



PROBATE & ESTATE PLANNING SECTION

**Agenda and Attachments for**

Friday, September 8, 2023

Annual Meeting of the Members of the Section,  
Meeting of Committee on Special Projects (CSP),

and

Meeting of the Council of the Probate and Estate Planning Section

at the University Club of Michigan State University  
3435 Forest Rd, Lansing, MI 48910

Or *via* Zoom

**Probate & Estate Planning Section of the  
State Bar of Michigan**

You are invited to the September meetings of the Committee on Special Projects (CSP),  
the Annual Meeting of the Members of the Section and  
the Council of the Probate & Estate Planning Section:

**Friday, September 8, beginning at 9 AM**  
at the University Club of Michigan State University  
3435 Forest Rd, Lansing, MI 48910

Remote participation by Zoom will be available. So, you are also invited . . .

*to a Zoom meeting.*

*When: Sep 8, 2023, 09:00 AM Eastern Time (US and Canada)*

*Register in advance for this meeting:*

<https://us02web.zoom.us/meeting/register/tZwvdOutpjsrHtVU3CQ2uVmw29Tkli4zthQh>

*After registering, you will receive a confirmation email containing information about joining the meeting.*

*If you are calling in by phone, email your name and phone number to Angela Hentkowski*

[ahentkowski@stewardsheridan.com](mailto:ahentkowski@stewardsheridan.com), *we will put your name in a zoom user list that*

*will identify you by name when you call in.*

**Please note that the Zoom feature of these meetings entails that they will be recorded.**

This will be a regular in person and remote meetings of the Council of the Probate & Estate Planning Section. The Council meeting will be preceded by a meeting of the Council's Committee on Special Projects (CSP), which will begin at 9:00 AM. The CSP meeting will end at about 10:15 AM, and the Council meeting will begin shortly thereafter. The agenda and meeting materials will be posted on the Probate & Estate Planning Section page of the SBM website. Once those things are posted, you should be able to download them from: <http://connect.michbar.org/probate/events/schedule>.

Nathan Piwowarski  
Section Secretary

Nathan Piwowarski McCurdy, Wotila, and Porteous, PC  
120 West Harris Street  
Cadillac, MI 49601  
general line: (231) 775-1391  
fax line: (231) 775-0972  
<http://www.mwplegal.com/attorneys/nathan-piwowarski>

**Officers of the Council  
for 2022-2023 Term**

Office	Officer
Chairperson	Mark E. Kellogg
Chairperson Elect	James P. Spica
Vice Chairperson	Katie Lynwood
Secretary	Nathan R. Piwowarski
Treasurer	Richard C. Mills

**Council Members  
for 2022-2023 Term**

Council Member	Year Elected to Current Term (partial, first or second full term)	Current Term Expires	Eligible after Current Term?
Olson, Kurt A.	2020 (2 <sup>nd</sup> term)	2023	No
Savage, Christine M.	2020 (2 <sup>nd</sup> term)	2023	No
Anderton V, James F.	2020 (1 <sup>st</sup> term)	2023	Yes
David, Georgette E.	2020 (1 <sup>st</sup> term)	2023	Yes
Hilker, Daniel	2020 (1 <sup>st</sup> term)	2023	Yes
Krueger III, Warren H.	2020 (1 <sup>st</sup> term)	2023	Yes
Wrock, Rebecca K.	2021 (1 <sup>st</sup> term)	2024	Yes
Glazier, Sandra D.	2021 (1 <sup>st</sup> term)	2024	Yes
Hentkowski, Angela M.	2021 (2 <sup>nd</sup> term)	2024	No
Mysliwicz, Melisa M. W.	2021 (2 <sup>nd</sup> term)	2024	No
Nusholtz, Neal	2021 (2 <sup>nd</sup> term)	2024	No
Sprague, David	2021 (1 <sup>st</sup> term)	2024	Yes
Mayoras, Andrew W.	2022 (2 <sup>nd</sup> term)	2025	No
Silver, Kenneth	2022 (2 <sup>nd</sup> term)	2025	No
Dunnings, Hon. Shauna L.	2022 (1 <sup>st</sup> term)	2025	Yes
Chalgian, Susan L.	2022 (1 <sup>st</sup> term)	2025	Yes
Shelton, Michael D.	2022 (1 <sup>st</sup> term)	2025	Yes
Borst, Daniel W.	2022 (1 <sup>st</sup> term)	2025	Yes

## **Ex Officio Members of the Council**

Christopher Ballard; Robert D. Brower, Jr.; Douglas G. Chalgian; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Shaheen I. Imami; Robert B. Joslyn; Kenneth E. Konop; Marguerite Munson Lentz; Nancy L. Little; James H. LoPrete; Richard C. Lowe; David P. Lucas; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Gormely Prince; Douglas J. Rasmussen; Harold G. Schuitmaker; John A. Scott; David L.J.M. Skidmore; James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Marlaine C. Teahan; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack

State Bar of Michigan  
 Probate and Estate Planning Section  
 2022 - 2023 Standing Committees

Standing Committee	Mission	Chairperson	Members
Amicus Curiae	Review litigants' applications and Courts' requests for the Section to sponsor amicus curiae briefs in pending appeals cases relating to probate, and estate and trust planning, and oversee the work of legal counsel retained to prepare and file amicus briefs	Andrew W. Mayoras	Ryan P. Bourjaily Angela Hentkowski Neil J. Marchand Kurt A. Olson David L.J.M. Skidmore Trevor J. Weston Timothy White Scott Kraemer
Annual meeting	Plan the Section's Annual Meeting	Mark E. Kellogg [as Section Chairperson]	[Chairperson only]
Awards	Periodically make recommendations regarding recipients of the Michael Irish Award, and consult with ICLE regarding periodic induction of members in the George A. Cooney Society	David L.J.M. Skidmore [as immediately previous Section Chairperson]	David Lucas Christopher A. Ballard [as previous Section Chairpersons]
Budget	Develop the Section's annual budget	Nathan R. Piwowarski [as immediately previous Section Treasurer]	Richard C. Mills Katie Lynwood [as incoming Treasurer and immediately previous Section Secretary]
Bylaws	Review the Section's Bylaws, to ensure compliance with State Bar requirements, to include best practices for State Bar Sections, and to assure conformity to current practices and procedures of the Section and the Council, and make recommendations to the Council regarding such matters	Daniel W. Borst	Christopher A. Ballard John Roy Castillo David P. Lucas Nancy H. Welber
Charitable and Exempt Organizations	Consider federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations, and make recommendations to the Council regarding such matters	Rebecca K. Wrock	Celeste E. Arduino Michael Bartish Julia Dale Brian Heckman Richard C. Mills Kate L. Ringler
Citizens Outreach	Provide opportunities for education of the public on matters relating to probate, and estate and trust planning	Kathleen M. Goetsch	Kathleen Cieslik Michael J. McClory Neal Nusholtz Jessica M. Schilling Nicholas J. Vontroba

State Bar of Michigan  
 Probate and Estate Planning Section  
 2022 - 2023 Standing Committees

Committee on Special Projects	Consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Melisa M.W. Mysliwicz	meeting attendees
Court Rules, Forms, & Proceedings	Consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Warren H. Krueger, III	JV Anderton Susan L. Chalgian Morgan E. Cole Hon. Michael L. Jaconette Andrew W. Mayoras Michael J. McClory Dawn Santamarina Marlaine C. Teahan
Electronic Communications	Oversee all matters relating to electronic and virtual communication matters, and make recommendations to the Council regarding such matters	Angela Hentkowski	Michael G. Lichterman Amy N. Morrissey Nathan R. Piwowarski [Section Secretary] Marlaine C. Teahan
Ethics & Unauthorized Practice of Law	Consider matters relating to ethics and the unauthorized practice of law with respect to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Kurt A. Olson	William J. Ard Raymond A. Harris J. David Kerr Neil J. Marchand Robert M. Taylor Amy Rombyer Tripp
Guardianship, Conservatorship, & End of Life Committee	Consider matters relating to Guardianships and Conservatorships, and make recommendations to the Council regarding such matters	Sandra Glazier	William J. Ard Michael W. Bartnik Kimberly Browning Kathleen A. Cieslik Raymond A. Harris Phillip E. Harter Hon. Michael L. Jaconette Michael J. McClory Kurt A. Olson James B. Steward Paul S. Vaidya

State Bar of Michigan  
 Probate and Estate Planning Section  
 2022 - 2023 Standing Committees

Legislation Development and Drafting	Consider matters with respect to statutes relating to probate, and estate and trust legislation, consider the provisions of introduced legislation and legislation anticipated to be introduced with respect to probate, and estate and trust planning, draft proposals for legislation relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Robert P. Tiplady	Aaron A. Bartell Howard H. Collens Georgette David Kathleen M. Goetsch Daniel S. Hilker Henry Lee Michael G. Lichterman David P. Lucas Katie Lynwood Alex Mallory Richard C. Mills Nathan Piwowarski Christine M. Savage James P. Spica David Sprague Stephen Dunn
Legislation Monitoring & Analysis	Monitor the status of introduced legislation, and legislation anticipated to be introduced, regarding probate, and estate and trust planning, and communicate with the Council and the Legislation Development and Drafting Committee regarding such matters	Michael D. Shelton	Stephen Dunn Brian K. Elder Elizabeth Graziano David Sprague
Legislative Testimony	As requested and as available, the Members of this Committee will give testimony to the Legislature regarding legislation relating to probate, and estate and trust planning	Melisa M.W. Mysliwicz [as CSP Chair]	[Chairperson only]
Membership	Strengthen relations with Section members, encourage new membership, and promote awareness of, and participation in, Section activities	Angela Hentkowski	Kate L. Ringler Susan L. Chalgian
Nominating	Nominate candidates to stand for election as the officers of the Section and the members of the Council	David L.J.M Skidmore [as previous Section Chairperson]	David P. Lucas Christopher A. Ballard [as previous Section Chairpersons]
Planning	Periodically review and update the Section's Plan of Work	Mark E. Kellogg [as Section Chairperson]	James P. Spica Katie Lynwood Nathan Piwowarski Richard C. Mills [as Section Officers]

State Bar of Michigan  
 Probate and Estate Planning Section  
 2022 - 2023 Standing Committees

Probate Institute	Work with ICLE to plan the ICLE Probate and Estate Planning Institute	Katie Lynwood [as Section Vice Chairperson]	[Chairperson only]
Real Estate	Consider real estate matters relating to probate, and estates and trusts, and make recommendations to the Council regarding such matters	Kenneth F. Silver	Carlos Alvarado-Jorquera Jeffrey S. Ammon William J. Ard Leslie A. Butler J. David Kerr Angela Hentkowski Michael G. Lichterman Richard C. Mills James B. Steward
State Bar & Section Journals	Oversee the publication of the Section's Journal, and assist in the preparation of periodic theme issues of the State Bar Journal that are dedicated to probate, and estates and trusts	Melisa M.W. Mysliwicz, Managing Editor	Nancy W. Little Neil J. Marchand Richard C. Mills Diane Kuhn Huff Molly P. Petijean Rebecca K. Wrock Kurt A. Olson
Tax	Consider matters relating to taxation as taxation relates to probate, and estates and trusts, and make recommendations to the Council regarding such matters	JV Anderton	Daniel Borst Jonathan Beer Mark DeLuca Stephen Dunn John McFarland Richard C. Mills Neal Nusholtz Robert Labe Christine M. Savage

The Probate and Estate Planning Section Chairperson is an ex-officio Member of each Standing Committee



State Bar of Michigan  
Probate and Estate Planning Section

2022 - 2023 Ad Hoc Committees

Ad Hoc Committee	Mission	Chairperson	Members
Assisted Reproductive Technology	Review the 2008 Uniform Probate Code Amendment for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction, and make recommendations to the Council regarding such matters	Nancy H. Welber	Christopher A. Ballard Edward Goldman James P. Spica Lawrence W. Waggoner Nazneen Hasan Christina Lejowski
Electronic Wills	Review proposals for electronic wills, including the Uniform Law Commission's draft of a Uniform Law, and make recommendations to the Council regarding such matters	Kurt A. Olson	Kimberly Browning Georgette David Sandra Glazier Douglas A. Mielock Neal Nusholtz Christine M. Savage James P. Spica
Fiduciary Exception to the Attorney-Client Privilege	Consider whether there should be some exception to the rule that beneficiaries of an estate or trust are entitled to production of documents regarding the advice given by an attorney to the fiduciary, and make recommendations to the Council regarding such matters	Warren H. Krueger, III	Aaron A. Bartell Ryan P. Bourjaily
Nonbanking Entity Trust Powers	Consider whether there should be legislation granting trust powers to nonbanking entities, and make recommendations to the Council regarding such matters	James P. Spica and Robert P. Tiplady (co-Chairpersons)	JV Anderton Laura L. Brownfield Warren H. Krueger, III Richard C. Mills Mark K. Harder Kathleen Cieslik Joe Viviano
Premarital Agreements	Consider whether there should be legislation regarding marital property agreements, and	Christine M. Savage	Daniel W. Borst Sandra Glazier Kathleen M. Goetsch Patricia M. Ouellette
Uniform Community Property Disposition at Death Act	Consider the Uniform Community Property Disposition at Death Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Kathleen Cieslik Richard C. Mills Christine M. Savage David Sprague

Undue Influence	Consider the definition of undue influence and attendant evidentiary presumptions, and make recommendations to the Council regarding such matters	Kenneth F. Silver	Sandra Glazier Hon. Michael L. Jaconette Warren H. Krueger, III John Mabley Andrew W. Mayoras Hon. David Murkowski Kurt A. Olson David L.J.M. Skidmore
Uniform Fiduciary Income & Principal Act	Consider the Uniform Fiduciary Income and Principal Act promulgated by the Uniform Law Commission, and make recommendations to the Council regarding such matters	James P. Spica	Anthony Belloli Kathleen Cieslik Marguerite Munson Lentz Richard C. Mills Robert P. Tiplady Joe Viviano
Uniform Partition of Heirs Property Act	Consider the Uniform Partition of Heirs Property Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Marguerite Munson Lentz Alex Mallory Elizabeth McLachlan Christine Savage David Sprague
Uniform Power of Attorney Act	Consider the Uniform Power of Attorney Act promulgated by the Uniform Law Commission, and make recommendations to the Council regarding such matters	Christine M. Savage	Kathleen A. Cieslik David P. Lucas Alex Mallory Michael D. Shelton James P. Spica David Sprague
Various Issues Involving Death and Divorce	Should EPIC be changed so that a pending divorce affects priority to serve in a fiduciary position; Should Council explore whether EPIC should be changed so that a pending divorce affects intestacy, elective share, exemptions and allowances, etc. Should "affinity" be defined to prevent elimination of stepchildren's gifts by operation of law after divorce or, instead, should there be an exception allowing gifts to stepchildren on a showing of, Perhaps, clear and convincing evidence demonstrating that the Settlor would not have intended the omission of the stepchild?	Daniel Borst Sean Blume	Andy Mayoras Hon. Shauna Dunning Georgette David Katie Lynwood Elizabeth Siefker

The Probate and Estate Planning Section Chairperson is an ex-officio Member of each Ad Hoc Committee

State Bar of Michigan  
 Probate and Estate Planning Section

2022 - 2023 Liaisons

liaison to:	Liaison
Alternative Dispute Resolution Section	John Hohman
Business Law Section	Mark E. Kellogg
Elder Law and Disability Right Section	Angela Hentkowski
Family Law Section	Anthea E. Papista
Institute of Continuing Legal Education	Lindsey DiCesare
Law Schools	Savina Mucci
Michigan Bankers Association	David Sprague
Michigan Legal Help/Michigan Bar Foundation	Kathleen Goetsch
Michigan Probate Judges Association	Hon. Michael L. Jaconette
Probate Registers	[open]
Real Property Law Section	Kenneth Silver
Supreme Court Administrative Office	Melisa M.W. Mysliwicz
State Bar	Jennifer Hatter
Taxation Section	Neal Nusholtz
Uniform Law Commission	James P. Spica

The mission of each respective Liaison is to develop and maintain bilateral communication between such Liaison's respective association and the Probate and Estate Planning Section of the State Bar of Michigan, in matters of mutual interest and concern.

# CSP Materials

**MEETING OF THE COMMITTEE ON SPECIAL PROJECTS OF THE  
COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION  
OF THE STATE BAR OF MICHIGAN**

**The Committee on Special Projects, or CSP, is our Section's  
"committee of the whole." The CSP flexibly studies, in depth, a  
limited number of topics and makes recommendations to Council.  
All Section members are welcome to participate and are able to vote.**

**AGENDA**

Friday, September 8, 2023

9:00 – 10:00 AM

In person meeting at the University Club of Michigan State University  
3435 Forest Road, Lansing, MI 48910

Remote participation by Zoom is available. Register in advance at:

<https://us02web.zoom.us/meeting/register/tZwvdOutpjsrHtVU3CQ2uVmw29Tkli4zthQh>

After registering, you will receive a confirmation email containing information about joining the meeting. If you are calling in by phone, please email your name and phone number to Angela Hentkowski at [ahentkowski@stewardsheridan.com](mailto:ahentkowski@stewardsheridan.com). We will put your name in a Zoom user list that will identify you by name when you call in.

**1. Sandy Glazier – Guardianship, Conservatorship & End of Life Committee – 10 minutes**

Re: Committee Recommendation Regarding Adoption of updated Public Policy Position

The Committee has reviewed HB 4909, 4910, 4911, and 4912 and seeks a public policy position in regard to the same. Specifically, CSP will be asked to recommend that the Council adopt a public policy position in opposition to HB 4909, 4910, and 4912.

The Committee's report is attached as Ex. 1A and the Committee's proposed public policy position is attached as Ex. 1B. The relevant House Bills are also attached as follows: HB [4909](#) as Ex. 1C, HB [4910](#) as Ex. 1D, HB [4911](#) as Ex. 1E, and HB [4912](#) as Ex. 1E. Each house bill also includes a hyperlink, directing you to the bill as provided on the State Legislature's website.

**2. Jim Spica – Nonbanking Entity Trust Powers Ad Hoc Committee – 20 minutes**

Re: Reintroduction of Legislative Proposal

The Committee has developed a proposed Michigan Trust Company Act, which is attached as Ex 2A. Corresponding proposed amendments to EPIC are attached as Ex 2B and corresponding proposed amendments to the Qualified Dispositions in Trust Act are attached as Ex 2C. The Committee will reintroduce the legislative proposal.

**3. Ken Silver – Undue Influence Ad Hoc Committee – 30 minutes**

Re: Committee's White Paper

The Committee has prepared a White Paper, attached as Ex 3A, setting forth a summary of the law on undue influence in Michigan and application of the presumption of undue influence, a discussion of the Restatement of Property definition of undue influence, a summary of how other states are addressing these issues, a summary of the science of undue influence, a summary of the pros and cons of the Committee's suggested statutory approach, and the Committee's proposed statutes defining undue influence and clarifying how the presumption of undue influence would be established and applied.

The Committee requests that CSP take a public policy position in favor of the Committee's proposed statutes, but if an agreement with regard to the proposed statutes cannot be reached, the Committee seeks instruction as to whether the work of the Committee is deemed concluded upon presentation of this White Paper.

# **EXHIBIT 1A**

## **Guardianship, Conservatorship & End of Life Committee**

### **Committee's Report**

To: Probate Council/CSP

From: Sandra Glazier

Re: Report of the Guardianship, Conservatorship and End of Life Committee

Date: August 11, 2023

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1. On July 18, 2023, House Bills 4909, 4910, 4911 and 4912 were introduced. These bi-partisan bills represent the continued work of the Elder Abuse Task Force. This committee has continued its review and analysis of the Task Force's proposals over the past couple of years. Some of the modifications suggested have been incorporated into the recently (re-)introduced bills, while others have not. On August 8, 2023 members of the Guardianship, Conservatorship and End of Life Committee met via Zoom to discuss and analyze the bills as recently (re-) introduced in the house. Participating in the meeting were the following:

Josh Ard; Kathleen Goetsch; Hon. Michael McClory; Nathan Piwowarski; Hon. Avery Rose; Elizabeth Grazino; Kathleen Cieslik; Sandra Glazier

2. PDF copies of the above referenced bills were provided to all members of the committee in advance of the meeting.
3. Before analyzing the bills in depth, the some general comments and concerns were expressed:
  - a. David Skidmore passed along a message (via email, in advance of the meeting, due to his inability to attend) from Judge David Murkowski expressing his concerns regarding the bills and any proposal that the AG's office be permitted to intervene in a guardianship or conservatorship proceeding.
  - b. An overriding concern exists that the imposition of additional requirements and restrictions will limit the pool of qualified individuals willing to act in fiduciary capacities to support the needs of those who don't have suitable family members willing to fill those roles. In some jurisdictions there is a dearth of persons or entities (hereafter collectively "persons") willing to undertake responsibility for others – adding more requirements will further limit the ability to find appropriate persons willing to act on behalf of those individuals. Many are already operating at a financial deficit. In addition, adding filing requirements will also strain the courts (financially as well as their staff) without an incremental benefit (and perhaps detriment) to the very persons the bills are intended to protect.
  - c. Participating judiciary expressed concerns regarding restrictions imposed under HB 4909 the on the Court's ability to consider inter-personal disputes in determining suitability of a person with priority of appointment. The focus needs to be on the individual and the court's ability to make the right decision for



addressing the individual's needs. A discussion ensued regarding times when conflict may or may not be appropriate in determining an individual should not be appointed to act. While the language now contained in the HB4909 is better than what was originally proposed, we believe it appropriate to explore whether the Task Force (and legislature) are amenable to incorporating the language previously proffered to the Task Force, that provided that: “ (f) The person's ability to fulfill duties regardless of interpersonal disputes between interested persons or others with an interest in the welfare of the individual subject to guardianship. Interpersonal disputes alone must not be the basis for finding a person with priority, under subsection (2) or (3) is unsuitable, unless the court determines, by a clear and convincing evidence, that the interpersonal disputes will adversely impact: (i) the ability of the person with priority to fulfill duties, or (ii) the best interests of the individual subject to guardianship will be better served by the appointment of another.”

- d. Changes with regard to the admissibility of GAL reports may conflict with (and require modification of) court rules (e.g. MCR 5.121). But it was noted that MCR 5.121(D)(1) provides that “Oral and written reports of a guardian ad litem or visitor may be received by the court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the Michigan Rules of Evidence.”
- e. Currently many courts do not release/discharge GALs once the individual is represented by counsel. They appreciate the ability to have the GAL provide insights on what may be transpiring and don't believe there will be a benefit to eliminating the court's ability to have the GAL continue to contribute their observations and recommendations on a broad range of issues that may be presented, as opposed to the proposal that GAL may only be permitted to report on limited/specified issues via appointment as a special GAL
- f. Requiring monthly visits of professional guardians and/or inability to delegate visits and other tasks to staff will likely result in less persons willing to act.
- g. Additional responsibilities regarding identifying and safeguarding sentimental objects and petition and hearing requirements when movement of the individual is required will likely cause more problems than benefits.
- h. While the judiciary recognizes that Council must balance competing interests in its analysis of the bills, it is believed that the proposed changes will provide infinitesimal benefits while driving a potential collapse of the system if over-regulated given that many agencies are barely hanging on as it is. Therefore, a failure to provide for adequate funding, resources and alternatives before enactment, could cause considerable harm to the very persons the bills seek to protect.
- i. Elimination of the 182 day limit (although currently sparingly used) is problematic. The majority of individuals under guardianship in Michigan suffer from mental health issues. The courts currently treat any communication (such as even a letter to the court expressing concern over a guardian or guardianship matter) as a petition for review or termination. Individuals in this population may fixate on their desire to have the guardianship terminated or an

individual removed as his/her guardian. There are cases where this results in daily or weekly requests being submitted to the court. The inability of the court to impose the up to 182 day restriction on filings, will severely hamper the court's ability to address the needs of the entire population of individuals who need to be serviced and addressed by the probate court. While this restriction is rarely and sparingly used, it remains a useful tool in some of these cases (particularly those where the need for guardianship is based, in whole or in part, on mental health issues that adversely impact the individual's insight to their own limitations and inability to control excessive (obsessive) contact with the court.

- j. Some provisions contained in the bills are thought to be helpful such as requiring an expiration of letters. Not all probate courts in Michigan utilize this procedure. Many jurisdictions already provide for this with renewal of the letters upon filing of reports.
4. In discussing HB 4909, in particular, the following issues were identified:
- a. An Amicus Brief filed by the Michigan Elder Justice Initiative, Legal Services Association of Michigan and the Michigan State Planning Body, in an appeal to the Michigan Supreme Court in the matter of *In re Guardianship of Mary Ann Malloy* that espoused the position that no power or duty should be or may ever be delegated by a guardian raises concern over sections of HB 4909 that would restrict the ability of a professional guardian or conservator to delegate decision-making authority. It is common for conservators to authorize brokers and financial advisors to trade securities in order to provide professional management of assets in a fashion that permits a limber response to market changes. A guardian might authorize a doctor to make judgment calls regarding a procedure/operation/treatment options that might arise during surgery or in an emergency situation. While it is not thought that the purpose behind the language contained in Section 5106(6) was intended to limit such conduct, as currently drafted, it might be argued and/or interpreted to do so. Therefore, the language contained in this section may be too restrictive.
  - b. While it appears that Section 5106a(1) was intended to only apply to professional guardians, we believe the language could be clearer. In this regard, we recommend that it read as follows: "(1) The court shall not appoint *a professional guardian or professional conservator* of a protected individual .....". In addition, it was felt that attorneys should be exempted from the requirement of certification as their conduct must already comport with fiduciary requirements and duties. The judiciary emphasized how important attorneys are to the functioning of the protective system in a number of jurisdictions and expressed concern that imposing additional requirements (such as certification) might have an adverse (as opposed to positive) impact on the system and availability of competent persons to serve when family members are unable or unsuitable to act.
  - c. Concerns regarding the elimination of the 182 day restriction on filing a petition or request for a finding that a ward is no longer an incapacitated individual, or

for an order removing the guardian, modification or termination of a guardianship without first obtaining special leave of the court, is discussed above and therefore not reiterated here. Suffice it to say, it was felt that the stricken language in Section 5106a(3) should be restored for the reasons identified above.

- d. Concerns regarding the proposed language of Section 5313(5)(f), regarding the potential impact and consideration of interpersonal disputes is also addressed above, and therefore has not been reiterated here. Suffice it to say, it remains important for the court to be able to consider an individual unsuitable to act when those disputes interfere with the person's ability to fulfill their duties or could adversely affect the individual's best interests and well being.
  - e. It was felt that the ability of a guardian to be able to delegate authority to a co-guardian, contained in Section 5313(6) was helpful.
  - f. Language regarding the court's ability to consider inter-personal disputes in determining the suitability of a person with priority to act (in a guardianship proceeding) is discussed above in paragraph 3(c) of this report. Those comments and concerns are equally applicable to the language contained in Section 5409(3)(f) with regard to the appointment of conservators.
  - g. More generally, it was felt that HB 4909 should make clear that less restrictive options and alternatives to guardianships and conservatorship should be considered whenever appropriate, as opposed to simply relying upon language regarding the ability of the court to appoint a visitor to assess the viability of such options. Diversion and/or less restrictive options (where appropriate) can help to preserve the individual's civil rights (e.g. right to vote, marry, drive, etc) while providing guard rails that might be needed. This is an important focus of the Uniform act upon which Michigan's guardianship and conservatorship statutes were patterned. It may also help to alleviate burdens that current exert pressures on the functioning of the current systems.
5. In discussing HB 4910, in particular, the following issues were identified:
- a. It was felt that among the duties imposed upon the GAL, under Section 5305(2) should be:
    - i. To explain to the individual that they have a right to have the issue tried by a jury or to have a determine made by the judge in a close session of the court;
    - ii. To additionally explain to the individual that if a guardian is appointed the individual may lose the right to vote or drive
    - iii. The GAL should attempt to ascertain and include in their report if the individual wishes the matter to be addressed by the court in a closed session.
  - b. It was indicated that notifying the individual that the GAL doesn't represent them is important.
  - c. In Section 5305(5 )(n), the word "general" should be inserted before "description of personal property to the extent known after reasonable inquiry, otherwise the this provision might impose an unreasonable and unduly burden to itemize each and every item of personal property.

- d. Concerns were expressed about the receipt of a GAL report into evidence without testimony of the GAL, when there is a contest or the individual is represented by counsel, despite the recognition that MCR 5.121(b) currently authorizes this to occur. No concerns were expressed with the admission of such reports (despite containing hearsay) where no contest exists and the individual is not represented by counsel.
- e. An attorney who acts as a court appointed GAL pointed out the difficulty a GAL may have in performing their appointed tasks if they are unable to contact the individual if the individual is represented by counsel.
- f. The inability to delegate required in-person visits by a professional guardians (which limitation is not imposed on other guardians), as reflected in Section 5314(1)(a)(iii) remained a concern (as discussed above in paragraphs 3(b)(f) and (h) of this memo and are, therefore, not reiterated here, while the provisions of Section 5314(1)(a)(i) were a welcome addition, given the proposed modifications to Michigan's guardianship statute.
- g. The use of the word "reasonable" in Section 5314(1)(b) with regard to identification of items of person or sentimental value was thought to potentially be too nebulous. Perhaps the word "some" might be better. What we are really looking for is a reasonable effort to identify such items. In addition, it would be helpful if the bills provided a mechanism for a professional guardian to be able to give such items to family members of the individual when it is impractical for the individual to retain possession of the same, rather than essentially forcing sale or other disposition of items of sentimental as opposed to significant monetary value.
- h. We were pleased to see that the requirements for establishing a conservatorship have clarified what "liquid" assets will be counted in determining if the individual's qualified estate necessitates such action.
- i. Additionally, while modifications have been included to address concerns regarding removal of an individual by a professional guardian in the event of an emergency, concerns still exist with regard to the following:
  - i. The need for a separate petition, which results in unnecessary efforts and paperwork when removal is anticipated at the time the petition for guardianship is filed;
  - ii. It is believed that the court should be able to determine if restrictions on the ability to move an individual should be put into place when the guardianship is granted or modified, as opposed to requiring petitions by professional guardians, as there are instances when it can be reasonably anticipated that a move may be required. It remains prudent to have requirements that interested parties and the court be advised whenever an individual is moved from their residence on a permanent basis.
  - iii. While we don't believe this was the intent, the language defining permanent residence "as the location the allegedly incapacitated individual or legally incapacitated individual considers to be his or her home" appears to be too broad, as it could be construed to encompass

an underpass, street corner or paper box when dealing with displaced or homeless individuals. We believe language that reflects a more permanent edifice reasonably considered to be one's home is required.

- j. While we were pleased to see the inclusion of language providing interested persons with the ability to review proofs of income and disbursements at a time reasonably convenient to the guardian and interested persons (with similar language for conservatorships), we remain concerned that requiring the attachments of statements (even with redaction of account numbers) with regard to inventories and accountings and documentation of expenses in excess of \$1,000, to be unduly burdensome. The chance that identifying personal information may escape redaction remains too great, the increased cost and effort may impede the ability to find persons willing to act in such roles and it creates an extra cost and burden on the court and its personnel without sufficient benefit in the vast majority of cases. If the court or an interested party wishes to examine the information that formed the basis for an inventory or accounting, the court can order production and filing with the court of such proofs as it desires and providing the interested parties with the ability (as now included in the proposed legislation) to arrange a time to view the proofs with the guardian or conservator (as the case may be).
  - k. It is unclear what is meant by the requirement that "if a conservator has disposed of or sold any of the items, the conservator must describe on the account under subsection (1) how the conservator fulfilled the conservator's duties under Section 5417(3). This will also likely require modification of SCAO account forms, without providing any real benefit. The disposition of items should ordinarily be indicated on an accounting anyway and an interested party may always timely inquire regarding anything reflected on an accounting. Practitioners and the court, felt this requirement was not likely to be helpful, was unduly burdensome and would create administrative burdens without benefit. If a conservator breaches their duty, remedies remain – they are not generally required to set forth in narrative form how they fulfilled each duty.
6. In discussing HB 4912, in particular, the following issues were identified:
- a. It was noted that this bill was essentially intended to cover resignation, death or suspension of a guardian, and as such clearer language in Section 5312a(2) might be helpful.
  - b. A period of 6 months duration may be too permissive oral notice is provided.
  - c. It was felt that the court should not appoint a temporary guardian under this subsection unless Notice of the hearing was provided to all interested persons and that the language when notice has not been provided should be required to be submitted under penalty of perjury, similar to the language required when publication or substituted service is sought. See PC 617.
  - d. Concern was also expressed regarding merely providing an incapacitated person with oral notice, because cognitive impairments may limit their retention or understanding of such communication. It was felt actual written notice (even if it merely confirms notice relayed on the record in court) should also be provided to the incapacitated individual.

# **EXHIBIT 1B**

## **Guardianship, Conservatorship & End of Life Committee**

### **Proposed Public Policy Position**

**Proposed Public Policy Position regarding HB 4909, 4910, and 4912**

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,405 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

**Oppose**

**Explanation:**

The section has concerns regarding potentially unintended consequences in our focus on vulnerable adults.

# **EXHIBIT 1C**

## **Guardianship, Conservatorship & End of Life Committee**

**HB 4909**



# HOUSE BILL NO. 4909

July 18, 2023, Introduced by Reps. Breen, Tsernoglou, Morse, Hope, McFall, Conlin, Young, Scott, Price, Paiz, Hood, Rogers, Fitzgerald, Mentzer, Rheingans, Filler, Borton, Schmaltz, MacDonell, Wozniak, Andrews, Dievendorf, Steckloff, Coffia, Koleszar, Haadsma, Farhat, Byrnes, McKinney, Hoskins, Brabec, Liberati, O'Neal, Neeley, Edwards, Miller, Wegela, Outman, Tyrone Carter, Snyder, Brixie, Coleman, Wilson, Grant, Glanville, Churches, Johnsen, Morgan, Aiyash, Whitsett, Hill, Puri and Meerman and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5104, 5106, 5310, 5313, and 5409 (MCL 700.5104, 700.5106, 700.5310, 700.5313, and 700.5409), section 5106 as amended by 2017 PA 136, section 5310 as amended by 2000 PA 54, section 5313 as amended by 2012 PA 545, and section 5409 as amended by 2000 PA 463, and by adding section 5106a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 5104. (1) An interested person who desires to be notified  
2 before an order is made in a guardianship proceeding, including a

1 proceeding subsequent to the appointment of a guardian under  
 2 section ~~5312~~, **5312a**, or in a protective proceeding under section  
 3 5401 must file a request for notice with the register of the court  
 4 in which the proceeding is pending and with the attorney of record  
 5 of the guardian or conservator or, if none, with the guardian or  
 6 conservator, if any. A request is not effective unless it contains  
 7 a statement showing the interest of the person making it and the  
 8 address of that person or an attorney to whom notice is to be  
 9 given. The request is effective only as to a proceeding that occurs  
 10 after the filing. If a guardianship or protective proceeding is not  
 11 pending at the time a person files a request for notice as  
 12 authorized by this subsection, the person shall pay a fee for  
 13 filing the request, which fee ~~shall~~ **must** be in the same amount as,  
 14 but is separate from, the fee required to commence such a  
 15 proceeding.

16 (2) A governmental agency paying benefits to the individual to  
 17 be protected or before whom an application for benefits is pending  
 18 is an interested person in a protective proceeding.

19 Sec. 5106. (1) Subject to subsections (2) and (3), the court  
 20 may appoint or approve a professional guardian or professional  
 21 conservator, as appropriate, as a guardian or conservator under  
 22 this act, or as a plenary guardian or partial guardian as those  
 23 terms are defined in section 600 of the mental health code, 1974 PA  
 24 258, MCL 330.1600.

25 (2) The court shall only appoint a professional guardian or  
 26 professional conservator as authorized under subsection (1) if the  
 27 court finds on the record all of the following:

28 (a) The appointment of the professional guardian or  
 29 professional conservator is in the ward's, developmentally disabled

1 individual's, incapacitated individual's, or protected individual's  
2 best interests.

3 (b) There is no other person that is competent, suitable, and  
4 willing to serve in that fiduciary capacity in accordance with  
5 section 5212, **5312a**, 5313, or 5409.

6 (3) The court shall not appoint a **person as a** professional  
7 guardian or professional conservator as authorized under subsection  
8 (1) unless the professional guardian or professional conservator  
9 files a bond in an amount and with the conditions as determined by  
10 the court. For a professional conservator, the sureties and  
11 liabilities of the bond are subject to sections 5410 and 5411.

12 (4) A professional guardian or professional conservator  
13 appointed under this section shall not receive as a result of that  
14 appointment a benefit beyond compensation specifically authorized  
15 for that type of fiduciary by this act or the mental health code,  
16 1974 PA 258, MCL 330.1001 to 330.2106. This subsection does not  
17 prevent a person from providing compensation or other benefits,  
18 from a source other than the estate of the ward, developmentally  
19 disabled individual, incapacitated individual, or protected  
20 individual, to a professional guardian or professional conservator  
21 appointed or approved under this section. If a professional  
22 guardian or professional conservator appointed or approved under  
23 this section receives or is to receive compensation or other  
24 benefits as a result of that appointment from a person other than  
25 this state, a political subdivision of this state, or a trust  
26 created under section 5407(2), the professional guardian or  
27 professional conservator shall file with the appointing or  
28 approving court a written statement of the compensation or other  
29 benefit received or to be received, including the source of the

1 compensation or other benefit, in a form and in a manner prescribed  
 2 by the Michigan court rules. The professional guardian or  
 3 professional conservator shall serve a copy of the form described  
 4 in this subsection to the ward, developmentally disabled  
 5 individual, incapacitated individual, or protected individual and  
 6 to interested persons.

7 ~~(5) A professional guardian appointed under this section shall~~  
 8 ~~establish and maintain a schedule of visitation so that an~~  
 9 ~~individual associated with the professional guardian who is~~  
 10 ~~responsible for the ward's care visits the ward within 3 months~~  
 11 ~~after the professional guardian's appointment and not less than~~  
 12 ~~once within 3 months after each previous visit.~~

13 (5) ~~(6)~~ A professional guardian appointed under this section  
 14 shall ensure that there are a sufficient number of employees  
 15 assigned to the care of wards for the purpose of performing the  
 16 necessary duties associated with ensuring that proper and  
 17 appropriate care is provided.

18 (6) A professional guardian or professional conservator may  
 19 use support staff and other professionals, under the professional  
 20 guardian's or professional conservator's active and direct  
 21 supervision, to perform office functions and client services.  
 22 Support staff and professionals may be used to gather and provide  
 23 necessary information to the professional guardian or professional  
 24 conservator regarding a ward or protected individual and to make  
 25 recommendations to the professional guardian or professional  
 26 conservator based on their knowledge and expertise. The  
 27 professional guardian or professional conservator shall not  
 28 delegate decision-making authority to support staff, a  
 29 professional, or another person regarding financial decisions or

1 decisions requiring informed consent, including, but not limited  
 2 to, medical, mental health, placement, or care planning decisions  
 3 unless the support staff, professional, or other person has  
 4 obtained certification as described in section 5106a.

5 (7) For the purposes of the statutory authorization required  
 6 by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL  
 7 487.11105, to act as a fiduciary in this state, if the court  
 8 appoints a for-profit or nonprofit, nonbanking corporation  
 9 organized under the laws of this state to serve in a fiduciary  
 10 capacity that is listed in subsection (1), the nonbanking  
 11 corporation is authorized to act in that fiduciary capacity. The  
 12 authorization under this subsection confers the fiduciary capacity  
 13 only to the extent necessary in the particular matter of each  
 14 appointment and is not a general grant of fiduciary authority. A  
 15 nonbanking corporation is not authorized to act in any other  
 16 fiduciary capacity.

17 **Sec. 5106a. (1) The court shall not appoint a person as a**  
 18 **guardian of a legally incapacitated individual or conservator of a**  
 19 **protected individual who is not a minor, or both, under this**  
 20 **article unless the person has obtained certification as set forth**  
 21 **by administrative order of the supreme court. This section does not**  
 22 **apply until both of the following occur:**

23 (a) The legislature appropriates money for the certification  
 24 process.

25 (b) The supreme court establishes the certification process.

26 (2) The guardian and conservator certification advisory  
 27 council is created within the state court administrative office.  
 28 The advisory council shall recommend to the supreme court criteria  
 29 for guardian and conservator certification under subsection (1).

1 The advisory council consists of the following members:

2 (a) The attorney general or his or her designee.

3 (b) The state court administrator or his or her designee.

4 (c) The following members appointed by the governor:

5 (i) One member representing the Michigan Guardianship  
6 Association.

7 (ii) One member representing the Michigan Elder Justice  
8 Initiative.

9 (iii) One member representing the Elder Law and Disability  
10 Rights Section of the State Bar of Michigan.

11 (iv) One member representing the Probate and Estate Planning  
12 Section of the State Bar of Michigan.

13 (v) One member representing the Michigan Probate Judges  
14 Association.

15 (vi) One member representing the Michigan Probate and Juvenile  
16 Registers Association.

17 (vii) One member from a county guardianship office.

18 (viii) One member from a list of 3 or more individuals  
19 recommended by the senate majority leader.

20 (ix) One member from a list of 3 or more individuals  
21 recommended by the speaker of the house of representatives.

22 (x) One member from a list of 3 or more individuals  
23 recommended by the house minority leader.

24 (xi) One member from a list of 3 or more individuals  
25 recommended by the senate minority leader.

26 (3) The guardian and conservator certification advisory  
27 council is dissolved after 2 years after the effective date of the  
28 amendatory act that added this section.

29 (4) This section does not apply to a financial institution

1 **appointed as a professional conservator.**

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

6           (2) The ward or a person interested in the ward's welfare may  
7 petition for an order removing the guardian, appointing a successor  
8 guardian, modifying the guardianship's terms, or terminating the  
9 guardianship. A request for this order may be made by informal  
10 letter to the court or judge. A person who knowingly interferes  
11 with the transmission of this kind of request to the court or judge  
12 is subject to a finding of contempt of court. **A petition for an  
13 order appointing a successor guardian under this subsection is  
14 subject to the priority of appointment under section 5313.**

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

25           (4) Before removing a guardian, appointing a successor  
26 guardian, modifying the guardianship's terms, or terminating a  
27 guardianship, and following the same procedures to safeguard the  
28 ward's rights as apply to a petition for a guardian's appointment,  
29 the court may send a visitor to the present guardian's residence

1 and to the place where the ward resides or is detained to observe  
2 conditions and report in writing to the court.

3       Sec. 5313. (1) ~~The~~ **Subject to sections 5106 and 5106a, the**  
4 court may appoint a competent person as guardian of a legally  
5 incapacitated individual. The court shall not appoint as a guardian  
6 an agency, public or private, that financially benefits from  
7 ~~directly~~ providing housing, medical, mental health, **caregiving**, or  
8 social services to the legally incapacitated individual. If the  
9 court determines that the ward's property needs protection, the  
10 court shall order the guardian to furnish a bond or shall include  
11 restrictions in the letters of guardianship as necessary to protect  
12 the property.

13       (2) In appointing a guardian under this section, the court  
14 shall appoint a person, if suitable **under subsection (5)** and  
15 willing to serve, in the following order of priority:

16       (a) A person previously appointed, qualified, and serving in  
17 good standing as guardian for the legally incapacitated individual  
18 in another state.

19       (b) A person the individual subject to the petition chooses to  
20 serve as guardian.

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

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

26       (3) If there is no person chosen, nominated, or named under  
27 subsection (2), or if none of the persons listed in subsection (2)  
28 are suitable **under subsection (5)** or willing to serve, the court  
29 may appoint as a guardian an individual who is related to the



1 individual who is the subject of the petition in the following  
2 order of preference:

3 (a) The legally incapacitated individual's spouse. This  
4 subdivision ~~shall~~**must** be considered to include a person nominated  
5 by will or other writing signed by a deceased spouse.

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

7 (c) A parent of the legally incapacitated individual. This  
8 subdivision ~~shall~~**must** be considered to include a person nominated  
9 by will or other writing signed by a deceased parent.

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

13 (e) A person nominated by a person who is caring for the  
14 legally incapacitated individual or paying benefits to the legally  
15 incapacitated individual.

16 (4) If none of the persons as designated or listed in  
17 subsection (2) or (3) are suitable **under subsection (5)** or willing  
18 to serve, the court may appoint any competent person who is  
19 suitable **under subsection (5)** and willing to serve, including a  
20 professional guardian as provided in section 5106. **If the court**  
21 **appoints a professional guardian that employs 2 or more employees**  
22 **who have obtained certification under section 5106a, the**  
23 **professional guardian shall designate a certified employee who must**  
24 **be the decision maker for the ward. The professional guardian shall**  
25 **notify the ward and interested persons in writing of the name and**  
26 **contact information of the designated decision maker within 7 days**  
27 **after the court appoints the professional guardian and, if there is**  
28 **a permanent change in the designated decision maker, within 7 days**  
29 **after the permanent change. The professional guardian shall make**

1 the name and contact information of the designated decision maker  
2 available on request to the court, the ward's caregivers, medical  
3 and service providers, advocates, law enforcement, and any other  
4 person who requests the name and contact information to address a  
5 concern regarding the ward's health, safety, or welfare.

6 (5) The court shall appoint a person with priority guardian of  
7 a legally incapacitated individual unless specific findings on the  
8 record indicate that the person is not suitable as set forth in  
9 this subsection or is not willing to serve. A person is suitable to  
10 serve on a determination of specific findings of the court,  
11 including, but not limited to, all of the following factors:

12 (a) The preference of the individual subject to the  
13 guardianship, including who should serve and not serve as guardian.

14 (b) The person's availability to the individual subject to the  
15 guardianship.

16 (c) The person's history and relationship with the individual  
17 subject to the guardianship.

18 (d) The person's criminal history that is relevant to the  
19 care, custody, and control of the individual subject to the  
20 guardianship.

21 (e) The person's personal history, including, but not limited  
22 to, employment, training, skills, and stability, that will  
23 facilitate fulfillment of duties.

24 (f) The person's ability to fulfill duties regardless of  
25 interpersonal disputes between interested persons or others with an  
26 interest in the welfare of the individual subject to guardianship.  
27 Interpersonal disputes alone must not be the basis for finding a  
28 person with priority, under subsection (2) or (3), is unsuitable  
29 unless the court finds by clear and convincing evidence that no

1 other person is able to fulfill the duties.

2 (g) The person's ability to meet the requirements of section  
3 5410, if applicable.

4 (h) The person's ability to advocate appropriately for the  
5 best interests of the individual subject to the guardianship with  
6 health care and service providers.

7 (6) In deciding between 2 persons with equal priority under  
8 subsection (2), the court shall weigh the factors in subsection (5)  
9 with specific findings on the record. The court may appoint 2  
10 persons to serve as coguardians. Unless the order of appointment  
11 and letters of guardianship otherwise state, coguardians must act  
12 jointly. However, a coguardian may delegate the coguardian's  
13 authority to the other coguardian under section 5103.

14 (7) Letters of guardianship must expire not later than 15  
15 months after the date of appointment. The expiration date must be  
16 printed on the letters of guardianship. Letters of guardianship  
17 must not be reissued to a guardian that fails to report the  
18 condition of the ward and the ward's estate that is subject to the  
19 guardian's possession or control, as required by the court, under  
20 section 5314. The probate register may reissue letters of  
21 guardianship under this subsection without a hearing.

22 Sec. 5409. (1) The court may appoint an individual, a  
23 corporation authorized to exercise fiduciary powers, or a  
24 professional conservator described in section 5106 to serve as  
25 conservator of a protected individual's estate. The following are  
26 entitled to consideration for appointment in the following order of  
27 priority:

28 (a) A conservator, guardian of property, or similar fiduciary  
29 appointed or recognized by the appropriate court of another

1 jurisdiction in which the protected individual resides.

2 (b) ~~An individual or corporation~~ **A person** nominated by the  
3 protected individual if he or she is 14 years of age or older and  
4 of sufficient mental capacity to make an intelligent choice,  
5 including a nomination made in a durable power of attorney.

6 (c) The protected individual's spouse.

7 (d) An adult child of the protected individual.

8 (e) A parent of the protected individual or a person nominated  
9 by the will of a deceased parent.

10 (f) A relative of the protected individual with whom he or she  
11 has resided for more than 6 months before the petition is filed.

12 (g) A person nominated by the person who is caring for or  
13 paying benefits to the protected individual.

14 (h) If none of the persons listed in subdivisions (a) to (g)  
15 are suitable **under subsection (3)** and willing to serve, any person  
16 that the court determines is suitable **under subsection (3)** and  
17 willing to serve.

18 (2) A person named in subsection (1)(a), (c), (d), (e), or (f)  
19 may designate in writing a substitute to serve instead, and that  
20 designation transfers the priority to the substitute. ~~If persons~~  
21 ~~have equal priority, the court shall select the person the court~~  
22 ~~considers best qualified to serve. Acting in the protected~~  
23 ~~individual's best interest, the court may pass over a person having~~  
24 ~~priority and appoint a person having a lower priority or no~~  
25 ~~priority.~~

26 (3) **The court shall appoint a person with priority to serve as**  
27 **conservator of a protected individual's estate unless specific**  
28 **findings on the record indicate the person is not suitable as set**  
29 **forth in this subsection or is not willing to serve. A person is**

1 suitable to serve on a determination of specific findings by the  
2 court, including, but not limited to, all of the following factors:

3 (a) Preference of the individual subject to the  
4 conservatorship, including who should serve and not serve as  
5 conservator.

6 (b) Availability to the individual subject to the  
7 conservatorship.

8 (c) History and relationship with the individual subject to  
9 the conservatorship.

10 (d) Criminal history that is relevant to the role of a  
11 conservator.

12 (e) Personal history, including, but not limited to,  
13 employment, training, skills, and stability that will facilitate  
14 fulfillment of duties.

15 (f) Ability to fulfill duties regardless of interpersonal  
16 disputes between interested persons or others with an interest in  
17 the welfare of the individual subject to conservatorship.  
18 Interpersonal disputes alone must not be the basis for finding a  
19 person with priority is unsuitable unless the court finds by clear  
20 and convincing evidence that no person with priority can fulfill  
21 the duties.

22 (g) Ability to meet the requirements of section 5410.

23 (4) In deciding between 2 persons with equal priority, the  
24 court shall weigh the factors in subsection (3) with specific  
25 findings on the record. The court may appoint not more than 2  
26 persons to serve as coconservators. Unless the order of appointment  
27 and letters of conservatorship otherwise state, coconservators must  
28 act jointly.

29 (5) Letters of conservatorship must expire not later than 15

1 months after the date of appointment. The expiration date must be  
2 printed on the letters of conservatorship. Letters of  
3 conservatorship must not be reissued to a conservator that fails to  
4 account to the court as required under section 5418. The probate  
5 register may reissue letters of conservatorship under this  
6 subsection without a hearing.

7 Enacting section 1. This amendatory act takes effect 180 days  
8 after the date it is enacted into law.

9 Enacting section 2. This amendatory act does not take effect  
10 unless all of the following bills of the 102nd Legislature are  
11 enacted into law:

12 (a) Senate Bill No. \_\_\_\_ or House Bill No. 4910 (request no.  
13 01150'23).

14 (b) Senate Bill No. \_\_\_\_ or House Bill No. 4911 (request no.  
15 01151'23).

16 (c) Senate Bill No. \_\_\_\_ or House Bill No. 4912 (request no.  
17 01152'23).

# **EXHIBIT 1D**

## **Guardianship, Conservatorship & End of Life Committee**

**HB 4910**

# HOUSE BILL NO. 4910

July 18, 2023, Introduced by Reps. Tsernoglou, Breen, Morse, Hope, McFall, Conlin, Young, Scott, Price, Paiz, Hood, Mentzer, Rogers, Filler, Borton, Rheingans, Schmaltz, Fitzgerald, MacDonell, Wozniak, Andrews, Dievendorf, Steckloff, Coffia, Koleszar, Haadsma, Byrnes, Farhat, McKinney, Hoskins, Brabec, Liberati, O'Neal, Neeley, Edwards, Miller, Wegela, Outman, Tyrone Carter, Snyder, Brixie, Coleman, Wilson, Grant, Glanville, Churches, Johnsen, Morgan, Aiyash, Whitsett, Hill, Meerman and Puri and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5305, 5314, 5406, 5417, and 5418 (MCL 700.5305, 700.5314, 700.5406, 700.5417, and 700.5418), section 5305 as amended by 2017 PA 155, section 5314 as amended by 2018 PA 594, section 5406 as amended by 2000 PA 464, and sections 5417 and 5418 as amended by 2000 PA 312, and by adding section 5314a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 5305. (1) ~~The~~ **Subject to subsection (2), the** duties of a  
2 guardian ad litem appointed ~~for~~ **when** an individual **is** alleged to be



1 incapacitated include all of the following:

2 ~~(a) Personally visiting the individual.~~

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

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

8 ~~(i) The right to contest the petition.~~

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

12 ~~(A) A do-not-resuscitate order.~~

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

14 ~~(iii) The right to object to a particular person being appointed~~  
 15 ~~guardian.~~

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

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

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

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

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

1 ~~executed on his or her behalf.~~

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

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

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

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

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

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

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

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

1 mediation.

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

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

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

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

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

11 ~~(viii) Whether the individual objects to a particular person~~  
12 ~~being appointed guardian.~~

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

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

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

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

4       (a) Impartially gather information as provided by law.

5       (b) Seek information from the individual and, if communication  
 6 is possible, communicate in a manner the individual is best able to  
 7 understand. If communication is not possible or there is a barrier  
 8 to communication, the guardian ad litem must note that in the  
 9 report under subsection (3).

10       (c) Interview the individual in person at the individual's  
 11 location and out of the presence of any interested person.

12       (d) Advise the individual that the guardian ad litem does not  
 13 represent the individual as an attorney and that no attorney-client  
 14 relationship has been created.

15       (e) Identify whether the individual wishes to be present at  
 16 the hearing. If the allegedly incapacitated individual does not  
 17 wish to be present at the hearing, the guardian ad litem shall  
 18 identify the reasons why the individual does not wish to be  
 19 present.

20       (f) Identify any barrier to attending hearings at the place  
 21 where court is held or otherwise fully participating in the  
 22 hearing, including the need for assistive technology,  
 23 transportation, or other support. If the allegedly incapacitated  
 24 individual wishes to attend, the guardian ad litem must identify  
 25 whether the individual has identified a plan for how the individual  
 26 will attend.

27       (g) Identify whether the individual plans to retain legal  
 28 counsel or wants appointed legal counsel. If the allegedly  
 29 incapacitated individual does not plan to retain legal counsel or

1 request appointed legal counsel, the guardian ad litem must make a  
2 recommendation as to whether legal counsel should be appointed.

3 (h) Identify whether a disagreement or dispute related to the  
4 petition might be resolved through court-ordered mediation.

5 (2) The duties of a guardian ad litem appointed when an  
6 individual is alleged to be incapacitated or a legally  
7 incapacitated individual include all of the following, as  
8 applicable:

9 (a) Explain to the individual the nature, purpose, and legal  
10 effects of a guardian's appointment.

11 (b) Explain who has filed the petition and who, if anyone, has  
12 been nominated as guardian.

13 (c) Explain to the individual the hearing procedure and the  
14 individual's rights in the hearing procedure, as identified in  
15 section 5306a, including, but not limited to, the following:

16 (i) The right to contest the petition, in whole or in part.

17 (ii) The right to request limits on the guardian's powers.

18 (iii) The right to be present at the hearing. If the individual  
19 is unable to attend the hearing at the location court proceedings  
20 typically are held, the guardian ad litem shall inform the  
21 individual of his or her right for the hearing at another location.

22 (iv) The right to request a reasonable accommodation to allow  
23 the individual to participate as fully as possible at the hearing,  
24 including with assistive technology or other support.

25 (v) The right to be represented by legal counsel of the  
26 individual's choice. If the individual is unable to secure legal  
27 counsel of his or her choice, the right to have legal counsel  
28 appointed by the court.

29 (vi) The right to request an independent medical evaluation.

1 (d) Explain to the individual that if a guardian is appointed,  
2 the guardian may have the power to take certain actions on behalf  
3 of the individual. A guardian ad litem must inform the individual  
4 that a guardian may have any of the following powers and, if  
5 meaningful communication is possible, discern if the individual  
6 objects to a guardian having any of the following powers:

7 (i) Executing a do-not-resuscitate order.

8 (ii) Executing a physician orders for scope of treatment form.

9 (iii) Consenting to any medical treatment.

10 (iv) Consenting to placement decisions, including moving the  
11 individual to a nursing facility or adult foster care home.

12 (v) Choosing whether the individual can marry or divorce.

13 (vi) Handling any financial and property matters, including the  
14 sale or disposal of personal property and the maintenance of real  
15 property.

16 (e) Identify whether the individual objects to the particular  
17 person proposed as guardian, if any.

18 (f) If a guardian were to be appointed, identify a list of  
19 whom the individual would want to serve, in order of preference.

20 (g) If a guardian were to be appointed, identify whom the  
21 individual would not want to serve.

22 (3) Subject to subsections (4) and (5), a guardian ad litem  
23 appointed for an individual alleged to be incapacitated or a  
24 legally incapacitated individual shall file a written report with  
25 the court and in the form required by the state court  
26 administrative office.

27 (4) If an individual who is subject to an initial petition  
28 under this part, petition to terminate under this part, or petition  
29 to modify under this part contests the petition, the guardian ad

1 litem's written report required under subsection (3) must include  
2 only the following:

3 (a) That the individual contests the petition.

4 (b) Whether the individual has retained legal counsel or  
5 wishes for legal counsel to be appointed.

6 (c) Whether the individual has any barriers to attending court  
7 at the place where it is usually held.

8 (d) If a guardian were appointed, who the individual would  
9 want to serve in order of preference.

10 (e) If a guardian were appointed, who the individual would not  
11 want to serve.

12 (f) Any other information the guardian ad litem determines  
13 would be helpful to the court in ruling on the petition.

14 (5) If an individual who is subject to an initial petition  
15 under this part, petition to terminate under this part, or petition  
16 to modify under this part does not contest the petition, the  
17 guardian ad litem's report required under subsection (3) must  
18 include only the following:

19 (a) The date and time the guardian ad litem met with the  
20 individual.

21 (b) The length of time the guardian ad litem met with the  
22 individual.

23 (c) The location where the guardian ad litem met with the  
24 individual.

25 (d) Whether the guardian ad litem was able to meaningfully  
26 communicate with the individual and any barriers to communication.

27 (e) Who, if anyone, was present for the interview besides the  
28 individual.

29 (f) Whether the individual wishes to be present at the

1 hearing. If the individual wishes to be present at the hearing but  
2 has a barrier to fully participating, the guardian ad litem must  
3 include in the written report whether the barrier can be resolved  
4 by moving the location of the hearing or using assistive  
5 technology, or both, or other support.

6 (g) Whether the individual has identified a plan for how the  
7 individual will attend.

8 (h) Whether the individual plans to retain legal counsel or  
9 has requested appointed legal counsel. If the individual has not  
10 indicated he or she wishes to be represented by legal counsel, the  
11 guardian ad litem shall include in the written report a  
12 recommendation as to whether legal counsel should be appointed to  
13 represent the individual.

14 (i) Whether the individual has any of the following:

15 (i) A power of attorney with or without limitations on purpose,  
16 authority, or time period.

17 (ii) A patient advocate designation.

18 (iii) A physician orders for scope of treatment form.

19 (iv) A benefits payee, trustee, or other fiduciary.

20 (j) Whether a disagreement or dispute related to the petition  
21 might be resolved through court-ordered mediation.

22 (k) Whether the appointment of a visitor with appropriate  
23 knowledge, training, and education such as a social worker, mental  
24 health professional, or medical professional could provide the  
25 court with the information on whether alternatives to guardianship  
26 or a limited guardianship is appropriate.

27 (l) If a guardian were appointed, who the individual would want  
28 to serve in order of preference.

29 (m) If a guardian were appointed, who the individual would not



1 want to serve.

2 (n) An estimate of the liquid assets as that term is defined  
3 in section 5314, income, real property, and a description of  
4 personal property to the extent known after reasonable inquiry.

5 (o) Any other information the guardian ad litem determines  
6 would be helpful to the court in ruling on the petition.

7 (6) If a guardian ad litem is appointed for any purpose other  
8 than an initial petition under this part, petition to terminate  
9 under this part, or petition to modify under this part, the  
10 guardian ad litem must provide a written report to the court that  
11 includes, at a minimum, the information described in subsection (4)  
12 or (5), as applicable, and any other information required by law. A  
13 special limited guardian ad litem appointed under subsection (13)  
14 is not required to provide a written report unless ordered to do so  
15 by the court under subsection (13).

16 (7) A guardian ad litem shall file the report required under  
17 subsection (3) with the court and serve it on all interested  
18 persons at least 5 days before the date of the hearing. The court  
19 may order the report to be filed and served less than 5 days before  
20 the hearing only if the petition is made on an emergency basis  
21 under section 5312.

22 (8) The court may receive into evidence without testimony the  
23 written report of the guardian ad litem required under subsection  
24 (3) if the report is filed with the court and served on all  
25 interested persons not less than 5 days before the hearing. The  
26 guardian ad litem is required to report findings until the date of  
27 the termination of the guardian ad litem. The court may issue on  
28 its own initiative, or any interested person may secure, a subpoena  
29 to compel the preparer of the report to testify. On request of any

1 interested person, the court shall issue a subpoena to compel the  
2 preparer of the report to testify.

3 (9) The court shall not order compensation of the guardian ad  
4 litem unless the guardian ad litem states in the guardian ad  
5 litem's written report that the guardian ad litem complied with  
6 subsections (2) to (7), as applicable.

7 (10) The court shall not appoint a person that was previously  
8 appointed as guardian ad litem as legal counsel for the individual  
9 if the guardian ad litem's report under subsection (3) or  
10 recommendation to the court conflicts with the wishes of the  
11 individual.

12 (11) If an individual who is subject to a petition under this  
13 part has not already secured legal counsel, the court shall appoint  
14 legal counsel if any of the following apply:

15 (a) The individual requests legal counsel.

16 (b) The individual objects to any part of the petition for  
17 guardianship or potential authority of a guardian.

18 (c) The guardian ad litem determines it is in the individual's  
19 best interest to have legal counsel if legal counsel has not been  
20 secured. If the individual who is subject to the petition is  
21 indigent, this state shall bear the expense of appointed legal  
22 counsel under this subsection.

23 (12) If an individual who is subject to a petition under this  
24 part has legal counsel appointed or retained, the appointment of a  
25 guardian ad litem terminates. The report of the guardian ad litem  
26 must not be admitted into evidence after the appearance or  
27 appointment of legal counsel for the individual who is subject to  
28 the petition.

29 (13) After appointment or retention of legal counsel for the

1 individual who is subject to the petition under this part, the  
 2 court may, for good cause shown, appoint a special limited guardian  
 3 ad litem to provide information on a narrowly defined issue that  
 4 will likely otherwise be inadequately addressed. A special guardian  
 5 ad litem is exempt from subsections (2) to (6). The court may order  
 6 that a special limited guardian ad litem appointed under this  
 7 subsection provide a written report. The report under this  
 8 subsection must contain the information the court considers  
 9 necessary to adequately address the issue leading to the  
 10 appointment of the special limited guardian ad litem. A special  
 11 limited guardian ad litem shall not communicate directly with the  
 12 individual who is subject to the petition and must instead  
 13 communicate through legal counsel to the individual who is subject  
 14 to the petition, unless legal counsel otherwise gives consent.

15 (14) An individual alleged to be incapacitated has the right  
 16 to retain legal counsel of his or her choice at any stage,  
 17 regardless of findings regarding his or her capacity. Retained  
 18 legal counsel shall file a substitution of legal counsel or a  
 19 motion to substitute if legal counsel has already been appointed.  
 20 Retained legal counsel is entitled to reasonable attorney fees.

21 Sec. 5314. (1) If meaningful communication is possible, a  
 22 legally incapacitated individual's guardian shall consult with the  
 23 legally incapacitated individual before making a major decision  
 24 affecting the legally incapacitated individual. To the extent a  
 25 guardian of a legally incapacitated individual is granted powers by  
 26 the court under section 5306, the guardian is responsible for the  
 27 ward's care, custody, and control, but is not liable to third  
 28 persons because of that responsibility for the ward's acts. In  
 29 particular and without qualifying the previous sentences, a

1 guardian has all of the following powers and duties, to the extent  
2 granted by court order:

3 (a) ~~The~~ **Subject to section 5314a, the** custody of the person of  
4 the ward and the power to establish the ward's place of residence  
5 in or outside this state. ~~The guardian shall visit the ward within~~  
6 ~~3 months after the guardian's appointment and not less than once~~  
7 ~~within 3 months after each previous visit. The~~ **Subject to section**  
8 **5314a, the** guardian shall notify the court within 14 days of a  
9 ~~change in the ward's place of residence or a change in the~~  
10 guardian's place of residence. **All of the following apply to the**  
11 **duty of the guardian to visit the ward:**

12 (i) The guardian shall visit the ward in person within 1 month  
13 after the guardian's appointment and not less than once within 3  
14 months after each in-person visit. The guardian shall also visit  
15 the ward using both audio and video technology, or if that  
16 technology is not available, only audio means, each month in which  
17 an in-person visit does not occur. If the ward is unable to  
18 communicate using audio and visual or audio-only means, the  
19 guardian shall communicate with the ward's caregivers or any other  
20 party who is familiar with the ward's circumstances and can apprise  
21 the guardian of the ward's needs and progress. If the guardian  
22 determines that audio and visual visits or audio-only visits are  
23 not possible or that the ward is unable to communicate through  
24 audiovisual means, the records the guardian must maintain must also  
25 identify the circumstances that required the guardian to rely on an  
26 audio-only visit or that required the guardian to consult with  
27 caregivers or others instead of communicating directly with the  
28 ward. The guardian shall maintain records relating to the date,  
29 time, duration, and significant information for each required

1 visit. The guardian shall make the records available for the  
2 court's review and for review of interested persons.

3 (ii) If the guardian is a limited guardian, the visitation  
4 duties described in subparagraph (i) apply. However, the limited  
5 guardian may seek approval from the court to conduct audiovisual or  
6 audio-only visits less often than monthly in the months in which  
7 the limited guardian is not visiting in person. The court may grant  
8 the request if the court finds on the record that monthly  
9 audiovisual or audio-only visits in the months in which an in-  
10 person visit is not occurring are not necessary for the  
11 individual's well-being and best interests and identifies on the  
12 record the individual's circumstances that led to that finding.

13 (iii) If the guardian is not a professional guardian, the  
14 guardian may delegate the required in-person visits under  
15 subparagraph (i) to another person. The guardian shall communicate  
16 with the person who conducted the in-person visit and maintain  
17 records regarding the information shared by the person who  
18 conducted the visit.

19 (iv) If the guardian is a professional guardian and the  
20 professional guardian employs 2 or more employees who have obtained  
21 certification under section 5106a, the designated decision maker  
22 under section 5313(4) shall not delegate the required in-person  
23 visits under subparagraph (i) to another person. The designated  
24 decision maker may delegate the required audio-visual or audio-only  
25 visits under subparagraph (i) to another certified employee only if  
26 the designated decision maker is unavailable to conduct the audio-  
27 visual or audio-only visits. If the designated decision maker  
28 delegates a visit requirement to another certified employee as  
29 allowed under this subparagraph, the certified employee who

1 conducts the visit must prepare and submit a written report  
 2 consistent with the requirements under subparagraph (i) to the  
 3 designated decision maker.

4 (v) If the guardian is an individual professional guardian,  
 5 the professional guardian shall not delegate the required in-person  
 6 visits under subparagraph (i) to another person.

7 (b) If entitled to custody of the ward, the duty to make  
 8 provision for the ward's care, comfort, and maintenance and, when  
 9 appropriate, arrange for the ward's training and education. The  
 10 guardian shall secure services to restore the ward to the best  
 11 possible state of mental and physical well-being so that the ward  
 12 can return to self-management at the earliest possible time. **The**  
 13 **guardian shall make a reasonable effort to identify a reasonable**  
 14 **number of items of personal or sentimental value, including, but**  
 15 **not limited to, family heirlooms, photo albums, and collections.**  
 16 **Within 56 days after appointment, the guardian shall serve on all**  
 17 **interested persons a list of the identified items. The list must be**  
 18 **signed by the guardian and include an attestation that states, "I**  
 19 **represent this list is true and correct to the best of my**  
 20 **knowledge, information, and belief at the time of signing. I**  
 21 **understand that I must handle this property, like all of the ward's**  
 22 **property for which I am responsible, consistent with my fiduciary**  
 23 **duties. This may include sale, disposal, or other actions to meet**  
 24 **my fiduciary duties. I am not responsible for storing any items at**  
 25 **my own expense."** Without regard to custodial rights of the ward's  
 26 person, the guardian shall take reasonable care of the ward's  
 27 clothing, furniture, vehicles, and other personal effects and  
 28 commence a protective proceeding if the ward's other property needs  
 29 protection. If a guardian commences a protective proceeding because

1 the guardian believes that it is in the ward's best interest to  
 2 sell or otherwise dispose of the ward's real property or interest  
 3 in real property, the court may appoint the guardian as special  
 4 conservator and authorize the special conservator to proceed under  
 5 section 5423(3). A guardian shall not otherwise sell the ward's  
 6 real property or interest in real property.

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

26 (d) The power to execute, reaffirm, and revoke a do-not-  
 27 resuscitate order on behalf of a ward. However, a guardian shall  
 28 not execute a do-not-resuscitate order unless the guardian does all  
 29 of the following:

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

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

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

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

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

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

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

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

28 (ii) Consults directly with the ward's attending physician as  
 29 to the specific medical indications that warrant the physician



1 orders for scope of treatment form.

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

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

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

12 (i) If a conservator for the ward's estate is not appointed,  
13 ~~the power to do any~~ **all** of the following:

14 (i) ~~Institute~~ **The power to institute** a proceeding to compel a  
15 person under a duty to support the ward or to pay money for the  
16 ward's welfare to perform that duty.

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

26 **(iii) The duty to allow interested persons to review proofs of**  
27 **income and disbursements at a time reasonably convenient to the**  
28 **guardian and interested persons.**

29 (j) The duty to report the condition of the ward and the

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

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

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

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

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

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

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

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

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

25 (ix) Services received by the ward.

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

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

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

7 (2) If a conservator has not been appointed for the ward, and  
 8 if the ward's qualified estate is greater than 400% of the federal  
 9 poverty level, the guardian must file a petition for  
 10 conservatorship under part 4. This subsection does not prevent the  
 11 appointment of a conservator for the ward if the ward's qualified  
 12 estate is less than 400% of the federal poverty level. As used in  
 13 this subsection:

14 (a) "Federal poverty level" means the poverty guidelines  
 15 published annually in the federal register by the United States  
 16 Department of Health and Human Services under its authority to  
 17 revise the poverty line under 42 USC 9902.

18 (b) "Liquid assets" means assets that can easily be converted  
 19 into cash in a short amount of time. Liquid assets includes, but is  
 20 not limited to, cash, checking and savings accounts, money market  
 21 instruments, certificates of deposit, mutual funds held in a  
 22 taxable account, marketable securities, bonds, and the monetary  
 23 value of life or other insurance. A retirement account is  
 24 considered a liquid asset once the individual's circumstances allow  
 25 him or her to withdraw cash without facing any Internal Revenue  
 26 Service early withdrawal penalties.

27 (c) "Ward's qualified estate" means, except as otherwise  
 28 provided in subdivision (d), the ward's liquid assets or income, or  
 29 both, reported by the guardian ad litem under section 5305 or later

1 discovered by the guardian.

2 (d) Ward's qualified estate does not include liquid assets or  
3 income that is subject to some oversight such as a representative  
4 payee, durable power of attorney, joint ownership, trust, or other  
5 protection.

6 Sec. 5314a. (1) The guardian shall maintain a legally  
7 incapacitated individual in the legally incapacitated individual's  
8 permanent residence if possible and consistent with the well-being  
9 and preferences of the legally incapacitated individual. If a  
10 legally incapacitated individual is removed from his or her  
11 permanent residence temporarily for any reason, the guardian must  
12 make all reasonable efforts to return the legally incapacitated  
13 individual to his or her permanent residence at the earliest  
14 opportunity consistent with the legally incapacitated individual's  
15 wishes. Temporary removal of the legally incapacitated individual  
16 from his or her permanent residence for the purpose of receiving  
17 health care or supervision, for engaging in family or social  
18 activities, or for other reasons including the well-being or  
19 convenience of the legally incapacitated individual does not  
20 relieve the guardian of the obligations set forth in this section  
21 regarding permanent removal from the permanent residence. A  
22 guardian shall not primarily consider the guardian's own  
23 convenience or benefit when making a decision to remove the legally  
24 incapacitated individual from the legally incapacitated  
25 individual's permanent residence or selecting a new residence for  
26 the legally incapacitated individual.

27 (2) A guardian shall explore reasonably available and  
28 affordable supports and services that could enable the legally  
29 incapacitated individual to remain in his or her permanent

1 residence.

2 (3) If a guardian proposes to move the legally incapacitated  
3 individual from his or her permanent residence, the guardian must  
4 attempt to consult with the legally incapacitated individual and  
5 honor the legally incapacitated individual's preference to the  
6 greatest extent possible.

7 (4) In exercising the guardian's power to establish the  
8 legally incapacitated individual's place of residence, the guardian  
9 shall do both of the following:

10 (a) Select a residential setting the guardian believes the  
11 legally incapacitated individual would select if the legally  
12 incapacitated individual were able. If the guardian does not know  
13 and cannot reasonably determine what setting the legally  
14 incapacitated individual would likely select, or the guardian  
15 reasonably believes the decision the legally incapacitated  
16 individual would make would unreasonably harm or endanger the  
17 welfare or personal or financial interests of the legally  
18 incapacitated individual, the guardian must choose a residential  
19 setting that is consistent with the legally incapacitated  
20 individual's best interest.

21 (b) Give priority to a residential setting in a location that  
22 will allow the legally incapacitated individual to interact with  
23 persons and participate in activities important to the legally  
24 incapacitated individual and meet the legally incapacitated  
25 individual's needs in the least restrictive manner reasonably  
26 feasible.

27 (5) If a guardian that is not a professional guardian removes  
28 a legally incapacitated individual from the legally incapacitated  
29 individual's permanent residence to another location in this state,

1 the guardian must notify the court in writing within 14 days after  
 2 the removal. The notification required under this subsection must  
 3 include the address of the new permanent residence.

4 (6) A guardian shall not move the legally incapacitated  
 5 individual out of state without order of the court. If the guardian  
 6 petitions to move the legally incapacitated individual out of  
 7 state, a guardian ad litem must be appointed and the court shall  
 8 schedule a hearing regardless of whether the individual files  
 9 objections or expresses dissatisfaction with the proposed move. If  
 10 the legally incapacitated individual files objections or expresses  
 11 dissatisfaction with the proposed move, the court must appoint  
 12 legal counsel if the legally incapacitated individual is not  
 13 already represented by legal counsel.

14 (7) Subject to subsections (9) and (10), and except as  
 15 otherwise provided in subsection (14), a professional guardian  
 16 shall not permanently remove a legally incapacitated individual  
 17 from the legally incapacitated individual's permanent residence  
 18 unless, subject to subsection (8), the professional guardian files  
 19 a petition under this subsection and the court grants the petition  
 20 under subsection (13). A petition under this subsection must be  
 21 separate from the petition for a finding of incapacity and  
 22 appointment of guardian under section 5303. A petition under this  
 23 subsection must include all of the following information:

- 24 (a) The individual's current permanent residence.
- 25 (b) The proposed new residence.
- 26 (c) The reason for the proposed move.
- 27 (d) Whether the move is to a more or less restrictive setting.
- 28 (e) The efforts made or resources explored to enable the  
 29 individual to remain in his or her current permanent residence.

1 (f) Whether the guardian has engaged in meaningful  
2 communication with the individual about the proposed move.

3 (g) Whether the individual objects to or supports the proposed  
4 move.

5 (8) If the person petitioning for guardianship under section  
6 5303 proposes or anticipates that a professional guardian will be  
7 appointed under section 5306, the petitioner or any interested  
8 person that believes that it is necessary for the well-being of the  
9 alleged incapacitated individual to move the individual permanently  
10 from his or her permanent residence may file a petition under  
11 subsection (7) seeking authority for a professional guardian, if  
12 appointed under section 5306, to permanently remove the alleged  
13 incapacitated individual from his or her permanent residence.

14 (9) If a professional guardian determines that to protect the  
15 health, safety, or welfare of the legally incapacitated individual,  
16 it is necessary to move the legally incapacitated individual from  
17 his or her permanent residence to a another residence the  
18 professional guardian intends to be permanent before obtaining  
19 court approval under subsection (13), the professional guardian may  
20 move the legally incapacitated individual. Within 14 days after  
21 moving the legally incapacitated individual as allowed under this  
22 subsection, the professional guardian must file a petition under  
23 subsection (7). The petition must include the circumstances that  
24 the professional guardian determined were necessary to move the  
25 legally incapacitated individual before filing a petition under  
26 subsection (7).

27 (10) If, after a temporary stay in a health care facility or  
28 at a residence the professional guardian initially intended to be  
29 temporary, the professional guardian determines that it is

1 necessary to change to the permanent residence of the legally  
 2 incapacitated individual, the professional guardian must, within 14  
 3 days after making the determination, file a petition under  
 4 subsection (7). The petition must include the circumstances  
 5 underlying the professional guardian's determination.

6 (11) If a petition for removal from the permanent residence  
 7 has been filed under subsection (7), the court shall promptly  
 8 appoint a guardian ad litem and hold the hearing within 28 days  
 9 after the petition is filed. The guardian ad litem must, in  
 10 addition to the other duties set forth in section 5305, do all of  
 11 the following:

12 (a) Advise the individual that a petition has been filed to  
 13 move the individual from his or her permanent residence to the new  
 14 residence identified in the petition or another location the court  
 15 determines is appropriate.

16 (b) Explain that if the court grants the petition to move the  
 17 individual, the guardian will have the authority to change the  
 18 individual's permanent residence to the location specified in the  
 19 petition or to another location the court determines is  
 20 appropriate.

21 (c) Ascertain, if possible, the wishes of the individual to  
 22 remain in his or her permanent residence.

23 (d) Include a summary of the discussion in the guardian ad  
 24 litem's written report.

25 (12) If the alleged incapacitated individual or legally  
 26 incapacitated individual does not already have legal counsel, the  
 27 court must appoint legal counsel if the individual files an  
 28 objection to the petition for authority to move the individual from  
 29 his or her permanent residence under subsection (7) or if the



1 guardian ad litem's report under subsection (11) states that the  
 2 individual objects to being removed from his or her permanent  
 3 residence.

4 (13) The court shall not grant a petition for removal from the  
 5 permanent residence under subsection (7) unless the court, after  
 6 due consideration and opportunity for testimony on the matter,  
 7 determines by clear and convincing evidence that moving the legally  
 8 incapacitated individual from the permanent residence to the  
 9 residence identified in the petition is 1 or more of the following:

10 (a) Necessary to protect the individual's physical health,  
 11 safety, or welfare.

12 (b) Consistent with the individual's wishes.

13 (14) If the legally incapacitated individual must leave the  
 14 permanent residence because the residence becomes permanently  
 15 unavailable, the professional guardian must provide at least 14  
 16 days' prior written notice to the legally incapacitated individual  
 17 if possible under the circumstances or, if less time is available  
 18 before the legally incapacitated individual must move, notice at  
 19 the earliest opportunity. The professional guardian shall provide  
 20 written notice to the court and all interested persons within 14  
 21 days after the move under this subsection explaining why the  
 22 permanent residence is no longer available, whether the  
 23 professional guardian attempted to consult with the legally  
 24 incapacitated individual about where the legally incapacitated  
 25 individual wanted to move, whether the professional guardian  
 26 honored the legally incapacitated individual's preferences  
 27 regarding where he or she wanted to move, the address of the new  
 28 residence, the type of residence, and how the new residence will  
 29 meet the legally incapacitated individual's needs. If the legally

1 incapacitated individual's residence becomes permanently  
2 unavailable, the professional guardian is not required to file a  
3 petition under subsection (7) and the court is not required to  
4 appoint a guardian ad litem or legal counsel or hold a hearing. For  
5 purposes of this subsection, a residence becomes permanently  
6 unavailable as a result of a facility closure, removal of the  
7 property from the rental market, involuntary discharge or eviction  
8 that cannot be appropriately resolved by the professional guardian,  
9 irreparable damage to the permanent residence, or other  
10 circumstances that are not initiated by the professional guardian  
11 but necessitate the permanent removal of the legally incapacitated  
12 individual from his or her permanent residence.

13 (15) If removal from the permanent residence necessitates the  
14 sale, transfer, or disposal of real property or sentimental  
15 personal property and if meaningful communication is possible, the  
16 guardian must consult with the legally incapacitated individual  
17 before taking any action to dispose of the property. A guardian  
18 shall make all reasonable efforts to identify and honor the legally  
19 incapacitated individual's wishes to preserve sentimental personal  
20 property in the overall context of the legally incapacitated  
21 individual's estate, including items identified in the inventory  
22 under section 5314, and shall take reasonable steps to safeguard  
23 that personal property. The court may remove a guardian that fails  
24 to comply with this subsection.

25 (16) As used in this section, "permanent residence" means any  
26 of the following:

27 (a) The location the allegedly incapacitated individual or  
28 legally incapacitated individual uses as a permanent address, in  
29 which most of the individual's possessions are maintained.

1           **(b) The location the allegedly incapacitated individual or**  
 2 **legally incapacitated individual considers to be his or her home.**

3           Sec. 5406. (1) ~~Upon~~**On** receipt of a petition for a  
 4 conservator's appointment or another protective order because of  
 5 minority, the court shall set a date for hearing. If, at any time  
 6 in the proceeding, the court determines that the minor's interests  
 7 are or may be inadequately represented, the court may appoint an  
 8 attorney to represent the minor, giving consideration to the  
 9 minor's choice if 14 years of age or older. An attorney appointed  
 10 by the court to represent a minor has the powers and duties of a  
 11 guardian ad litem.

12           (2) ~~Upon~~**On** receipt of a petition for a conservator's  
 13 appointment or another protective order for a reason other than  
 14 minority, the court shall set a date for **initial** hearing. Unless  
 15 the individual to be protected has chosen **legal** counsel, or is  
 16 mentally competent but aged or physically infirm, the court shall  
 17 appoint a guardian ad litem. ~~to represent the person in the~~  
 18 ~~proceeding.~~ If the alleged disability is mental illness, mental  
 19 deficiency, physical illness or disability, chronic use of drugs,  
 20 or chronic intoxication, the court may direct that the individual  
 21 alleged to need protection be examined by a physician or mental  
 22 health professional appointed by the court, preferably a physician  
 23 or mental health professional who is not connected with an  
 24 institution in which the individual is a patient or is detained.  
 25 The individual alleged to need protection has the right to secure  
 26 an independent evaluation at his or her own expense. The court may  
 27 send a visitor to interview the individual to be protected. The  
 28 visitor may be a guardian ad litem or a court officer or employee.

29           (3) The court may utilize, as an additional visitor, the

1 service of a public or charitable agency to evaluate the condition  
2 of the individual to be protected and make appropriate  
3 recommendations to the court.

4 (4) A guardian ad litem, physician, mental health  
5 professional, or visitor appointed under this section who meets  
6 with, examines, or evaluates an individual who is the subject of a  
7 petition in a protective proceeding shall do all of the following:

8 (a) Consider whether there is an appropriate alternative to a  
9 conservatorship.

10 (b) If a conservatorship is appropriate, consider the  
11 desirability of limiting the scope and duration of the  
12 conservator's authority.

13 (c) Report to the court based on the considerations required  
14 in subdivisions (a) and (b).

15 (5) **Subject to subsection (6), the duties of a guardian ad**  
16 **litem appointed under subsection (2) for an individual alleged to**  
17 **need protection include all of the following:**

18 (a) **Impartially gather information as provided by law.**

19 (b) **Seek information from the individual and, if communication**  
20 **is possible, communicate in a manner the individual is best able to**  
21 **understand. If communication is not possible or there is a barrier**  
22 **to communication, the guardian ad litem must note that in the**  
23 **report.**

24 (c) **Interview the individual in person at the individual's**  
25 **location and out of the presence of any interested person.**

26 (d) **Advise the individual that the guardian ad litem does not**  
27 **represent the individual as an attorney and that no attorney-client**  
28 **relationship has been created.**

29 (e) **Identify whether the individual wishes to be present at**

1 the hearing. If the individual alleged to need protection does not  
 2 wish to be present at the hearing, the guardian ad litem shall  
 3 identify the reasons why the individual does not wish to be  
 4 present.

5 (f) Identify any barrier to attending hearings at the place  
 6 where court is held or otherwise fully participating in the  
 7 hearing, including the need for assistive technology,  
 8 transportation, or other support. If the individual alleged to need  
 9 protection wishes to attend, the guardian ad litem must identify  
 10 whether the individual has identified a plan for how the individual  
 11 will attend.

12 (g) Identify whether the individual plans to retain legal  
 13 counsel or wants appointed legal counsel. If the individual alleged  
 14 to need protection does not plan to retain legal counsel or request  
 15 appointed legal counsel, the guardian ad litem must make a  
 16 recommendation as to whether legal counsel should be appointed.

17 (h) Identify whether a disagreement or dispute related to the  
 18 petition might be resolved through court-ordered mediation.

19 (6) The duties of a guardian ad litem appointed for an  
 20 individual alleged to need protection or a protected individual  
 21 include all of the following, as applicable:

22 (a) Explain to the individual the nature, purpose, and legal  
 23 effects of a conservator's appointment or issuance of a protective  
 24 order.

25 (b) Explain who has filed the petition and who, if anyone, has  
 26 been nominated as conservator, if applicable.

27 (c) Explain to the individual the hearing procedure and the  
 28 individual's rights in the hearing procedure, including, but not  
 29 limited to, the following:

1 (i) The right to contest the petition, in whole or in part.

2 (ii) The right to request limits on the conservator's powers.

3 (iii) The right to be present at the hearing. If the individual  
4 is unable to attend the hearing at the location court proceedings  
5 typically are held, the guardian ad litem shall inform the  
6 individual of his or her right to have the hearing at another  
7 location.

8 (iv) The right to request a reasonable accommodation to allow  
9 the individual to participate as fully as possible at the hearing,  
10 including with assistive technology or other support.

11 (v) The right to be represented by legal counsel of the  
12 individual's choice. If the individual is unable to secure legal  
13 counsel of his or her choice, the guardian ad litem shall explain  
14 to the individual that he or she has the right to have legal  
15 counsel appointed by the court.

16 (vi) The right to request an independent medical evaluation.

17 (d) Explain to the individual that if a conservator is  
18 appointed, the conservator may have the power to take certain  
19 actions on behalf of the individual. A guardian ad litem must  
20 inform the individual that a conservator may have any of the powers  
21 described in section 5407 and, if meaningful communication is  
22 possible, discern if the individual objects to a conservator having  
23 any of those powers.

24 (e) Identify whether the individual objects to the particular  
25 person proposed as conservator, if any.

26 (f) If a conservator were to be appointed, identify a list of  
27 who the individual would want to serve, in order of preference.

28 (g) If a conservator were to be appointed, identify who the  
29 individual would not want to serve.

1           (7) A guardian ad litem appointed for an individual alleged to  
2 need protection or a protected individual shall file a written  
3 report with the court in the form required by the state court  
4 administrative office.

5           (8) If an individual who is subject to an initial petition  
6 under this part, petition to terminate under this part, or petition  
7 to modify under this part contests the petition, the guardian ad  
8 litem's written report required under subsection (7) must include  
9 only the following:

10           (a) That the individual contests the petition.

11           (b) Whether the individual has retained legal counsel or  
12 wishes for legal counsel to be appointed.

13           (c) Whether the individual has any barriers to attending court  
14 at the place where it is usually held.

15           (9) If an individual who is subject to an initial petition  
16 under this part, petition to terminate under this part, or petition  
17 to modify under this part does not contest the petition, the  
18 guardian ad litem's written report required under subsection (7)  
19 must include only the following:

20           (a) The date and time the guardian ad litem met with the  
21 individual.

22           (b) The length of time the guardian ad litem met with the  
23 individual.

24           (c) The location where the guardian ad litem met with the  
25 individual.

26           (d) Whether the guardian ad litem was able to meaningfully  
27 communicate with the individual and any barriers to communication.

28           (e) Who, if anyone, was present for the interview besides the  
29 individual.

1 (f) Whether the individual wishes to be present at the  
 2 hearing. If the individual wishes to be present at the hearing but  
 3 has a barrier to fully participating, the guardian ad litem must  
 4 include in the written report whether the barrier can be resolved  
 5 by moving the location of the hearing or using assistive  
 6 technology, or both, or other support.

7 (g) Whether the individual has identified a plan for how the  
 8 individual will attend.

9 (h) Whether the individual plans to retain legal counsel or  
 10 has requested appointed legal counsel. If the individual has not  
 11 indicated he or she wishes to be represented by legal counsel, the  
 12 guardian ad litem shall include in the written report a  
 13 recommendation as to whether legal counsel should be appointed to  
 14 represent the individual.

15 (i) Whether the individual has any of the following:

16 (i) A power of attorney with or without limitations on purpose,  
 17 authority, or time period.

18 (ii) A patient advocate designation.

19 (iii) A physician orders for scope of treatment form.

20 (iv) A benefits payee, trustee, or other fiduciary.

21 (j) Whether a disagreement or dispute related to the  
 22 conservatorship petition might be resolved through court-ordered  
 23 mediation.

24 (k) Whether the appointment of a visitor with appropriate  
 25 knowledge, training, and education such as a social worker, mental  
 26 health professional, or medical professional could provide the  
 27 court with the information on whether alternatives to  
 28 conservatorship or a limited conservatorship under section 5419(1)  
 29 is appropriate.



1           (l) For an initial petition under this part, if a conservator  
2 were appointed, who the individual would want to serve in order of  
3 preference.

4           (m) For an initial petition under this part, if a conservator  
5 were appointed, who the individual would not want to serve.

6           (n) An estimate of the liquid assets as that term is defined  
7 in section 5314, income, real property, and a description of  
8 personal property to the extent known after reasonable inquiry.

9           (10) If a guardian ad litem is appointed for any purpose other  
10 than an initial petition under this part, petition to terminate  
11 under this part, or petition to modify under this part, the  
12 guardian ad litem must provide a written report to the court that  
13 includes, at a minimum, the information described in subsection  
14 (5), (6), (8), or (9), as applicable, and any other information  
15 required by law. A special limited guardian ad litem appointed  
16 under subsection (16) is not required to provide a written report  
17 unless ordered to do so by the court.

18           (11) The court may receive into evidence without testimony the  
19 written report of the guardian ad litem required under subsection  
20 (7) if the report is filed with the court and served on all  
21 interested persons not less than 5 days before the hearing. The  
22 guardian ad litem is required to report findings until the date of  
23 the termination of the guardian ad litem. The court may issue on  
24 its own initiative, or any interested person may secure, a subpoena  
25 to compel the preparer of the report to testify. On request of any  
26 interested person, the court must issue a subpoena to compel the  
27 preparer of the report to testify.

28           (12) A guardian ad litem shall file any report required under  
29 this section with the court and serve the report on all interested

1 persons at least 5 days before the hearing. The court shall not  
2 order compensation of the guardian ad litem unless the guardian ad  
3 litem states in the guardian ad litem's written report that the  
4 guardian ad litem complied with this subsection.

5 (13) The court shall not appoint a guardian ad litem as legal  
6 counsel for the individual if the guardian ad litem's report under  
7 subsection (7) or recommendation to the court conflicts with the  
8 wishes of the individual.

9 (14) If an individual who is subject to a petition under this  
10 part has not already secured legal counsel, the court shall appoint  
11 legal counsel if any of the following apply:

12 (a) The individual who is subject to the petition requests  
13 legal counsel.

14 (b) The individual who is subject to the petition objects to  
15 any part of the petition for conservatorship or potential authority  
16 of a conservator.

17 (c) The guardian ad litem determines it is in the best  
18 interest of the individual subject to the petition to have legal  
19 counsel and, if legal counsel has not been secured, the court shall  
20 appoint legal counsel. If the individual who is subject to the  
21 petition is indigent, this state shall bear the expense of  
22 appointed legal counsel.

23 (15) If an individual who is subject to a petition under this  
24 part has legal counsel appointed or retained, the appointment of a  
25 guardian ad litem terminates. The report of the guardian ad litem  
26 under subsection (7) must not be admitted into evidence after the  
27 appearance or appointment of legal counsel for the individual who  
28 is subject to the petition.

29 (16) After appointment or retention of legal counsel for the

1 individual who is subject to the petition under this part, the  
 2 court may, for good cause shown, appoint a special limited guardian  
 3 ad litem to provide information on a narrowly defined issue that  
 4 will likely otherwise be inadequately addressed. A special guardian  
 5 ad litem is exempt from subsections (5) to (10). The court may  
 6 order that a special limited guardian ad litem provide a written  
 7 report. The report under this subsection must contain the  
 8 information the court considers necessary to adequately address the  
 9 issue leading to the appointment of the special limited guardian ad  
 10 litem. A special limited guardian ad litem shall not communicate  
 11 directly with the individual who is subject to the petition and  
 12 must instead communicate through legal counsel to the individual  
 13 who is subject to the petition, unless legal counsel otherwise  
 14 gives consent.

15 (17) ~~(5)~~—The individual to be protected is entitled to be  
 16 present at the hearing in person. If the individual wishes to be  
 17 present at the hearing, all practical steps must be taken to ensure  
 18 the individual's presence including, if necessary, moving the site  
 19 of the hearing. The individual is entitled to be represented by  
 20 **legal** counsel, to present evidence, to cross-examine witnesses,  
 21 including a court-appointed physician or other qualified person and  
 22 a visitor, and to trial by jury. The issue may be determined at a  
 23 closed hearing or without a jury if the individual to be protected  
 24 or **legal** counsel for the individual so requests.

25 (18) ~~(6)~~—Any person may request ~~for~~ permission to participate  
 26 in the proceeding, and the court may grant the request, with or  
 27 without hearing, ~~upon~~**on** determining that the best interest of the  
 28 individual to be protected will be served by granting the request.  
 29 The court may attach appropriate conditions to the permission.

1           **(19)** ~~(7)~~ After hearing, ~~upon~~**on** finding that a basis for a  
 2 conservator's appointment or another protective order is  
 3 established by clear and convincing evidence, the court shall make  
 4 the appointment or other appropriate protective order.

5           Sec. 5417. (1) Within 56 days after appointment or within  
 6 another time period specified by court rule, a conservator shall  
 7 prepare and file with the appointing court a complete inventory of  
 8 the estate subject to the conservatorship together with an oath or  
 9 affirmation that the inventory is believed to be complete and  
 10 accurate so far as information permits. **The conservator shall serve**  
 11 **on interested persons, along with the inventory, account statements**  
 12 **with account numbers redacted that reflect the value of depository**  
 13 **and investment accounts dated within 30 days after the inventory's**  
 14 **date.** The conservator shall provide a copy of the inventory to the  
 15 protected individual if the individual can be located and is 14  
 16 years of age or older and to interested persons as specified in the  
 17 Michigan court rules.

18           (2) The conservator must keep suitable records of the  
 19 administration and exhibit those records on the request of an  
 20 interested person.

21           **(3) The conservator must make reasonable efforts to identify**  
 22 **on the inventory under subsection (1) a reasonable number of items**  
 23 **of special personal or sentimental value, including, but not**  
 24 **limited to, family heirlooms, photo albums, or collections. To the**  
 25 **extent meaningful conversation permits, the conservator must make**  
 26 **an inquiry with the protected individual as to what items the**  
 27 **protected individual identifies as having special personal or**  
 28 **sentimental value. If the conservator is unable to locate an item**  
 29 **identified as having special personal or sentimental value at the**

1 time of filing the inventory under subsection (1), the conservator  
 2 must state that on the inventory. The inventory must be signed by  
 3 the conservator and include an attestation that states, "I  
 4 represent this list is true and correct to the best of my  
 5 knowledge, information, and belief at the time of signing. I  
 6 understand that I must handle this property, like all of the  
 7 protected individual's property, consistent with my fiduciary  
 8 duties. This may include sale, disposal, or other actions to meet  
 9 my fiduciary duties. I am not responsible for storing any items at  
 10 my expense.". A conservator shall make all reasonable efforts to  
 11 identify and honor the protected individual's wishes to preserve  
 12 items of special personal or sentimental value in the overall  
 13 context of the protected individual's estate, including items  
 14 identified in the inventory and annual accounts, and shall take  
 15 reasonable steps to safeguard the property. The court may remove a  
 16 conservator that fails to comply with this subsection.

17 (4) The inventory under subsection (1) must list any  
 18 merchandise, funeral services, cemetery services, or prepaid  
 19 contracts for which the protected individual or conservator is the  
 20 contract buyer or contract beneficiary under the prepaid funeral  
 21 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235. If the  
 22 conservatorship estate includes assets described in this  
 23 subsection, the conservator must file all of the following with the  
 24 inventory under subsection (1):

25 (a) A copy of any prepaid contract under the prepaid funeral  
 26 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

27 (b) Proof that payments made under a prepaid contract are held  
 28 in escrow or under a trust agreement in compliance with the prepaid  
 29 funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to

1 328.235.

2 (c) The most recent escrow statement issued concerning the  
3 prepaid contract.

4 (d) Proof of any assignments of life policies or annuity  
5 contracts made to purchase merchandise, funeral services, or  
6 cemetery services under the prepaid funeral and cemetery sales act,  
7 1986 PA 255, MCL 328.211 to 328.235, under subsection (1) must list  
8 property with reasonable detail and the type and amount of any  
9 encumbrance.

10 (5) The inventory under subsection (1) must be served on all  
11 interested persons. Any interested person may file an objection to  
12 the inventory with the court and serve the objection on all other  
13 interested persons. The court shall set the matter for hearing.

14 Sec. 5418. (1) A conservator shall account to the court for  
15 administration of the trust not less than annually unless the court  
16 directs otherwise, upon resignation or removal, and at other times  
17 as the court directs. ~~On~~**The conservator shall serve on interested**  
18 **persons, along with the account under this subsection, account**  
19 **statements with account numbers redacted that reflect the value of**  
20 **depository and investment accounts dated within 30 days after the**  
21 **inventory's date and receipts, invoices, or other documentation for**  
22 **expenses in excess of \$1,000.00. The account must be in the form as**  
23 **provided by the state court administrative office, or substantially**  
24 **similar. The account must detail assets including those identified**  
25 **in the inventory under section 5417, debts, gross income, and**  
26 **expenses.**

27 (2) **Within 56 days after the** termination of the protected  
28 individual's minority or disability, a conservator shall account to  
29 the court or to the formerly protected individual or that

1 individual's successors. Subject to appeal or vacation within the  
2 time permitted, an order, after notice and hearing, allowing an  
3 intermediate account of a conservator adjudicates as to liabilities  
4 concerning the matters considered in connection with the accounts,  
5 and an order, after notice and hearing, allowing a final account  
6 adjudicates as to all previously unsettled liabilities of the  
7 conservator to the protected individual or the protected  
8 individual's successors relating to the conservatorship. In  
9 connection with any account, the court may require a conservator to  
10 submit to a physical check of the estate to be made in any manner  
11 the court specifies.

12 (3) If the conservator has disposed of or sold any of the  
13 items, the conservator must describe on the account under  
14 subsection (1) how the conservator fulfilled the conservator's  
15 duties under section 5417(3).

16 (4) If the protected individual's estate includes any  
17 merchandise, funeral services, cemetery services, or prepaid  
18 contracts for which the protected individual or conservator is the  
19 contract buyer or contract beneficiary under the prepaid funeral  
20 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235, the  
21 conservator must file all of the following with the account:

22 (a) A copy of any prepaid contract under the prepaid funeral  
23 and cemetery sales act, 1986 PA 255, MCL 328.211 to 328.235.

24 (b) Proof that payments made under a prepaid contract are held  
25 in escrow or under a trust agreement in compliance with the prepaid  
26 funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to  
27 328.235.

28 (c) The most recent escrow statement issued concerning the  
29 prepaid contract.

1           (d) Proof of any assignments of life policies or annuity  
 2 contracts made to purchase merchandise, funeral services, or  
 3 cemetery services under the prepaid funeral and cemetery sales act,  
 4 1986 PA 255, MCL 328.211 to 328.235.

5           (5) ~~(2)~~—The conservator shall provide a copy of an account to  
 6 the protected individual if the individual can be located and is 14  
 7 years of age or older and to interested persons as specified in the  
 8 Michigan court rules.

9           (6) If the protected individual objects to an account, the  
 10 court must appoint a guardian ad litem to visit the protected  
 11 individual in the same manner as specified in section 5406. The  
 12 court must appoint legal counsel to represent the protected  
 13 individual if any of the following are met:

14           (a) The protected individual requests legal counsel.

15           (b) The guardian ad litem believes that appointment of legal  
 16 counsel is in the best interest of the protected individual.

17           (c) The court otherwise believes it is necessary to protect  
 18 the interest of the protected individual.

19           Enacting section 1. This amendatory act takes effect 180 days  
 20 after the date it is enacted into law.

21           Enacting section 2. This amendatory act does not take effect  
 22 unless all of the following bills of the 102nd Legislature are  
 23 enacted into law:

24           (a) Senate Bill No. \_\_\_\_ or House Bill No. 4909 (request no.  
 25 01149'23).

26           (b) Senate Bill No. \_\_\_\_ or House Bill No. 4911 (request no.  
 27 01151'23).

28           (c) Senate Bill No. \_\_\_\_ or House Bill No. 4912 (request no.  
 29 01152'23).



# **EXHIBIT 1E**

## **Guardianship, Conservatorship & End of Life Committee**

**HB 4911**

# HOUSE BILL NO. 4911

July 18, 2023, Introduced by Reps. Filler, Breen, Morse, Tsernoglou, Hope, McFall, Conlin, Young, Scott, Price, Paiz, Hood, Rogers, Fitzgerald, Borton, Rheingans, Kunse, Schmaltz, MacDonell, Wozniak, Andrews, Dievendorf, Steckloff, Coffia, Koleszar, Haadsma, Mentzer, McKinney, Byrnes, Farhat, Hoskins, Brabec, Liberati, Neeley, Edwards, Miller, Coleman, Wegela, Outman, Tyrone Carter, Snyder, Brixie, Wilson, Grant, Glanville, Churches, Aiyash, Whitsett, Morgan, Hill, Puri and Meerman and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5303, 5304, 5306, 5306a, 5312, and 5416 (MCL 700.5303, 700.5304, 700.5306, 700.5306a, 700.5312, and 700.5416), section 5303 as amended by 2017 PA 155, section 5306 as amended by 2019 PA 170, section 5306a as added by 2012 PA 173, and section 5312 as amended by 2000 PA 54.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 5303. (1) An individual in his or her own behalf, or any  
2 person interested in the individual's welfare, may petition for a  
3 finding of incapacity and appointment of a guardian. The petition

1 must contain specific facts about the individual's condition and  
 2 specific examples of the individual's recent conduct that  
 3 demonstrate the need for a guardian's appointment.

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

12 (3) ~~Upon~~ **On** the filing of a petition under subsection (1), the  
 13 court shall set a date for **initial** hearing. ~~on the issue of~~  
 14 ~~incapacity.~~ Unless the allegedly incapacitated individual has legal  
 15 counsel of his or her own choice, the court shall appoint a  
 16 guardian ad litem ~~to represent the person in the proceeding.~~ **for the**  
 17 **initial hearing. The court may enter a final order on the petition**  
 18 **at the initial hearing if the court does not set a trial date under**  
 19 **subsection (4).**

20 (4) At the initial hearing under subsection (3), the court  
 21 shall set a trial date at least 7 days after the initial hearing  
 22 for the petition under subsection (1) if any of the following  
 23 apply:

24 (a) The guardian ad litem requests that the proceeding be set  
 25 for trial.

26 (b) The allegedly incapacitated individual or his or her legal  
 27 counsel requests the matter be set for trial.

28 (c) Any reason as justice requires.

29 (5) If the court sets a trial date at the initial hearing

1 under subsection (4), the court shall do both of the following:

2 (a) Enter a scheduling order to the extent necessary.

3 (b) Enter an order that provides, to the extent practicable,  
4 for the attendance of the allegedly incapacitated individual at the  
5 trial if the allegedly incapacitated individual wishes to attend.  
6 An order entered under this subdivision may order any interested  
7 person over whom the court has jurisdiction to facilitate  
8 attendance or move the hearing site under section 5304.

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

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

29 (3) A report prepared under this section ~~shall~~**must** contain

1 all of the following:

2 (a) A detailed description of the individual's ~~physical or~~  
3 ~~psychological infirmities.~~ **cognitive and functional abilities and**  
4 **limitations.**

5 (b) An explanation of how and to what extent ~~each infirmity~~  
6 ~~interferes with the individual's ability to receive or evaluate~~  
7 ~~information in making decisions.~~ **the individual is able to receive,**  
8 **understand, participate in, and evaluate information in making**  
9 **decisions.**

10 (c) ~~A~~ **If the report is being completed by a physician or**  
11 **mental health professional, a** listing of all medications the  
12 individual is receiving, the dosage of each medication, and a  
13 description of the effects each medication has ~~upon~~ **on** the  
14 individual's behavior.

15 (d) ~~A~~ **If the report is being completed by a physician or**  
16 **mental health professional, a** prognosis for improvement in the  
17 individual's condition, **including whether it is a permanent or**  
18 **temporary condition,** and a recommendation for the most appropriate  
19 rehabilitation plan.

20 (e) The signatures **and printed names** of all individuals who  
21 performed the evaluations, ~~upon which the report is based.~~ **where**  
22 **they are employed, the date of examination on which the report is**  
23 **based, the length of time they have known the individual, and the**  
24 **length of time they met with the individual.**

25 (f) **Whether the individual has the capacity to assign or**  
26 **delegate responsibilities to ensure his or her well-being.**

27 (g) **Whether the individual has executed a document directing**  
28 **care or naming an agent to act on his or her behalf, including, but**  
29 **not limited to, a power of attorney, patient advocate designation,**

1 or do-not-resuscitate order.

2 (h) If the report is being completed by a visitor, it must  
 3 also include, at a minimum, an assessment of the existence of  
 4 current formal and informal supports, the ability of supportive  
 5 services and benefits to meet any unmet needs, the identification  
 6 of any existing concerns regarding the individual's well-being, and  
 7 the individual's ability to address those existing concerns.

8 (4) If the court finds that the report prepared under this  
 9 section does not substantially comply with the requirements of this  
 10 section, the court shall not consider the evaluation.

11 (5) ~~(4)~~—The individual alleged to be incapacitated is entitled  
 12 to be present at the hearing in person, and to see or hear all  
 13 evidence bearing ~~upon~~ on the individual's condition. If the  
 14 individual wishes to be present at the hearing, all practical steps  
 15 shall ~~must~~ be taken to ensure his or her presence, including, if  
 16 necessary, moving the hearing site.

17 (6) ~~(5)~~—The individual **alleged to be incapacitated** is entitled  
 18 to be represented by legal counsel, to present evidence, to cross-  
 19 examine witnesses, including the court-appointed physician or  
 20 mental health professional and the visitor, and to trial by jury.

21 (7) ~~(6)~~—The issue of incapacity may be determined at a closed  
 22 hearing without a jury if requested by the individual alleged to be  
 23 incapacitated or that individual's legal counsel.

24 Sec. 5306. (1) The court may appoint a guardian if the court  
 25 finds by clear and convincing evidence both that the individual for  
 26 whom a guardian is sought is an incapacitated individual and that  
 27 the appointment is necessary as a means of providing continuing  
 28 care and supervision of the incapacitated individual, with each  
 29 finding supported separately on the record. ~~Alternately, the court~~

1 ~~may dismiss the proceeding or enter another appropriate order.~~

2 (2) The court shall dismiss the proceeding under subsection  
3 (1) if the court cannot be shown both of the following by clear and  
4 convincing evidence:

5 (a) That the individual for whom a guardian is sought is an  
6 incapacitated individual.

7 (b) That the appointment is necessary as a means of providing  
8 continuing care and supervision of the individual.

9 (3) At any time during the proceedings under subsection (1),  
10 the court may stay the guardianship proceedings for a reasonable  
11 period of time, based on the needs of the individual, to allow the  
12 individual the opportunity to explore the alternatives to  
13 appointment of a guardian. If the individual properly names a  
14 patient advocate under a patient advocate designation, an attorney  
15 in fact under a power of attorney, or a representative payee under  
16 a governmental benefit during the stay under this subsection and  
17 provides evidence of naming the patient advocate, attorney in fact,  
18 or representative payee to the court, the court may dismiss the  
19 petition with or without a hearing. This subsection does not  
20 prevent the court from ordering a temporary guardianship under  
21 section 5312a if the temporary guardianship is limited in scope and  
22 the court explicitly finds that the individual has the capacity to  
23 execute a power of attorney, patient advocate designation, or  
24 designate a representative payee.

25 (4) ~~(2)~~—The court shall grant a guardian only those powers and  
26 only for that period of time as is necessary to provide for the  
27 demonstrated need of the incapacitated individual. The court shall  
28 design the guardianship to encourage the development of maximum  
29 self-reliance and independence in the individual. If the court is

1 aware that an individual has executed a patient advocate  
 2 designation under section 5506, the court shall not grant a  
 3 guardian any of the same powers that are held by the patient  
 4 advocate. A court order establishing a guardianship shall specify  
 5 any limitations on the guardian's powers and any time limits on the  
 6 guardianship.

7 (5) ~~(3)~~—If the court finds by clear and convincing evidence  
 8 that an individual is incapacitated and lacks the capacity to do  
 9 some, but not all, of the tasks necessary to care for himself or  
 10 herself, the court may appoint a limited guardian to provide  
 11 guardianship services to the individual, but the court shall not  
 12 appoint a full guardian.

13 (6) ~~(4)~~—If the court finds by clear and convincing evidence  
 14 that the individual is incapacitated and is totally without  
 15 capacity to care for himself or herself, the court shall specify  
 16 that finding of fact in an order and may appoint a full guardian.

17 (7) ~~(5)~~—If an individual executed a patient advocate  
 18 designation under section 5506 before the time the court determines  
 19 that he or she became a legally incapacitated individual, a  
 20 guardian does not have and shall not exercise the power or duty of  
 21 making medical or mental health treatment decisions that the  
 22 patient advocate is designated to make. If, however, a petition for  
 23 guardianship or for modification under section 5310 alleges and the  
 24 court finds that the patient advocate designation was not executed  
 25 in compliance with section 5506, that the patient advocate is not  
 26 complying with the terms of the designation or with the applicable  
 27 provisions of sections 5506 to 5515, or that the patient advocate  
 28 is not acting consistent with the ward's best interests, the court  
 29 may modify the guardianship's terms to grant those powers to the



1 guardian.

2 (8) ~~(6)~~—If the court finds by clear and convincing evidence  
3 that the individual is incapacitated, that the person that has the  
4 care and custody of the incapacitated individual denied another  
5 person access to the incapacitated individual, and that the  
6 incapacitated individual desires contact with the other person or  
7 that contact with the other person is in the incapacitated  
8 individual's best interest, the court may appoint a limited  
9 guardian to supervise access with the other person.

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

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

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

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

22 (d) To have legal counsel of his or her own choice represent  
23 him or her on ~~the~~ **either of the following:**

24 (i) **The** petition to appoint a guardian, as provided in sections  
25 5303, 5304, and 5305.

26 (ii) **If applicable, a professional guardian's petition to**  
27 **permanently remove the individual from the individual's permanent**  
28 **residence, as provided in section 5314a.**

29 (e) If he or she is not represented by legal counsel, to the

1 appointment of a guardian ad litem, ~~to represent the individual on~~  
2 ~~the petition to appoint a guardian,~~ as provided in section 5303.

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

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

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

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

15 (j) To a trial by jury on the petition to appoint a guardian,  
16 as provided in section 5304.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (x) To the same rights on a petition for modification or  
 2 termination of the guardianship including the appointment of a  
 3 visitor as apply to a petition for appointment of a guardian, as  
 4 provided in section 5310.

5 (y) To personal notice of a petition for appointment or  
 6 removal of a guardian, as provided in section 5311.

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

10 (aa) To choose the person who will serve as guardian, if the  
 11 chosen person is suitable and willing to serve, as provided in  
 12 section 5313.

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

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

18 ~~To have the guardian notify the court within 14 days of a~~  
 19 ~~change in the individual's residence, as provided in section 5314.~~  
 20 **If the guardian is not a professional guardian, to have the**  
 21 **guardian notify the court within 14 days after a change in the**  
 22 **individual's permanent residence, as provided in section 5314a.**

23 **(ee) If the guardian is a professional guardian, to have the**  
 24 **court consider a separate petition, as provided in section 5314a,**  
 25 **if a professional guardian seeks to move the individual to a new**  
 26 **permanent residence.**

27 **(ff) ~~(ee)~~**To have the guardian secure services to restore the  
 28 individual to the best possible state of mental and physical well-  
 29 being so that the individual can return to self-management at the

1 earliest possible time, as provided in section 5314.

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

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

15 Sec. 5312. ~~(1) If an individual does not have a guardian, an~~  
16 ~~emergency exists, and no other person appears to have authority to~~  
17 ~~act in the circumstances, the court shall provide notice to the~~  
18 ~~individual alleged to be incapacitated and shall hold a hearing.~~  
19 ~~Upon a showing that the individual is an incapacitated individual,~~  
20 ~~the court may exercise the power of a guardian, or appoint a~~  
21 ~~temporary guardian with only the powers and for the period of time~~  
22 ~~as ordered by the court. A hearing with notice as provided in~~  
23 ~~section 5311 shall be held within 28 days after the court has acted~~  
24 ~~under this subsection.~~

25 ~~(2) If an appointed guardian is not effectively performing the~~  
26 ~~guardian's duties and the court further finds that the legally~~  
27 ~~incapacitated individual's welfare requires immediate action, the~~  
28 ~~court may appoint, with or without notice, a temporary guardian for~~  
29 ~~the legally incapacitated individual for a specified period not to~~

1 ~~exceed 6 months.~~

2 ~~(3) A temporary guardian is entitled to the care and custody~~  
 3 ~~of the ward, and the authority of a permanent guardian previously~~  
 4 ~~appointed by the court is suspended as long as a temporary guardian~~  
 5 ~~has authority. A temporary guardian may be removed at any time. A~~  
 6 ~~temporary guardian shall make reports as the court requires. In~~  
 7 ~~other respects, the provisions of this act concerning guardians~~  
 8 ~~apply to temporary guardians.~~

9 (1) An interested person may file a petition to appoint an  
 10 emergency guardian for an allegedly incapacitated individual under  
 11 this subsection. If a petition is filed under this subsection, the  
 12 petitioner shall give notice, except as otherwise provided in  
 13 subsection (2), as provided by section 5311, and the court shall  
 14 appoint a guardian ad litem under section 5305. The court shall  
 15 conduct a hearing on a petition under this subsection as soon as  
 16 possible and not later than 7 days after the court receives the  
 17 petition. Except as otherwise provided in subsection (2), following  
 18 the hearing under this subsection, the court may appoint an  
 19 emergency guardian if the court finds by a preponderance of the  
 20 evidence that all of the following apply:

21 (a) An emergency exists that is likely to result in  
 22 substantial harm to the allegedly incapacitated individual's  
 23 physical health, safety, or welfare.

24 (b) No other person appears to have authority to act in the  
 25 circumstances.

26 (c) There is a basis that both the individual is an  
 27 incapacitated individual and appointment of an emergency guardian  
 28 is necessary as a means of providing continuing care and  
 29 supervision of the individual.

1           (2) On the filing of a petition to appoint an emergency  
2 guardian under subsection (1), the court may appoint an emergency  
3 guardian for an allegedly incapacitated individual without notice  
4 to the allegedly incapacitated individual only if the court  
5 determines from an affidavit showing, by clear and convincing  
6 evidence, that all of the following apply:

7           (a) An emergency exists that is likely to result in imminent  
8 and substantial harm to the allegedly incapacitated individual's  
9 physical health, safety, or welfare.

10           (b) No other person appears to have authority to act in the  
11 circumstances.

12           (c) There is a basis that both the individual is an  
13 incapacitated individual and appointment of an emergency guardian  
14 is necessary as a means of providing continuing care and  
15 supervision of the individual.

16           (3) If the court appoints an emergency guardian under  
17 subsection (2), the court shall do all of the following:

18           (a) Appoint a guardian ad litem for the allegedly  
19 incapacitated individual under section 5305.

20           (b) Within 48 hours after the appointment of an emergency  
21 guardian under this subsection, order the petitioner to give notice  
22 by personal service of the appointment to the allegedly  
23 incapacitated individual and service as required by court rule to  
24 all interested persons.

25           (c) Within 7 days after the appointment of an emergency  
26 guardian under this subsection, hold a hearing on whether the  
27 conditions for the appointment of the emergency guardian exist.

28           (4) If the court finds conditions exist for the appointment of  
29 the emergency guardian at a hearing under this section, and the

1 individual wishes to contest the appointment, the court must set a  
2 date for a hearing and enter an order consistent with section 5306.

3 (5) An order appointing an emergency guardian under this  
4 section expires 28 days after the appointment. However, the court  
5 may extend an order appointing an emergency guardian under this  
6 section once for an additional 28 days if the court finds by a  
7 preponderance of the evidence, upon an affidavit by the appointed  
8 emergency guardian or following a hearing set at the discretion of  
9 the court, that the conditions that led to the appointment of the  
10 emergency guardian still exist.

11 (6) An emergency guardian may exercise only the powers  
12 specified by the court.

13 (7) The court may remove an emergency guardian at any time.

14 (8) An appointment of an emergency guardian under this section  
15 is not a determination that a basis exists for an appointment of a  
16 guardian under section 5306(1).

17 Sec. 5416. (1) In relation to powers conferred by this part or  
18 implicit in the title acquired by virtue of the proceeding, a  
19 conservator shall act as a fiduciary and observe the standard of  
20 care applicable to a trustee.

21 (2) A conservator for an individual that is subject to a  
22 conservatorship for a reason other than minority has the duty to  
23 take all steps within the scope of the conservator's authority to  
24 ensure the individual attends any hearing concerning the  
25 individual's conservatorship if the individual wishes to attend the  
26 hearing in a manner as provided in section 5406.

27 Enacting section 1. This amendatory act takes effect 180 days  
28 after the date it is enacted into law.

29 Enacting section 2. This amendatory act does not take effect



1 unless all of the following bills of the 102nd Legislature are  
2 enacted into law:

3 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 4909 (request no.  
4 01149'23).

5 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 4910 (request no.  
6 01150'23).

7 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 4912 (request no.  
8 01152'23).

# **EXHIBIT 1F**

## **Guardianship, Conservatorship & End of Life Committee**

**HB 4912**

# HOUSE BILL NO. 4912

July 18, 2023, Introduced by Reps. Borton, Breen, Tsernoglou, Morse, Hope, McFall, Conlin, Young, Scott, Price, Paiz, Hood, Rogers, Filler, Rheingans, Kunse, Schmaltz, Fitzgerald, MacDonell, Wozniak, Andrews, Dievendorf, Steckloff, Coffia, Koleszar, Haadsma, Johnsen, Farhat, Mentzer, McKinney, Byrnes, Hoskins, Brabec, Liberati, O'Neal, Neeley, Edwards, Miller, Wegela, Outman, Tyrone Carter, Snyder, Brixie, Coleman, Wilson, Grant, Glanville, Churches, Aiyash, Whitsett, Morgan, Hill, Puri and Meerman and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending sections 5414 and 5415 (MCL 700.5414 and 700.5415) and  
by adding section 5312a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           **Sec. 5312a. (1) The court may appoint a temporary guardian**  
2 **under section 5301a or this section.**

3           **(2) If a guardian has not been appointed or an appointed**  
4 **guardian is not effectively performing the guardian's duties and**  
5 **the court further finds that the alleged incapacitated individual**  
6 **or ward's welfare requires immediate action, the court may appoint**

1 a temporary guardian under this section for a specified period not  
 2 to exceed 6 months. The court shall not appoint a temporary  
 3 guardian under this subsection unless either of the following  
 4 conditions is met:

5 (a) Oral or written notice of the hearing was provided to all  
 6 interested persons.

7 (b) If the petitioner has not provided notice of the hearing  
 8 to all interested persons, the petitioner submits a written  
 9 explanation to the court to detail the efforts, if any, that the  
 10 petitioner has made to provide notice and the reason why provided  
 11 notice should not be required.

12 (3) A temporary guardian is entitled to the care and custody  
 13 of the ward, and the authority of a permanent guardian previously  
 14 appointed by the court is suspended while a temporary guardian has  
 15 authority. A temporary guardian may be removed at any time. A  
 16 temporary guardian shall make reports as the court requires. In  
 17 other respects, the provisions of this act concerning guardians  
 18 apply to temporary guardians.

19 Sec. 5414. (1) The court may remove a conservator for good  
 20 cause, ~~upon~~ on notice and hearing, or accept a conservator's  
 21 resignation. ~~Upon~~ On the conservator's death, resignation, or  
 22 removal, the court may appoint another conservator. A conservator  
 23 ~~so~~ appointed **under this subsection** succeeds to the title and powers  
 24 of the predecessor.

25 (2) The protected individual or a person interested in the  
 26 protected individual's welfare may petition for an order removing  
 27 the conservator, appointing a successor conservator, modifying the  
 28 terms of the conservatorship, or terminating the conservatorship. A  
 29 request for this order under this subsection may be made by

1 informal letter to the court. A person who knowingly interferes  
 2 with transmission of a request described in this subsection to the  
 3 court is subject to a finding of contempt of court. A petition for  
 4 an order appointing a successor conservator under this subsection  
 5 is subject to the priority of appointment under section 5409.

6 Sec. 5415. (1) A person interested in the welfare of an  
 7 individual for whom a conservator is appointed may file a petition  
 8 in the appointing court for an order to do any of the following:

9 (a) Require bond or security or additional bond or security,  
 10 or reduce bond.

11 (b) Require an accounting for the administration of the trust.

12 (c) Direct distribution.

13 (d) Remove the conservator and appoint a temporary or  
 14 successor conservator.

15 (e) Grant other appropriate relief.

16 (2) A conservator may petition the appointing court for  
 17 instructions concerning fiduciary responsibility. ~~Upon~~ **On** notice  
 18 and hearing, the court may give appropriate instructions or make an  
 19 appropriate order.

20 **(3) A petition for an order appointing a successor conservator**  
 21 **under subsection (1) is subject to the priority of appointment**  
 22 **under section 5409.**

23 Enacting section 1. This amendatory act takes effect 180 days  
 24 after the date it is enacted into law.

25 Enacting section 2. This amendatory act does not take effect  
 26 unless all of the following bills of the 102nd Legislature are  
 27 enacted into law:

28 (a) Senate Bill No. \_\_\_\_ or House Bill No. 4909 (request no.  
 29 01149'23).

1 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 4910 (request no.  
2 01150'23).

3 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 4911 (request no.  
4 01151'23).

# **EXHIBIT 2A**

## **Nonbanking Entity Trust Powers Ad Hoc Committee**

### **Proposed Michigan Trust Company Act**

AN ACT to authorize small commercial trust companies, family trust companies and foreign family trust companies to exercise trust powers and otherwise act as fiduciaries for or on behalf of clients in this state.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

**Part 1**  
**General Provisions**

**[487.16101 Short title]**

**SECTION 101. SHORT TITLE.** This act shall be known and may be cited as the “trust company act”.

**SECTION 102. PURPOSES OF ACT.** The purposes of this act include all of the following:

(a) To authorize and promote the organization of small commercial trust companies and family trust companies in this state.

(b) To authorize small commercial trust companies, family trust companies and foreign family trust companies to exercise trust powers and otherwise act as fiduciaries for or on behalf of clients in this state.

(c) To regulate licensed trust companies and foreign family trust companies that conduct business in this state.

(d) To safeguard the members of the public who deal with small commercial trust companies acting in a fiduciary capacity.

**SECTION. 103. DEFINITIONS.** As used in this act:

(a) “Associated person or relation” means, in relation to a family trust company, any of the following:

(i) An entity 25% of the equity interests in which are owned, directly or indirectly, by the company, a family client, a family member or an extended family member.



(ii) An entity that is under common control with the company or is directly or indirectly controlled by the company, a family client, a family member or an extended family member.

(iii) A trust or estate the assets of which are under common control with the company or are directly or indirectly controlled by the company, a family client, a family member or an extended family member.

(iv) The trustee or trust director referred to in subdivision (iii).

(v) The personal representative, executor, administrator, or special such fiduciary of an estate referred to in subdivision (iii).

(b) “Bank” means a bank, foreign bank or out-of-state bank as defined in sections 1201 and 1202 of the banking code of 1999, MCL 487.11201, 487.11202.

(c) “Banking code of 1999” means the banking code of 1999, 1999 PA 276, MCL 487.1110 to MCL 487.15105.

(d) “Branch office” means a trust’s company physical place of business other than its principal office where 1 or more of the company’s directors, managers, officers, committee members, employees or other personnel, in their capacity as such, conduct company business on a non-temporary basis. The physical place of business of an associated person or relation is not a branch office even if 1 or more of the following applies:

(i) The affiliate provides services to the affiliated family trust company.

(ii) An individual who is a director, manager, officer, committee member, agent or employee of the affiliate is also acting as a director, manager, officer, committee member, agent or employee of the affiliated company.

(e) “Client” means a person for or on behalf of whom a trust company or family trust company affiliate exercises fiduciary powers.

(f) “Client account” means a trust, estate, agency, partnership or other relationship in which a trust company is acting as a fiduciary that is distinguishable from all other relationships in which the company is acting as a fiduciary. A single client may have an interest in two or more client accounts and a trust company may hold multiple offices relating to the same client account. Two fiduciary relationships that are treated as separate for federal income tax purposes are distinct client accounts. All fiduciary relationships established solely for 1 client who is an individual or the client and his or her spouse shall be treated as 1 client account. In all other circumstances, whether 1 fiduciary relationship is distinguishable from another shall be determined based on all relevant factors, including the following:

(i) Terms of the governing instruments or governance documents, if any.

(ii) Attendant tax attributes.

(iii) The property that is subject to the relationship or relationships.

(iv) The legal form of the relationship or relationships.

(v) Identity of persons holding legal title to or beneficial interests in the property that is subject to the relationship or relationships and the extent and nature of those interests.

(g) “Client instrument” means a governing instrument or governance document to which a trust company becomes subject in connection with services the company performs for or on behalf of a client of the company.

(h) “Charitable organization” means a non-profit organization, charitable foundation, charitable trust for which 1 or more family clients, other charitable organizations, or non-profit organizations are the only current permissible distributees of trust income or principal, or any other

organization created for any purpose described in section 501(c)(3) of the internal revenue code, 26 USC 501.

(i) "Commissioner" means the director of the department.

(j) "Committee member" means a person acting as a member of a committee formed pursuant to section 407.

(k) "Confidential information" means 1 or more of the following:

(i) Any information required or permitted to be disclosed pursuant to the terms of a governing instrument or section 7814 of the estates and protected individuals code, MCL 700.7814.

(ii) The name and terms of any governing instrument, including any trust instrument, will, amendment of trust, or codicil.

(iii) State and federal tax returns.

(iv) Assignments of ownership and other transfer documents.

(v) Powers of attorney and beneficiary designation forms.

(vi) The name of any settlor, decedent, ward, protected individual or beneficiary of any family client.

(vii) Any information relating to the ownership, management, assets, income or business of a family trust company and any associated person or relation not generally known by the public, including financial statements, balance sheets, income statements, financial projections, contracts, governance documents, asset disclosures, ledgers, employee or officer information, committee or subcommittee information, internal market analyses and forecasts, sales and marketing research, commercial and strategic planning, pricing and customer information.

(viii) Any information required to be reported to or filed with the department.

(ix) Any findings of the department through any examination or investigation.

(l) “Control” means both of the following:

(i) In relation to an entity, the power to exercise a controlling influence over the management or policies of an entity, unless such power is solely the result of being an officer of such entity.

(ii) In relation to assets, the power to purchase, sell, encumber, transfer or otherwise exercise discretion over the asset.

(m) “Current client” means a client of a small commercial trust company who is 1 or more of the following:

(i) In relation to a trust for which the company is acting as a trustee or trust director, a trust beneficiary that is, as of the time in question, a distributee or permissible distributee of trust income or principal.

(ii) In relation to a decedent’s estate for which the company is acting as a personal representative, a person who has a right to receive more than five percent of the value of the estate as the company may determine from time to time.

(iii) A ward or protected individual for whom the trust company is acting as a guardian or conservator.

(iv) A principal for whom the company is acting as an agent.

(v) A partner of a partnership for which the company is acting as a general partner.

(vi) A shareholder of a corporation for which the company is acting as a director.

(vii) As to all other relationships in which the company is acting as a fiduciary, a person who is currently eligible to receive an economic benefit from the property subject to that relationship as a result of that relationship.

(viii) A person who would otherwise become a current client as a result of an interest in a decedent's estate or revocable trust following the death of someone is not a current client unless the person is a client two years after the death in question, and in that event, the person shall be counted as a current client beginning on the second anniversary of that death.

(n) "Degrees of affinity" means degrees of relation by marriage as measured in the civil law system of determining degrees of relation.

(o) "Degrees of consanguinity" means degrees of blood-relationship as measured in the civil law system of determining degrees of relation.

(p) "Department" means the department of insurance and financial services.

(q) "Descendant" means that term as defined in section 1103 of the estates and protected individuals code, MCL 700.1103.

(r) "Designated family member" means an individual designated as provided in section 207 of this act.

(s) "Domestic trust company" means a trust company other than a foreign trust company that is authorized to exercise fiduciary powers for or on behalf of clients under this act.

(t) "Employee" means an individual other than a key employee who is or was employed by a specified person, on a fulltime basis, for a continuous period of not less than twelve months.

(u) "Entity" means a corporation, including a nonprofit corporation, limited liability company, partnership, or other non-natural legal person.

(v) "Estates and protected individuals code" means the estates and protected individuals code, 1998 PA 386 and 2009 PA 46, MCL 700.1101 to MCL 700.8206.

(w) "Executive officer" means a non-subordinate officer of an entity who may act for and bind that entity.

(x) “Extended family member” means all individuals who are related to the designated family member within ten degrees of affinity, including all of his or her lineal descendants without regard to adoption.

(y) “Family client” means an existing, prospective or former client described in subdivision (i) or (ii):

(i) With respect to a family trust company or family trust company affiliate that is an investment adviser that is not registered under the uniform securities act, MCL 451.2105 to 451.2703, or the investment advisors act of 1940, 15 U.S.C. 80b-1 to 80b-21, and that is not licensed and not applying for a license under this act, a client who is any of the following:

(A) A family member, former family member or other person who is a family client as defined in CFR § 275.202(a)(11)(G)-1(d)(4).

(B) For 1 year after a transfer of legal title resulting from the death of a family member or key employee or other involuntary transfer from a family member or key employee, a person who becomes a client as a result of the death or other involuntary transfer.

(C) Any person who was a client of the family trust company or family trust company affiliate before January 1, 2010, and who is described in subsections (1) to (3) of CFR § 275.202(a)(11)(G)-1(c).

(ii) With respect to any family trust company or family trust company affiliate not described in subparagraph (i)(A) to (i)(C), a client who is any of the following:

(A) A person described in subparagraph (i).

(B) An extended family member.

(C) A former extended family member.

(D) A current or former employee, officer, director or manager of the family trust company or any family trust company affiliate, and his or her children, stepchildren and spouse.

(E) A trustee or trust director of a trust having a settlor or beneficiary who is a person described in subparagraphs (ii)(A) to (ii)(D).

(F) An individual who is a beneficiary of a trust having a settlor who is described in subparagraphs (ii)(A) to (ii)(D).

(G) An individual who is a devisee under the will of a decedent who is described in subparagraphs (ii)(A) to (ii)(D).

(H) A descendant within five degrees of consanguinity of a spouse or former spouse of an individual described in subparagraphs (ii)(F) or (ii)(G).

(I) The estate of an individual described in subparagraphs (ii)(A) to (ii)(D), the guardian or conservator of that estate, and the individual's children, stepchildren and spouse.

(J) A charitable organization created, controlled or funded by 1 or more of the persons described in subparagraphs (ii)(A) to (ii)(D), and each director, officer, trustee and manager of such charitable organization.

(K) An entity of which at least 10% of the equity interests (by vote, income or capital) are directly or indirectly owned by 1 or more of the persons described in subparagraphs (ii)(A) to (ii)(D).

(z) "Family member" means all of the following:

(i) The designated family member.

(ii) All lineal descendants of the designated family member who are within ten degrees of consanguinity.

(iii) Each stepchild and foster child of any individual described in subparagraph (i) or (ii) who, if adopted by that individual, would be a lineal descendant of the designated family member within ten degrees of consanguinity.

(iv) All individuals for whom a family member was appointed as guardian when that individual was a minor.

(v) The spouses of the individuals described in subparagraphs (i) to (iv).

(aa) “Family trust company” means a domestic trust company that does not exercise fiduciary powers for or on behalf of any person who is not a family client. A family trust company may be a licensed family trust company, an unlicensed family trust company or a multifamily trust company.

(bb) “Family trust company affiliate” means an entity to which all of the following apply in respect of a given family trust company:

(i) It is wholly owned by 1 or more clients of the company.

(ii) It is directly or indirectly controlled by either of the following:

(A) 1 or more individuals who are family members with respect to the company.

(B) 1 or more associated persons or relations who are family clients of the company that are described in CFR § 275.202(a)(11)(G)-1(d)(5).

(iii) It has no clients other than family clients of the company.

(iv) It does not hold itself out to the public as an investment adviser or small commercial trust company.

(cc) “Fiduciary” includes a bailee, custodian, escrow agent, receiver, personal representative, funeral representative, guardian, conservator, trustee, trust director, plenary



guardian, partial guardian, successor fiduciary, agent under a power of attorney, patient advocate, receiver, conservator, liquidating agent, and custodian under Michigan uniform transfers to minors act, 1998 PA 433.

(dd) “Fiduciary powers” means in addition to the power to conduct trust business as provided in section 4401 of the banking code of 1999, MCL 487.14401, all powers that are exercisable by a fiduciary in a fiduciary capacity.

(ee) “Foreign family trust company” means a foreign trust company that, under the law that authorizes it to exercise fiduciary powers for or on behalf of clients, cannot exercise fiduciary powers for clients who are not related to each other within the degrees of consanguinity and affinity specified by that law.

(ff) “Foreign trust company” means a trust company that has its principal office in a state other than this state and is authorized to exercise fiduciary powers for or on behalf of clients by the laws of the state in which the company has its principal office or the laws of another state other than this state.

(gg) “Former extended family member” means an individual who was an extended family member but is no longer an extended family member due to a divorce or other similar event.

(hh) “Former family member” means a spouse or stepchild that was a family member but is no longer a family member due to a divorce or other similar event.

(ii) “Governance document” includes the articles of incorporation, articles of organization, bylaws, operating agreement, partnership agreement, shareholders agreement, member agreement, buy-sell agreement and each other document governing the rights, duties, privileges and powers of an entity and its owners, directors, managers, officers or other personnel.

(jj) “Governing instrument” means that term as defined in section 1104 of the estates and protected individuals code, MCL 700.1104.

(kk) “Investment advice” means advisory services that may only be provided to members of the general public in this state by a person who is registered as an investment adviser in this state or by the Securities and Exchange Commission.

(ll) “Investment adviser” means any person described in subsection 102a(15) of the uniform securities Act, MCL 451.2102a(e), or subsection 202(a)(11) of the investment advisors act of 1940, 15 U.S.C. 80b-2(a)(11).

(mm) “Key employee” means an individual who is any of the following with respect to a family trust company or family trust company affiliate and a spouse of such individual if the spouse holds a joint, community property, or similar shared ownership interest with the individual:

(i) The president, any vice president in charge of a principal business unit, division or function (such as administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions.

(ii) A director, trustee, general partner, or person serving in a similar capacity.

(iii) Any employee other than an employee performing solely clerical, secretarial, or administrative functions with regard to the company or affiliate who in connection with his or her regular functions or duties, participates in the investment activities of the company or affiliate, provided that such employee has been performing such functions and duties for or on behalf of the company or affiliate, or substantially similar functions or duties for or on behalf of another person, for at least 12 months.

(nn) “Licensed family trust company” means a family trust company that has received a license pursuant to section 302.

(oo) “Licensed trust company” means a small commercial trust company or licensed family trust company.

(pp) “Manager” means, in relation to a limited liability company that is not managed by its member or members, a person or persons designated to manage the company pursuant to a provision in the controlling governance document stating that the business is to be managed by or under the authority of managers, and, in relation to all other limited liability companies, the member or members of the company or, if the authority to manage the business and affairs of the company is limited to a designated member or members pursuant to a provision in the controlling governance document, the designated member or members.

(qq) “Multifamily trust company” means a family trust company formed under this act that has more than 1 designated family member.

(rr) “Person” means an individual or an entity.

(ss) “Settlor” means that term as defined in section 7103 of the estates and protected individuals code, MCL 700.7103, except that if a trustee or trust director of a given trust creates a second trust by the exercise of either a fiduciary power of appointment or a fiduciary administrative power like that described in 7820a of the estates and protected individuals code, MCL 700.7820a, the settlor or settlors of the first trust are treated as the settlor(s) of the second trust.

(tt) “Small commercial trust company” means a domestic trust company other than a family trust company that satisfies all of the requirements in section 204(1) of this act.

(uu) “Trust company” means an entity that is not a bank and is authorized to exercise fiduciary powers under this act or the laws of another state, including a family trust company, small commercial trust company and foreign trust company.

(vv) “Unlicensed family trust company” means a family trust company other than a licensed family trust company.

**SECTION 104. ENTITY ACTING AS TRUST COMPANY.** With respect to any particular kind of trust company, for an entity to “act as” that kind of trust company is for the entity to exercise fiduciary powers for or on behalf of clients or otherwise exercise the rights, privileges and powers of that kind of trust company.

**SECTION 105. SCOPE.** This act applies to all domestic trust companies and all foreign family trust companies acting as fiduciaries in this state. This act does not apply to a bank.

**SECTION 106. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW.** General principles of common law and equity supplement this act only to the extent that they are not inconsistent with the provisions of this act.

**SECTION 107. EFFECTIVE DATE.** This act applies to all foreign trust companies acting in this state and to all domestic trust companies formed on or after \_\_\_\_\_.

**Part 2**  
**Formation of Trust Companies**

**SECTION 201. CHOICE OF FORM.** A domestic trust company must be formed as either a domestic or foreign limited liability company or corporation.

**SECTION 202. PRINCIPAL OFFICE.** Each licensed trust company shall maintain its principal office in this state.

**SECTION 203. GENERAL REQUIREMENTS APPLICABLE TO TRUST COMPANIES.** An entity is eligible to act as a domestic trust company only if 1 of the following applies:

(a) The entity has a bank account with 1 or more of the following:

(i) A bank that is organized or reorganized under the laws of this state.

(ii) A bank having its principal office or a branch office in this state that is organized under the laws of another state, the District of Columbia, or a territory or protectorate of the United States whose principal office is located in a state other than this state, in the District of Columbia, or in a territory or protectorate of the United States, and whose deposits are insured by the Federal Deposit Insurance Corporation.

(iii) A national banking association chartered by the federal government under the national bank act, 12 USC 21 to 216d, that has its principal office, or a branch office located in this state.

(b) The entity maintains at its principal office original or true copies in physical or electronic form of all of its material business and financial records, including financial statements, bank statements, written consents and meeting minutes.

**SECTION 204. SPECIAL REQUIREMENTS FOR ARTICLES OF INCORPORATION OR ARTICLES OF ORGANIZATION.**

(1) An entity is eligible to act as small commercial trust company only if its articles of incorporation or articles of organization prohibit the entity from doing all of the following:

(a) Acting for more than 250 client accounts at any given time.

(b) Maintaining custody of intangible assets for any current client.

(2) An entity is eligible to act as a family trust company only if its articles of incorporation, articles of organization, bylaws or operating agreement prohibit the entity from exercising fiduciary powers for or on behalf of clients who are not family clients.