is effective as to third persons. A
5 person is not bound to see to the proper application of estate
6 property paid or delivered to a conservator.

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

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

23 Sec. 5423. (1) Subject to a limitation imposed under section
24 5427, a conservator has all of the powers conferred in this section
25 and the additional powers conferred by law on trustees in this
26 state. In addition, a conservator of the estate of an unmarried
27 minor, as to whom no one has parental rights, has the powers,

1 responsibilities, and duties of a guardian described in section
2 5215 until the individual is no longer a minor or marries. The
3 parental rights conferred on a conservator by this section do not
4 preclude a guardian's appointment as provided in part 2.

5 (2) Acting reasonably in an effort to accomplish the purpose
6 of the appointment and without court authorization or confirmation,
7 a conservator may do any of the following:

8 (a) Collect, hold, or retain estate property, including land
9 in another state, until the conservator determines that disposition
10 of the property should be made. Property may be retained even
11 though it includes property in which the conservator is personally
12 interested.

13 (b) Receive an addition to the estate.

14 (c) Continue or participate in the operation of a business or
15 other enterprise.

16 (d) Acquire an undivided interest in estate property in which
17 the conservator, in a fiduciary capacity, holds an undivided
18 interest.

19 (e) Invest or reinvest estate property. If the conservator
20 exercises the power conferred by this subdivision, the conservator
21 must invest or reinvest the property in accordance with the
22 Michigan prudent investor rule.

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

25 (g) Except as provided in subsection (3), acquire or dispose
26 of estate property, including land in another state, for cash or on
27 credit, at public or private sale, or manage, develop, improve,

1 exchange, partition, change the character of, or abandon estate
2 property.

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

6 (i) Subdivide, develop, or dedicate land to public use; make
7 or obtain the vacation of a plat or adjust a boundary; adjust a
8 difference in valuation on exchange or partition by giving or
9 receiving consideration; or dedicate an easement to public use
10 without consideration.

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

14 (k) Enter into a lease or arrangement for exploration and
15 removal of a mineral or other natural resource or enter into a
16 pooling or unitization agreement.

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

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

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

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

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

26 (q) Hold a security in the name of a nominee or in other form
27 without disclosure of the conservatorship so that title to the

1 security may pass by delivery. However, the conservator is liable
2 for an act of the nominee in connection with the stock so held.

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

5 (s) Borrow money to be repaid from estate property or
6 otherwise.

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

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

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

19 (w) Allocate an item of income or expense to either estate
20 income or principal, as provided by law, including creation of a
21 reserve out of income for depreciation, obsolescence, or
22 amortization, or for depletion in a mineral or timber property.

23 (x) Pay money distributable to a protected individual or the
24 protected individual's dependent by paying the money to the
25 distributee or by paying the money for the use of the distributee
26 to the distributee's guardian, or if none, to a relative or other
27 person having custody of the distributee.

1 (y) Employ a person, including an auditor, investment advisor,
2 or agent, even though the person is associated with the
3 conservator, to advise or assist in the performance of an
4 administrative duty; act upon the person's recommendation without
5 independent investigation; and, instead of acting personally,
6 employ an agent to perform an act of administration, whether or not
7 discretionary.

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

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

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

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

22 (3) A conservator shall not sell or otherwise dispose of the
23 protected individual's real property or interest in real property
24 **OR MORTGAGE, PLEDGE, OR CAUSE A LIEN TO BE PLACED ON THE PROTECTED**
25 **INDIVIDUAL'S HOME** without approval of the court. The court shall
26 only approve the sale, ~~or other disposal,~~ **MORTGAGE, OR PLEDGE** of **OR**
27 **LIEN AGAINST** the real property or interest in real property if,

1 after a hearing with notice to interested persons as specified in
2 the Michigan court rules, the court considers evidence of the value
3 of the real property or interest in real property and otherwise
4 determines that the sale, ~~or other disposal~~, **MORTGAGE, PLEDGE, OR**
5 **LIEN** is in the protected individual's best interest.

6 Sec. 5501. (1) A durable power of attorney is a power of
7 attorney by which a principal designates another as the principal's
8 attorney in fact in **A** writing ~~and the writing~~ **THAT** contains the
9 words "This power of attorney is not affected by the principal's
10 subsequent disability or incapacity, or by the lapse of time", or
11 "This power of attorney is effective upon the disability or
12 incapacity of the principal", or similar words showing the
13 principal's intent that the authority conferred is exercisable
14 notwithstanding the principal's subsequent disability or incapacity
15 and, unless the power states a termination time, notwithstanding
16 the lapse of time since the execution of the instrument.

17 **(2) BEFORE EXERCISING AUTHORITY AS ATTORNEY IN FACT UNDER A**
18 **DURABLE POWER OF ATTORNEY, A PERSON SHALL SIGN AN ACCEPTANCE OF THE**
19 **DESIGNATION, ACKNOWLEDGING AND ACCEPTING ALL OF THE FOLLOWING**
20 **OBLIGATIONS, LIABILITIES, AND RIGHTS:**

21 **(A) TO ACT IN THE BEST INTEREST OF THE PRINCIPAL.**

22 **(B) TO KEEP THE PRINCIPAL INFORMED OF THE ATTORNEY IN FACT'S**
23 **ACTIONS AND ACCOUNT TO THE PRINCIPAL.**

24 **(C) TO NOT MAKE GIFTS OF THE PRINCIPAL'S PROPERTY UNLESS**
25 **SPECIFICALLY AUTHORIZED BY THE POWER OF ATTORNEY.**

26 **(D) TO BE PROSECUTED AND PUNISHED FOR ANY CRIMINAL ACTS.**

27 **(E) TO KEEP THE PRINCIPAL'S ASSETS IN AN ACCOUNT THAT DOES NOT**

1 INCLUDE MONEY OF THE ATTORNEY IN FACT OR ANOTHER PERSON.

2 (F) TO ONLY USE THE PRINCIPAL'S PROPERTY AND INCOME FOR THE
3 BENEFIT OF THE PRINCIPAL, UNLESS OTHERWISE AUTHORIZED SPECIFICALLY
4 IN THE POWER OF ATTORNEY.

5 (G) IF REQUESTED, TO PROVIDE AN ACCOUNTING AT ANY TIME TO THE
6 PRINCIPAL, A FIDUCIARY APPOINTED ON BEHALF OF THE PRINCIPAL, OR THE
7 COURT.

8 (H) TO MAINTAIN SUFFICIENT RECORDS OF EVERY TRANSACTION AND BE
9 PREPARED TO DEFEND EACH ACTION.

10 (I) TO BE HELD FINANCIALLY RESPONSIBLE FOR ANY TRANSACTION
11 THAT IS NOT SPECIFICALLY AUTHORIZED IN THE POWER OF ATTORNEY.

12 (J) TO HIRE AN ADVISOR, ATTORNEY, ACCOUNTANT, OR OTHER
13 PROFESSIONAL AS REASONABLY REQUIRED TO COMPLY WITH THE ATTORNEY IN
14 FACT'S DUTIES AND TO PAY FOR THE PROFESSIONAL'S SERVICES FROM THE
15 ESTATE OF THE PRINCIPAL.

16 (K) UNLESS PROHIBITED BY THE POWER OF ATTORNEY, TO RECEIVE
17 REASONABLE COMPENSATION FOR THE ATTORNEY IN FACT'S SERVICES, WHICH
18 COMPENSATION MAY BE SUBJECT TO SCRUTINY BY THE COURT.

19 Enacting section 1. This amendatory act takes effect April 1,
20 2012.