

HOUSE BILL NO. 4898

May 25, 2021, Introduced by Reps. Filler and Bolden and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1106, 1210, 2519, 2806, 3605, 3916, 3917,
3918, 3959, 3981, 3982, 3983, 5102, 5301, 5303, 5304, 5305, 5306a,
5310, 5311, 5313, 5314, 5506, 5507, 5508, 5510, 5511, 7103, 7105,
7110, 7302, 7402, 7506, and 7604 (MCL 700.1106, 700.1210, 700.2519,
700.2806, 700.3605, 700.3916, 700.3917, 700.3918, 700.3959,
700.3981, 700.3982, 700.3983, 700.5102, 700.5301, 700.5303,
700.5304, 700.5305, 700.5306a, 700.5310, 700.5311, 700.5313,
700.5314, 700.5506, 700.5507, 700.5508, 700.5510, 700.5511,

700.7103, 700.7105, 700.7110, 700.7302, 700.7402, 700.7506, and 700.7604), section 1106 as amended by 2018 PA 555, sections 1210, 7302, 7402, and 7506 as amended and sections 7110 and 7604 as added by 2009 PA 46, section 2519 as amended by 2010 PA 325, section 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, and sections 7103 and 7105 as amended by 2018 PA 664, and by adding sections 5301c, 7408, 7409, and 7409a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1106. As used in this act:

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

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

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

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

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

1 333.18838.

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

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

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

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

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

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

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

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

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

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

27 (j) "Parent" includes, but is not limited to, an individual
28 entitled to take, or who would be entitled to take, as a parent
29 under this act by intestate succession from a child who dies

1 without a will and whose relationship is in question. Parent does
2 not include an individual who is only a stepparent, foster parent,
3 or grandparent.

4 (k) "Partial guardian" means that term as defined in section
5 600 of the mental health code, 1974 PA 258, MCL 330.1600.

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

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

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

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

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

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

26 (r) "Physician orders for scope of treatment form" means that
27 term as defined in section 5674 of the public health code, 1978 PA
28 368, MCL 333.5674.

29 (s) "Plenary guardian" means that term as defined in section

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

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

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

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

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

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

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

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

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

1 decedent dies.

2 (2) Before January 1, 2022, the specific amounts stated in
3 sections 2519, 3605, 3916, 3917, 3918, 3981, 3982, and 5102 apply
4 to those sections. Beginning January 1, 2022, those specific dollar
5 amounts must be multiplied by the cost-of-living adjustment factor
6 for the calendar year in which the decedent dies.

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

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

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

23 MICHIGAN STATUTORY WILL NOTICE

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

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

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

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

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

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

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

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

18 INSTRUCTIONS:

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

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

26 MICHIGAN STATUTORY WILL OF _____

27 (Print or type your full name)

28 ARTICLE 1. DECLARATIONS

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

1 I live in _____ County, Michigan.
2 My spouse is _____.

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

4 My children now living are:

5 _____
6 _____
7 _____

8 (Insert names or write "none")

9 ARTICLE 2. DISPOSITION OF MY ASSETS

10 2.1 CASH GIFTS TO PERSONS OR CHARITIES.

11 (Optional)

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

18 _____
19 (Insert name of person or charity)

20 _____
21 (Insert address)

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

23 AMOUNT OF GIFT (In words): _____ Dollars

24 _____
25 (Your signature)

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

28 _____
29 (Insert name of person or charity)

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

7 2.2 PERSONAL AND HOUSEHOLD ITEMS.

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

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

19 2.3 ALL OTHER ASSETS.

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

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

1 (Select only 1)

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

5 _____
6 (Your signature)

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

9 _____
10 (Your signature)

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

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

22 3.1 PERSONAL REPRESENTATIVE.

23 (Name at least 1)

24 I nominate _____

25 (Insert name of person or eligible financial institution)

26 of _____ to serve as personal representative.

27 (Insert address)

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

29 _____

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

4 3.2 GUARDIAN AND CONSERVATOR.

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

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

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

19 If my first choice cannot serve, I nominate
20 _____
21 (Insert name of individual)
22 of _____ as guardian and
23 (Insert address)

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

28 3.3 BOND.

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

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

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

8 _____
9 (Your signature)

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

12 _____
13 (Your signature)

14 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

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

17 I sign my name to this Michigan statutory will on
18 _____ , 20____.

19 _____
20 (Your signature)

21 NOTICE REGARDING WITNESSES

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

26 STATEMENT OF WITNESSES

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

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

4 _____

5 (Print Name)

6 _____

7 (Signature of witness)

8 _____

9 (Address)

10 _____

11 (City)

(State)

(Zip)

12 _____

13 (Print name)

14 _____

15 (Signature of witness)

16 _____

17 (Address)

18 _____

19 (City)

(State)

(Zip)

20 _____

21 (Print name)

22 _____

23 (Signature of witness)

24 _____

25 (Address)

26 _____

27 (City)

(State)

(Zip)

28 DEFINITIONS

29 The following definitions and rules of construction apply to

1 this Michigan statutory will:

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

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

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

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

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

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

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

1 the laws that are then in effect.

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

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

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

10 ADDITIONAL CLAUSES

11 Powers of personal representative

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

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

1 ~~provisions of~~ this paragraph.

2 POWERS OF GUARDIAN AND CONSERVATOR

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

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

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

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

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

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

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

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

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

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

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

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

29 Sec. 3916. (1) In exchange for suitable receipts and following

1 a court order if the administration is supervised, a fiduciary
 2 making final distribution shall deposit with the county treasurer
 3 the money or personal property the fiduciary has that belongs to
 4 any of the following:

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

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

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

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

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

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

27 Sec. 3917. (1) The county treasurer shall receive and safely
 28 keep money deposited under authority of this act in a separate fund
 29 and keep a separate account for each distributee or claim. The

1 county treasurer shall deposit the money in a county depository at
2 the current rate of interest, shall pay out from the fund upon the
3 order of the court, and shall turn over any surplus left in the
4 treasurer's hands at the termination of the treasurer's term of
5 office to the treasurer's successor. The county treasurer shall, at
6 the end of each year, render to the court, and to the county board
7 of commissioners, a true account of that money.

8 (2) For the care of the money received under authority of this
9 act, the county treasurer may take 1% from the different amounts
10 paid out under court order unless the amount paid out to a single
11 individual exceeds ~~\$1,000.00~~, **\$1,500.00**, in which case the county
12 treasurer shall take ~~\$10.00~~ **\$15.00** plus 1/2 of 1% of the excess of
13 the amount over ~~\$1,000.00~~ **\$1,500.00**.

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

23 (4) If a person whose whereabouts are unknown or who declined
24 to accept the money does not make a claim to money deposited by a
25 fiduciary before the expiration of 3 years after the deposit date,
26 the money and interest earned on the money that would be
27 distributed under this section to the person, if alive, less
28 expenses, ~~shall~~ **must** be distributed by court order to each person
29 who would be entitled to the money if the person had died before

1 the date that he or she became entitled to the money, and the
 2 person is forever barred from all claim or right to the money.

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

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

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

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

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

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

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

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

5 (ii) The distribution is in amounts not exceeding ~~\$5,000.00~~
 6 **\$25,000.00** a year or property not exceeding ~~\$5,000.00~~**\$25,000.00** in
 7 value, unless the court authorizes a higher amount or value.

8 (4) A person receiving money or property for an individual
 9 under legal disability shall use the money or property only for
 10 that individual's support and for reimbursement of out-of-pocket
 11 expenses for goods and services necessary for that individual's
 12 support. Excess money and property ~~shall~~**must** be preserved for the
 13 individual's future support. The personal representative is not
 14 responsible for the proper use of money or property by the
 15 recipient if distribution is made under the authority of this
 16 section.

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

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

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

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

28 **(2) The** court may appoint the same or a successor personal
 29 representative to administer the subsequently discovered estate. If

1 a new appointment is made, unless the court orders otherwise, the
 2 provisions of this act apply as appropriate. A claim previously
 3 barred ~~shall~~**must** not be asserted in the subsequent administration.

4 Sec. 3981. **(1)** A hospital, convalescent or nursing home,
 5 morgue, or law enforcement agency holding ~~\$500.00~~**\$1,000.00** or less
 6 and wearing apparel of a decedent may deliver the money and wearing
 7 apparel to an individual furnishing identification and a sworn
 8 statement that the individual is the decedent's spouse, child, or
 9 parent and that there is no application or petition pending for
 10 administration of the decedent's estate. The hospital, home,
 11 morgue, or law enforcement agency making the delivery is released
 12 to the same extent as if delivery were made to a legally qualified
 13 personal representative of the decedent's estate and is not
 14 required to see to the property's disposition. The individual to
 15 whom delivery is made is answerable for the property to a person
 16 with a prior right and accountable to a personal representative of
 17 the decedent's estate appointed after the delivery.

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

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

26 (2) ~~Upon~~**On** a showing of evidence, satisfactory to the court,
 27 that the decedent's funeral or burial expenses are unpaid or were
 28 paid by a person other than the estate, and if the balance of the
 29 gross estate after payment of the expenses would consist of

1 property of the value of ~~\$15,000.00~~ **\$25,000.00** or less, the court
 2 shall order that the property be first used to pay the unpaid
 3 funeral and burial expenses, or to reimburse the person that paid
 4 those expenses, and may order that the balance be turned over to
 5 the surviving spouse or, if there is not a spouse, to the
 6 decedent's heirs.

7 (3) Other than a surviving spouse who qualifies for allowances
 8 under this act or the decedent's minor children, an heir who
 9 receives property through an order under this section is
 10 responsible, for 63 days after the date of the order, for any
 11 unsatisfied debt of the decedent up to the value of the property
 12 received through the order. The court shall state in the order the
 13 condition on the distribution of property provided by this
 14 subsection.

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

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

22 Sec. 3983. (1) After 28 days after a decedent's death, a
 23 person indebted to the decedent or having possession of tangible
 24 personal property or an instrument evidencing a debt, obligation,
 25 stock, or chose in action belonging to the decedent shall pay the
 26 indebtedness or deliver the tangible personal property or the
 27 instrument to a person claiming to be the decedent's successor ~~upon~~
 28 **on** being presented with the decedent's death certificate and a
 29 sworn statement made by or on behalf of the successor stating all

1 of the following:

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

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

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

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

12 (e) The name and address of each other person that is entitled
13 to a share of the property and the portion to which each is
14 entitled.

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

19 (3) The state court administrative office shall develop and
20 make available a standardized form for use as a sworn statement
21 that can be used for the procedure authorized under subsection (1).
22 The form ~~shall~~**must** include a notice that a false statement may
23 subject the person swearing to the statement to prosecution for
24 perjury.

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

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

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

3 (c) A guardian of the minor.

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

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

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

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

24 Sec. 5301. (1) If serving as guardian, the parent of an
25 unmarried legally incapacitated individual may appoint by will, or
26 other writing signed by the parent and attested by at least 2
27 witnesses, a guardian for the legally incapacitated individual. If
28 both parents are dead or the surviving parent is adjudged legally
29 incapacitated, **and no standby guardian has been appointed under**

1 **section 5301c**, a parental appointment **by will or other writing**
2 becomes effective when, after having given 7 days' prior written
3 notice of intention to do so to the legally incapacitated
4 individual and to the person having the care of the legally
5 incapacitated individual or to the nearest adult relative, the
6 guardian files acceptance of appointment in the court in which the
7 will containing the nomination is probated or, if the nomination is
8 contained in a nontestamentary nominating instrument or the
9 testator who made the nomination is not deceased, when the
10 guardian's acceptance is filed in the court at the place where the
11 legally incapacitated individual resides or is present. The notice
12 must state that the appointment may be terminated by filing a
13 written objection in the court as provided by subsection (4). If
14 both parents are dead, an effective appointment by the parent who
15 died later has priority.

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

1 legally incapacitated individual resides or is present. The notice
2 must state that the appointment may be terminated by filing a
3 written objection in the court as provided by subsection (4).

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

7 (4) ~~Upon~~**On** the filing of the legally incapacitated
8 individual's written objection to a guardian's appointment under
9 this section in either the court in which the will was probated or,
10 for a nontestamentary nominating instrument or a testamentary
11 nominating instrument made by a testator who is not deceased, the
12 court at the place where the legally incapacitated individual
13 resides or is present, the appointment is terminated. An objection
14 does not prevent appointment by the court in a proper proceeding of
15 the parental or spousal nominee or another suitable person ~~upon~~**on**
16 an adjudication of incapacity in a proceeding under sections 5302
17 to 5317.

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

22 (2) The nominated standby guardian must receive a copy of the
23 petition nominating the person to serve, the court order
24 establishing or modifying guardianship, and the order designating
25 the standby guardian.

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

29 (4) If the standby guardian is unable or unwilling to serve,

1 the standby guardian shall promptly notify the court and interested
2 persons in writing.

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

6 (a) The guardian dies.

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

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

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

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

25 (8) On assuming office, the standby guardian shall promptly
26 notify the court, any known agent appointed under a power of
27 attorney executed under section 5103, and interested persons. On
28 receiving notice under this subsection, the court may enter an
29 order appointing a standby guardian as guardian without the need

1 **for additional proceedings. The guardian appointed under this**
2 **subsection shall serve the court's order on the interested persons.**

3 Sec. 5303. (1) An individual in his or her own behalf, or any
4 person interested in the individual's welfare, may petition for a
5 finding of incapacity and appointment of a guardian **or designation**
6 **of a standby guardian.** The petition must contain specific facts
7 about the individual's condition and specific examples of the
8 individual's recent conduct that demonstrate the need for a
9 guardian's appointment.

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

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

23 Sec. 5304. (1) If necessary, the court may order that an
24 individual alleged to be incapacitated be examined by a physician
25 or mental health professional appointed by the court who shall
26 submit a report in writing to the court at least 5 days before the
27 hearing set under section 5303. A report prepared as provided in
28 this subsection ~~shall~~**must** not be made a part of the proceeding's
29 public record, but ~~shall~~**must** be available to the court or an

1 appellate court in which the proceeding is subject to review, to
2 the alleged incapacitated individual, to the petitioner, to their
3 respective legal counsels, and to other persons as the court
4 directs. The report may be used as provided in the Michigan rules
5 of evidence.

6 (2) The alleged incapacitated individual has the right to
7 secure an independent evaluation, at his or her own expense or, if
8 indigent, at the expense of the state. Compensation for an
9 independent evaluation at public expense ~~shall~~**must** be in an amount
10 that, based ~~upon~~**on** time and expense, the court approves as
11 reasonable.

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

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

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

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

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

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

26 (4) The individual alleged to be incapacitated is entitled to
27 be present at the hearing **to appoint a guardian or designate a**
28 **standby guardian** in person, and to see or hear all evidence bearing
29 ~~upon~~**on** the individual's condition. If the individual wishes to be

1 present at the hearing, all practical steps ~~shall~~**must** be taken to
 2 ensure his or her presence, including, if necessary, moving the
 3 hearing site.

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

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

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

14 (a) Personally visiting the individual.

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

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

20 (i) The right to contest the petition.

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

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

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

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

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

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

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

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

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

14 (f) Informing the individual of the name of each person known
15 to be seeking appointment as guardian **or designation as standby**
16 **guardian.**

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

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

22 (i) Whether there are 1 or more appropriate alternatives to the
23 appointment of a full guardian or whether 1 or more actions should
24 be taken in addition to the appointment of a guardian. Before
25 informing the court of his or her determination under this
26 subparagraph, the guardian ad litem shall consider the
27 appropriateness of at least each of the following as alternatives
28 or additional actions:

29 (A) Appointment of a limited guardian, including the specific

1 powers and limitation on those powers the guardian ad litem
2 believes appropriate.

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

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

12 (ii) Whether a disagreement or dispute related to the
13 guardianship petition might be resolved through court ordered
14 mediation.

15 (iii) Whether the individual wishes to be present at the
16 hearing.

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

18 (v) Whether the individual wishes limits placed on the
19 guardian's powers.

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

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

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

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

1 (3) If the individual alleged to be incapacitated wishes to
2 contest the petition, to have limits placed on the guardian's
3 powers, or to object to a particular person being appointed
4 guardian **or designated as standby guardian** and if legal counsel has
5 not been secured, the court shall appoint legal counsel to
6 represent the individual alleged to be incapacitated. If the
7 individual alleged to be incapacitated is indigent, this state
8 shall bear the expense of legal counsel.

9 (4) If the individual alleged to be incapacitated requests
10 legal counsel or the guardian ad litem determines it is in the
11 individual's best interest to have legal counsel, and if legal
12 counsel has not been secured, the court shall appoint legal
13 counsel. If the individual alleged to be incapacitated is indigent,
14 this state shall bear the expense of legal counsel.

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

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

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

23 (b) To have the guardianship proceeding commenced and
24 conducted in the place where the individual resides or is present
25 or, if the individual is admitted to an institution by a court, in
26 the county in which the court is located, as provided in section
27 5302.

28 (c) To petition on his or her own behalf for the appointment
29 of a guardian **or designation of a standby guardian**, as provided in

1 section 5303.

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

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

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

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

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

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

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

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

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

28 (m) If a guardian ad litem is appointed, to an explanation by
29 the guardian ad litem of the nature, purpose, and legal effects of

1 a guardian's appointment, as provided in section 5305.

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

5 (o) If a guardian ad litem is appointed, to be informed by the
6 guardian ad litem of the right to contest the petition, to request
7 limits on the guardian's powers, to object to a particular person
8 being appointed guardian **or designated as standby guardian**, to be
9 present at the hearing, to be represented by legal counsel, and to
10 have legal counsel appointed if the individual is unable to afford
11 legal counsel, as provided in section 5305.

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

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

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

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

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

27 (u) To periodic review of the guardianship by the court,
28 including the right to a hearing and the appointment of an attorney
29 if issues arise upon the review of the guardianship, as provided in

1 section 5309.

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

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

8 (x) To the same rights on a petition for modification or
9 termination of the guardianship including the appointment of a
10 visitor as apply to a petition for appointment of a guardian, as
11 provided in section 5310.

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

15 (z) To written notice of the nature, purpose, and legal
16 effects of the appointment of a guardian, as provided in section
17 5311.

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

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

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

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

29 (ee) To have the guardian secure services to restore the

1 individual to the best possible state of mental and physical well-
 2 being so that the individual can return to self-management at the
 3 earliest possible time, as provided in section 5314.

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

7 (2) A guardian ad litem shall inform the ward in writing of
 8 his or her rights enumerated in this section. The state court
 9 administrative office and the ~~office of services to the aging~~
 10 ~~created in section 5 of the older Michiganians act, 1981 PA 180,~~
 11 ~~MCL 400.585,~~ **aging and adult services agency created under**
 12 **Executive Reorganization Order No. 2015-1, MCL 400.227,** shall
 13 promulgate a form to be used to give the written notice under this
 14 section, which ~~shall~~ **must** include space for the court to include
 15 information on how to contact the court or other relevant personnel
 16 with respect to the rights enumerated in this section.

17 Sec. 5310. (1) On petition of the guardian and subject to the
 18 filing and approval of a report prepared as required by section
 19 5314, the court shall accept the guardian's resignation and make
 20 any other order that is appropriate.

21 (2) The ward, **a person appointed guardian in a will or other**
 22 **writing by a parent or spouse under section 5301, or a** ~~any other~~
 23 person interested in the ward's welfare may petition for an order
 24 removing the guardian, **changing the designated standby guardian,**
 25 appointing a successor guardian, modifying the guardianship's
 26 terms, or terminating the guardianship. A request for this order
 27 may be made by informal letter to the court or judge. **If a request**
 28 **under this subsection is made by the person appointed by will or**
 29 **other writing under section 5301, the person shall also present**

1 **proof of the person's appointment by will or other writing.** A
 2 person who knowingly interferes with the transmission of this kind
 3 of request to the court or judge is subject to a finding of
 4 contempt of court.

5 (3) Except as otherwise provided in the order finding
 6 incapacity, ~~upon~~**on** receiving a petition or request under this
 7 section, the court shall set a date for a hearing to be held within
 8 28 days after the receipt of the petition or request. An order
 9 finding incapacity may specify a minimum period, not exceeding 182
 10 days, during which a petition or request for a finding that a ward
 11 is no longer an incapacitated individual, or for an order removing
 12 the guardian, modifying the guardianship's terms, or terminating
 13 the guardianship, ~~shall~~**must** not be filed without special leave of
 14 the court.

15 (4) Before removing a guardian, appointing a successor
 16 guardian, **changing the designated standby guardian**, modifying the
 17 guardianship's terms, or terminating a guardianship, and following
 18 the same procedures to safeguard the ward's rights as apply to a
 19 petition for a guardian's appointment, the court may send a visitor
 20 to the present guardian's residence and to the place where the ward
 21 resides or is detained to observe conditions and report in writing
 22 to the court.

23 Sec. 5311. (1) In a proceeding for the appointment or removal
 24 of an incapacitated individual's guardian, other than the
 25 appointment of a temporary guardian or temporary suspension of a
 26 guardian, **or to designate a standby guardian or change the**
 27 **designated standby guardian**, notice of hearing must be given to
 28 each of the following:

29 (a) The ward or the individual alleged to be incapacitated and

1 that individual's spouse, parents, and adult children.

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

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

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

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

11 (2) Notice must be served personally on the alleged
12 incapacitated individual. Notice to all other persons must be given
13 as prescribed by court rule. Waiver of notice by the individual
14 alleged to be incapacitated is not effective unless the individual
15 attends the hearing or a waiver of notice is confirmed in an
16 interview with the visitor.

17 (3) In a proceeding for a guardian's appointment **or**
18 **designation of a standby guardian** under sections 5303 and 5304, a
19 copy of the petition must be attached to the hearing notice, and
20 the notice to the alleged incapacitated individual must contain all
21 of the following information:

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

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

26 Sec. 5313. (1) The court may appoint a competent person as
27 guardian of a legally incapacitated individual. The court shall not
28 appoint as a guardian an agency, public or private, that
29 financially benefits from directly providing housing, medical,

1 mental health, or social services to the legally incapacitated
2 individual. If the court determines that the ward's property needs
3 protection, the court shall order the guardian to furnish a bond or
4 shall include restrictions in the letters of guardianship as
5 necessary to protect the property.

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

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

12 (b) A person the individual subject to the petition chooses to
13 serve as guardian.

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

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

19 **(e) A person appointed by a parent or spouse of a legally**
20 **incapacitated individual by will or other writing under section**
21 **5301.**

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

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

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

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

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

8 (e) A person nominated by a person who is caring for the
9 legally incapacitated individual or paying benefits to the legally
10 incapacitated individual.

11 (4) If none of the persons as designated or listed in
12 subsection (2) or (3) are suitable or willing to serve, the court
13 may appoint any competent person who is suitable and willing to
14 serve, including a professional guardian as provided in section
15 5106.

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

27 (a) The custody of the person of the ward and the power to
28 establish the ward's place of residence in or outside this state.
29 The guardian shall visit the ward within 3 months after the

1 guardian's appointment and not less than once within 3 months after
2 each previous visit. The guardian shall notify the court within 14
3 days of a change in the ward's place of residence or a change in
4 the guardian's place of residence.

5 (b) If entitled to custody of the ward, the duty to make
6 provision for the ward's care, comfort, and maintenance and, when
7 appropriate, arrange for the ward's training and education. The
8 guardian shall secure services to restore the ward to the best
9 possible state of mental and physical well-being so that the ward
10 can return to self-management at the earliest possible time.
11 Without regard to custodial rights of the ward's person, the
12 guardian shall take reasonable care of the ward's clothing,
13 furniture, vehicles, and other personal effects and commence a
14 protective proceeding if the ward's other property needs
15 protection. If a guardian commences a protective proceeding because
16 the guardian believes that it is in the ward's best interest to
17 sell or otherwise dispose of the ward's real property or interest
18 in real property, the court may appoint the guardian as special
19 conservator and authorize the special conservator to proceed under
20 section 5423(3). A guardian shall not otherwise sell the ward's
21 real property or interest in real property.

22 (c) The power to give the consent or approval that is
23 necessary to enable the ward to receive medical, mental health, or
24 other professional care, counsel, treatment, or service. However, a
25 guardian does not have and shall not exercise the power to give the
26 consent to or approval for inpatient hospitalization unless the
27 court expressly grants the power in its order. If the ward objects
28 or actively refuses mental health treatment, the guardian or any
29 other interested person must follow the procedures provided in

1 chapter 4 of the mental health code, 1974 PA 258, MCL 330.1400 to
2 330.1490, to petition the court for an order to provide involuntary
3 mental health treatment. The power of a guardian to execute a do-
4 not-resuscitate order under subdivision (d), execute a nonopioid
5 directive form under subdivision (f), or execute a physician orders
6 for scope of treatment form under subdivision (g) does not affect
7 or limit the power of a guardian to consent to a physician's order
8 to withhold resuscitative measures in a hospital. As used in this
9 subdivision, "involuntary mental health treatment" means that term
10 as defined in section 400 of the mental health code, 1974 PA 258,
11 MCL 330.1400.

12 (d) The power to execute, reaffirm, and revoke a do-not-
13 resuscitate order on behalf of a ward. However, a guardian shall
14 not execute a do-not-resuscitate order unless the guardian does all
15 of the following:

16 (i) Not more than 14 days before executing the do-not-
17 resuscitate order, visits the ward and, if meaningful communication
18 is possible, consults with the ward about executing the do-not-
19 resuscitate order.

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

23 (e) If a guardian executes a do-not-resuscitate order under
24 subdivision (d), not less than annually after the do-not-
25 resuscitate order is first executed, the duty to do all of the
26 following:

27 (i) Visit the ward and, if meaningful communication is
28 possible, consult with the ward about reaffirming the do-not-
29 resuscitate order.

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

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

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

10 (i) Not more than 14 days before executing the physician orders
11 for scope of treatment form, visits the ward and, if meaningful
12 communication is possible, consults with the ward about executing
13 the physician orders for scope of treatment form.

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

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

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

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

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

29 (i) Institute a proceeding to compel a person under a duty to

1 support the ward or to pay money for the ward's welfare to perform
2 that duty.

3 (ii) Receive money and tangible property deliverable to the
4 ward and apply the money and property for the ward's support, care,
5 and education. The guardian shall not use money from the ward's
6 estate for room and board that the guardian or the guardian's
7 spouse, parent, or child have furnished the ward unless a charge
8 for the service is approved by court order made on notice to at
9 least 1 of the ward's next of kin, if notice is possible. The
10 guardian shall exercise care to conserve any excess for the ward's
11 needs.

12 (j) The duty to report the condition of the ward and the
13 ward's estate that is subject to the guardian's possession or
14 control, as required by the court, but not less often than
15 annually. The guardian shall also serve the report required under
16 this subdivision on the ward and interested persons as specified in
17 the Michigan court rules. A report under this subdivision must
18 contain all of the following:

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

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

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

24 (iv) Whether the guardian recommends a more suitable living
25 arrangement for the ward.

26 (v) Medical treatment, including mental health treatment,
27 received by the ward.

28 (vi) Whether the guardian has executed, reaffirmed, or revoked
29 a do-not-resuscitate order on behalf of the ward during the past

1 year.

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

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

8 (ix) Services received by the ward.

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

11 (xi) A recommendation as to the need for continued
12 guardianship.

13 **(xii) If a standby guardian has been designated, a statement**
14 **signed by the standby guardian that the standby guardian continues**
15 **to be willing to serve in the event of the unavailability, death,**
16 **incapacity, or resignation of the guardian.**

17 (k) If a conservator is appointed, the duty to pay to the
18 conservator, for management as provided in this act, the amount of
19 the ward's estate received by the guardian in excess of the amount
20 the guardian expends for the ward's current support, care, and
21 education. The guardian shall account to the conservator for the
22 amount expended.

23 Sec. 5506. (1) An individual 18 years of age or older who is
24 of sound mind at the time a patient advocate designation is made
25 may designate in writing another individual who is 18 years of age
26 or older to exercise powers concerning care, custody, and medical
27 or mental health treatment decisions for the individual making the
28 patient advocate designation. An individual making a patient
29 advocate designation under this subsection may include in the

1 patient advocate designation the authority for the designated
2 individual to make an anatomical gift of all or part of the
3 individual's body in accordance with this act and part 101 of the
4 public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The
5 authority regarding an anatomical gift under this subsection may
6 include the authority to resolve a conflict between the terms of
7 the advance health care directive and the administration of means
8 necessary to ensure the medical suitability of the anatomical gift.
9 **If more than 1 individual is designated as a patient advocate to**
10 **serve at the same time, a person providing care, custody, or**
11 **medical or mental health treatment may rely on the representations**
12 **of any designated patient advocate without further inquiry.**

13 (2) For purposes of this section and sections 5507 to 5515, an
14 individual who is named in a patient advocate designation to
15 exercise powers concerning care, custody, and medical or mental
16 health treatment decisions is known as a patient advocate and an
17 individual who makes a patient advocate designation is known as a
18 patient.

19 (3) Subject to section 1202, a patient advocate designation
20 under this section must be in writing, signed, witnessed as
21 provided in subsection (4), dated, executed voluntarily, and,
22 before its implementation, made part of the patient's medical
23 record with, as applicable, the patient's attending physician, the
24 mental health professional providing treatment to the patient, the
25 facility where the patient is located, or the community mental
26 health services program or hospital that is providing mental health
27 services to the patient. The patient advocate designation must
28 include a statement that the authority conferred under this section
29 is exercisable only when the patient is unable to participate in

1 medical or mental health treatment decisions, as applicable, and,
2 in the case of the authority to make an anatomical gift as
3 described in subsection (1), a statement that the authority remains
4 exercisable after the patient's death.

5 (4) Subject to section 1202, a patient advocate designation
6 under this section must be executed in the presence of and signed
7 by 2 witnesses. A witness under this section shall not be the
8 patient's spouse, parent, child, grandchild, sibling, presumptive
9 heir, known devisee at the time of the witnessing, physician, or
10 patient advocate or an employee of a life or health insurance
11 provider for the patient, of a health facility that is treating the
12 patient, or of a home for the aged as defined in section 20106 of
13 the public health code, 1978 PA 368, MCL 333.20106, where the
14 patient resides, or of a community mental health services program
15 or hospital that is providing mental health services to the
16 patient. A witness shall not sign the patient advocate designation
17 unless the patient appears to be of sound mind and under no duress,
18 fraud, or undue influence.

19 (5) As used in this section, "community mental health services
20 program or hospital" means a community mental health services
21 program as that term is defined in section 100a of the mental
22 health code, 1974 PA 258, MCL 330.1100a, or a hospital as that term
23 is defined in section 100b of the mental health code, 1974 PA 258,
24 MCL 330.1100b.

25 Sec. 5507. (1) A patient advocate designation may include a
26 statement of the patient's desires on care, custody, and medical
27 treatment or mental health treatment, or both. A patient advocate
28 designation may also include a statement of the patient's desires
29 on the making of an anatomical gift of all or part of the patient's

1 body under part 101 of the public health code, 1978 PA 368, MCL
2 333.10101 to 333.10123. The statement regarding an anatomical gift
3 under this subsection may include a statement of the patient's
4 desires regarding the resolution of a conflict between the terms of
5 the advance health care directive and the administration of means
6 necessary to ensure the medical suitability of the anatomical gift.
7 The patient may authorize the patient advocate to exercise 1 or
8 more powers concerning the patient's care, custody, medical
9 treatment, mental health treatment, the making of an anatomical
10 gift, or the resolution of a conflict between the terms of the
11 advance health care directive and the administration of means
12 necessary to ensure the medical suitability of the anatomical gift
13 that the patient could have exercised on his or her own behalf.

14 **(2) A patient advocate designation may also include the**
15 **patient's instructions about how the patient advocate is to make**
16 **decisions.**

17 **(3) ~~(2)~~**—A patient may designate in the patient advocate
18 designation a successor individual as a patient advocate who may
19 exercise the powers described in subsection (1) for the patient if
20 the first individual named as patient advocate does not accept, is
21 incapacitated, resigns, or is removed.

22 **(4) ~~(3)~~**—Before a patient advocate designation is implemented,
23 a copy of the patient advocate designation must be given to the
24 proposed patient advocate and must be given to a successor patient
25 advocate before the successor acts as patient advocate. Before
26 acting as a patient advocate, the proposed patient advocate must
27 sign an acceptance of the patient advocate designation.

28 **(5) ~~(4)~~**—The acceptance of a designation as a patient advocate
29 must include substantially all of the following statements:

1 1. This patient advocate designation is not effective unless
2 the patient is unable to participate in decisions regarding the
3 patient's medical or mental health, as applicable. If this patient
4 advocate designation includes the authority to make an anatomical
5 gift as described in section 5506, the authority remains
6 exercisable after the patient's death.

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

11 3. This patient advocate designation cannot be used to make a
12 medical treatment decision to withhold or withdraw treatment from a
13 patient who is pregnant that would result in the pregnant patient's
14 death.

15 4. A patient advocate may make a decision to withhold or
16 withdraw treatment that would allow a patient to die only if the
17 patient has expressed in a clear and convincing manner that the
18 patient advocate is authorized to make such a decision, and that
19 the patient acknowledges that such a decision could or would allow
20 the patient's death.

21 5. A patient advocate shall not receive compensation for the
22 performance of his or her authority, rights, and responsibilities,
23 but a patient advocate may be reimbursed for actual and necessary
24 expenses incurred in the performance of his or her authority,
25 rights, and responsibilities.

26 6. A patient advocate shall act in accordance with the
27 standards of care applicable to fiduciaries when acting for the
28 patient and shall act consistent with the patient's best interests.
29 The known desires of the patient expressed or evidenced while the

1 patient is able to participate in medical or mental health
2 treatment decisions are presumed to be in the patient's best
3 interests.

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

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

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

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

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

1 must indicate in the designation how the determination under this
2 subsection ~~shall~~**must** be made. The determination of the patient's
3 ability to make mental health treatment decisions ~~shall~~**must** be
4 made under section 5515.

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

25 (3) ~~In the case of~~**For** a patient advocate designation that
26 authorizes a patient advocate to make an anatomical gift of all or
27 part of the patient's body, the patient advocate shall act on the
28 patient's behalf in accordance with part 101 of the public health
29 code, 1978 PA 368, MCL 333.10101 to 333.10123, and may do so only

1 after the patient has been declared unable to participate in
 2 medical treatment decisions as provided in subsection (1) or
 3 declared dead by a licensed physician. The patient advocate's
 4 authority to make an anatomical gift remains exercisable after the
 5 patient's death.

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

7 **(a) "Attending medical professional" means a medical**
 8 **professional who has primary responsibility for the treatment and**
 9 **care of the patient.**

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

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

14 **(ii) A physician's assistant licensed to practice in this state**
 15 **under article 15 of the public health code, 1978 PA 368, MCL**
 16 **333.16101 to 333.18838.**

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

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

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

26 (b) An order of removal by the probate court under section
 27 ~~5511(5)~~. **5511(6)** .

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

1 (d) The patient's revocation of the patient advocate
2 designation. Subject to section 5515, even if the patient is unable
3 to participate in medical treatment decisions, a patient may revoke
4 a patient advocate designation at any time and in any manner by
5 which he or she is able to communicate an intent to revoke the
6 patient advocate designation. If there is a dispute as to the
7 intent of the patient to revoke the patient advocate designation,
8 the court may make a determination on the patient's intent to
9 revoke the patient advocate designation. If the revocation is not
10 in writing, an individual who witnesses a revocation of a patient
11 advocate designation shall describe in writing the circumstances of
12 the revocation, must sign the writing, and shall notify, if
13 possible, the patient advocate of the revocation. If the patient's
14 physician, mental health professional, or health facility has
15 notice of the patient's revocation of a patient advocate
16 designation, the physician, mental health professional, or health
17 facility shall note the revocation in the patient's records and
18 bedside chart and shall notify the patient advocate.

19 (e) A subsequent patient advocate designation that revokes the
20 prior patient advocate designation either expressly or by
21 inconsistency.

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

24 (g) If a patient advocate designation is executed during a
25 patient's marriage naming the patient's spouse as the patient
26 advocate, the patient advocate designation is suspended during the
27 pendency of an action for separate maintenance, annulment, or
28 divorce and is revoked upon the entry of a judgment of separate
29 maintenance, annulment, or divorce, unless the patient has named a

1 successor individual to serve as a patient advocate. If a successor
2 patient advocate is named, that individual acts as the patient
3 advocate.

4 (2) The revocation of a patient advocate designation under
5 subsection (1) does not revoke or terminate the agency as to the
6 patient advocate or other person who acts in good faith under the
7 patient advocate designation and without actual knowledge of the
8 revocation. Unless the action is otherwise invalid or
9 unenforceable, an action taken without knowledge of the revocation
10 binds the patient and his or her heirs, devisees, and personal
11 representatives. A sworn statement executed by the patient advocate
12 stating that, at the time of doing an act in accordance with the
13 patient advocate designation, he or she did not have actual
14 knowledge of the revocation of the patient advocate designation is,
15 in the absence of fraud, conclusive proof that the patient advocate
16 did not have actual knowledge of the revocation at the time of the
17 act.

18 Sec. 5511. (1) Irrespective of a previously expressed or
19 evidenced desire, a current desire by a patient to have provided,
20 and not withheld or withdrawn, a specific life-extending care,
21 custody, or medical treatment is binding on the patient advocate,
22 if known by the patient advocate, regardless of the then ability or
23 inability of the patient to participate in care, custody, or
24 medical treatment decisions or the patient's competency.

25 (2) A person providing, performing, withholding, or
26 withdrawing care, custody, or medical or mental health treatment as
27 a result of the decision of an individual who is reasonably
28 believed to be a patient advocate and who is reasonably believed to
29 be acting within the authority granted by the designation is liable

1 in the same manner and to the same extent as if the patient had
2 made the decision on his or her own behalf.

3 (3) A person providing care, custody, or medical or mental
4 health treatment to a patient is bound by sound medical or, if
5 applicable, mental health treatment practice and by a patient
6 advocate's instructions if the patient advocate complies with
7 sections 5506 to 5515, but is not bound by the patient advocate's
8 instructions if the patient advocate does not comply with these
9 sections.

10 (4) **A person providing care, custody, or medical or mental**
11 **health treatment to a patient is not required to determine if a**
12 **patient advocate complies with any of the patient's instructions**
13 **under section 5507(2). A person providing care, custody, or medical**
14 **or mental health treatment to a patient is not liable if the**
15 **patient advocate fails to comply with any of the patient's**
16 **instructions under section 5507(2).**

17 (5) ~~(4)~~—A mental health professional who provides mental
18 health treatment to a patient shall comply with the desires of the
19 patient as expressed in the designation. If 1 or more of the
20 following apply to a desire of the patient as expressed in the
21 designation, the mental health professional is not bound to follow
22 that desire, but shall follow the patient's other desires as
23 expressed in the designation:

24 (a) In the opinion of the mental health professional,
25 compliance is not consistent with generally accepted community
26 practice standards of treatment.

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

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

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

1 (e) In the opinion of the mental health professional, there is
2 a psychiatric emergency endangering the life of the patient or
3 another individual and compliance is not appropriate under the
4 circumstances.

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

11 Sec. 7103. As used in this article:

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

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

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

21 (d) "Discretionary trust provision" means a provision in a
22 trust, regardless of whether the terms of the trust provide a
23 standard for the exercise of the trustee's discretion and
24 regardless of whether the trust contains a spendthrift provision,
25 that provides that the trustee has discretion, or words of similar
26 import, to determine 1 or more of the following:

27 (i) Whether to distribute to or for the benefit of an
28 individual or a class of beneficiaries the income or principal or
29 both of the trust.

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

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

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

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

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

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

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

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

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

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

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

29 **(B)** ~~(ii)~~The trust beneficiary would be a distributee or

1 permissible distributee of trust income or principal if the
 2 interests of the distributees under the trust described in
 3 subparagraph ~~(i)~~ **sub-subparagraph (A)** terminated on that date
 4 without causing the trust to terminate.

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

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

12 **(A)** The trust beneficiary is a distributee or permissible
 13 distributee of trust income or principal.

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

19 **(C)** The trust beneficiary would be a distributee or
 20 permissible distributee of trust income or principal if the trust
 21 terminated on that date.

22 (h) "Revocable", as applied to a trust, means revocable by the
 23 settlor without the consent of the trustee or a person holding an
 24 adverse interest. A trust's characterization as revocable is not
 25 affected by the settlor's lack of capacity to exercise the power of
 26 revocation, regardless of whether an agent of the settlor under a
 27 durable power of attorney, a conservator of the settlor, or a
 28 plenary guardian of the settlor is serving.

29 (i) "Settlor" means a person, including a testator or a

1 trustee, who creates a trust. If more than 1 person creates a
2 trust, each person is a settlor of the portion of the trust
3 property attributable to that person's contribution. The lapse,
4 release, or waiver of a power of appointment does not cause the
5 holder of a power of appointment to be treated as a settlor of the
6 trust.

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

10 (k) "Support provision" means a provision in a trust that
11 provides the trustee shall distribute income or principal or both
12 for the health, education, support, or maintenance of a trust
13 beneficiary, or language of similar import. A provision in a trust
14 that provides a trustee has discretion whether to distribute income
15 or principal or both for these purposes or to select from among a
16 class of beneficiaries to receive distributions under the trust
17 provision is not a support provision, but rather is a discretionary
18 trust provision.

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

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

23 (ii) The person holds a power of appointment over trust
24 property in a capacity other than that of trustee or trust
25 director.

26 (m) "Trust director" means that term as defined in section
27 7703a.

28 (n) "Trust instrument" means a governing instrument that
29 contains the terms of the trust, including any amendment to a term

1 of the trust.

2 Sec. 7105. (1) Except as otherwise provided in the terms of
3 the trust, this article governs the duties and powers of a trustee,
4 relations among trustees, and the rights and interests of a trust
5 beneficiary.

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

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

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

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

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

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

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

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

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

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

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

28 **(h)** ~~(g)~~—The power of the court under section 7708(2) to adjust
29 a trustee's compensation specified in the terms of the trust that

1 is unreasonably low or high.

2 (i) ~~(h)~~—The obligations imposed on a trust director in section
3 7703a(4) and (5).

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

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

11 (l) ~~(k)~~—The effect of an exculpatory term under section
12 7703a(5) (b) or 7908.

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

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

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

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

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

23 (r) ~~(q)~~—The requirement under section 7113 that a provision in
24 a trust that purports to penalize an interested person for
25 contesting the trust or instituting another proceeding relating to
26 the trust ~~shall~~**must** not be given effect if probable cause exists
27 for instituting a proceeding contesting the trust or another
28 proceeding relating to the trust.

29 (s) ~~(r)~~—The requirement under section 7703b(2) (d) regarding

1 the eligibility of a trust's sole beneficiary to be a separate
2 trustee as that term is defined in section 7703b.

3 Sec. 7110. (1) A charitable organization expressly named in
4 the terms of a trust to receive distributions under the terms of a
5 charitable trust has the rights of a qualified trust beneficiary
6 under this article if 1 or more of the following are applicable to
7 the charitable organization on the date the charitable
8 organization's qualification is being determined:

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

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

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

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

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

26 (4) ~~(3)~~—The attorney general of this state has the following
27 rights with respect to a charitable trust having its principal
28 place of administration in this state:

29 (a) The rights provided in the supervision of trustees for

1 charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

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

4 Sec. 7302. (1) ~~The~~ **To the extent there is no conflict of**
5 **interest between the holder of a power of appointment and the**
6 **person represented with respect to a particular question or**
7 **dispute, the** holder of a ~~power of revocation or amendment or a~~
8 ~~presently exercisable or testamentary general or special~~ power of
9 appointment, **including a power of appointment in the form of a**
10 **power of amendment or revocation,** may represent and bind a person
11 ~~whose~~ **to the extent the person's** interest, as a permissible
12 appointee, taker in default, or otherwise, is subject to the power.
13 For the purpose, however, of granting consent or approval to
14 modification or termination of a trust or to deviation from its
15 terms, including consent or approval to a settlement agreement
16 described in section 7111, only the holder of a presently
17 exercisable or testamentary general power of appointment may
18 represent and bind such a person.

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

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

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

29 (3) **As used in this section, "nonfiduciary" means, with**

1 **respect to a power of appointment, that the power is not held in a**
2 **fiduciary capacity.**

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

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

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

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

9 (i) A charitable trust.

10 (ii) A trust for a noncharitable purpose **under section 7409** or
11 **a trust** for the care of an animal ~~, as provided in section~~
12 ~~2722,~~ **under section 7408.**

13 (d) The trustee has duties to perform.

14 (e) The same person is not the sole trustee and sole
15 beneficiary.

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

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

21 **Sec. 7408. (1) A trust may be created to provide for the care**
22 **of a designated domestic pet or animal alive during the settlor's**
23 **lifetime. A trust created under this subsection terminates on the**
24 **death of the animal or, if the trust was created to provide for the**
25 **care of more than 1 domestic or pet animal alive during the**
26 **settlor's lifetime, on the death of the last surviving animal.**

27 (2) A trust authorized under this section may be enforced by a
28 person appointed in the terms of the trust or, if there is not a
29 person appointed in the terms of the trust, by a person appointed

1 by the court. A person that has an interest in the welfare of an
2 animal for which the trust is created may request the court to
3 appoint a person to enforce the trust or to remove a person
4 appointed in the terms of the trust.

5 (3) Property of a trust authorized by this section may be
6 applied only to its intended use, except to the extent the court
7 determines that the value of the trust property exceeds the amount
8 required for the intended use. Except as otherwise provided in the
9 terms of the trust, property not required for the intended use must
10 be distributed to the settlor, if then living, or otherwise to the
11 settlor's successors in interest.

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

14 (a) A trust may be created for a noncharitable purpose without
15 a definite or definitely ascertainable beneficiary or for a
16 noncharitable but otherwise valid purpose to be selected by the
17 trustee. A trust created under this section may be performed by the
18 trustee according to the terms of the trust for not more than 25
19 years whether or not the terms of the trust contemplate a longer
20 duration.

21 (b) A trust authorized by this section may be enforced by a
22 person appointed in the terms of the trust or, if there is not a
23 person appointed in the terms of the trust, by a person appointed
24 by the court.

25 (c) Property of a trust authorized by this section may be
26 applied only to its intended use, except to the extent the court
27 determines that the value of the trust property exceeds the amount
28 required for the intended use. Except as otherwise provided in the
29 terms of the trust, property not required for the intended use must

1 be distributed to the settlor, if then living, or otherwise to the
2 settlor's successors in interest.

3 Sec. 7409a. (1) If the terms of a trust other than a
4 charitable trust are embodied in a trust instrument that clearly
5 express the settlor's intent that 1 or more items of prime
6 disclosure information should be withheld, generally or in
7 specified circumstances, from 1 or more of the trust beneficiaries,
8 both of the following apply:

9 (a) During the nondisclosure period all of the following
10 apply:

11 (i) To the extent necessary to effectuate the settlor's
12 expressed intent, the trustee does not have the duty under section
13 7814(2) (a) to (c) to provide beneficiaries with the terms of the
14 trust and information about the trust's property and to notify
15 qualified trust beneficiaries of the existence of the trust and the
16 identity of the trustee.

17 (ii) The trustee may administer the trust in accordance with
18 the settlor's expressed intent regarding nondisclosure of primary
19 disclosure information to the extent made practicable by the terms
20 of the trust given the circumstances of the beneficiaries and any
21 reporting obligations imposed on the trustee by law other than this
22 act.

23 (iii) If the trust instrument grants a nondisclosure correlative
24 right, the trustee has a duty to administer the trust in accordance
25 with the settlor's expressed intent regarding nondisclosure of
26 primary disclosure information, but only to the extent made
27 practicable by the terms of the trust given the circumstances of
28 the beneficiaries and any reporting obligations imposed on the
29 trustee by law other than this act.

1 (iv) Any purported appointment or distribution of assets of the
2 instant trust to another undisclosed trust is ineffective to the
3 extent it could cause the appointed or distributed assets to be
4 administered continuously under the authority of this section for a
5 period ending after the date on which the instant trust's maximum
6 nondisclosure period ends.

7 (b) The trustee or any holder of either a nondisclosure
8 correlative right or a protection power is not liable to any trust
9 beneficiary because of the trustee's failure to follow the terms of
10 the trust prescribing nondisclosure of prime disclosure
11 information. The trustee's duty, if any, to follow the terms of the
12 trust prescribing nondisclosure of prime disclosure information
13 during the trust's nondisclosure period is owed solely to the
14 holders, if any, of nondisclosure correlative rights, and the sole
15 remedy of a nondisclosure correlative right holder for the
16 trustee's breach of that duty is removal.

17 (2) If the trust instrument grants either a nondisclosure
18 correlative right or a protection power, all of the following
19 apply:

20 (a) On the reasonable request of a nondisclosure correlative
21 right holder or protection power holder at any time during the
22 trust's nondisclosure period, the trustee shall promptly furnish to
23 the right or power holder a copy of the terms of the trust that
24 describe or affect the holder's right or power.

25 (b) Within 63 days after accepting trusteeship of an
26 undisclosed trust, the trustee shall notify all nondisclosure
27 correlative right holders and protection power holders of the
28 acceptance, of the court in which the trust is registered, if it is
29 registered, and of the trustee's name, address, and telephone

1 number.

2 (c) Within 63 days after the date the trustee acquires
3 knowledge of the creation of an undisclosed trust of which the
4 trustee is trustee or the date the trustee acquires knowledge that
5 a formerly revocable trust of which the trustee is trustee has, by
6 becoming irrevocable, whether by the death of the settlor or
7 otherwise, become an undisclosed trust, the trustee shall notify
8 all nondisclosure correlative right holders and protection power
9 holders of the trust's existence, of the identity of the settlor or
10 settlors, of the court in which the trust is registered, if it is
11 registered, and of the right to request a copy of the terms of the
12 trust that describe or affect the power holders' rights or powers.

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

20 (4) To the extent the trustee has not already provided the
21 notice of the trust required under section 7814(2) by the end of
22 the trust's nondisclosure period, the trustee is deemed for that
23 purpose to have accepted the trust and to have acquired knowledge
24 of the trust's creation on the date on which the nondisclosure
25 period ends, and the identities of the qualified trust
26 beneficiaries are determined for that purpose as of the time
27 immediately preceding the end of the nondisclosure period.

28 (5) As used in this section:

29 (a) "Maximum nondisclosure period" means a period of 25 years

1 from the later of the first date on which property becomes subject
2 to the terms of the trust or the date on which the trust ceases to
3 be revocable by the settlor.

4 (b) "Nondisclosure correlative right" means a right granted by
5 the terms of a trust that allows the right holder to remove a
6 trustee of the trust for the trustee's failure during the trust's
7 nondisclosure period to follow, to the extent practicable, the
8 terms of the trust prescribing nondisclosure of prime disclosure
9 information.

10 (c) "Nondisclosure period" means the shorter of the trust's
11 maximum nondisclosure period or the period from the beginning of
12 the maximum nondisclosure period to the trust's termination.

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

16 (e) "Protection power" means a power granted by the terms of a
17 trust that allows the power holder, acting in a fiduciary capacity,
18 to direct the trustee of the trust for the benefit of the trust
19 beneficiaries during the trust's nondisclosure period. A protection
20 power may authorize the power holder to represent the trust
21 beneficiaries in the sense described in section 7301(1) to (2)
22 without regard to the application of sections 7302 to 7304.

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

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

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

29 (b) After the death of a settlor, and subject to the settlor's

1 right to direct the source from which liabilities will be paid, the
 2 property of a trust that at the settlor's death was revocable by
 3 the settlor, either alone or in conjunction with another person, is
 4 subject to expenses, claims, and allowances as provided in section
 5 7605.

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

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

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

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

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

20 (4) An individual who creates a trust ~~shall~~**is** not be
 21 considered a settlor with regard to the individual's retained
 22 beneficial interest in the trust that follows the termination of
 23 the individual's spouse's prior beneficial interest in the trust if
 24 all of the following apply:

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

27 ~~(b) The trust is treated as qualified terminable interest~~
 28 ~~property under section 2523(f) of the internal revenue code, 26 USC~~
 29 ~~2523.~~

1 (a) During the lifetime of the individual's spouse, the only
2 distributees or permissible distributees of the trust income or
3 principal are either of the following:

4 (i) The individual's spouse.

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

6 (A) The individual's issue.

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

8 (b) ~~(e)~~—The individual retains a beneficial interest in the
9 trust income, trust principal, or both, which beneficial interest
10 follows the termination of the individual's spouse's prior
11 beneficial interest in the trust.

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

14 (a) If the settlor is the individual's spouse, regardless of
15 whether or when the individual was the settlor of a trust for the
16 benefit of that spouse.

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

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

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

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

26 (i) The trust's existence.

27 (ii) The date of the trust instrument.

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

29 (iv) A copy of relevant portions of the terms of the trust that

1 describe or affect the person's interest in the trust, if any.

2 (v) The settlor's name.

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

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

5 **(2) If a trust that was revocable at the settlor's death**
6 **becomes an undisclosed trust as that term is defined in section**
7 **7409a, a person from whom information described in section**
8 **7814(2) (a) to (c) is withheld under section 7409a(1) (a) (i) during**
9 **the 2-year period following the settlor's death may commence a**
10 **judicial proceeding to contest the validity of the trust within the**
11 **earlier of the following:**

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

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

18 (3) ~~(2)~~—Upon the death of the settlor of a trust that was
19 revocable at the settlor's death, the trustee may proceed to
20 distribute the trust property in accordance with the terms of the
21 trust. The trustee is not subject to liability for doing so unless
22 either of the following applies:

23 (a) The trustee knows of a pending judicial proceeding
24 contesting the validity of the trust.

25 (b) A potential contestant has notified the trustee in writing
26 of a possible judicial proceeding to contest the trust and a
27 judicial proceeding is commenced within 63 days after the
28 contestant sent the notification.

29 (4) ~~(3)~~—A beneficiary of a trust that is determined to have

1 been invalid is liable to return any distribution received.

2 Enacting section 1. Section 2722 of the estates and protected

3 individuals code, 1998 PA 386, MCL 700.2722, is repealed.