

**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, 5506, 5507, 5508, 5510, 5511, 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, 700.5506, 700.5507, 700.5508, 700.5510,
700.5511, 700.7103, 700.7105, 700.7110, 700.7302, 700.7402,
700.7506, 700.7604, and 700.7820a), section 1106 as amended by 2018
PA 555, sections 1210, 7302, 7402, and 7506 as amended and sections

7110 and 7604 as added by 2009 PA 46, section 2519 as amended by 2010 PA 325, section 3917 as amended by 2004 PA 314, section 5301 as amended by 2005 PA 204, sections 5303 and 5305 as amended by 2017 PA 155, section 5306a as added by 2012 PA 173, section 5310 as amended by 2000 PA 54, section 5313 as amended by 2012 PA 545, section 5314 as amended by 2018 PA 594, section 5506 as amended by 2020 PA 246, sections 5507, 5508, and 5510 as amended by 2008 PA 41, section 5511 as amended by 2004 PA 532, sections 7103 and 7105 as amended by 2018 PA 664, and section 7820a as added by 2012 PA 483, and by adding sections 1215, 1216, 5301c, 7408, 7409, and 7409a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1106. As used in this act:

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

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

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

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

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

17 (v) A physician's assistant licensed to practice in this state

1 under article 15 of the public health code, 1978 PA 368, MCL
2 333.16101 to 333.18838.

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

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

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

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

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

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

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

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

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

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

1 or grandparent.

2 (k) "Partial guardian" means that term as defined in section
3 600 of the mental health code, 1974 PA 258, MCL 330.1600.

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

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

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

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

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

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

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

27 (s) "Plenary guardian" means that term as defined in section
28 600 of the mental health code, 1974 PA 258, MCL 330.1600.

29 **(t) "Power of appointment" means that term as defined in**

1 **section 2 of the powers of appointment act of 1967, 1967 PA 224,**
2 **MCL 556.112.**

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

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

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

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

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

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

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

29 **(2) Before January 1, 2023, the specific amounts stated in**

1 sections 2519, 3605, 3916, 3917, 3918, 3981, 3982, and 5102 apply
2 to those sections. Beginning January 1, 2023, those specific dollar
3 amounts must be multiplied by the cost-of-living adjustment factor
4 for the calendar year in which the decedent dies.

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

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

16 (a) **The person has actual knowledge of it.**

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

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

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

1 information unless the communication is part of the individual's
2 regular duties or the individual knows a matter that would be
3 materially affected by the information.

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

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

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

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

29 (5) If a part of a governing instrument is void under

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

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

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

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

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

28 (a) A spouse of the individual.

29 (b) A lineal ascendant or descendant of the individual or the

1 individual's spouse.

2 (c) A sibling of the individual.

3 (d) A spouse of the individual described in subdivision (b) or
4 (c).

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

8 (11) As used in this section:

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

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

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

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

26 (i) Whether the gift or testamentary transfer is outright or in
27 trust.

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

29 (iii) Whether the power is held in a fiduciary or nonfiduciary

1 capacity.

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

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

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

12 MICHIGAN STATUTORY WILL NOTICE

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

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

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

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

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

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

29 7. You should keep this will in your safe deposit box or other

1 safe place. By paying a small fee, you may file this will in your
2 county's probate court for safekeeping. You should tell your family
3 where the will is kept.

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

7 INSTRUCTIONS:

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

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

15 MICHIGAN STATUTORY WILL OF _____

16 (Print or type your full name)

17 ARTICLE 1. DECLARATIONS

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

19 I live in _____ County, Michigan.

20 My spouse is _____.

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

22 My children now living are:

23 _____
24 _____
25 _____

26 (Insert names or write "none")

27 ARTICLE 2. DISPOSITION OF MY ASSETS

28 2.1 CASH GIFTS TO PERSONS OR CHARITIES.

29 (Optional)

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

7 _____
8 (Insert name of person or charity)

9 _____
10 (Insert address)

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

12 AMOUNT OF GIFT (In words): _____ Dollars

13 _____
14 (Your signature)

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

17 _____
18 (Insert name of person or charity)

19 _____
20 (Insert address)

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

22 AMOUNT OF GIFT (In words): _____ Dollars

23 _____
24 (Your signature)

25 2.2 PERSONAL AND HOUSEHOLD ITEMS.

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

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

8 2.3 ALL OTHER ASSETS.

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

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

19 (Select only 1)

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

23 _____
24 (Your signature)

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

27 _____
28 (Your signature)

29 ARTICLE 3. NOMINATIONS OF PERSONAL

1 REPRESENTATIVE, GUARDIAN, AND CONSERVATOR

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

11 3.1 PERSONAL REPRESENTATIVE.

12 (Name at least 1)

13 I nominate _____

14 (Insert name of person or eligible financial institution)

15 of _____ to serve as personal representative.

16 (Insert address)

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

18 _____

19 (Insert name of person or eligible financial institution)

20 of _____ to serve as personal representative.

21 (Insert address)

22 3.2 GUARDIAN AND CONSERVATOR.

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

28 If a guardian or conservator is needed for a child of
29 mine, I nominate _____

1 (Insert name of individual)
2 of _____ as guardian and
3 (Insert address)

4 _____
5 (Insert name of individual or eligible financial institution)
6 of _____ to serve as conservator.
7 (Insert address)

8 If my first choice cannot serve, I nominate

9 _____
10 (Insert name of individual)
11 of _____ as guardian and
12 (Insert address)

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

17 3.3 BOND.

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

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

26 _____
27 (Your signature)

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

1 _____
2 (Your signature)

3 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

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

6 I sign my name to this Michigan statutory will on
7 _____, 20____.

8 _____
9 (Your signature)

10 NOTICE REGARDING WITNESSES

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

15 STATEMENT OF WITNESSES

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

22 _____
23 (Print Name)

24 _____
25 (Signature of witness)

26 _____
27 (Address)

28 _____ _____ _____
29 (City) (State) (Zip)

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(Print name)

(Signature of witness)

(Address)

(City) (State) (Zip)

(Print name)

(Signature of witness)

(Address)

(City) (State) (Zip)

DEFINITIONS

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

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

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

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

(d) "Jointly held assets" means those assets to which

1 ownership is transferred automatically upon the death of 1 of the
2 owners to the remaining owner or owners.

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

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

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

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

21 (i) Plural and singular words include each other, where
22 appropriate.

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

28 ADDITIONAL CLAUSES

29 Powers of personal representative

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

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

20 POWERS OF GUARDIAN AND CONSERVATOR

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

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

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

28 (a) "Disposition or appointment of property" includes, but is
 29 not limited to, a transfer of an item of property or another

1 benefit to a beneficiary designated in a governing instrument.

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

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

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

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

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

28 Sec. 3605. **(1)** A person apparently having an interest in the
29 estate worth in excess of ~~\$2,500.00~~ **\$25,000.00** or a creditor having

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

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

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

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

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

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

29 (2) As an alternative to deposit with the county treasurer

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

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

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

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

26 (2) For the care of the money received under authority of this
 27 act, the county treasurer may take 1% from the different amounts
 28 paid out under court order unless the amount paid out to a single
 29 individual exceeds ~~\$1,000.00,~~ **\$1,500.00**, in which case the county

1 treasurer shall take ~~\$10.00~~ **\$15.00** plus 1/2 of 1% of the excess of
 2 the amount over ~~\$1,000.00~~ **\$1,500.00**.

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

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

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

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

27 (2) Unless contrary to an express provision in the will, the
 28 personal representative may discharge the personal representative's
 29 obligation to distribute to an individual under legal disability as

1 authorized by section 5102 or another statute. If the personal
 2 representative knows that a conservator has been appointed for an
 3 individual or that a proceeding for appointment of a conservator
 4 for the individual is pending, the personal representative is
 5 authorized to distribute only to the conservator. If the personal
 6 representative knows that a guardian of the estate of an individual
 7 with a developmental disability has been appointed under the mental
 8 health code, 1974 PA 258, MCL 330.1001 to 330.2106, or that a
 9 proceeding for appointment of a guardian of the estate for the
 10 individual with the developmental disability is pending, the
 11 personal representative is authorized to distribute only to the
 12 guardian of the estate.

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

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

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

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

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

23 (ii) The distribution is in amounts not exceeding ~~\$5,000.00~~
 24 **\$25,000.00** a year or property not exceeding ~~\$5,000.00~~**\$25,000.00** in
 25 value, unless the court authorizes a higher amount or value.

26 (4) A person receiving money or property for an individual
 27 under legal disability shall use the money or property only for
 28 that individual's support and for reimbursement of out-of-pocket
 29 expenses for goods and services necessary for that individual's

1 support. Excess money and property ~~shall~~**must** be preserved for the
 2 individual's future support. The personal representative is not
 3 responsible for the proper use of money or property by the
 4 recipient if distribution is made under the authority of this
 5 section.

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

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

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

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

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

22 Sec. 3981. **(1)** A hospital, convalescent or nursing home,
 23 morgue, or law enforcement agency holding ~~\$500.00~~**\$1,000.00** or less
 24 and wearing apparel of a decedent may deliver the money and wearing
 25 apparel to an individual furnishing identification and a sworn
 26 statement that the individual is the decedent's spouse, child, or
 27 parent and that there is no application or petition pending for
 28 administration of the decedent's estate. The hospital, home,
 29 morgue, or law enforcement agency making the delivery is released

1 to the same extent as if delivery were made to a legally qualified
 2 personal representative of the decedent's estate and is not
 3 required to see to the property's disposition. The individual to
 4 whom delivery is made is answerable for the property to a person
 5 with a prior right and accountable to a personal representative of
 6 the decedent's estate appointed after the delivery.

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

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

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

25 (3) Other than a surviving spouse who qualifies for allowances
 26 under this act or the decedent's minor children, an heir who
 27 receives property through an order under this section is
 28 responsible, for 63 days after the date of the order, for any
 29 unsatisfied debt of the decedent up to the value of the property

1 received through the order. The court shall state in the order the
2 condition on the distribution of property provided by this
3 subsection.

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

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

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

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

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

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

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

1 (e) The name and address of each other person that is entitled
 2 to a share of the property and the portion to which each is
 3 entitled.

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

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

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

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

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

21 (c) A guardian of the minor.

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

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

29 (3) Other than the minor or a financial institution, an

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

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

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

1 must state that the appointment may be terminated by filing a
2 written objection in the court as provided by subsection (4). If
3 both parents are dead, an effective appointment by the parent who
4 died later has priority.

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

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

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

1 court at the place where the legally incapacitated individual
2 resides or is present, the appointment is terminated. An objection
3 does not prevent appointment by the court in a proper proceeding of
4 the parental or spousal nominee or another suitable person ~~upon~~ **on**
5 an adjudication of incapacity in a proceeding under sections 5302
6 to 5317.

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

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

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

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

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

24 (a) The guardian dies.

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

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

27 (6) During an emergency affecting the legally incapacitated
28 individual's welfare when the guardian is unavailable, the standby
29 guardian may temporarily assume the powers and duties of the

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

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

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

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

28 (2) Before a petition is filed under this section, the court
29 shall provide the person intending to file the petition with

1 written information that sets forth alternatives to appointment of
 2 a full guardian, including, but not limited to, a limited guardian,
 3 conservator, patient advocate designation, do-not-resuscitate
 4 order, physician orders for scope of treatment form, or durable
 5 power of attorney with or without limitations on purpose,
 6 authority, or time period, and an explanation of each alternative.

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

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

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

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

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

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

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

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

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

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

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

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

29 Sec. 5305. (1) The duties of a guardian ad litem appointed for

1 an individual alleged to be incapacitated include all of the
2 following:

3 (a) Personally visiting the individual.

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

6 (c) Explaining to the individual the hearing procedure and the
7 individual's rights in the hearing procedure, including, but not
8 limited to, all of the following:

9 (i) The right to contest the petition.

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

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

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

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

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

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

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

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

26 (e) Informing the individual that if a guardian is appointed,
27 the guardian may have the power to execute a physician orders for
28 scope of treatment form on behalf of the individual and, if
29 meaningful communication is possible, discern if the individual

1 objects to having a physician orders for scope of treatment form
2 executed on his or her behalf.

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

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

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

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

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

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

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

1 (ii) Whether a disagreement or dispute related to the
2 guardianship petition might be resolved through court ordered
3 mediation.

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

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

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

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

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

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

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

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

27 (4) If the individual alleged to be incapacitated requests
28 legal counsel or the guardian ad litem determines it is in the
29 individual's best interest to have legal counsel, and if legal

1 counsel has not been secured, the court shall appoint legal
2 counsel. If the individual alleged to be incapacitated is indigent,
3 this state shall bear the expense of legal counsel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (z) To written notice of the nature, purpose, and legal
5 effects of the appointment of a guardian, as provided in section
6 5311.

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

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

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

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

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

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

25 (2) A guardian ad litem shall inform the ward in writing of
26 his or her rights enumerated in this section. The state court
27 administrative office and the ~~office of services to the aging~~
28 ~~created in section 5 of the older Michiganians act, 1981 PA 180,~~
29 ~~MCL 400.585,~~ **aging and adult services agency created under**

1 **Executive Reorganization Order No. 2015-1, MCL 400.227**, shall
2 promulgate a form to be used to give the written notice under this
3 section, which ~~shall~~**must** include space for the court to include
4 information on how to contact the court or other relevant personnel
5 with respect to the rights enumerated in this section.

6 Sec. 5310. (1) On petition of the guardian and subject to the
7 filing and approval of a report prepared as required by section
8 5314, the court shall accept the guardian's resignation and make
9 any other order that is appropriate.

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

23 (3) Except as otherwise provided in the order finding
24 incapacity, ~~upon~~**on** receiving a petition or request under this
25 section, the court shall set a date for a hearing to be held within
26 28 days after the receipt of the petition or request. An order
27 finding incapacity may specify a minimum period, not exceeding 182
28 days, during which a petition or request for a finding that a ward
29 is no longer an incapacitated individual, or for an order removing

1 the guardian, modifying the guardianship's terms, or terminating
 2 the guardianship, ~~shall~~**must** not be filed without special leave of
 3 the court.

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

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

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

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

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

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

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

29 (2) Notice must be served personally on the alleged

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

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

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

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

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

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

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

1 (b) A person the individual subject to the petition chooses to
2 serve as guardian.

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

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

8 **(e) A person appointed by a parent or spouse of a legally**
9 **incapacitated individual by will or other writing under section**
10 **5301.**

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

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

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

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

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

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

29 (4) If none of the persons as designated or listed in

1 subsection (2) or (3) are suitable or willing to serve, the court
2 may appoint any competent person who is suitable and willing to
3 serve, including a professional guardian as provided in section
4 5106.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (i) Not more than 14 days before executing the physician orders
29 for scope of treatment form, visits the ward and, if meaningful

1 communication is possible, consults with the ward about executing
2 the physician orders for scope of treatment form.

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

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

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

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

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

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

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

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

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

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

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

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

15 (v) Medical treatment, including mental health treatment,
16 received by the ward.

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

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

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

26 (ix) Services received by the ward.

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

29 (xi) A recommendation as to the need for continued

1 guardianship.

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

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

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

1 **of any designated patient advocate without further inquiry.**

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

8 (3) Subject to section 1202, a patient advocate designation
9 under this section must be in writing, signed, witnessed as
10 provided in subsection (4), dated, executed voluntarily, and,
11 before its implementation, made part of the patient's medical
12 record with, as applicable, the patient's attending physician, the
13 mental health professional providing treatment to the patient, the
14 facility where the patient is located, or the community mental
15 health services program or hospital that is providing mental health
16 services to the patient. The patient advocate designation must
17 include a statement that the authority conferred under this section
18 is exercisable only when the patient is unable to participate in
19 medical or mental health treatment decisions, as applicable, and,
20 in the case of the authority to make an anatomical gift as
21 described in subsection (1), a statement that the authority remains
22 exercisable after the patient's death.

23 (4) Subject to section 1202, a patient advocate designation
24 under this section must be executed in the presence of and signed
25 by 2 witnesses. A witness under this section shall not be the
26 patient's spouse, parent, child, grandchild, sibling, presumptive
27 heir, known devisee at the time of the witnessing, physician, or
28 patient advocate or an employee of a life or health insurance
29 provider for the patient, of a health facility that is treating the

1 patient, or of a home for the aged as defined in section 20106 of
2 the public health code, 1978 PA 368, MCL 333.20106, where the
3 patient resides, or of a community mental health services program
4 or hospital that is providing mental health services to the
5 patient. A witness shall not sign the patient advocate designation
6 unless the patient appears to be of sound mind and under no duress,
7 fraud, or undue influence.

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

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

1 necessary to ensure the medical suitability of the anatomical gift
2 that the patient could have exercised on his or her own behalf.

3 **(2) A patient advocate designation may also include the**
4 **patient's instructions about how the patient advocate is to make**
5 **decisions.**

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

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

17 (5) ~~(4)~~—The acceptance of a designation as a patient advocate
18 must include substantially all of the following statements:

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

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

29 3. This patient advocate designation cannot be used to make a

1 medical treatment decision to withhold or withdraw treatment from a
2 patient who is pregnant that would result in the pregnant patient's
3 death.

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

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

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

22 7. A patient may revoke his or her patient advocate
23 designation at any time and in any manner sufficient to communicate
24 an intent to revoke.

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

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

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

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

23 (2) If a dispute arises as to whether the patient is unable to
24 participate in medical or mental health treatment decisions, a
25 petition may be filed with the court in the county in which the
26 patient resides or is located requesting the court's determination
27 as to whether the patient is unable to participate in decisions
28 regarding medical treatment or mental health treatment, as
29 applicable. If a petition is filed under this subsection, the court

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

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

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

25 (a) **"Attending medical professional" means a medical**
26 **professional who has primary responsibility for the treatment and**
27 **care of the patient.**

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

29 (i) **A physician who is licensed to practice medicine or**

1 osteopathic medicine and surgery in this state under article 15 of
2 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

3 (ii) A physician's assistant licensed to practice in this state
4 under article 15 of the public health code, 1978 PA 368, MCL
5 333.16101 to 333.18838.

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

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

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

15 (b) An order of removal by the probate court under section
16 ~~5511(5)~~. **5511(6)**.

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

19 (d) The patient's revocation of the patient advocate
20 designation. Subject to section 5515, even if the patient is unable
21 to participate in medical treatment decisions, a patient may revoke
22 a patient advocate designation at any time and in any manner by
23 which he or she is able to communicate an intent to revoke the
24 patient advocate designation. If there is a dispute as to the
25 intent of the patient to revoke the patient advocate designation,
26 the court may make a determination on the patient's intent to
27 revoke the patient advocate designation. If the revocation is not
28 in writing, an individual who witnesses a revocation of a patient
29 advocate designation shall describe in writing the circumstances of

1 the revocation, must sign the writing, and shall notify, if
2 possible, the patient advocate of the revocation. If the patient's
3 physician, mental health professional, or health facility has
4 notice of the patient's revocation of a patient advocate
5 designation, the physician, mental health professional, or health
6 facility shall note the revocation in the patient's records and
7 bedside chart and shall notify the patient advocate.

8 (e) A subsequent patient advocate designation that revokes the
9 prior patient advocate designation either expressly or by
10 inconsistency.

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

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

22 (2) The revocation of a patient advocate designation under
23 subsection (1) does not revoke or terminate the agency as to the
24 patient advocate or other person who acts in good faith under the
25 patient advocate designation and without actual knowledge of the
26 revocation. Unless the action is otherwise invalid or
27 unenforceable, an action taken without knowledge of the revocation
28 binds the patient and his or her heirs, devisees, and personal
29 representatives. A sworn statement executed by the patient advocate

1 stating that, at the time of doing an act in accordance with the
2 patient advocate designation, he or she did not have actual
3 knowledge of the revocation of the patient advocate designation is,
4 in the absence of fraud, conclusive proof that the patient advocate
5 did not have actual knowledge of the revocation at the time of the
6 act.

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

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

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

28 **(4) A person providing care, custody, or medical or mental**
29 **health treatment to a patient is not required to determine if a**

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

6 (5) ~~(4)~~—A mental health professional who provides mental
 7 health treatment to a patient shall comply with the desires of the
 8 patient as expressed in the designation. If 1 or more of the
 9 following apply to a desire of the patient as expressed in the
 10 designation, the mental health professional is not bound to follow
 11 that desire, but shall follow the patient's other desires as
 12 expressed in the designation:

13 (a) In the opinion of the mental health professional,
 14 compliance is not consistent with generally accepted community
 15 practice standards of treatment.

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

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

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

19 (e) In the opinion of the mental health professional, there is
 20 a psychiatric emergency endangering the life of the patient or
 21 another individual and compliance is not appropriate under the
 22 circumstances.

23 (6) ~~(5)~~—If a dispute arises as to whether a patient advocate
 24 is acting consistent with the patient's best interests or is not
 25 complying with sections 5506 to 5515, a petition may be filed with
 26 the court in the county in which the patient resides or is located
 27 requesting the court's determination as to the continuation of the
 28 designation or the removal of the patient advocate.

29 Sec. 7103. As used in this article:

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

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

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

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

16 (i) Whether to distribute to or for the benefit of an
17 individual or a class of beneficiaries the income or principal or
18 both of the trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (A) The trust beneficiary is a distributee or permissible
2 distributee of trust income or principal.

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

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

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

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

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

28 (k) "Support provision" means a provision in a trust that
29 provides the trustee shall distribute income or principal or both

1 for the health, education, support, or maintenance of a trust
2 beneficiary, or language of similar import. A provision in a trust
3 that provides a trustee has discretion whether to distribute income
4 or principal or both for these purposes or to select from among a
5 class of beneficiaries to receive distributions under the trust
6 provision is not a support provision, but rather is a discretionary
7 trust provision.

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

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

12 (ii) The person holds a power of appointment over trust
13 property in a capacity other than that of trustee or trust
14 director.

15 (m) "Trust director" means that term as defined in section
16 7703a.

17 (n) "Trust instrument" means a governing instrument that
18 contains the terms of the trust, including any amendment to a term
19 of the trust.

20 Sec. 7105. (1) Except as otherwise provided in the terms of
21 the trust, this article governs the duties and powers of a trustee,
22 relations among trustees, and the rights and interests of a trust
23 beneficiary.

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

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

28 (b) Except as otherwise provided in sections 7703a and 7703b,
29 the duty of a trustee to administer a trust in accordance with

1 section 7801.

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

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

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

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

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

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

11 (f) ~~(e)~~—The effect of a spendthrift provision, a support
12 provision, and a discretionary trust provision on the rights of
13 certain creditors and assignees to reach a trust as provided in
14 part 5.

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

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

20 (i) ~~(h)~~—The obligations imposed on a trust director in section
21 7703a(4) and (5).

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

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

29 (l) ~~(k)~~—The effect of an exculpatory term under section

1 7703a(5) (b) or 7908.

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

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

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

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

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

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

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

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

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

29 (b) The charitable organization would be a distributee or

1 permissible distributee of trust income or principal on the
 2 termination of the interests of other distributees or permissible
 3 distributees then receiving or eligible to receive distributions.

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

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

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

15 **(4)** ~~(3)~~The attorney general of this state has the following
 16 rights with respect to a charitable trust having its principal
 17 place of administration in this state:

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

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

22 Sec. 7302. **(1) ~~The~~To the extent there is no conflict of**
 23 **interest between the holder of a power of appointment and the**
 24 **person represented with respect to a particular question or**
 25 **dispute, the holder of a ~~power of revocation or amendment or a~~**
 26 **~~presently exercisable or testamentary general or special~~ power of**
 27 **appointment, including a power of appointment in the form of a**
 28 **power of amendment or revocation, may represent and bind a person**
 29 **~~whose~~ to the extent the person's interest, as a permissible**

1 appointee, taker in default, or otherwise, is subject to the power.
 2 For the purpose, however, of granting consent or approval to
 3 modification or termination of a trust or to deviation from its
 4 terms, including consent or approval to a settlement agreement
 5 described in section 7111, only the holder of a presently
 6 exercisable or testamentary general power of appointment may
 7 represent and bind such a person.

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

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

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

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

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

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

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

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

27 (i) A charitable trust.

28 (ii) A trust for a noncharitable purpose **under section 7409 or**
 29 **a trust** for the care of an animal ~~, as provided in section~~

1 ~~2722~~-under section 7408.

2 (d) The trustee has duties to perform.

3 (e) The same person is not the sole trustee and sole
4 beneficiary.

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

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

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

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

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

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

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

10 (b) A trust authorized by this section may be enforced by a
11 person appointed in the terms of the trust or, if there is not a
12 person appointed in the terms of the trust, by a person appointed
13 by the court.

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

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

27 (a) During the nondisclosure period all of the following
28 apply:

29 (i) To the extent necessary to effectuate the settlor's

1 expressed intent, the trustee does not have the duty under section
2 7814(2) (a) to (c) to provide beneficiaries with the terms of the
3 trust and information about the trust's property and to notify
4 qualified trust beneficiaries of the existence of the trust and the
5 identity of the trustee.

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

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

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

25 (b) The trustee or any holder of either a nondisclosure
26 correlative right or a protection power is not liable to any trust
27 beneficiary because of the trustee's failure to follow the terms of
28 the trust prescribing nondisclosure of prime disclosure
29 information. The trustee's duty, if any, to follow the terms of the

1 trust prescribing nondisclosure of prime disclosure information
2 during the trust's nondisclosure period is owed solely to the
3 holders, if any, of nondisclosure correlative rights, and the sole
4 remedy of a nondisclosure correlative right holder for the
5 trustee's breach of that duty is removal.

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

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

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

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

1 trust that describe or affect the power holders' rights or powers.

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

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

17 (5) As used in this section:

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

22 (b) "Nondisclosure correlative right" means a right granted by
23 the terms of a trust that allows the right holder to remove a
24 trustee of the trust for the trustee's failure during the trust's
25 nondisclosure period to follow, to the extent practicable, the
26 terms of the trust prescribing nondisclosure of prime disclosure
27 information.

28 (c) "Nondisclosure period" means the shorter of the trust's
29 maximum nondisclosure period or the period from the beginning of

1 the maximum nondisclosure period to the trust's termination.

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

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

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

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

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

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

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

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

28 (ii) The maximum amount that can be distributed to or for the
29 settlor's benefit exclusive of sums to pay the settlor's taxes

1 during the settlor's lifetime.

2 (2) If a trust has more than 1 settlor, the amount a creditor
3 or assignee of a particular settlor may reach under subsection
4 (1)(c) ~~shall~~**must** not exceed the settlor's interest in the portion
5 of the trust attributable to that settlor's contribution.

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

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

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

16 ~~(b) The trust is treated as qualified terminable interest~~
17 ~~property under section 2523(f) of the internal revenue code, 26 USC~~
18 ~~2523.~~

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

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

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

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

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

26 **(b) ~~(c)~~The individual retains a beneficial interest in the**
27 **trust income, trust principal, or both, which beneficial interest**
28 **follows the termination of the individual's spouse's prior**
29 **beneficial interest in the trust.**

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

3 (a) If the settlor is the individual's spouse, regardless of
4 whether or when the individual was the settlor of a trust for the
5 benefit of that spouse.

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

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

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

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

15 (i) The trust's existence.

16 (ii) The date of the trust instrument.

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

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

20 (v) The settlor's name.

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

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

23 (2) If a trust that was revocable at the settlor's death
24 becomes an undisclosed trust as that term is defined in section
25 7409a, a person from whom information described in section
26 7814(2) (a) to (c) is withheld under section 7409a(1) (a) (i) during
27 the 2-year period following the settlor's death may commence a
28 judicial proceeding to contest the validity of the trust within the
29 earlier of the following:

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

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

7 (3) ~~(2)~~—Upon the death of the settlor of a trust that was
8 revocable at the settlor's death, the trustee may proceed to
9 distribute the trust property in accordance with the terms of the
10 trust. The trustee is not subject to liability for doing so unless
11 either of the following applies:

12 (a) The trustee knows of a pending judicial proceeding
13 contesting the validity of the trust.

14 (b) A potential contestant has notified the trustee in writing
15 of a possible judicial proceeding to contest the trust and a
16 judicial proceeding is commenced within 63 days after the
17 contestant sent the notification.

18 (4) ~~(3)~~—A beneficiary of a trust that is determined to have
19 been invalid is liable to return any distribution received.

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

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

28 (b) If the governing instrument of the first trust expressly
29 indicates an intention that the first trust qualify for a tax

1 benefit or the terms of the first trust are clearly designed to
2 qualify the first trust for a tax benefit, and if the first trust
3 would qualify for the intended tax benefit, the governing
4 instrument of the second trust is not inconsistent with the tax
5 planning that informed the first trust.

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

9 (a) An increase in or a change in the method of determining
10 the compensation of a trustee, unless the increase or change has
11 been consented to in writing by all beneficiaries entitled to
12 receive reports regarding the first trust.

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

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

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

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

23 (a) In determining whether a trust is irrevocable, a settlor's
24 lack of capacity to exercise a power of revocation negates the
25 power unless an agent of the settlor under a durable power of
26 attorney, a conservator of the settlor, or a plenary guardian of
27 the settlor is serving and the agent, conservator, or guardian is
28 authorized to exercise the power of revocation.

29 (b) ~~An~~**If an** increase in the maximum period during which the

1 vesting of a future interest may be ~~suspended or postponed under~~ **is**
 2 **due solely to a change of** applicable law **governing remoteness of**
 3 **vesting, the increase** does not constitute a material change in the
 4 interest of a beneficiary.

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

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

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

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

23 (a) That assets of the first trust discovered after exercise
 24 of the power described in subsection (1) ~~shall~~ **will** be property of
 25 the first trust if that trust is to continue in existence after
 26 exercise of the power, or that assets of the first trust discovered
 27 after exercise of the power ~~shall~~ **will** be property of the second
 28 trust if the first trust terminates ~~upon~~ **on** exercise of the power.

29 (b) For indemnification of the trustee of the first trust,

1 except as limited by section 7908.

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

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

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

25 (10) As used in this section:

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

29 (b) "Tax benefit" means a federal or state tax deduction,

1 exemption, exclusion, or other particular tax attribute. ~~The term~~
2 ~~tax benefit~~ **Tax benefit** does not include grantor trust status. A
3 trust has grantor trust status to the extent that the assets of the
4 trust are treated, for federal income tax purposes, as owned by the
5 grantor or another person under sections 671 to 679 of the internal
6 revenue code **of 1986**, 26 USC 671 to 679.

7 Enacting section 1. Sections 2722 and 7104 of the estates and
8 protected individuals code, 1998 PA 386, MCL 700.2722 and 700.7104,
9 are repealed.