



## PROBATE & ESTATE PLANNING SECTION

Agendas and Attachments for:

Meeting of the Committee on Special Projects (CSP);

Meeting of the Council of the Probate and Estate Planning Section

Friday, April 12, 2019  
9:00 a.m.  
University Club of MSU  
3435 Forest Road  
Lansing, Michigan 48910

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

Meeting of the Section's Committee on Special Projects and  
Meeting of the Council of the Probate and Estate Planning Section

April 12, 2019  
9:00 a.m.

University Club of MSU  
3435 Forest Road  
Lansing, Michigan 48910

The meeting of the Section's **Committee on Special Projects (CSP)** meeting will begin at 9:00 am and will end at approximately 10:15 am. The meeting of the **Council of the Probate and Estate Planning Section** will begin at approximately 10:30 am. If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

David L.J.M. Skidmore, Secretary  
Warner Norcross + Judd LLP  
111 Lyon Street NW, Suite 900  
Grand Rapids, Michigan 49503  
Voice: 616-752-2491  
Fax: 616-222-2491  
Email: [dskidmore@wnj.com](mailto:dskidmore@wnj.com)

STATE BAR OF MICHIGAN  
PROBATE AND ESTATE PLANNING SECTION COUNCIL  
**Council and CSP Meeting Schedule for 2018-2019**  
Friday, April 12, 2019, University Club, Lansing, Michigan\*\*  
Friday, June 14, 2019, University Club, Lansing, Michigan\*\*  
Friday, September 20, 2019, University Club, Lansing, Michigan\*\*

\*\*University Club, 3435 Forest Road, Lansing, Michigan 48909

Each meeting starts with the Committee on Special Projects at 9:00am, followed by the meeting of the Council of the Probate & Estate Planning Section.

**Call for materials**

***Due dates for Materials for Committee on Special Projects***

All materials are due on or before 5:00 p.m. of the date falling 9 days before the next CSP meeting. CSP materials are to be sent to Katie Lynwood, Chair of CSP (klynwood@bllhlaw.com)

***Schedule of due dates for CSP materials, by 5:00 p.m.:***

Wednesday, April 3, 2019 (for Friday, April 12, 2019 meeting)

Wednesday, June 5, 2019 (for Friday, June 14, 2019 meeting)

Wednesday, September 11, 2019 (for Friday, September 20, 2019 meeting)

***Due dates for Materials for Council Meeting***

All materials are due on or before 5:00 p.m. of the date falling 8 days before the next Council meeting. Council materials are to be sent to David Skidmore (dskidmore@wnj.com).

***Schedule of due dates for Council materials, by 5:00 p.m.:***

Thursday, April 4, 2019 (for Friday, April 12, 2019 meeting)

Thursday, June 6, 2019 (for Friday, June 14, 2019 meeting)

Thursday, September 12, 2019 (for Friday, September 20, 2019 meeting)

**Officers of the Council  
for 2018-2019 Term**

Office	Officer
Chairperson	Marguerite Munson Lentz
Chairperson Elect	Christopher A. Ballard
Vice Chairperson	David P. Lucas
Secretary	David L.J.M. Skidmore
Treasurer	Mark E. Kellogg

**Council Members  
for 2018-2019 Term**

Council Member	Year Elected to Current Term (partial, first or second full term)	Current Term Expires	Eligible after Current Term?
Anderton, James F.	2018 (1st term)	2020	Yes (2 terms)
Jaconette, Hon. Michael L.	2017 (2nd term)	2020	No
Lichterman, Michael G.	2017 (1st term)	2020	Yes
Malviya, Raj A.	2017 (2nd term)	2020	No
Olson, Kurt A.	2017 (1st term)	2020	Yes
Savage, Christine M.	2017 (1st term)	2020	Yes
Caldwell, Christopher J.	2018 (2nd term)	2021	No
Goetsch, Kathleen M.	2018 (2nd term)	2021	No
Hentkowski, Angela M.	2018 (1st term)	2021	Yes
Lynwood, Katie	2018 (2nd term)	2021	No
Mysliwicz, Melisa M. W.	2018 (1st term)	2021	Yes
Nusholtz, Neal	2018 (1st term)	2021	Yes
Labe, Robert C.	2016 (1st term)	2019	Yes (1 term)
Mayoras, Andrew W.	2018 (to fill Geoff Vernon's seat)	2019	Yes (2 terms)
Mills, Richard C.	2016 (1st full term)	2019	Yes (1 term)
New, Lorraine F.	2016 (2nd term)	2019	No
Piwowski, Nathan R.	2016 (1st term)	2019	Yes (1 term)
Syed, Nazneen H.	2016 (1st term)	2019	Yes (1 term)

**Ex Officio Members of the Council**

John E. Bos; Robert D. Brower, Jr.; Douglas G. Chalgian; George W. Gregory; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Brian V. Howe; Shaheen I. Imami; Stephen W. Jones; Robert B. Joslyn; James A. Kendall; Kenneth E. Konop; Nancy L. Little; James H. LoPrete; Richard C. Lowe; 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; James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack; Marlaine C. Teahan

**Probate and Estate Planning Section  
2018-2019 Plan of Work**

	<b>Section Initiatives</b>	<b>Respond to Others' Initiatives</b>	<b>Outreach to Section or Community</b>
<b>Fall 2018 priority</b>	Obtain passage of: \$ Omnibus EPIC \$ ART, SB 1056, 1057, 1058 \$ Certificate of Trust, HB 5362, 5398 \$ Modify Voidable Transfers Act to fix glitch \$ Divided and Directed Trustees act, HB 6129, 6130, 6131 \$ Uncapping bill, SB 540, HB 5546	\$ Respond if needed to HB 4751, 4969 \$ Respond re HB 4684, 4996 (visitation of isolated adults)	\$ State Bar Journal theme issue (Nov. 2018) \$ Consider initiatives for involving younger lawyers, increasing diversity. \$ Promote "Who Should I Trust" in October 2018? \$ Update information regarding members, committees, etc. on web site
<b>Spring 2019 priority</b>	\$ Lawyer drafter/beneficiary \$ TBE Trusts \$ Community Property Trusts \$ Premarital property act \$ Undisclosed trusts		\$ Annual Probate Institute (May/June 2019)
<b>Ongoing</b>	\$ SCAO meetings \$ Review of forms and court rules for changes needed by legislative changes	\$ State Bar 21 <sup>st</sup> Century Task Force \$ Modest Means Work Group \$ E-filing in courts	\$ Social events for members \$ Joint event with other bars like the taxation section or business law section? \$ Review brochures on web site. Need to be updated?
<b>Secondary priority</b>	\$ Review Uniform Fiduciary Income and Principal Act \$ No liability for trustee of ILIT (SB 644 stalled)		
<b>Future projects</b>	\$ Legislative fix for who does attorney represent when attorney represents fiduciary \$ Update supervision of charitable trusts act? \$ Revise nonprofit corporation act so charity can clearly act as trustee \$ Statutory authority for private trust companies.	\$ Electronic Wills	

(2019-04-12)

# 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**

**AGENDA**

Friday, April 12, 2019

East Lansing, Michigan

9:00 – 10:15 AM

**1. Nathan Piwowarski – Proposed Bills – 15 minutes**

See attached:

- Email/memo from Nathan Piwowarski
- SB 221
- HB 4260
- HB 4255
- HB 4254
- HB 4256
- HB 4257
- HB 4258
- HB 4259
- HB 4265

**2. Kathleen Goetsch – Safe Families for Children Act MCL 722.1551 et seq – 30 minutes**

See attached Memo from Josh Ard re: Safe Families for Children Act dated January 2019

**3. Andy Mayoras – Drafter/beneficiary Ad Hoc Committee – 30 minutes**

See attached:

- Memo from Andy Mayoras dated March 25, 2019
- “Clean” draft of statute
- “Redline” draft of statute



**1**

## Nathan Piwowarski

---

**From:** Nathan Piwowarski  
**Sent:** Friday, March 22, 2019 5:00 PM  
**To:** 'Becky Bechler'; 'Meg Lentz'  
**Subject:** RE: Potential Issues for Judiciary in April/May

I've perused the bills. My hot take:

- SB 221. My professional experience in this specific type of proceeding is so limited that I hesitate to chime in.
- HB 4260. This appears to be one of two linchpin bills in the elder exploitation package. Many of the other bills just address the effects (in terms of eligibility for employment at certain facilities) for one convicted of this offense.
  - The changes to subsection (1) expand the "vulnerable adult exploitation" offense to pertain to exploitation of a person who simply is an elder. While I have personal opinions about this, I don't believe that the Section has a compelling public policy interest concerning this element of the proposal.
  - The new subsection (9) creates a rebuttable presumption that a transfer of more than \$10K to a "nonrelative" is *presumptively* exploitive. **It is unclear who is a "nonrelative," which could result in inconsistent or overbroad enforcement.** I recently had to conduct a statutory survey of the term, "relative," and found different definitions in various statutory contexts, so this ambiguity cannot be easily resolved short of adding a definition for this section's particular purposes.
  - Subsection (13) would now require consecutive sentencing. While I have personal opinions regarding the criminal justice, corrections, and budgetary aspects of this decision, I don't believe that the Section has a dog in that fight.
- HB 4255. This is the second major piece of the package.
  - This bill creates a new set of criminal offenses for assaulting an elder or vulnerable adult. I have personal opinions about this (this seems akin to "hate crimes"), but I don't believe that the Section has a dog in this fight.
  - **We may have a concern associated with the way this bill may criminalize elder access disputes. In particular, look at page 2 line 12 and the top of page 3. I doubt that law enforcement is going to be enthused about all of the criminal referrals they're going to get for elder access disputes that are hard enough to resolve in the civil arena.**
- HB 4255. Nothing objectionable on its face, so long as we are comfortable with the definitions of the underlying criminal offenses.
- HB 4256. Nothing objectionable on its face, so long as we are comfortable with the definitions of the underlying criminal offenses.
- HB 4257. Nothing objectionable on its face, so long as we are comfortable with the definitions of the underlying criminal offenses.
- HB 4258. Nothing objectionable on its face, so long as we are comfortable with the definitions of the underlying criminal offenses.
- HB 4259. Nothing objectionable on its face, so long as we are comfortable with the definitions of the underlying criminal offenses.
- HB 4265 Nothing objectionable on its face, so long as we are comfortable with the definitions of the underlying criminal offenses.

**From:** Becky Bechler [mailto:bechler@paaonline.com]  
**Sent:** Thursday, March 21, 2019 10:11 AM  
**To:** Nathan Piwowarski <nathan@mwplegal.com>; 'Meg Lentz' <meglentz@gmail.com>  
**Subject:** Potential Issues for Judiciary in April/May



Nathan/Meg,

Attached is a package on elder abuse as well as Senate Bill 221 for your review. I believe both issues will be taken up in April/May in their respective chambers. Please let us know if you see any problems, especially with Senate Bill 221.

Thank you,

Becky

Becky Bechler  
**Public Affairs Associates, LLC**  
120 N. Washington Sq., Ste 1050  
Lansing, MI 48933  
517-371-3800 (office)  
517-371-3363 (fax)  
[bechler@paaonline.com](mailto:bechler@paaonline.com)

Confidentiality Caution

This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this transmission is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you receive this transmission in error, please notify us immediately by telephone and return the original message to us at the above address at our cost.

2

# SENATE BILL No. 221

March 14, 2019, Introduced by Senator LUCIDO and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 5207, 5208, and 5209 (MCL 700.5207, 700.5208, and 700.5209).

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

1           Sec. 5207. (1) The court may review a guardianship for a minor  
2 as it considers necessary and shall review a guardianship annually  
3 if the minor is under 6 years of age. In conducting the review  
4 **UNDER THIS SUBSECTION**, the court shall consider all of the

5 following factors:

6           (a) The parent's and guardian's compliance with either of the  
7 following, as applicable:

8           (i) A limited guardianship placement plan.

9           (ii) A court-structured plan under subsection (3) (b) (ii) (B) or  
10 section ~~5209(2)(b)(ii)~~.5209 (B) (ii) .

1 (b) Whether the guardian has adequately provided for the  
2 minor's welfare.

3 (c) The necessity of continuing the guardianship.

4 (d) The guardian's willingness and ability to continue to  
5 provide for the minor's welfare.

6 (e) The effect ~~upon~~ **ON** the minor's welfare if the guardianship  
7 is continued.

8 (f) Any other factor that the court considers relevant to the  
9 minor's welfare.

10 (2) The court may order the ~~family independence agency~~  
11 **DEPARTMENT OF HEALTH AND HUMAN SERVICES** or a court employee or  
12 agent to conduct an investigation and file a written report of the  
13 investigation regarding the factors listed in subsection (1).

14 (3) ~~Upon~~ **ON** completion of a guardianship review, the court may  
15 do either of the following:

16 (a) Continue the guardianship.

17 (b) Schedule and conduct a hearing on the guardianship's  
18 status and do any of the following:

19 (i) If the guardianship is a limited guardianship, do either  
20 of the following:

21 (A) Continue the limited guardianship.

22 (B) Order the parties to modify the limited guardianship  
23 placement plan as a condition to continuing the limited  
24 guardianship.

25 (ii) If the guardianship was established under section 5204,  
26 do either of the following:

27 (A) Continue the guardianship.

1 (B) Order the parties to follow a court-structured plan  
2 designed to resolve the conditions identified at the review  
3 hearing.

4 (iii) Take an action described in section ~~5209(2)~~-5209.

5 Sec. 5208. (1) A minor's parent or parents may petition the  
6 court to terminate a guardianship for the minor as follows:

7 (a) If the guardianship is a limited guardianship, the parents  
8 or the sole parent with a right to custody of the minor **MAY**

9 **PETITION THE COURT.**

10 (b) If the guardianship was established under section 5204,  
11 the minor's parent or parents **MAY PETITION THE COURT.**

12 (2) If a petition is filed to terminate a guardianship under  
13 this section, the court may do 1 or more of the following:

14 (a) Order the ~~family independence agency~~ **DEPARTMENT OF HEALTH**  
15 **AND HUMAN SERVICES** or a court employee or agent to conduct an  
16 investigation and file a written report of the investigation  
17 regarding the best interests of the minor or give testimony  
18 concerning the investigation.

19 (b) Utilize the community resources in behavioral sciences and  
20 other professions in the investigation and study of the best  
21 interests of the minor and consider their recommendations for the  
22 disposition of the petition.

23 (c) Appoint a guardian ad litem or attorney to represent the  
24 minor.

25 (d) Take any other action considered necessary in a particular  
26 case.

27 (3) **AFTER NOTICE AND HEARING ON A PETITION UNDER THIS SECTION**

1 TO TERMINATE A LIMITED GUARDIANSHIP, THE COURT SHALL TERMINATE THE  
 2 LIMITED GUARDIANSHIP IF IT DETERMINES THAT THE MINOR'S PARENT OR  
 3 PARENTS HAVE SUBSTANTIALLY COMPLIED WITH THE LIMITED GUARDIANSHIP  
 4 PLACEMENT PLAN. THE COURT MAY ENTER ORDERS TO FACILITATE THE  
 5 MINOR'S REINTEGRATION INTO THE HOME OF THE PARENT OR PARENTS FOR A  
 6 PERIOD OF UP TO 6 MONTHS BEFORE THE TERMINATION.

7 (4) ~~(3)~~—This section and section 5209 apply to all  
 8 guardianships established before, on, or after ~~the effective date~~  
 9 ~~of this section.~~ **APRIL 1, 2000.**

10 Sec. 5209. ~~(1) After notice and hearing on a petition under~~  
 11 ~~section 5208 to terminate a limited guardianship, the court shall~~  
 12 ~~terminate the limited guardianship if it determines that the~~  
 13 ~~minor's parent or parents have substantially complied with the~~  
 14 ~~limited guardianship placement plan. The court may enter orders to~~  
 15 ~~facilitate the minor's reintegration into the home of the parent or~~  
 16 ~~parents for a period of up to 6 months before the termination.~~

17 ———(2) For a petition to terminate a guardianship in which  
 18 subsection (1) does not apply, **THAT IS NOT A PETITION BY A MINOR'S**  
 19 **PARENT OR PARENTS TO TERMINATE GUARDIANSHIP UNDER SECTION 5208,**  
 20 after notice and hearing, the court may do any of the following:

21 (a) Terminate the guardianship if the court determines that it  
 22 is in the best interests of the minor, and do any of the following:

23 (i) Enter orders to facilitate the minor's reintegration into  
 24 the parent's home for a period of up to 6 months before the  
 25 termination.

26 (ii) Order the ~~family independence agency~~ **DEPARTMENT OF HEALTH**  
 27 **AND HUMAN SERVICES** to supervise the transition period when the



1 minor is being reintegrated into his or her parent's home.

2 (iii) Order the ~~family independence agency~~ **DEPARTMENT OF**  
3 **HEALTH AND HUMAN SERVICES** to provide services to facilitate the  
4 minor's reintegration into his or her parent's home.

5 (b) Continue the guardianship for not more than 1 year after  
6 the hearing date if the court determines that it is in the best  
7 interests of the minor, and do any of the following:

8 (i) If the guardianship is a limited guardianship, order the  
9 parent or parents to comply with 1 of the following:

10 (A) The limited guardianship placement plan.

11 (B) A court-modified limited guardianship placement plan.

12 (C) If the limited guardianship was established before  
13 December 20, 1990, a court-structured plan that enables the minor  
14 to return to the home of his or her parent or parents.

15 (ii) If the guardianship is ordered under section 5204, order  
16 the parent or parents to follow a court-structured plan that  
17 enables the minor to return to the home of his or her parent or  
18 parents.

19 (iii) If a guardianship is continued under subparagraph (i) or  
20 (ii), schedule and conduct a hearing to review the guardianship  
21 before the expiration of the period of time that the guardianship  
22 is continued and either terminate the guardianship or limited  
23 guardianship or proceed under subdivision (c) or (d).

24 (c) If the minor resides with the guardian or limited guardian  
25 for not less than 1 year and if the court finds that the minor's  
26 parent or parents have failed to provide the minor with parental  
27 care, love, guidance, and attention appropriate to the child's age

1 and individual needs resulting in a substantial disruption of the  
2 parent-child relationship, continue the guardianship if it is  
3 established by clear and convincing evidence that the continuation  
4 would serve the best interests of the minor.

5 (d) Appoint an attorney to represent the minor or refer the  
6 matter to the ~~family independence agency~~. **DEPARTMENT OF HEALTH AND**  
7 **HUMAN SERVICES**. The attorney or the ~~family independence agency~~  
8 **DEPARTMENT OF HEALTH AND HUMAN SERVICES** may file a complaint on  
9 behalf of the minor requesting the family division of the circuit  
10 court to take jurisdiction of the minor under section 2(b) of  
11 chapter XIIA of **THE PROBATE CODE OF 1939**, 1939 PA 288, MCL 712A.2.

3

# HOUSE BILL No. 4260

February 26, 2019, Introduced by Reps. Anthony, Guerra, Wozniak, Pagan, Bolden, Hope, Markkanen, Elder, Liberati, Manoogian, Shannon, Ellison, Clemente, Gay-Dagnogo, Crawford, Sabo, Sneller, Yancey, Kuppa, Hood, Sowerby, Stone, Cynthia Johnson, Chirkun, Farrington, Lasinski, Yaroch, Whitsett, Calley, Vaupel, Cherry and Coleman and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending section 174a (MCL 750.174a), as amended by 2013 PA 34.

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

1           Sec. 174a. (1) A person shall not through fraud, deceit,  
2 misrepresentation, coercion, or unjust enrichment obtain or use or  
3 attempt to obtain or use a vulnerable **OR ELDER** adult's money or  
4 property to directly or indirectly benefit that person knowing or  
5 having reason to know the ~~vulnerable adult is a vulnerable~~  
6 ~~adult~~. **INDIVIDUAL WHOSE MONEY OR PROPERTY THE PERSON IS ATTEMPTING**  
7 **TO OBTAIN OR USE OR HAS OBTAINED OR USED IS AN ELDER ADULT OR**  
8 **VULNERABLE ADULT.**

9           (2) If the money or property used or obtained, or attempted to

1 be used or obtained, has a value of less than \$200.00, the person  
2 is guilty of a misdemeanor punishable by imprisonment for not more  
3 than 93 days or a fine of not more than \$500.00 or 3 times the  
4 value of the money or property used or obtained or attempted to be  
5 used or obtained, whichever is greater, or both imprisonment and a  
6 fine.

7 (3) If any of the following apply, the person is guilty of a  
8 misdemeanor punishable by imprisonment for not more than 1 year or  
9 a fine of not more than \$2,000.00 or 3 times the value of the money  
10 or property used or obtained or attempted to be used or obtained,  
11 whichever is greater, or both imprisonment and a fine:

12 (a) The money or property used or obtained, or attempted to be  
13 used or obtained, has a value of \$200.00 or more but less than  
14 \$1,000.00.

15 (b) The person violates subsection (2) and has 1 or more prior  
16 convictions for committing or attempting to commit an offense under  
17 this section.

18 (4) If any of the following apply, the person is guilty of a  
19 felony punishable by imprisonment for not more than 5 years or a  
20 fine of not more than \$10,000.00 or 3 times the value of the money  
21 or property used or obtained or attempted to be used or obtained,  
22 whichever is greater, or both imprisonment and a fine:

23 (a) The money or property used or obtained, or attempted to be  
24 used or obtained, has a value of \$1,000.00 or more but less than  
25 \$20,000.00.

26 (b) The person violates subsection (3) (a) and has 1 or more  
27 prior convictions for committing or attempting to commit an offense

1 under this section. For purposes of this subdivision, however, a  
2 prior conviction does not include a conviction for a violation or  
3 attempted violation of subsection (2) or (3)(b).

4 (5) If any of the following apply, the person is guilty of a  
5 felony punishable by imprisonment for not more than 10 years or a  
6 fine of not more than \$15,000.00 or 3 times the value of the money  
7 or property used or obtained or attempted to be used or obtained,  
8 whichever is greater, or both imprisonment and a fine:

9 (a) The money or property used or obtained, or attempted to be  
10 used or obtained, has a value of \$20,000.00 or more but less than  
11 \$50,000.00.

12 (b) The person violates subsection (4)(a) and has 2 or more  
13 prior convictions for committing or attempting to commit an offense  
14 under this section. For purposes of this subdivision, however, a  
15 prior conviction does not include a conviction for a violation or  
16 attempted violation of subsection (2) or (3)(b).

17 (6) If any of the following apply, the person is guilty of a  
18 felony punishable by imprisonment for not more than 15 years or a  
19 fine of not more than \$15,000.00 or 3 times the value of the money  
20 or property used or obtained or attempted to be used or obtained,  
21 whichever is greater, or both imprisonment and a fine:

22 (a) The money or property used or obtained, or attempted to be  
23 used or obtained, has a value of \$50,000.00 or more but less than  
24 \$100,000.00.

25 (b) The person violates subsection (5)(a) and has 2 or more  
26 prior convictions for committing or attempting to commit an offense  
27 under this section. For purposes of this subdivision, however, a

1 prior conviction does not include a conviction for a violation or  
2 attempted violation of subsection (2) or (3) (b).

3 (7) If any of the following apply, the person is guilty of a  
4 felony punishable by imprisonment for not more than 20 years or a  
5 fine of not more than \$50,000.00 or 3 times the value of the money  
6 or property used or obtained or attempted to be used or obtained,  
7 whichever is greater, or both imprisonment and a fine:

8 (a) The money or property used or obtained, or attempted to be  
9 used or obtained, has a value of \$100,000.00 or more.

10 (b) The person violates subsection (6) (a) and has 2 or more  
11 prior convictions for committing or attempting to commit an offense  
12 under this section. For purposes of this subdivision, however, a  
13 prior conviction does not include a conviction for a violation or  
14 attempted violation of subsection (2) or (3) (b).

15 (8) Except as otherwise provided in this subsection, the  
16 values of money or property used or obtained or attempted to be  
17 used or obtained in separate incidents pursuant to a scheme or  
18 course of conduct within any 12-month period may be aggregated to  
19 determine the total value of money or personal property used or  
20 obtained or attempted to be used or obtained. If the scheme or  
21 course of conduct is directed against only 1 person, no time limit  
22 applies to aggregation under this subsection.

23 **(9) THE TRANSFER OF MONEY OR PROPERTY VALUED IN EXCESS OF**  
24 **\$10,000.00 AT THE TIME OF THE TRANSFER, WHETHER IN A SINGLE**  
25 **TRANSACTION OR MULTIPLE TRANSACTIONS, BY AN ELDER ADULT OR**  
26 **VULNERABLE ADULT TO A NONRELATIVE WHOM THE ELDER ADULT OR**  
27 **VULNERABLE ADULT KNEW FOR FEWER THAN 2 YEARS BEFORE THE FIRST**

1 TRANSFER AND FOR WHICH THE ELDER ADULT OR VULNERABLE ADULT DID NOT  
2 RECEIVE THE REASONABLY EQUIVALENT FINANCIAL VALUE IN GOODS OR  
3 SERVICES CREATES A REBUTTABLE PRESUMPTION THAT THE TRANSFER WAS THE  
4 RESULT OF FRAUD, DECEIT, MISREPRESENTATION, COERCION, OR UNJUST  
5 ENRICHMENT. THIS SUBSECTION APPLIES WHETHER OR NOT THE TRANSFER OR  
6 TRANSFERS ARE DENOTED BY THE ELDER ADULT OR VULNERABLE ADULT AND  
7 NONRELATIVE AS A GIFT OR A LOAN, EXCEPT THAT IT DOES NOT APPLY TO A  
8 VALID LOAN EVIDENCED IN WRITING THAT INCLUDES DEFINITE REPAYMENT  
9 DATES. HOWEVER, IF REPAYMENT OF SUCH A LOAN IS IN DEFAULT, IN WHOLE  
10 OR IN PART, FOR MORE THAN 65 DAYS, THE REBUTTABLE PRESUMPTION  
11 CREATED IN THIS SUBSECTION APPLIES. THIS SUBSECTION DOES NOT APPLY  
12 TO ANY OF THE FOLLOWING:

13 (A) A PERSON IN THE BUSINESS OF MAKING LOANS.

14 (B) CHARITABLE DONATIONS TO NONPROFIT ORGANIZATIONS ORGANIZED  
15 EXCLUSIVELY FOR 1 OR MORE CHARITABLE PURPOSES, INCLUDING NONPROFIT  
16 ORGANIZATIONS THAT QUALIFY FOR TAX-EXEMPT STATUS UNDER SECTION  
17 501(C) (3) OF THE INTERNAL REVENUE CODE, 26 USC 501.

18 (10) ~~(9)~~—If the prosecuting attorney intends to seek an  
19 enhanced sentence based upon the defendant having 1 or more prior  
20 convictions, the prosecuting attorney shall include on the  
21 complaint and information a statement listing the prior conviction  
22 or convictions. The existence of the defendant's prior conviction  
23 or convictions ~~shall~~**MUST** be determined by the court, without a  
24 jury, at sentencing or at a separate hearing for that purpose  
25 before sentencing. The existence of a prior conviction may be  
26 established by any evidence relevant for that purpose, including,  
27 but not limited to, 1 or more of the following:



1 (a) A copy of the judgment of conviction.

2 (b) A transcript of a prior trial, plea-taking, or sentencing.

3 (c) Information contained in a presentence report.

4 (d) The defendant's statement.

5 (11) ~~(10)~~ If the sentence for a conviction under this section  
6 is enhanced by 1 or more prior convictions, those prior convictions  
7 ~~shall~~ **MUST** not be used to further enhance the sentence for the  
8 conviction under section 10, 11, or 12 of chapter IX of the code of  
9 criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

10 (12) ~~(11)~~ A financial institution or a broker or a director,  
11 officer, employee, or agent of a financial institution or broker is  
12 not in violation of this section while performing duties in the  
13 normal course of business of a financial institution or broker or a  
14 director, officer, employee, or agent of a financial institution or  
15 broker.

16 (13) The court may order a sentence ~~imposed for a violation of~~  
17 ~~subsection (4), (5), (6), or (7) to be served consecutively to any~~  
18 ~~other sentence imposed for a violation of this section.~~ **TERM OF**  
19 **IMPRISONMENT IMPOSED FOR A VIOLATION OF THIS SECTION TO BE SERVED**  
20 **CONSECUTIVELY TO A TERM OF IMPRISONMENT IMPOSED FOR ANY OTHER**  
21 **CRIME, INCLUDING ANY OTHER VIOLATION OF LAW ARISING OUT OF THE SAME**  
22 **TRANSACTION AS THE VIOLATION OF THIS SECTION.**

23 (14) This section does not prohibit a person from being  
24 charged with, convicted of, or punished for any other violation of  
25 law the person commits while violating this section.

26 (15) As used in this section:

27 (a) "Broker" means that term as defined in section 8102 of the

1 uniform commercial code, 1962 PA 174, MCL 440.8102.

2 (B) "ELDER ADULT" MEANS A PERSON WHO IS 65 YEARS OF AGE OR  
3 OLDER.

4 (C) ~~(b)~~ "Financial institution" means a bank, credit union,  
5 saving bank, or a savings and loan chartered under state or federal  
6 law or an affiliate of a bank, credit union, saving bank, or  
7 savings and loan chartered under state or federal law.

8 (D) ~~(e)~~ "Vulnerable adult" means that term as defined in  
9 section 145m, whether or not the individual has been determined by  
10 the court to be incapacitated.

11 (16) If ~~the office of services to the~~ **A LOCAL AREA AGENCY ON**  
12 aging becomes aware of a violation of this section, the ~~office of~~  
13 ~~services to the~~ **LOCAL AREA AGENCY ON** aging shall promptly report  
14 the violation to the department of **HEALTH AND** human services **AND TO**  
15 **A LOCAL LAW ENFORCEMENT AGENCY.**

16 Enacting section 1. This amendatory act takes effect 90 days  
17 after the date it is enacted into law.

4

# HOUSE BILL No. 4255

February 26, 2019, Introduced by Reps. Filler, Anthony, Pagan, Wozniak, Bolden, Hope, Markkanen, Elder, Manoogian, Liberati, Shannon, Ellison, Clemente, Gay-Dagnogo, Crawford, Sabo, Sneller, Yancey, Kuppa, Hood, Sowerby, Stone, Cynthia Johnson, Farrington, Vaupel, Yaroch, Whitsett, Lasinski, Calley, Cherry and Coleman and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending section 134a (MCL 330.1134a), as amended by 2014 PA 72.

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

1           Sec. 134a. (1) Except as otherwise provided in subsection (2),  
2 a psychiatric facility or other facility defined in 42 USC 1396d(d)  
3 shall not employ, independently contract with, or grant clinical  
4 privileges to an individual who regularly has direct access to or  
5 provides direct services to patients or residents in the  
6 psychiatric facility or other facility defined in 42 USC 1396d(d)  
7 if the individual satisfies 1 or more of the following:

8           (a) Has been convicted of a relevant crime described under 42  
9 USC 1320a-7(a).

1 (b) Has been convicted of any of the following felonies, an  
2 attempt or conspiracy to commit any of those felonies, or any other  
3 state or federal crime that is similar to the felonies described in  
4 this subdivision, other than a felony for a relevant crime  
5 described under 42 USC 1320a-7(a), unless 15 years have lapsed  
6 since the individual completed all of the terms and conditions of  
7 his or her sentencing, parole, and probation for that conviction  
8 prior to the date of application for employment or clinical  
9 privileges or the date of the execution of the independent  
10 contract:

11 (i) A felony that involves the intent to cause death or  
12 serious impairment of a body function, that results in death or  
13 serious impairment of a body function, that involves the use of  
14 force or violence, or that involves the threat of the use of force  
15 or violence.

16 (ii) A felony involving cruelty or torture.

17 (iii) A felony under chapter XXA of the Michigan penal code,  
18 1931 PA 328, MCL 750.145m to ~~750.145r~~ **750.145s**.

19 (iv) A felony involving criminal sexual conduct.

20 (v) A felony involving abuse or neglect.

21 (vi) A felony involving the use of a firearm or dangerous  
22 weapon.

23 (vii) A felony involving the diversion or adulteration of a  
24 prescription drug or other medications.

25 (c) Has been convicted of a felony or an attempt or conspiracy  
26 to commit a felony, other than a felony for a relevant crime  
27 described under 42 USC 1320a-7(a) or a felony described under

1 subdivision (b), unless 10 years have lapsed since the individual  
2 completed all of the terms and conditions of his or her sentencing,  
3 parole, and probation for that conviction prior to the date of  
4 application for employment or clinical privileges or the date of  
5 the execution of the independent contract.

6 (d) Has been convicted of any of the following misdemeanors,  
7 other than a misdemeanor for a relevant crime described under 42  
8 USC 1320a-7(a), or a state or federal crime that is substantially  
9 similar to the misdemeanors described in this subdivision, within  
10 the 10 years immediately preceding the date of application for  
11 employment or clinical privileges or the date of the execution of  
12 the independent contract:

13 (i) A misdemeanor involving the use of a firearm or dangerous  
14 weapon with the intent to injure, the use of a firearm or dangerous  
15 weapon that results in a personal injury, or a misdemeanor  
16 involving the use of force or violence or the threat of the use of  
17 force or violence.

18 (ii) A misdemeanor under chapter XXA of the Michigan penal  
19 code, 1931 PA 328, MCL 750.145m to ~~750.145r~~ **750.145s**.

20 (iii) A misdemeanor involving criminal sexual conduct.

21 (iv) A misdemeanor involving cruelty or torture unless  
22 otherwise provided under subdivision (e).

23 (v) A misdemeanor involving abuse or neglect.

24 (e) Has been convicted of any of the following misdemeanors,  
25 other than a misdemeanor for a relevant crime described under 42  
26 USC 1320a-7(a), or a state or federal crime that is substantially  
27 similar to the misdemeanors described in this subdivision, within

1 the 5 years immediately preceding the date of application for  
2 employment or clinical privileges or the date of the execution of  
3 the independent contract:

4 (i) A misdemeanor involving cruelty if committed by an  
5 individual who is less than 16 years of age.

6 (ii) A misdemeanor involving home invasion.

7 (iii) A misdemeanor involving embezzlement.

8 (iv) A misdemeanor involving negligent homicide or a violation  
9 of section 601d(1) of the Michigan vehicle code, ~~1940~~1949 PA 300,  
10 MCL 257.601d.

11 (v) A misdemeanor involving larceny unless otherwise provided  
12 under subdivision (g).

13 (vi) A misdemeanor of retail fraud in the second degree unless  
14 otherwise provided under subdivision (g).

15 (vii) Any other misdemeanor involving assault, fraud, theft,  
16 or the possession or delivery of a controlled substance unless  
17 otherwise provided under subdivision (d), (f), or (g).

18 (f) Has been convicted of any of the following misdemeanors,  
19 other than a misdemeanor for a relevant crime described under 42  
20 USC 1320a-7(a), or a state or federal crime that is substantially  
21 similar to the misdemeanors described in this subdivision, within  
22 the 3 years immediately preceding the date of application for  
23 employment or clinical privileges or the date of the execution of  
24 the independent contract:

25 (i) A misdemeanor for assault if there was no use of a firearm  
26 or dangerous weapon and no intent to commit murder or inflict great  
27 bodily injury.

1           (ii) A misdemeanor of retail fraud in the third degree unless  
2 otherwise provided under subdivision (g).

3           (iii) A misdemeanor under part 74 of the public health code,  
4 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided  
5 under subdivision (g).

6           (g) Has been convicted of any of the following misdemeanors,  
7 other than a misdemeanor for a relevant crime described under 42  
8 USC 1320a-7(a), or a state or federal crime that is substantially  
9 similar to the misdemeanors described in this subdivision, within  
10 the year immediately preceding the date of application for  
11 employment or clinical privileges or the date of the execution of  
12 the independent contract:

13           (i) A misdemeanor under part 74 of the public health code,  
14 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the  
15 time of conviction, is under the age of 18.

16           (ii) A misdemeanor for larceny or retail fraud in the second  
17 or third degree if the individual, at the time of conviction, is  
18 under the age of 16.

19           (h) Is the subject of an order or disposition under section  
20 16b of chapter IX of the code of criminal procedure, 1927 PA 175,  
21 MCL 769.16b.

22           (i) Engages in conduct that becomes the subject of a  
23 substantiated finding of neglect, abuse, or misappropriation of  
24 property by a state or federal agency according to an investigation  
25 conducted in accordance with 42 USC 1395i-3 or 1396r.

26           (2) Except as otherwise provided in this subsection or  
27 subsection (5), a psychiatric facility or other facility defined in



1 42 USC 1396d(d) shall not employ, independently contract with, or  
2 grant privileges to an individual who regularly has direct access  
3 to or provides direct services to patients or residents in the  
4 psychiatric facility or other facility defined in 42 USC 1396d(d)  
5 until the psychiatric facility or other facility defined in 42 USC  
6 1396d(d) or staffing agency has conducted a criminal history check  
7 in compliance with this section or received criminal history record  
8 information in compliance with subsection (3) or (10). This  
9 subsection and subsection (1) do not apply to any of the following:

10 (a) An individual who is employed by, under independent  
11 contract to, or granted clinical privileges in a psychiatric  
12 facility or other facility defined in 42 USC 1396d(d) before April  
13 1, 2006. On or before April 1, 2011, an individual who is exempt  
14 under this subdivision and who has not been the subject of a  
15 criminal history check conducted in compliance with this section  
16 shall provide the department of state police with a set of  
17 fingerprints and the department of state police shall input those  
18 fingerprints into the automated fingerprint identification system  
19 database established under subsection (13). An individual who is  
20 exempt under this subdivision is not limited to working within the  
21 psychiatric facility or other facility defined in 42 USC 1396d(d)  
22 with which he or she is employed by, under independent contract to,  
23 or granted clinical privileges on April 1, 2006 but may transfer to  
24 another psychiatric facility or other facility defined in 42 USC  
25 1396d(d), covered health facility, or adult foster care facility.  
26 If an individual who is exempt under this subdivision is  
27 subsequently convicted of a crime described under subsection (1)(a)

1 through (g) or found to be the subject of a substantiated finding  
2 described under subsection (1)(i) or an order or disposition  
3 described under subsection (1)(h), or is found to have been  
4 convicted of a relevant crime described under subsection (1)(a),  
5 then he or she is no longer exempt and ~~shall~~**MUST** be terminated  
6 from employment or denied employment or clinical privileges.

7 (b) An individual who is under an independent contract with a  
8 psychiatric facility or other facility defined in 42 USC 1396d(d)  
9 if he or she is not under the facility's control and the services  
10 for which he or she is contracted is not directly related to the  
11 provision of services to a patient or resident or if the services  
12 for which he or she is contracted allows for direct access to the  
13 patients or residents but is not performed on an ongoing basis.  
14 This exception includes, but is not limited to, an individual who  
15 is under an independent contract with the psychiatric facility or  
16 other facility defined in 42 USC 1396d(d) to provide utility,  
17 maintenance, construction, or communications services.

18 (3) An individual who applies for employment either as an  
19 employee or as an independent contractor or for clinical privileges  
20 with a psychiatric facility or other facility defined in 42 USC  
21 1396d(d) or a staffing agency and who has not been the subject of a  
22 criminal history check conducted in compliance with this section  
23 shall give written consent at the time of application for the  
24 department of state police to conduct a criminal history check  
25 under this section, along with identification acceptable to the  
26 department of state police. If the applicant has been the subject  
27 of a criminal history check conducted in compliance with this

1 section, the applicant shall give written consent at the time of  
2 application for the psychiatric facility or other facility defined  
3 in 42 USC 1396d(d) or staffing agency to obtain the criminal  
4 history record information as prescribed in subsection (4) from the  
5 relevant licensing or regulatory department and for the department  
6 of state police to conduct a criminal history check under this  
7 section if the requirements of subsection (10) are not met and a  
8 request to the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**  
9 **INVESTIGATION** to make a determination of the existence of any  
10 national criminal history pertaining to the applicant is necessary,  
11 along with identification acceptable to the department of state  
12 police. Upon receipt of the written consent to obtain the criminal  
13 history record information and identification required under this  
14 subsection, the psychiatric facility or other facility defined in  
15 42 USC 1396d(d) or staffing agency that has made a good-faith offer  
16 of employment or an independent contract or clinical privileges to  
17 the applicant shall request the criminal history record information  
18 from the relevant licensing or regulatory department and shall make  
19 a request regarding that applicant to the relevant licensing or  
20 regulatory department to conduct a check of all relevant registries  
21 in the manner required in subsection (4). If the requirements of  
22 subsection (10) are not met and a request to the ~~federal bureau of~~  
23 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a subsequent  
24 determination of the existence of any national criminal history  
25 pertaining to the applicant is necessary, the psychiatric facility  
26 or other facility defined in 42 USC 1396d(d) or staffing agency  
27 shall proceed in the manner required in subsection (4). A staffing

1 agency that employs an applicant who regularly has direct access to  
2 or provides direct services to patients or residents under an  
3 independent contract with a psychiatric facility or other facility  
4 defined in 42 USC 1396d(d) shall submit information regarding the  
5 criminal history check conducted by the staffing agency to the  
6 psychiatric facility or other facility defined in 42 USC 1396d(d)  
7 that has made a good-faith offer of independent contract to that  
8 applicant.

9 (4) Upon receipt of the written consent to conduct a criminal  
10 history check and identification required under subsection (3), a  
11 psychiatric facility or other facility defined in 42 USC 1396d(d)  
12 or staffing agency that has made a good-faith offer of employment  
13 or an independent contract or clinical privileges to the applicant  
14 shall make a request to the department of state police to conduct a  
15 criminal history check on the applicant, to input the applicant's  
16 fingerprints into the automated fingerprint identification system  
17 database, and to forward the applicant's fingerprints to the  
18 ~~federal bureau of investigation.~~ **FEDERAL BUREAU OF INVESTIGATION.**  
19 The department of state police shall request the ~~federal bureau of~~  
20 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a  
21 determination of the existence of any national criminal history  
22 pertaining to the applicant. The applicant shall provide the  
23 department of state police with a set of fingerprints. The request  
24 ~~shall~~ **MUST** be made in a manner prescribed by the department of  
25 state police. The psychiatric facility or other facility defined in  
26 42 USC 1396d(d) or staffing agency shall make the written consent  
27 and identification available to the department of state police. The

1 psychiatric facility or other facility defined in 42 USC 1396d(d)  
2 or staffing agency shall make a request regarding that applicant to  
3 the relevant licensing or regulatory department to conduct a check  
4 of all relevant registries established under federal and state law  
5 and regulations for any substantiated findings of abuse, neglect,  
6 or misappropriation of property. If the department of state police  
7 or the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**  
8 **INVESTIGATION** charges a fee for conducting the criminal history  
9 check, the psychiatric facility or other facility defined in 42 USC  
10 1396d(d) or staffing agency shall pay the cost of the charge. The  
11 psychiatric facility or other facility defined in 42 USC 1396d(d)  
12 or staffing agency shall not seek reimbursement for a charge  
13 imposed by the department of state police or the ~~federal bureau of~~  
14 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** from the individual  
15 who is the subject of the criminal history check. A prospective  
16 employee or a prospective independent contractor covered under this  
17 section may not be charged for the cost of a criminal history check  
18 required under this section. The department of state police shall  
19 conduct a criminal history check on the applicant named in the  
20 request. The department of state police shall provide the  
21 department with a written report of the criminal history check  
22 conducted under this subsection. The report shall contain any  
23 criminal history record information on the applicant maintained by  
24 the department of state police. The department of state police  
25 shall provide the results of the ~~federal bureau of investigation~~  
26 **FEDERAL BUREAU OF INVESTIGATION** determination to the department  
27 within 30 days after the request is made. If the requesting

1 psychiatric facility or other facility defined in 42 USC 1396d(d)  
2 or staffing agency is not a state department or agency and if  
3 criminal history record information is disclosed on the written  
4 report of the criminal history check or the ~~federal bureau of~~  
5 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** determination that  
6 resulted in a conviction, the department shall notify the  
7 psychiatric facility or other facility defined in 42 USC 1396d(d)  
8 or staffing agency and the applicant in writing of the type of  
9 crime disclosed on the written report of the criminal history check  
10 or the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**  
11 **INVESTIGATION** determination without disclosing the details of the  
12 crime. Any charges imposed by the department of state police or the  
13 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** for  
14 conducting a criminal history check or making a determination under  
15 this subsection ~~shall~~ **MUST** be paid in the manner required under  
16 this subsection. The notice ~~shall~~ **MUST** include a statement that the  
17 applicant has a right to appeal the information relied upon by the  
18 psychiatric facility or other facility defined in 42 USC 1396d(d)  
19 or staffing agency regarding his or her employment eligibility  
20 based on the criminal history check. The notice ~~shall~~ **MUST** also  
21 include information regarding where to file and describing the  
22 appellate procedures established under section 20173b of the public  
23 health code, 1978 PA 368, MCL 333.20173b.

24 (5) If a psychiatric facility or other facility defined in 42  
25 USC 1396d(d) determines it necessary to employ or grant clinical  
26 privileges to an applicant before receiving the results of the  
27 applicant's criminal history check or criminal history record

1 information under this section, the psychiatric facility or other  
2 facility defined in 42 USC 1396d(d) may conditionally employ or  
3 grant conditional clinical privileges to the individual if all of  
4 the following apply:

5 (a) The psychiatric facility or other facility defined in 42  
6 USC 1396d(d) requests the criminal history check or criminal  
7 history record information under this section upon conditionally  
8 employing or conditionally granting clinical privileges to the  
9 individual.

10 (b) The individual signs a statement in writing that indicates  
11 all of the following:

12 (i) That he or she has not been convicted of 1 or more of the  
13 crimes that are described in subsection (1) (a) through (g) within  
14 the applicable time period prescribed by each subdivision  
15 respectively.

16 (ii) That he or she is not the subject of an order or  
17 disposition described in subsection (1) (h).

18 (iii) That he or she has not been the subject of a  
19 substantiated finding as described in subsection (1) (i).

20 (iv) The individual agrees that, if the information in the  
21 criminal history check conducted under this section does not  
22 confirm the individual's statements under subparagraphs (i) through  
23 (iii), his or her employment or clinical privileges will be  
24 terminated by the psychiatric facility or other facility defined in  
25 42 USC 1396d(d) as required under subsection (1) unless and until  
26 the individual appeals and can prove that the information is  
27 incorrect.

1           (v) That he or she understands the conditions described in  
2 subparagraphs (i) through (iv) that result in the termination of  
3 his or her employment or clinical privileges and that those  
4 conditions are good cause for termination.

5           (c) Except as otherwise provided in this subdivision, the  
6 psychiatric facility or other facility defined in 42 USC 1396d(d)  
7 does not permit the individual to have regular direct access to or  
8 provide direct services to patients or residents in the psychiatric  
9 facility or other facility defined in 42 USC 1396d(d) without  
10 supervision until the criminal history check or criminal history  
11 record information is obtained and the individual is eligible for  
12 that employment or clinical privileges. If required under this  
13 subdivision, the psychiatric facility or other facility defined in  
14 42 USC 1396d(d) shall provide on-site supervision of an individual  
15 in the facility on a conditional basis under this subsection by an  
16 individual who has undergone a criminal history check conducted in  
17 compliance with this section. A psychiatric facility or other  
18 facility defined in 42 USC 1396d(d) may permit an individual in the  
19 facility on a conditional basis under this subsection to have  
20 regular direct access to or provide direct services to patients or  
21 residents in the psychiatric facility or other facility defined in  
22 42 USC 1396d(d) without supervision if all of the following  
23 conditions are met:

24           (i) The psychiatric facility or other facility defined in 42  
25 USC 1396d(d), at its own expense and before the individual has  
26 direct access to or provides direct services to patients or  
27 residents of the psychiatric facility or other facility defined in



1 42 USC 1396d(d), conducts a search of public records on that  
2 individual through the internet criminal history access tool  
3 maintained by the department of state police and the results of  
4 that search do not uncover any information that would indicate that  
5 the individual is not eligible to have regular direct access to or  
6 provide direct services to patients or residents under this  
7 section.

8 (ii) Before the individual has direct access to or provides  
9 direct services to patients or residents of the psychiatric  
10 facility or other facility defined in 42 USC 1396d(d), the  
11 individual signs a statement in writing that he or she has resided  
12 in this state without interruption for at least the immediately  
13 preceding 12-month period.

14 (iii) If applicable, the individual provides to the department  
15 of state police a set of fingerprints on or before the expiration  
16 of 10 business days following the date the individual was  
17 conditionally employed or granted conditional clinical privileges  
18 under this subsection.

19 (6) The department shall develop and distribute a model form  
20 for the statements required under subsection (5)(b) and (c). The  
21 department shall make the model form available to psychiatric  
22 facilities or other facility defined in 42 USC 1396d(d) subject to  
23 this section upon request at no charge.

24 (7) If an individual is employed as a conditional employee or  
25 is granted conditional clinical privileges under subsection (5),  
26 and the information under subsection (3) or report under subsection  
27 (4) does not confirm the individual's statement under subsection

1 (5) (b) (i) through (iii), the psychiatric facility or other facility  
2 defined in 42 USC 1396d(d) shall terminate the individual's  
3 employment or clinical privileges as required by subsection (1).

4 (8) An individual who knowingly provides false information  
5 regarding his or her identity, criminal convictions, or  
6 substantiated findings on a statement described in subsection  
7 (5) (b) (i) through (iii) is guilty of a misdemeanor punishable by  
8 imprisonment for not more than 93 days or a fine of not more than  
9 \$500.00, or both.

10 (9) A psychiatric facility or other facility defined in 42 USC  
11 1396d(d) or staffing agency shall use criminal history record  
12 information obtained under subsection (3) or (4) only for the  
13 purpose of evaluating an applicant's qualifications for employment,  
14 an independent contract, or clinical privileges in the position for  
15 which he or she has applied and for the purposes of subsections (5)  
16 and (7). A psychiatric facility or other facility defined in 42 USC  
17 1396d(d) or staffing agency or an employee of the psychiatric  
18 facility or other facility defined in 42 USC 1396d(d) or staffing  
19 agency shall not disclose criminal history record information  
20 obtained under subsection (3) or (4) to a person who is not  
21 directly involved in evaluating the applicant's qualifications for  
22 employment, an independent contract, or clinical privileges. An  
23 individual who knowingly uses or disseminates the criminal history  
24 record information obtained under subsection (3) or (4) in  
25 violation of this subsection is guilty of a misdemeanor punishable  
26 by imprisonment for not more than 93 days or a fine of not more  
27 than \$1,000.00, or both. Except for a knowing or intentional

1 release of false information, a psychiatric facility or other  
2 facility defined in 42 USC 1396d(d) or staffing agency has no  
3 liability in connection with a criminal history check conducted in  
4 compliance with this section or the release of criminal history  
5 record information under this subsection.

6 (10) Upon consent of an applicant as required in subsection  
7 (3) and upon request from a psychiatric facility or other facility  
8 defined in 42 USC 1396d(d) or staffing agency that has made a good-  
9 faith offer of employment or an independent contract or clinical  
10 privileges to the applicant, the relevant licensing or regulatory  
11 department shall review the criminal history record information, if  
12 any, and notify the requesting psychiatric facility or other  
13 facility defined in 42 USC 1396d(d) or staffing agency of the  
14 information in the manner prescribed in subsection (4). Until the  
15 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**  
16 implements an automatic notification system similar to the system  
17 required of the state police under subsection (13) and federal  
18 regulations allow the federal criminal record to be used for  
19 subsequent authorized uses, as determined in an order issued by the  
20 department, a covered health or staffing agency facility may rely  
21 on the criminal history record information provided by the relevant  
22 licensing or regulatory department under this subsection and a  
23 request to the federal bureau of investigation to make a subsequent  
24 determination of the existence of any national criminal history  
25 pertaining to the applicant is not necessary if all of the  
26 following requirements are met:

27 (a) The criminal history check was conducted during the

1 immediately preceding 12-month period.

2 (b) The applicant has been continuously employed by a  
3 psychiatric facility or other facility defined in 42 USC 1396d(d),  
4 covered health facility, or adult foster care facility or the  
5 staffing agency since the criminal history check was conducted in  
6 compliance with this section or meets the continuous employment  
7 requirement of this subdivision other than being on layoff status  
8 for less than 1 year from a psychiatric facility or other facility  
9 defined in 42 USC 1396d(d), covered health facility, or adult  
10 foster care facility.

11 (c) The applicant can provide evidence acceptable to the  
12 relevant licensing or regulatory department that he or she has been  
13 a resident of this state for the immediately preceding 12-month  
14 period.

15 (11) As a condition of continued employment, each employee,  
16 independent contractor, or individual granted clinical privileges  
17 shall do each of the following:

18 (a) Agree in writing to report to the psychiatric facility or  
19 other facility defined in 42 USC 1396d(d) or staffing agency  
20 immediately upon being arraigned for 1 or more of the criminal  
21 offenses listed in subsection (1)(a) through (g), upon being  
22 convicted of 1 or more of the criminal offenses listed in  
23 subsection (1)(a) through (g), upon becoming the subject of an  
24 order or disposition described under subsection (1)(h), and upon  
25 being the subject of a substantiated finding of neglect, abuse, or  
26 misappropriation of property as described in subsection (1)(i).  
27 Reporting of an arraignment under this subdivision is not cause for

1 termination or denial of employment.

2 (b) If a set of fingerprints is not already on file with the  
3 department of state police, provide the department of state police  
4 with a set of fingerprints.

5 (12) In addition to sanctions set forth in this act, a  
6 licensee, owner, administrator, or operator of a psychiatric  
7 facility or other facility defined in 42 USC 1396d(d) or staffing  
8 agency who knowingly and willfully fails to conduct the criminal  
9 history checks as required under this section is guilty of a  
10 misdemeanor punishable by imprisonment for not more than 1 year or  
11 a fine of not more than \$5,000.00, or both.

12 (13) In collaboration with the department of state police, the  
13 department of technology, management, and budget shall establish  
14 and maintain an automated fingerprint identification system  
15 database that would allow the department of state police to store  
16 and maintain all fingerprints submitted under this section and  
17 would provide for an automatic notification if and when a  
18 subsequent criminal arrest fingerprint card submitted into the  
19 system matches a set of fingerprints previously submitted under  
20 this section. Upon notification, the department of state police  
21 shall immediately notify the department and the department shall  
22 immediately contact each respective psychiatric facility or other  
23 facility defined in 42 USC 1396d(d) or staffing agency with which  
24 that individual is associated. Information in the database  
25 established under this subsection is confidential, is not subject  
26 to disclosure under the freedom of information act, 1976 PA 442,  
27 MCL 15.231 to 15.246, and ~~shall~~ **MUST** not be disclosed to any person

1 except for purposes of this act or for law enforcement purposes.

2 (14) The department shall maintain an electronic web-based  
3 system to assist psychiatric facilities or other facility defined  
4 in 42 USC 1396d(d) and staffing agencies required to check relevant  
5 registries and conduct criminal history checks of its employees and  
6 independent contractors, and individuals granted privileges and to  
7 provide for an automated notice to those psychiatric facilities or  
8 other facility defined in 42 USC 1396d(d) and staffing agencies for  
9 those individuals inputted in the system who, since the initial  
10 criminal history check, have been convicted of a disqualifying  
11 offense or have been the subject of a substantiated finding of  
12 abuse, neglect, or misappropriation of property. The department may  
13 charge a staffing agency a 1-time set-up fee of up to \$100.00 for  
14 access to the electronic web-based system under this section.

15 (15) As used in this section:

16 (a) "Adult foster care facility" means an adult foster care  
17 facility licensed under the adult foster care facility licensing  
18 act, 1979 PA 218, MCL 400.701 to 400.737.

19 (b) "Convicted" means either of the following:

20 (i) For a crime that is not a relevant crime, a final  
21 conviction, the payment of a fine, a plea of guilty or nolo  
22 contendere if accepted by the court, or a finding of guilt for a  
23 criminal law violation or a juvenile adjudication or disposition by  
24 the juvenile division of probate court or family division of  
25 circuit court for a violation that if committed by an adult would  
26 be a crime.

27 (ii) For a relevant crime described under 42 USC 1320a-7(a),

1 convicted means that term as defined in 42 USC 1320a-7.

2 (c) "Covered health facility" means a nursing home, county  
3 medical care facility, hospice, hospital that provides swing bed  
4 services, or home for the aged licensed under article 17 of the  
5 public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or  
6 home health agency.

7 (d) "Criminal history check conducted in compliance with this  
8 section" includes a criminal history check conducted under this  
9 section, under section 20173a of the public health code, 1978 PA  
10 ~~3658, 368~~, MCL 333.20173a, or under section 34b of the adult foster  
11 care facility licensing act, 1979 PA 218, MCL 400.734b.

12 (e) "Direct access" means access to a patient or resident or  
13 to a patient's or resident's property, financial information,  
14 medical records, treatment information, or any other identifying  
15 information.

16 (f) "Home health agency" means a person certified by medicare  
17 whose business is to provide to individuals in their places of  
18 residence other than in a hospital, nursing home, or county medical  
19 care facility 1 or more of the following services: nursing  
20 services, therapeutic services, social work services, homemaker  
21 services, home health aide services, or other related services.

22 (g) "Independent contract" means a contract entered into by a  
23 health facility or agency with an individual who provides the  
24 contracted services independently or a contract entered into by a  
25 health facility or agency with a staffing agency that complies with  
26 the requirements of this section to provide the contracted services  
27 to the psychiatric facility or other facility defined in 42 USC

1 1396d(d) on behalf of the staffing agency.

2 (h) "Medicare" means benefits under the federal medicare  
3 program established under title XVIII of the social security act,  
4 42 USC 1395 to 1395kkk-1.

5 (i) "Staffing agency" means an entity that recruits candidates  
6 and provides temporary and permanent qualified staffing for  
7 psychiatric facilities or other facility defined in 42 USC  
8 1396d(d), including independent contractors.

9 (j) "Under the facility's control" means an individual  
10 employed by or under independent contract with a psychiatric  
11 facility or other facility defined in 42 USC 1396d(d) for whom the  
12 psychiatric facility or other facility defined in 42 USC 1396d(d)  
13 does both of the following:

14 (i) Determines whether the individual who has access to  
15 patients or residents may provide care, treatment, or other similar  
16 support service functions to patients or residents served by the  
17 psychiatric facility or other facility defined in 42 USC 1396d(d).

18 (ii) Directs or oversees 1 or more of the following:

19 (A) The policy or procedures the individual must follow in  
20 performing his or her duties.

21 (B) The tasks performed by the individual.

22 (C) The individual's work schedule.

23 (D) The supervision or evaluation of the individual's work or  
24 job performance, including imposing discipline or granting  
25 performance awards.

26 (E) The compensation the individual receives for performing  
27 his or her duties.



1 (F) The conditions under which the individual performs his or  
2 her duties.

3 Enacting section 1. This amendatory act takes effect 90 days  
4 after the date it is enacted into law.

5 Enacting section 2. This amendatory act does not take effect  
6 unless Senate Bill No. \_\_\_\_ or House Bill No. 4254 (request no.  
7 00483'19) of the 100th Legislature is enacted into law.

5

# HOUSE BILL No. 4254

February 26, 2019, Introduced by Reps. Wozniak, Anthony, Guerra, Pagan, Bolden, Hope, Markkanen, Elder, Manoogian, Liberati, Shannon, Ellison, Clemente, Gay-Dagnogo, Crawford, Sabo, Sneller, Yancey, Kuppa, Hood, Sowerby, Stone, Cynthia Johnson, Farrington, Vaupel, Whitsett, Calley, Lasinski, Filler, Cherry, Yaroch and Coleman and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," (MCL 750.1 to 750.568) by amending the heading of chapter XXA and by adding section 145s.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XXA

VULNERABLE ADULTS AND ELDER ADULTS

SEC. 145S. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO ASSAULTS ANOTHER PERSON THAT HE OR SHE KNOWS OR REASONABLY SHOULD KNOW IS AN ELDER ADULT OR VULNERABLE ADULT IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF UP TO \$1,000.00, OR BOTH.

(2) IF A VIOLATION OF SUBSECTION (1) CAUSES PHYSICAL INJURY,

HOUSE BILL No. 4254

1 PAIN, OR MENTAL SUFFERING, THE PERSON IS GUILTY OF A FELONY  
2 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 4 YEARS OR A FINE OF  
3 NOT MORE THAN \$5,000.00, OR BOTH.

4 (3) IF A VIOLATION OF SUBSECTION (1) CAUSES SERIOUS IMPAIRMENT  
5 OF A BODY FUNCTION, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY  
6 IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A FINE OF NOT MORE THAN  
7 \$10,000.00, OR BOTH.

8 (4) IF A VIOLATION OF SUBSECTION (1) CAUSES THE DEATH OF THE  
9 OTHER PERSON, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY  
10 IMPRISONMENT FOR NOT MORE THAN 25 YEARS OR A FINE OF NOT MORE THAN  
11 \$25,000.00, OR BOTH.

12 (5) A PERSON WHO RESTRAINS AN ELDER ADULT OR A VULNERABLE  
13 ADULT BY THE USE OF VIOLENCE, MENACE, FRAUD, OR DECEIT IS GUILTY OF  
14 A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 4 YEARS OR A  
15 FINE OF NOT MORE THAN \$5,000.00, OR BOTH.

16 (6) THIS SECTION DOES NOT PROHIBIT A PERSON FROM BEING CHARGED  
17 WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION OF LAW  
18 ARISING OUT OF THE SAME TRANSACTION AS THE VIOLATION OF THIS  
19 SECTION.

20 (7) THE COURT MAY ORDER A TERM OF IMPRISONMENT IMPOSED FOR A  
21 VIOLATION OF THIS SECTION TO BE SERVED CONSECUTIVELY TO A TERM OF  
22 IMPRISONMENT IMPOSED FOR ANY OTHER CRIME, INCLUDING ANY OTHER  
23 VIOLATION OF LAW ARISING OUT OF THE SAME TRANSACTION AS THE  
24 VIOLATION OF THIS SECTION.

25 (8) AS USED IN THIS SECTION:

26 (A) "ELDER ADULT" MEANS A PERSON WHO IS 65 YEARS OF AGE OR  
27 OLDER.

1 (B) "RESTRAINS" MEANS TO RESTRICT A PERSON'S MOVEMENTS OR TO  
2 CONFINE THE PERSON SO AS TO INTERFERE WITH THAT PERSON'S LIBERTY  
3 WITHOUT THAT PERSON'S CONSENT OR WITHOUT LEGAL AUTHORITY. THE  
4 RESTRAINT DOES NOT HAVE TO EXIST FOR ANY PARTICULAR LENGTH OF TIME  
5 AND MAY BE RELATED OR INCIDENTAL TO THE COMMISSION OF OTHER  
6 CRIMINAL ACTS.

7 (C) "SERIOUS IMPAIRMENT OF A BODY FUNCTION" MEANS THAT TERM AS  
8 DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,  
9 MCL 257.58C.

10 (9) IF A LOCAL AREA AGENCY ON AGING BECOMES AWARE OF A  
11 VIOLATION OF THIS SECTION, THE LOCAL AREA AGENCY ON AGING SHALL  
12 PROMPTLY REPORT THE VIOLATION TO THE DEPARTMENT OF HEALTH AND HUMAN  
13 SERVICES.

14 Enacting section 1. This amendatory act takes effect 90 days  
15 after the date it is enacted into law.

16 Enacting section 2. This amendatory act does not take effect  
17 unless Senate Bill No. \_\_\_\_ or House Bill No. 4260 (request no.  
18 00482'19) of the 100th Legislature is enacted into law.

6

# HOUSE BILL No. 4256

February 26, 2019, Introduced by Reps. Bolden, Anthony, Wozniak, Pagan, Hope, Elder, Manoogian, Liberati, Shannon, Ellison, Clemente, Gay-Dagnogo, Crawford, Sabo, Sneller, Yancey, Kuppa, Hood, Sowerby, Stone, Chirkun, Cynthia Johnson, Farrington, Vaupel, Yaroch, Whitsett, Lasinski, Calley, Coleman, Filler and Cherry and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20173a and 21313 (MCL 333.20173a and 333.21313), section 20173a as amended by 2017 PA 167 and section 21313 as amended by 2012 PA 51.

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

1           Sec. 20173a. (1) Except as otherwise provided in subsection  
2           (2), a covered facility shall not employ, independently contract  
3           with, or grant clinical privileges to an individual who regularly  
4           has direct access to or provides direct services to patients or  
5           residents in the covered facility if the individual satisfies 1 or  
6           more of the following:

7           (a) Has been convicted of a relevant crime described under 42

1 USC 1320a-7(a).

2 (b) Has been convicted of any of the following felonies, an  
3 attempt or conspiracy to commit any of those felonies, or any other  
4 state or federal crime that is similar to the felonies described in  
5 this subdivision, other than a felony for a relevant crime  
6 described under 42 USC 1320a-7(a), unless 15 years have lapsed  
7 since the individual completed all of the terms and conditions of  
8 his or her sentencing, parole, and probation for that conviction  
9 before the date of application for employment or clinical  
10 privileges or the date of the execution of the independent  
11 contract:

12 (i) A felony that involves the intent to cause death or  
13 serious impairment of a body function, that results in death or  
14 serious impairment of a body function, that involves the use of  
15 force or violence, or that involves the threat of the use of force  
16 or violence.

17 (ii) A felony involving cruelty or torture.

18 (iii) A felony under chapter XXA of the Michigan penal code,  
19 1931 PA 328, MCL 750.145m to ~~750.145r~~ **750.145S**.

20 (iv) A felony involving criminal sexual conduct.

21 (v) A felony involving abuse or neglect.

22 (vi) A felony involving the use of a firearm or dangerous  
23 weapon.

24 (vii) A felony involving the diversion or adulteration of a  
25 prescription drug or other medications.

26 (c) Has been convicted of a felony or an attempt or conspiracy  
27 to commit a felony, other than a felony for a relevant crime



1 described under 42 USC 1320a-7(a) or a felony described under  
2 subdivision (b), unless 10 years have lapsed since the individual  
3 completed all of the terms and conditions of his or her sentencing,  
4 parole, and probation for that conviction prior to the date of  
5 application for employment or clinical privileges or the date of  
6 the execution of the independent contract.

7 (d) Has been convicted of any of the following misdemeanors,  
8 other than a misdemeanor for a relevant crime described under 42  
9 USC 1320a-7(a), or a state or federal crime that is substantially  
10 similar to the misdemeanors described in this subdivision, within  
11 the 10 years immediately preceding the date of application for  
12 employment or clinical privileges or the date of the execution of  
13 the independent contract:

14 (i) A misdemeanor involving the use of a firearm or dangerous  
15 weapon with the intent to injure, the use of a firearm or dangerous  
16 weapon that results in a personal injury, or a misdemeanor  
17 involving the use of force or violence or the threat of the use of  
18 force or violence.

19 (ii) A misdemeanor under chapter XXA of the Michigan penal  
20 code, 1931 PA 328, MCL 750.145m to ~~750.145r~~ **750.145S**.

21 (iii) A misdemeanor involving criminal sexual conduct.

22 (iv) A misdemeanor involving cruelty or torture unless  
23 otherwise provided under subdivision (e).

24 (v) A misdemeanor involving abuse or neglect.

25 (e) Has been convicted of any of the following misdemeanors,  
26 other than a misdemeanor for a relevant crime described under 42  
27 USC 1320a-7(a), or a state or federal crime that is substantially

1 similar to the misdemeanors described in this subdivision, within  
2 the 5 years immediately preceding the date of application for  
3 employment or clinical privileges or the date of the execution of  
4 the independent contract:

5 (i) A misdemeanor involving cruelty if committed by an  
6 individual who is less than 16 years of age.

7 (ii) A misdemeanor involving home invasion.

8 (iii) A misdemeanor involving embezzlement.

9 (iv) A misdemeanor involving negligent homicide or a violation  
10 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL  
11 257.601d.

12 (v) A misdemeanor involving larceny unless otherwise provided  
13 under subdivision (g).

14 (vi) A misdemeanor of retail fraud in the second degree unless  
15 otherwise provided under subdivision (g).

16 (vii) Any other misdemeanor involving assault, fraud, theft,  
17 or the possession or delivery of a controlled substance unless  
18 otherwise provided under subdivision (d), (f), or (g).

19 (f) Has been convicted of any of the following misdemeanors,  
20 other than a misdemeanor for a relevant crime described under 42  
21 USC 1320a-7(a), or a state or federal crime that is substantially  
22 similar to the misdemeanors described in this subdivision, within  
23 the 3 years immediately preceding the date of application for  
24 employment or clinical privileges or the date of the execution of  
25 the independent contract:

26 (i) A misdemeanor for assault if there was no use of a firearm  
27 or dangerous weapon and no intent to commit murder or inflict great

1   bodily injury.

2           (ii) A misdemeanor of retail fraud in the third degree unless  
3 otherwise provided under subdivision (g).

4           (iii) A misdemeanor under part 74 unless otherwise provided  
5 under subdivision (g).

6           (g) Has been convicted of any of the following misdemeanors,  
7 other than a misdemeanor for a relevant crime described under 42  
8 USC 1320a-7(a), or a state or federal crime that is substantially  
9 similar to the misdemeanors described in this subdivision, within  
10 the year immediately preceding the date of application for  
11 employment or clinical privileges or the date of the execution of  
12 the independent contract:

13           (i) A misdemeanor under part 74 if the individual, at the time  
14 of conviction, is under the age of 18.

15           (ii) A misdemeanor for larceny or retail fraud in the second  
16 or third degree if the individual, at the time of conviction, is  
17 under the age of 16.

18           (h) Is the subject of an order or disposition under section  
19 16b of chapter IX of the code of criminal procedure, 1927 PA 175,  
20 MCL 769.16b.

21           (i) Engages in conduct that becomes the subject of a  
22 substantiated finding of neglect, abuse, or misappropriation of  
23 property by a state or federal agency under an investigation  
24 conducted in accordance with 42 USC 1395i-3 or 1396r.

25           (2) Except as otherwise provided in this subsection or  
26 subsection (5), a covered facility shall not employ, independently  
27 contract with, or grant privileges to an individual who regularly

1 has direct access to or provides direct services to patients or  
2 residents in the covered facility until the covered facility or  
3 staffing agency has a criminal history check conducted in  
4 compliance with this section or has received criminal history  
5 record information in compliance with subsections (3) and (10).  
6 This subsection and subsection (1) do not apply to any of the  
7 following:

8 (a) An individual who is employed by, under independent  
9 contract to, or granted clinical privileges in a covered facility  
10 before April 1, 2006. On or before April 1, 2011, an individual who  
11 is exempt under this subdivision and who has not been the subject  
12 of a criminal history check conducted in compliance with this  
13 section shall provide the department of state police with a set of  
14 fingerprints and the department of state police shall input those  
15 fingerprints into the automated fingerprint identification system  
16 database established under subsection (13). An individual who is  
17 exempt under this subdivision is not limited to working within the  
18 covered facility with which he or she is employed by, under  
19 independent contract to, or granted clinical privileges on April 1,  
20 2006 but may transfer to another covered facility, adult foster  
21 care facility, or mental health facility. If an individual who is  
22 exempt under this subdivision is subsequently convicted of a crime  
23 described under subsection (1)(a) to (g) or found to be the subject  
24 of a substantiated finding described under subsection (1)(i) or an  
25 order or disposition described under subsection (1)(h), or is found  
26 to have been convicted of a relevant crime described under 42 USC  
27 1320a-7(a), then he or she is no longer exempt and ~~shall~~ **MUST** be

1 terminated from employment or denied employment or clinical  
2 privileges.

3 (b) An individual who is under an independent contract with a  
4 covered facility if he or she is not under the facility's control  
5 and the services for which he or she is contracted are not directly  
6 related to the provision of services to a patient or resident or if  
7 the services for which he or she is contracted allow for direct  
8 access to the patients or residents but are not performed on an  
9 ongoing basis. This exception includes, but is not limited to, an  
10 individual who is under an independent contract with the covered  
11 facility to provide utility, maintenance, construction, or  
12 communications services.

13 (3) An individual who applies for employment either as an  
14 employee or as an independent contractor or for clinical privileges  
15 with a staffing agency or covered facility and who has not been the  
16 subject of a criminal history check conducted in compliance with  
17 this section shall give written consent at the time of application  
18 for the department of state police to conduct a criminal history  
19 check under this section, along with identification acceptable to  
20 the department of state police. If the applicant has been the  
21 subject of a criminal history check conducted in compliance with  
22 this section, the applicant shall give written consent at the time  
23 of application for the covered facility or staffing agency to  
24 obtain the criminal history record information as prescribed in  
25 subsection (4) from the relevant licensing or regulatory department  
26 and for the department of state police to conduct a criminal  
27 history check under this section if the requirements of subsection

1 (10) are not met and a request to the Federal Bureau of  
2 Investigation to make a determination of the existence of any  
3 national criminal history pertaining to the applicant is necessary,  
4 along with identification acceptable to the department of state  
5 police. Upon receipt of the written consent to obtain the criminal  
6 history record information and identification required under this  
7 subsection, the staffing agency or covered facility that has made a  
8 good faith offer of employment or an independent contract or  
9 clinical privileges to the applicant shall request the criminal  
10 history record information from the relevant licensing or  
11 regulatory department and shall make a request regarding that  
12 applicant to the relevant licensing or regulatory department to  
13 conduct a check of all relevant registries in the manner required  
14 in subsection (4). If the requirements of subsection (10) are not  
15 met and a request to the Federal Bureau of Investigation to make a  
16 subsequent determination of the existence of any national criminal  
17 history pertaining to the applicant is necessary, the covered  
18 facility or staffing agency shall proceed in the manner required in  
19 subsection (4). A staffing agency that employs an individual who  
20 regularly has direct access to or provides direct services to  
21 patients or residents under an independent contract with a covered  
22 facility shall submit information regarding the criminal history  
23 check conducted by the staffing agency to the covered facility that  
24 has made a good faith offer of independent contract to that  
25 applicant.

26 (4) Upon receipt of the written consent to conduct a criminal  
27 history check and identification required under subsection (3), a

1 staffing agency or covered facility that has made a good faith  
2 offer of employment or an independent contract or clinical  
3 privileges to the applicant shall make a request to the department  
4 of state police to conduct a criminal history check on the  
5 applicant, to input the applicant's fingerprints into the automated  
6 fingerprint identification system database, and to forward the  
7 applicant's fingerprints to the Federal Bureau of Investigation.  
8 The department of state police shall request the Federal Bureau of  
9 Investigation to make a determination of the existence of any  
10 national criminal history pertaining to the applicant. The  
11 applicant shall provide the department of state police with a set  
12 of fingerprints. The request ~~shall~~ **MUST** be made in a manner  
13 prescribed by the department of state police. The staffing agency  
14 or covered facility shall make the written consent and  
15 identification available to the department of state police. The  
16 staffing agency or covered facility shall make a request regarding  
17 that applicant to the relevant licensing or regulatory department  
18 to conduct a check of all relevant registries established according  
19 to federal and state law and regulations for any substantiated  
20 findings of abuse, neglect, or misappropriation of property. If the  
21 department of state police or the Federal Bureau of Investigation  
22 charges a fee for conducting the criminal history check, the  
23 staffing agency or covered facility shall pay the cost of the  
24 charge. Except as otherwise provided in this subsection, if the  
25 department of state police or the Federal Bureau of Investigation  
26 charges a fee for conducting the criminal history check, the  
27 department shall pay the cost of or reimburse the charge for a

1 covered facility that is a home for the aged. ~~After October 1,~~  
2 ~~2018, if~~ **IF** the department of state police or the Federal Bureau of  
3 Investigation charges a fee for conducting the criminal history  
4 check, the department shall pay the cost of the charge up to 40  
5 criminal history checks per year for a covered facility that is a  
6 home for the aged with fewer than 100 beds and 50 criminal history  
7 checks per year for a home for the aged with 100 beds or more. The  
8 staffing agency or covered facility shall not seek reimbursement  
9 for a charge imposed by the department of state police or the  
10 Federal Bureau of Investigation from the individual who is the  
11 subject of the criminal history check. A prospective employee or a  
12 prospective independent contractor covered under this section may  
13 not be charged for the cost of a criminal history check required  
14 under this section. The department of state police shall conduct a  
15 criminal history check on the applicant named in the request. The  
16 department of state police shall provide the department with a  
17 written report of the criminal history check conducted under this  
18 subsection. The report ~~shall~~ **MUST** contain any criminal history  
19 record information on the applicant maintained by the department of  
20 state police. The department of state police shall provide the  
21 results of the Federal Bureau of Investigation determination to the  
22 department within 30 days after the request is made. If the  
23 requesting staffing agency or covered facility is not a state  
24 department or agency and if criminal history record information is  
25 disclosed on the written report of the criminal history check or  
26 the Federal Bureau of Investigation determination that resulted in  
27 a conviction, the department shall notify the staffing agency or



1 covered facility and the applicant in writing of the type of crime  
2 disclosed on the written report of the criminal history check or  
3 the Federal Bureau of Investigation determination without  
4 disclosing the details of the crime. Any charges imposed by the  
5 department of state police or the Federal Bureau of Investigation  
6 for conducting a criminal history check or making a determination  
7 under this subsection ~~shall~~**MUST** be paid in the manner required  
8 under this subsection. The notice ~~shall~~**MUST** include a statement  
9 that the applicant has a right to appeal the information relied  
10 upon by the staffing agency or covered facility in making its  
11 decision regarding his or her employment eligibility based on the  
12 criminal history check. The notice ~~shall~~**MUST** also include  
13 information regarding where to file and describing the appellate  
14 procedures established under section 20173b.

15 (5) If a covered facility determines it necessary to employ or  
16 grant clinical privileges to an applicant before receiving the  
17 results of the applicant's criminal history check or criminal  
18 history record information under this section, the covered facility  
19 may conditionally employ or grant conditional clinical privileges  
20 to the individual if all of the following apply:

21 (a) The covered facility requests the criminal history check  
22 or criminal history record information under this section upon  
23 conditionally employing or conditionally granting clinical  
24 privileges to the individual.

25 (b) The individual signs a statement in writing that indicates  
26 all of the following:

27 (i) That he or she has not been convicted of 1 or more of the

1 crimes that are described in subsection (1) (a) to (g) within the  
2 applicable time period prescribed by each subdivision respectively.

3 (ii) That he or she is not the subject of an order or  
4 disposition described in subsection (1) (h).

5 (iii) That he or she has not been the subject of a  
6 substantiated finding as described in subsection (1) (i).

7 (iv) That he or she agrees that, if the information in the  
8 criminal history check conducted under this section does not  
9 confirm the individual's statements under subparagraphs (i) to  
10 (iii), his or her employment or clinical privileges will be  
11 terminated by the covered facility as required under subsection (1)  
12 unless and until the individual appeals and can prove that the  
13 information is incorrect.

14 (v) That he or she understands that the conditions described  
15 in subparagraphs (i) to (iv) may result in the termination of his  
16 or her employment or clinical privileges and that those conditions  
17 are good cause for termination.

18 (c) Except as otherwise provided in this subdivision, the  
19 covered facility does not permit the individual to have regular  
20 direct access to or provide direct services to patients or  
21 residents in the covered facility without supervision until the  
22 criminal history check or criminal history record information is  
23 obtained and the individual is eligible for that employment or  
24 clinical privileges. If required under this subdivision, the  
25 covered facility shall provide on-site supervision of an individual  
26 in the covered facility on a conditional basis under this  
27 subsection by an individual who has undergone a criminal history

1 check conducted in compliance with this section. A covered facility  
2 may permit an individual in the covered facility on a conditional  
3 basis under this subsection to have regular direct access to or  
4 provide direct services to patients or residents in the covered  
5 facility without supervision if all of the following conditions are  
6 met:

7 (i) The covered facility, at its own expense and before the  
8 individual has direct access to or provides direct services to  
9 patients or residents of the covered facility, conducts a search of  
10 public records on that individual through the internet criminal  
11 history access tool maintained by the department of state police  
12 and the results of that search do not uncover any information that  
13 would indicate that the individual is not eligible to have regular  
14 direct access to or provide direct services to patients or  
15 residents under this section.

16 (ii) Before the individual has direct access to or provides  
17 direct services to patients or residents of the covered facility,  
18 the individual signs a statement in writing that he or she has  
19 resided in this state without interruption for at least the  
20 immediately preceding 12-month period.

21 (iii) If applicable, the individual provides to the department  
22 of state police a set of fingerprints on or before the expiration  
23 of 10 business days following the date the individual was  
24 conditionally employed or granted conditional clinical privileges  
25 under this subsection.

26 (6) The department shall develop and distribute a model form  
27 for the statements required under subsection (5) (b) and (c). The

1 department shall make the model form available to covered  
2 facilities upon request at no charge.

3 (7) If an individual is employed as a conditional employee or  
4 is granted conditional clinical privileges under subsection (5),  
5 and the information under subsection (3) or report under subsection  
6 (4) does not confirm the individual's statement under subsection  
7 (5) (b) (i) to (iii), the covered facility shall terminate the  
8 individual's employment or clinical privileges as required by  
9 subsection (1).

10 (8) An individual who knowingly provides false information  
11 regarding his or her identity, criminal convictions, or  
12 substantiated findings on a statement described in subsection  
13 (5) (b) (i) to (iii) is guilty of a misdemeanor punishable by  
14 imprisonment for not more than 93 days or a fine of not more than  
15 \$500.00, or both.

16 (9) A staffing agency or covered facility shall use criminal  
17 history record information obtained under subsection (3) or (4)  
18 only for the purpose of evaluating an applicant's qualifications  
19 for employment, an independent contract, or clinical privileges in  
20 the position for which he or she has applied and for the purposes  
21 of subsections (5) and (7). A staffing agency or covered facility  
22 or an employee of the staffing agency or covered facility shall not  
23 disclose criminal history record information obtained under  
24 subsection (3) or (4) to a person who is not directly involved in  
25 evaluating the applicant's qualifications for employment, an  
26 independent contract, or clinical privileges. An individual who  
27 knowingly uses or disseminates the criminal history record

1 information obtained under subsection (3) or (4) in violation of  
2 this subsection is guilty of a misdemeanor punishable by  
3 imprisonment for not more than 93 days or a fine of not more than  
4 \$1,000.00, or both. Except for a knowing or intentional release of  
5 false information, a staffing agency or covered facility has no  
6 liability in connection with a criminal history check conducted in  
7 compliance with this section or the release of criminal history  
8 record information under this subsection.

9 (10) Upon consent of an applicant as required in subsection  
10 (3) and upon request from a staffing agency or covered facility  
11 that has made a good faith offer of employment or an independent  
12 contract or clinical privileges to the applicant, the relevant  
13 licensing or regulatory department shall review the criminal  
14 history record information, if any, and notify the requesting  
15 staffing agency or covered facility of the information in the  
16 manner prescribed in subsection (4). Until the department of state  
17 police can participate with the Federal Bureau of Investigation's  
18 automatic notification system similar to the system required of the  
19 state police under subsection (13) and federal regulations allow  
20 the federal criminal record to be used for subsequent authorized  
21 uses, as determined in an order issued by the department, a  
22 staffing agency or covered facility may rely on the criminal  
23 history record information provided by the relevant licensing or  
24 regulatory department under this subsection and a request to the  
25 Federal Bureau of Investigation to make a subsequent determination  
26 of the existence of any national criminal history pertaining to the  
27 applicant is not necessary if all of the following requirements are

1 met:

2 (a) The criminal history check was conducted during the  
3 immediately preceding 12-month period.

4 (b) The applicant has been continuously employed by the  
5 staffing agency or a covered facility, adult foster care facility,  
6 or mental health facility since the criminal history check was  
7 conducted in compliance with this section or meets the continuous  
8 employment requirement of this subdivision other than being on  
9 layoff status for less than 1 year from a covered facility, adult  
10 foster care facility, or mental health facility.

11 (c) The applicant can provide evidence acceptable to the  
12 relevant licensing or regulatory department that he or she has been  
13 a resident of this state for the immediately preceding 12-month  
14 period.

15 (11) As a condition of continued employment, each employee,  
16 independent contractor, or individual granted clinical privileges  
17 shall do each of the following:

18 (a) Agree in writing to report to the staffing agency or  
19 covered facility immediately upon being arraigned for 1 or more of  
20 the criminal offenses listed in subsection (1)(a) to (g), upon  
21 being convicted of 1 or more of the criminal offenses listed in  
22 subsection (1)(a) to (g), upon becoming the subject of an order or  
23 disposition described under subsection (1)(h), and upon being the  
24 subject of a substantiated finding of neglect, abuse, or  
25 misappropriation of property as described in subsection (1)(i).  
26 Reporting of an arraignment under this subdivision is not cause for  
27 termination or denial of employment.

1 (b) If a set of fingerprints is not already on file with the  
2 department of state police, provide the department of state police  
3 with a set of fingerprints.

4 (12) In addition to sanctions set forth in section 20165, a  
5 licensee, owner, administrator, or operator of a staffing agency or  
6 covered facility who knowingly and willfully fails to conduct the  
7 criminal history checks as required under this section is guilty of  
8 a misdemeanor punishable by imprisonment for not more than 1 year  
9 or a fine of not more than \$5,000.00, or both.

10 (13) The department of state police and the Federal Bureau of  
11 Investigation shall store and retain all fingerprints submitted  
12 under this section and provide for an automatic notification if and  
13 when subsequent criminal information submitted into the system  
14 matches a set of fingerprints previously submitted under this  
15 section. Upon such notification, the department of state police  
16 shall immediately notify the department and the department shall  
17 immediately contact each respective staffing agency or covered  
18 facility with which that individual is associated. Information in  
19 the database established under this subsection is confidential, is  
20 not subject to disclosure under the freedom of information act,  
21 1976 PA 442, MCL 15.231 to 15.246, and ~~shall~~**MUST** not be disclosed  
22 to any person except for purposes of this act or for law  
23 enforcement purposes.

24 (14) The department shall maintain an electronic web-based  
25 system to assist staffing agencies and covered facilities required  
26 to check relevant registries and conduct criminal history checks of  
27 its employees, independent contractors, and individuals granted

1 privileges and to provide for an automated notice to those staffing  
2 agencies and covered facilities for those individuals inputted in  
3 the system who, since the initial criminal history check, have been  
4 convicted of a disqualifying offense or have been the subject of a  
5 substantiated finding of abuse, neglect, or misappropriation of  
6 property. The department may charge a staffing agency a 1-time set-  
7 up fee of up to \$100.00 for access to the electronic web-based  
8 system under this section.

9 (15) As used in this section:

10 (a) "Adult foster care facility" means an adult foster care  
11 facility licensed under the adult foster care facility licensing  
12 act, 1979 PA 218, MCL 400.701 to 400.737.

13 (b) "Convicted" means either of the following:

14 (i) For a crime that is not a relevant crime, a final  
15 conviction, the payment of a fine, a plea of guilty or nolo  
16 contendere if accepted by the court, or a finding of guilt for a  
17 criminal law violation or a juvenile adjudication or disposition by  
18 the juvenile division of probate court or family division of  
19 circuit court for a violation that if committed by an adult would  
20 be a crime.

21 (ii) For a relevant crime described under 42 USC 1320a-7(a),  
22 convicted means that term as defined in 42 USC 1320a-7.

23 (c) "Covered facility" means a health facility or agency that  
24 is a nursing home, county medical care facility, hospice, hospital  
25 that provides swing bed services, home for the aged, or home health  
26 agency.

27 (d) "Criminal history check conducted in compliance with this



1 section" includes a criminal history check conducted under this  
2 section, under section 134a of the mental health code, 1974 PA 258,  
3 MCL 330.1134a, or under section 34b of the adult foster care  
4 facility licensing act, 1979 PA 218, MCL 400.734b.

5 (e) "Direct access" means access to a patient or resident or  
6 to a patient's or resident's property, financial information,  
7 medical records, treatment information, or any other identifying  
8 information.

9 (f) "Home health agency" means a person certified by Medicare  
10 whose business is to provide to individuals in their places of  
11 residence other than in a hospital, nursing home, or county medical  
12 care facility 1 or more of the following services: nursing  
13 services, therapeutic services, social work services, homemaker  
14 services, home health aide services, or other related services.

15 (g) "Independent contract" means a contract entered into by a  
16 covered facility with an individual who provides the contracted  
17 services independently or a contract entered into by a covered  
18 facility with a staffing agency that complies with the requirements  
19 of this section to provide the contracted services to the covered  
20 facility on behalf of the staffing agency.

21 (h) "Medicare" means benefits under the federal Medicare  
22 program established under title XVIII of the social security act,  
23 42 USC 1395 to 1395III.

24 (i) "Mental health facility" means a psychiatric facility or  
25 other facility defined in 42 USC 1396d(d) as described under the  
26 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

27 (j) "Staffing agency" means an entity that recruits candidates

1 and provides temporary and permanent qualified staffing for covered  
2 facilities, including independent contractors.

3 (k) "Under the facility's control" means an individual  
4 employed by or under independent contract with a covered facility  
5 for whom the covered facility does both of the following:

6 (i) Determines whether the individual who has access to  
7 patients or residents may provide care, treatment, or other similar  
8 support service functions to patients or residents served by the  
9 covered facility.

10 (ii) Directs or oversees 1 or more of the following:

11 (A) The policy or procedures the individual must follow in  
12 performing his or her duties.

13 (B) The tasks performed by the individual.

14 (C) The individual's work schedule.

15 (D) The supervision or evaluation of the individual's work or  
16 job performance, including imposing discipline or granting  
17 performance awards.

18 (E) The compensation the individual receives for performing  
19 his or her duties.

20 (F) The conditions under which the individual performs his or  
21 her duties.

22 Sec. 21313. (1) The owner, operator, and governing body of a  
23 home for the aged are responsible for all phases of the operation  
24 of the home and shall assure that the home maintains an organized  
25 program to provide room and board, protection, supervision,  
26 assistance, and supervised personal care for its residents.

27 (2) The owner, operator, and governing body shall assure the

1 availability of emergency medical care required by a resident.

2 (3) The owner, operator, or member of the governing body of a  
3 home for the aged and the authorized representative ~~shall~~**MUST** be  
4 of good moral character.

5 (4) The department of **HEALTH AND** human services shall not  
6 issue a license to or renew the license of an owner, operator, or  
7 member of the governing body, who has regular direct access to  
8 residents or who has on-site facility operational responsibilities,  
9 or an applicant, if an individual or the authorized representative,  
10 if any of those individuals have been convicted of 1 or more of the  
11 following:

12 (a) A felony under this act or under chapter XXA of the  
13 Michigan penal code, 1931 PA 328, MCL 750.145m to ~~750.145r~~.  
14 **750.145S**.

15 (b) A misdemeanor under this act or under chapter XXA of the  
16 Michigan penal code, 1931 PA 328, MCL 750.145m to ~~750.145r~~,  
17 **750.145S**, within the 10 years immediately preceding the  
18 application.

19 (c) A misdemeanor involving abuse, neglect, assault, battery,  
20 or criminal sexual conduct or involving fraud or theft against a  
21 vulnerable adult as that term is defined in section 145m of the  
22 Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or  
23 federal crime that is substantially similar to a misdemeanor  
24 described in this subdivision within the 10 years immediately  
25 preceding the application.

26 (5) The applicant for a license for a home for the aged, if an  
27 individual, shall give written consent at the time of license

1 application and the authorized representative shall give written  
 2 consent at the time of appointment, for the department of state  
 3 police to conduct both of the following:

4 (a) A criminal history check.

5 (b) A criminal records check through the ~~federal bureau of~~  
 6 ~~investigation.~~ **FEDERAL BUREAU OF INVESTIGATION.**

7 (6) Unless already submitted under subsection (5), an owner,  
 8 operator, or member of the governing body who has regular direct  
 9 access to residents or who has on-site facility operational  
 10 responsibilities for a home for the aged shall give written consent  
 11 at the time of license application for the department of state  
 12 police to conduct both of the following:

13 (a) A criminal history check.

14 (b) A criminal records check through the ~~federal bureau of~~  
 15 ~~investigation.~~ **FEDERAL BUREAU OF INVESTIGATION.**

16 (7) The department of **HEALTH AND** human services shall require  
 17 the applicant, authorized representative, owner, operator, or  
 18 member of the governing body who has regular direct access to  
 19 residents or who has on-site facility operational responsibilities  
 20 to submit his or her fingerprints to the department of state police  
 21 for the criminal history check and criminal records check described  
 22 in subsections (5) and (6).

23 ~~(8) Not later than 1 year after the effective date of the 2012~~  
 24 ~~amendatory act that amended this subsection, all **ALL** owners,~~  
 25 operators, and members of the governing body of homes for the aged  
 26 who have regular direct access to residents or who have on-site  
 27 facility operational responsibilities and all authorized

1 representatives shall comply with the requirements of this section.

2 (9) The department of **HEALTH AND** human services shall request  
3 a criminal history check and criminal records check in the manner  
4 prescribed by the department of state police. The department of  
5 state police shall conduct the criminal history check and provide a  
6 report of the results to the licensing or regulatory bureau of the  
7 department of **HEALTH AND** human services. The report ~~shall~~**MUST**  
8 contain any criminal history information on the person maintained  
9 by the department of state police and the results of the criminal  
10 records check from the ~~federal bureau of investigation.~~ **FEDERAL**  
11 **BUREAU OF INVESTIGATION**. The department of state police may charge  
12 the person on whom the criminal history check and criminal records  
13 check are performed under this section a fee for the checks  
14 required under this section that does not exceed the actual cost  
15 and reasonable cost of conducting the checks.

16 (10) ~~Beginning the effective date of the 2012 amendatory act~~  
17 ~~that added this subsection, if~~ **IF** an applicant, authorized  
18 representative, owner, operator, or member of the governing body  
19 who has regular direct access to residents or who has on-site  
20 facility operational responsibilities applies for a license or to  
21 renew a license to operate a home for the aged and previously  
22 underwent a criminal history check and criminal records check  
23 required under subsection (5) or (6) or under section 134a of the  
24 mental health code, 1974 PA 258, MCL 330.1134a, and has remained  
25 continuously licensed or continuously employed under section 20173a  
26 or under section 34b of the adult foster care facility licensing  
27 act, 1979 PA 218, MCL 400.734b, after the criminal history check

1 and criminal records check have been performed, the applicant,  
2 authorized representative, owner, operator, or member of the  
3 governing body who has regular direct access to residents or who  
4 has on-site facility operational responsibilities is not required  
5 to submit to another criminal history check or criminal records  
6 check upon renewal of the license obtained under this section.

7 (11) The department of state police shall store and maintain  
8 all fingerprints submitted under this act in an automated  
9 fingerprint identification system database that provides for an  
10 automatic notification at the time a subsequent criminal arrest  
11 fingerprint card submitted into the system matches a set of  
12 fingerprints previously submitted in accordance with this act. At  
13 the time of that notification, the department of state police shall  
14 immediately notify the department of **HEALTH AND** human services. The  
15 department of **HEALTH AND** human services shall take the appropriate  
16 action upon notification by the department of state police under  
17 this subsection.

18 (12) An applicant, owner, operator, member of a governing  
19 body, or authorized representative of a home for the aged shall not  
20 be present in a home for the aged if he or she has been convicted  
21 of either of the following:

22 (a) Vulnerable adult abuse, neglect, or financial  
23 exploitation.

24 (b) A listed offense as defined in section 2 of the sex  
25 offenders registration act, 1994 PA 295, MCL 28.722.

26 Enacting section 1. This amendatory act takes effect 90 days  
27 after the date it is enacted into law.

1           Enacting section 2. This amendatory act does not take effect  
2 unless Senate Bill No.\_\_\_\_ or House Bill No. 4254 (request no.  
3 00483'19) of the 100th Legislature is enacted into law.

7



# HOUSE BILL No. 4257

February 26, 2019, Introduced by Reps. Crawford, Anthony, Wozniak, Pagan, Bolden, Hope, Elder, Manoogian, Liberati, Shannon, Ellison, Clemente, Gay-Dagnogo, Sabo, Sneller, Yancey, Kuppa, Hood, Sowerby, Stone, Chirkun, Cynthia Johnson, Farrington, Vaupel, Whitsett, Lasinski, Calley, Yaroch, Filler, Cherry and Coleman and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending sections 13, 31, and 34b (MCL 400.713, 400.731, and 400.734b), section 13 as amended by 2012 PA 52, section 31 as amended by 1994 PA 150, and section 34b as amended by 2014 PA 73.

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

HOUSE BILL No. 4257

1           Sec. 13. (1) A person, partnership, corporation, association,  
2 or a department or agency of the state, county, city, or other  
3 political subdivision shall not establish or maintain an adult  
4 foster care facility unless licensed by the department.

5           (2) Application for a license ~~shall~~ **MUST** be made on forms  
6 provided and in the manner prescribed by the department. The  
7 application ~~shall~~ **MUST** be accompanied by the fee prescribed in

1 section 13a.

2 (3) Before issuing or renewing a license, the department shall  
3 investigate the activities and standards of care of the applicant  
4 and shall make an on-site evaluation of the facility. On-site  
5 inspections conducted in response to the application may be  
6 conducted without prior notice to the applicant. Subject to  
7 subsections (9), (10), and (11), the department shall issue or  
8 renew a license if satisfied as to all of the following:

9 (a) The financial stability of the facility.

10 (b) The applicant's compliance with this act and rules  
11 promulgated under this act.

12 (c) The good moral character of the applicant, or owners,  
13 partners, or directors of the facility, if other than an  
14 individual. Each of these persons ~~shall~~**MUST** be not less than 18  
15 years of age.

16 (d) The physical and emotional ability of the applicant, and  
17 the person responsible for the daily operation of the facility to  
18 operate an adult foster care facility.

19 (e) The good moral character of the person responsible for the  
20 daily operations of the facility and all employees of the facility.  
21 The applicant ~~shall~~**MUST** be responsible for assessing the good  
22 moral character of the employees of the facility. The person  
23 responsible for the daily operation of the facility ~~shall~~**MUST** be  
24 not less than 18 years of age.

25 (4) The department shall require an applicant or a licensee to  
26 disclose the names, addresses, and official positions of all  
27 persons who have an ownership interest in the adult foster care

1 facility. If the adult foster care facility is located on or in  
2 real estate that is leased, the applicant or licensee shall  
3 disclose the name of the lessor of the real estate and any direct  
4 or indirect interest that the applicant or licensee has in the  
5 lease other than as lessee.

6 (5) Each license shall state the maximum number of persons to  
7 be received for foster care at 1 time.

8 (6) If applicable, a license shall state the type of  
9 specialized program for which certification has been received from  
10 the department.

11 (7) A license ~~shall~~**MUST** be issued to a specific person for a  
12 facility at a specific location, is nontransferable, and remains  
13 the property of the department. The prohibition against transfer of  
14 a license to another location does not apply if a licensee's adult  
15 foster care facility or home is closed as a result of eminent  
16 domain proceedings, if the facility or home, as relocated,  
17 otherwise meets the requirements of this act and the rules  
18 promulgated under this act.

19 (8) An applicant or licensee proposing a sale of an adult  
20 foster care facility or home to another owner shall provide the  
21 department with advance notice of the proposed sale in writing. The  
22 applicant or licensee and other parties to the sale shall arrange  
23 to meet with specified department representatives and shall obtain  
24 before the sale a determination of the items of noncompliance with  
25 applicable law and rules that ~~shall~~**MUST** be corrected. The  
26 department shall notify the respective parties of the items of  
27 noncompliance before the change of ownership, shall indicate that

1 the items of noncompliance ~~shall~~**MUST** be corrected as a condition  
2 of issuance of a license to the new owner, and shall notify the  
3 prospective purchaser of all licensure requirements.

4 (9) The department shall not issue a license to or renew the  
5 license of an owner, partner, or director of the applicant, who has  
6 regular direct access to residents or who has on-site facility  
7 operational responsibilities, or an applicant or the licensee  
8 designee, if any of those individuals have been convicted of 1 or  
9 more of the following:

10 (a) A felony under this act or under chapter XXA of the  
11 Michigan penal code, 1931 PA 328, MCL 750.145m to ~~750.145r~~,  
12 **750.145S**.

13 (b) A misdemeanor under this act or under chapter XXA of the  
14 Michigan penal code, 1931 PA 328, MCL 750.145m to ~~750.145r~~,  
15 **750.145S**, within the 10 years immediately preceding the  
16 application.

17 (c) A misdemeanor involving abuse, neglect, assault, battery,  
18 or criminal sexual conduct or involving fraud or theft against a  
19 vulnerable adult as that term is defined in section 145m of the  
20 Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or  
21 federal crime that is substantially similar to a misdemeanor  
22 described in this subdivision within the 10 years immediately  
23 preceding the application.

24 (10) If the department has revoked, suspended, or refused to  
25 renew a person's license for an adult foster care facility  
26 according to section 22, the department may refuse to issue a  
27 license to or renew a license of that person for a period of 5

1 years after the suspension, revocation, or nonrenewal of the  
2 license.

3 (11) The department may refuse to issue a license to or renew  
4 the license of an applicant if the department determines that the  
5 applicant has a relationship with a former licensee whose license  
6 under this act has been suspended, revoked, or nonrenewed under  
7 subsection (9) or section 22 or a convicted person to whom a  
8 license has been denied under subsection (9). This subsection  
9 applies for 5 years after the suspension, revocation, or nonrenewal  
10 of the former licensee's license or the denial of the convicted  
11 person's license. For purposes of this subsection, an applicant has  
12 a relationship with a former licensee or convicted person if the  
13 former licensee or convicted person is involved with the facility  
14 in 1 or more of the following ways:

15 (a) Participates in the administration or operation of the  
16 facility.

17 (b) Has a financial interest in the operation of the facility.

18 (c) Provides care to residents of the facility.

19 (d) Has contact with residents or staff on the premises of the  
20 facility.

21 (e) Is employed by the facility.

22 (f) Resides in the facility.

23 (12) If the department determines that an unlicensed facility  
24 is an adult foster care facility, the department shall notify the  
25 owner or operator of the facility that it is required to be  
26 licensed under this act. A person receiving the notification  
27 required under this section who does not apply for a license within

1 30 days is subject to the penalties described in subsection (13).

2 (13) Subject to subsection (12), a person who violates  
3 subsection (1) is guilty of a misdemeanor, punishable by  
4 imprisonment for not more than 2 years or a fine of not more than  
5 \$50,000.00, or both. A person who has been convicted of a violation  
6 of subsection (1) who commits a second or subsequent violation is  
7 guilty of a felony, punishable by imprisonment for not more than 5  
8 years or a fine of not more than \$75,000.00, or both.

9 (14) The department shall issue an initial or renewal license  
10 not later than 6 months after the applicant files a completed  
11 application. Receipt of the application is considered the date the  
12 application is received by any agency or department of this state.  
13 If the application is considered incomplete by the department, the  
14 department shall notify the applicant in writing or make notice  
15 electronically available within 30 days after receipt of the  
16 incomplete application, describing the deficiency and requesting  
17 additional information. If the department identifies a deficiency  
18 or requires the fulfillment of a corrective action plan, the 6-  
19 month period is tolled until either of the following occurs:

20 (a) Upon notification by the department of a deficiency, until  
21 the date the requested information is received by the department.

22 (b) Upon notification by the department that a corrective  
23 action plan is required, until the date the department determines  
24 the requirements of the corrective action plan have been met.

25 (15) The determination of the completeness of an application  
26 does not operate as an approval of the application for the license  
27 and does not confer eligibility of an applicant determined

1 otherwise ineligible for issuance of a license.

2 (16) If the department fails to issue or deny a license within  
3 the time required by this section, the department shall return the  
4 license fee and shall reduce the license fee for the applicant's  
5 next renewal application, if any, by 15%. Failure to issue or deny  
6 a license within the time period required under this section does  
7 not allow the department to otherwise delay processing an  
8 application. The completed application ~~shall~~ **MUST** be placed in  
9 sequence with other completed applications received at that same  
10 time. The department shall not discriminate against an applicant in  
11 the processing of an application based on the fact that the  
12 application fee was refunded or discounted under this subsection.

13 (17) If, on a continual basis, inspections performed by a  
14 local health department delay the department in issuing or denying  
15 licenses under this act within the 6-month period, the department  
16 may use department staff to complete the inspections instead of the  
17 local health department causing the delays.

18 (18) The department director shall submit a report by December  
19 1 of each year to the standing committees and appropriations  
20 subcommittees of the senate and house of representatives concerned  
21 with human services issues. The department director shall include  
22 all of the following information in the report concerning the  
23 preceding fiscal year:

24 (a) The number of initial and renewal applications the  
25 department received and completed within the 6-month time period  
26 described in subsection (14).

27 (b) The number of applications requiring a request for

1 additional information.

2 (c) The number of applications rejected.

3 (d) The number of licenses not issued within the 6-month  
4 period.

5 (e) The average processing time for initial and renewal  
6 licenses granted after the 6-month period.

7 (19) An applicant, if an individual, shall give written  
8 consent at the time of original license application and a licensee  
9 designee shall give written consent at the time of appointment for  
10 the department of state police to conduct both of the following:

11 (a) A criminal history check.

12 (b) A criminal records check through the ~~federal bureau of~~  
13 ~~investigation.~~ **FEDERAL BUREAU OF INVESTIGATION.**

14 (20) Unless already submitted under subsection (19), an owner,  
15 partner, or director of the applicant who has regular direct access  
16 to residents or who has on-site facility operational  
17 responsibilities shall give written consent at the time of original  
18 license application for the department of state police to conduct  
19 both of the following:

20 (a) A criminal history check.

21 (b) A criminal records check through the ~~federal bureau of~~  
22 ~~investigation.~~ **FEDERAL BUREAU OF INVESTIGATION.**

23 (21) The department shall require the applicant, if an  
24 individual, the licensee designee, owner, partner, or director of  
25 the applicant who has regular direct access to residents or who has  
26 on-site facility operational responsibilities to submit his or her  
27 fingerprints to the department of state police for the criminal



1 history check and criminal records check described in subsections  
2 (19) and (20).

3 (22) The department shall request a criminal history check and  
4 criminal records check required under this section in the manner  
5 prescribed by the department of state police. The department of  
6 state police shall conduct the criminal history check and provide a  
7 report of the results to the licensing or regulatory bureau of the  
8 department. The report shall contain any criminal history  
9 information on the person maintained by the department of state  
10 police and the results of the criminal records check from the  
11 ~~federal bureau of investigation.~~ **FEDERAL BUREAU OF INVESTIGATION.**  
12 The department of state police may charge the person on whom the  
13 criminal history check and criminal records check are performed  
14 under this section a fee that does not exceed the actual and  
15 reasonable cost of conducting the checks.

16 (23) ~~Not later than 1 year after the effective date of the~~  
17 ~~2012 amendatory act that amended this subsection, all~~ **ALL** licensees  
18 and licensee designees of facilities licensed on ~~the effective date~~  
19 ~~of the 2012 amendatory act that amended this subsection~~ **MARCH 13,**  
20 **2012** and all persons described in subsection (20) shall comply with  
21 the requirements of this section.

22 (24) ~~Beginning the effective date of the 2012 amendatory act~~  
23 ~~that amended this subsection, if~~ **IF** an applicant or licensee  
24 designee or person described in subsection (20) applies for a  
25 license or to renew a license to operate an adult foster care  
26 facility and he or she or the licensee designee previously  
27 underwent a criminal history check and criminal records check

1 required under subsection (19) or (20) or under section 134a of the  
2 mental health code, 1974 PA 258, MCL 330.1134a, and has remained  
3 continuously licensed or continuously employed under section 34b or  
4 under section 20173a of the public health code, 1978 PA 368, MCL  
5 333.20173a, after the criminal history check and criminal records  
6 check have been performed, that person is not required to submit to  
7 another criminal history check or criminal records check upon  
8 renewal of the license obtained under subsection (3).

9 (25) The department of state police shall store and maintain  
10 all fingerprints submitted under this act in an automated  
11 fingerprint identification system database that provides for an  
12 automatic notification at the time of a subsequent criminal arrest  
13 fingerprint card submitted into the system that matches a set of  
14 fingerprints previously submitted in accordance with this act. Upon  
15 notification, the department of state police shall immediately  
16 notify the department and the department shall take the appropriate  
17 action.

18 (26) A licensee, licensee designee, owner, partner, or  
19 director of the licensee ~~shall~~**MUST** not be permitted on the  
20 premises of an adult foster care facility if he or she has been  
21 convicted of any of the following: adult abuse, neglect, or  
22 financial exploitation; or listed offenses as defined in section 2  
23 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

24 (27) As used in this section, "completed application" means an  
25 application complete on its face and submitted with any applicable  
26 licensing fees as well as any other information, records, approval,  
27 security, or similar item required by law or rule from a local unit

1 of government, a federal agency, or a private entity but not from  
2 another department or agency of this state. A completed application  
3 does not include a health inspection performed by a local health  
4 department.

5 Sec. 31. (1) Except as otherwise provided in section 13 or  
6 section 22, a person, adult foster care facility, agency, or  
7 representative or officer of a corporation, association, or  
8 organization who violates this act is guilty of a misdemeanor,  
9 punishable by imprisonment for not more than 1 year or a fine of  
10 not more than \$1,000.00, or both.

11 (2) A person convicted of a misdemeanor under this act or  
12 under chapter XXA of the Michigan penal code, ~~Act No. 328 of the~~  
13 ~~Public Acts of 1931, being sections 1931 PA 328, MCL 750.145m to~~  
14 ~~750.145r of the Michigan Compiled Laws, shall 750.145S, MUST~~ not be  
15 involved with an adult foster care facility for a period of 5 years  
16 after the conviction in any of the following ways:

17 (a) Participate in the administration or operation of the  
18 facility.

19 (b) Have a financial interest in the operation of the  
20 facility.

21 (c) Provide care to residents of the facility.

22 (d) Have contact with residents or staff on the premises of  
23 the facility.

24 (e) Be employed by the facility.

25 (f) Reside in the facility.

26 (3) A person convicted of a felony under this act or ~~under~~  
27 chapter XXA of ~~Act No. 328 of the Public Acts of 1931 shall~~ **THE**

1 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145M TO 750.145S, MUST  
2 not be involved with an adult foster care facility in any of the  
3 following ways:

4 (a) Participate in the administration or operation of the  
5 facility.

6 (b) Have a financial interest in the operation of the  
7 facility.

8 (c) Provide care to residents of the facility.

9 (d) Have contact with residents or staff on the premises of  
10 the facility.

11 (e) Be employed by the facility.

12 (f) Reside in the facility.

13 Sec. 34b. (1) In addition to the restrictions prescribed in  
14 sections 13, 22, and 31, and except as otherwise provided in  
15 subsection (2), an adult foster care facility shall not employ or  
16 independently contract with an individual who regularly has direct  
17 access to or provides direct services to residents of the adult  
18 foster care facility if the individual satisfies 1 or more of the  
19 following:

20 (a) Has been convicted of a relevant crime described under 42  
21 USC 1320a-7(a).

22 (b) Has been convicted of any of the following felonies, an  
23 attempt or conspiracy to commit any of those felonies, or any other  
24 state or federal crime that is similar to the felonies described in  
25 this subdivision, other than a felony for a relevant crime  
26 described under 42 USC 1320a-7(a), unless 15 years have lapsed  
27 since the individual completed all of the terms and conditions of

1 his or her sentencing, parole, and probation for that conviction  
2 prior to the date of application for employment or the date of the  
3 execution of the independent contract:

4 (i) A felony that involves the intent to cause death or  
5 serious impairment of a body function, that results in death or  
6 serious impairment of a body function, that involves the use of  
7 force or violence, or that involves the threat of the use of force  
8 or violence.

9 (ii) A felony involving cruelty or torture.

10 (iii) A felony under chapter XXA of the Michigan penal code,  
11 1931 PA 328, MCL 750.145m to ~~750.145r~~. **750.145S**.

12 (iv) A felony involving criminal sexual conduct.

13 (v) A felony involving abuse or neglect.

14 (vi) A felony involving the use of a firearm or dangerous  
15 weapon.

16 (vii) A felony involving the diversion or adulteration of a  
17 prescription drug or other medications.

18 (c) Has been convicted of a felony or an attempt or conspiracy  
19 to commit a felony, other than a felony for a relevant crime  
20 described under 42 USC 1320a-7(a) or a felony described under  
21 subdivision (b), unless 10 years have lapsed since the individual  
22 completed all of the terms and conditions of his or her sentencing,  
23 parole, and probation for that conviction prior to the date of  
24 application for employment or the date of the execution of the  
25 independent contract.

26 (d) Has been convicted of any of the following misdemeanors,  
27 other than a misdemeanor for a relevant crime described under 42

1 USC 1320a-7(a), or a state or federal crime that is substantially  
2 similar to the misdemeanors described in this subdivision, within  
3 the 10 years immediately preceding the date of application for  
4 employment or the date of the execution of the independent  
5 contract:

6 (i) A misdemeanor involving the use of a firearm or dangerous  
7 weapon with the intent to injure, the use of a firearm or dangerous  
8 weapon that results in a personal injury, or a misdemeanor  
9 involving the use of force or violence or the threat of the use of  
10 force or violence.

11 (ii) A misdemeanor under chapter XXA of the Michigan penal  
12 code, 1931 PA 328, MCL 750.145m to ~~750.145r~~ **750.145S**.

13 (iii) A misdemeanor involving criminal sexual conduct.

14 (iv) A misdemeanor involving cruelty or torture unless  
15 otherwise provided under subdivision (e).

16 (v) A misdemeanor involving abuse or neglect.

17 (e) Has been convicted of any of the following misdemeanors,  
18 other than a misdemeanor for a relevant crime described under 42  
19 USC 1320a-7(a), or a state or federal crime that is substantially  
20 similar to the misdemeanors described in this subdivision, within  
21 the 5 years immediately preceding the date of application for  
22 employment or the date of the execution of the independent  
23 contract:

24 (i) A misdemeanor involving cruelty if committed by an  
25 individual who is less than 16 years of age.

26 (ii) A misdemeanor involving home invasion.

27 (iii) A misdemeanor involving embezzlement.

1           (iv) A misdemeanor involving negligent homicide or a violation  
2 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL  
3 257.601d.

4           (v) A misdemeanor involving larceny unless otherwise provided  
5 under subdivision (g).

6           (vi) A misdemeanor of retail fraud in the second degree unless  
7 otherwise provided under subdivision (g).

8           (vii) Any other misdemeanor involving assault, fraud, theft,  
9 or the possession or delivery of a controlled substance unless  
10 otherwise provided under subdivision (d), (f), or (g).

11           (f) Has been convicted of any of the following misdemeanors,  
12 other than a misdemeanor for a relevant crime described under 42  
13 USC 1320a-7(a), or a state or federal crime that is substantially  
14 similar to the misdemeanors described in this subdivision, within  
15 the 3 years immediately preceding the date of application for  
16 employment or the date of the execution of the independent  
17 contract:

18           (i) A misdemeanor for assault if there was no use of a firearm  
19 or dangerous weapon and no intent to commit murder or inflict great  
20 bodily injury.

21           (ii) A misdemeanor of retail fraud in the third degree unless  
22 otherwise provided under subdivision (g).

23           (iii) A misdemeanor under part 74 of the public health code,  
24 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided  
25 under subdivision (g).

26           (g) Has been convicted of any of the following misdemeanors,  
27 other than a misdemeanor for a relevant crime described under 42

1 USC 1320a-7(a), or a state or federal crime that is substantially  
2 similar to the misdemeanors described in this subdivision, within  
3 the year immediately preceding the date of application for  
4 employment or the date of the execution of the independent  
5 contract:

6 (i) A misdemeanor under part 74 of the public health code,  
7 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the  
8 time of conviction, is under the age of 18.

9 (ii) A misdemeanor for larceny or retail fraud in the second  
10 or third degree if the individual, at the time of conviction, is  
11 under the age of 16.

12 (h) Is the subject of an order or disposition under section  
13 16b of chapter IX of the code of criminal procedure, 1927 PA 175,  
14 MCL 769.16b.

15 (i) Engages in conduct that becomes the subject of a  
16 substantiated finding of neglect, abuse, or misappropriation of  
17 property by a state or federal agency according to an investigation  
18 conducted in accordance with 42 USC 1395i-3 or 1396r.

19 (2) Except as otherwise provided in this subsection or  
20 subsection (6), an adult foster care facility shall not employ or  
21 independently contract with an individual who has direct access to  
22 residents until the adult foster care facility or staffing agency  
23 has conducted a criminal history check in compliance with this  
24 section or has received criminal history record information in  
25 compliance with subsections (3) and (11). This subsection and  
26 subsection (1) do not apply to an individual who is employed by or  
27 under contract to an adult foster care facility before April 1,



1 2006. On or before April 1, 2011, an individual who is exempt under  
2 this subsection and who has not been the subject of a criminal  
3 history check conducted in compliance with this section shall  
4 provide the department of state police a set of fingerprints and  
5 the department of state police shall input those fingerprints into  
6 the automated fingerprint identification system database  
7 established under subsection (14). An individual who is exempt  
8 under this subsection is not limited to working within the adult  
9 foster care facility with which he or she is employed by or under  
10 independent contract with on April 1, 2006 but may transfer to  
11 another adult foster care facility, mental health facility, or  
12 covered health facility. If an individual who is exempt under this  
13 subsection is subsequently convicted of a crime or offense  
14 described under subsection (1) (a) to (g) or found to be the subject  
15 of a substantiated finding described under subsection (1) (i) or an  
16 order or disposition described under subsection (1) (h), or is found  
17 to have been convicted of a relevant crime described under 42 USC  
18 1320a-7(a), he or she is no longer exempt and ~~shall~~ **MUST** be  
19 terminated from employment or denied employment.

20 (3) An individual who applies for employment either as an  
21 employee or as an independent contractor with an adult foster care  
22 facility or staffing agency and who has not been the subject of a  
23 criminal history check conducted in compliance with this section  
24 shall give written consent at the time of application for the  
25 department of state police to conduct a criminal history check  
26 under this section, along with identification acceptable to the  
27 department of state police. If the individual has been the subject

1 of a criminal history check conducted in compliance with this  
2 section, the individual shall give written consent at the time of  
3 application for the adult foster care facility or staffing agency  
4 to obtain the criminal history record information as prescribed in  
5 subsection (4) or (5) from the relevant licensing or regulatory  
6 department and for the department of state police to conduct a  
7 criminal history check under this section if the requirements of  
8 subsection (11) are not met and a request to the ~~federal bureau of~~  
9 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a  
10 determination of the existence of any national criminal history  
11 pertaining to the individual is necessary, along with  
12 identification acceptable to the department of state police. Upon  
13 receipt of the written consent to obtain the criminal history  
14 record information and identification required under this  
15 subsection, the adult foster care facility or staffing agency that  
16 has made a good faith offer of employment or an independent  
17 contract to the individual shall request the criminal history  
18 record information from the relevant licensing or regulatory  
19 department and shall make a request regarding that individual to  
20 the relevant licensing or regulatory department to conduct a check  
21 of all relevant registries in the manner required in subsection  
22 (4). If the requirements of subsection (11) are not met and a  
23 request to the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**  
24 **INVESTIGATION** to make a subsequent determination of the existence  
25 of any national criminal history pertaining to the individual is  
26 necessary, the adult foster care facility or staffing agency shall  
27 proceed in the manner required in subsection (5). A staffing agency

1 that employs an individual who regularly has direct access to or  
2 provides direct services to residents under an independent contract  
3 with an adult foster care facility shall submit information  
4 regarding the criminal history check conducted by the staffing  
5 agency to the adult foster care facility that has made a good faith  
6 offer of independent contract to that applicant.

7 (4) Upon receipt of the written consent to conduct a criminal  
8 history check and identification required under subsection (3), the  
9 adult foster care facility or staffing agency that has made a good  
10 faith offer of employment or independent contract to the individual  
11 shall make a request to the department of state police to conduct a  
12 criminal history check on the individual and input the individual's  
13 fingerprints into the automated fingerprint identification system  
14 database, and shall make a request to the relevant licensing or  
15 regulatory department to perform a check of all relevant registries  
16 established according to federal and state law and regulations for  
17 any substantiated findings of abuse, neglect, or misappropriation  
18 of property. The request ~~shall~~**MUST** be made in a manner prescribed  
19 by the department of state police and the relevant licensing or  
20 regulatory department or agency. The adult foster care facility or  
21 staffing agency shall make the written consent and identification  
22 available to the department of state police and the relevant  
23 licensing or regulatory department or agency. If the department of  
24 state police or the ~~federal bureau of investigation~~**FEDERAL BUREAU**  
25 **OF INVESTIGATION** charges a fee for conducting the criminal history  
26 check, the charge ~~shall~~**MUST** be paid by or reimbursed by the  
27 department. The adult foster care facility or staffing agency shall

1 not seek reimbursement for a charge imposed by the department of  
2 state police or the ~~federal bureau of investigation~~ **FEDERAL BUREAU**  
3 **OF INVESTIGATION** from the individual who is the subject of the  
4 criminal history check. The department of state police shall  
5 conduct a criminal history check on the individual named in the  
6 request. The department of state police shall provide the  
7 department with a written report of the criminal history check  
8 conducted under this subsection. The report shall contain any  
9 criminal history record information on the individual maintained by  
10 the department of state police.

11 (5) Upon receipt of the written consent to conduct a criminal  
12 history check and identification required under subsection (3), if  
13 the individual has applied for employment either as an employee or  
14 as an independent contractor with an adult foster care facility or  
15 staffing agency, the adult foster care facility or staffing agency  
16 that has made a good faith offer of employment or independent  
17 contract shall comply with subsection (4) and shall make a request  
18 to the department of state police to forward the individual's  
19 fingerprints to the ~~federal bureau of investigation~~ **FEDERAL BUREAU**  
20 **OF INVESTIGATION**. The department of state police shall request the  
21 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to  
22 make a determination of the existence of any national criminal  
23 history pertaining to the individual. An individual described in  
24 this subsection shall provide the department of state police with a  
25 set of fingerprints. The department of state police shall complete  
26 the criminal history check under subsection (4) and, except as  
27 otherwise provided in this subsection, provide the results of its

1 determination under subsection (4) and the results of the ~~federal~~  
2 ~~bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**  
3 determination to the department within 30 days after the request is  
4 made. If the requesting adult foster care facility or staffing  
5 agency is not a state department or agency and if criminal history  
6 record information is disclosed on the written report of the  
7 criminal history check or the ~~federal bureau of investigation~~  
8 **FEDERAL BUREAU OF INVESTIGATION** determination that resulted in a  
9 conviction, the department shall notify the adult foster care  
10 facility or staffing agency and the individual in writing of the  
11 type of crime disclosed on the written report of the criminal  
12 history check or the ~~federal bureau of investigation~~ **FEDERAL BUREAU**  
13 **OF INVESTIGATION** determination without disclosing the details of  
14 the crime. The notification ~~shall~~ **MUST** inform the adult foster care  
15 facility or staffing agency and the applicant regarding the appeal  
16 process in section 34c and ~~shall~~ **MUST** include a statement that the  
17 individual has a right to appeal the information relied upon by the  
18 adult foster care facility or staffing agency in making its  
19 decision regarding his or her employment eligibility based on the  
20 criminal history check. Any charges imposed by the department of  
21 state police or the ~~federal bureau of investigation~~ **FEDERAL BUREAU**  
22 **OF INVESTIGATION** for conducting a criminal history check or making  
23 a determination under this subsection ~~shall~~ **MUST** be paid in the  
24 manner required under subsection (4).

25 (6) If an adult foster care facility determines it necessary  
26 to employ or independently contract with an individual before  
27 receiving the results of the individual's criminal history check or

1 criminal history record information required under this section,  
2 the adult foster care facility may conditionally employ the  
3 individual if all of the following apply:

4 (a) The adult foster care facility requests the criminal  
5 history check or criminal history record information required under  
6 this section, upon conditionally employing the individual.

7 (b) The individual signs a written statement indicating all of  
8 the following:

9 (i) That he or she has not been convicted of 1 or more of the  
10 crimes that are described in subsection (1)(a) to (g) within the  
11 applicable time period prescribed by subsection (1)(a) to (g).

12 (ii) That he or she is not the subject of an order or  
13 disposition described in subsection (1)(h).

14 (iii) That he or she has not been the subject of a  
15 substantiated finding as described in subsection (1)(i).

16 (iv) The individual agrees that, if the information in the  
17 criminal history check conducted under this section does not  
18 confirm the individual's statement under subparagraphs (i) to  
19 (iii), his or her employment will be terminated by the adult foster  
20 care facility as required under subsection (1) unless and until the  
21 individual can prove that the information is incorrect.

22 (v) That he or she understands the conditions described in  
23 subparagraphs (i) to (iv) that result in the termination of his or  
24 her employment and that those conditions are good cause for  
25 termination.

26 (c) Except as otherwise provided in this subdivision, the  
27 adult foster care facility does not permit the individual to have

1 regular direct access to or provide direct services to residents in  
2 the adult foster care facility without supervision until the  
3 criminal history check or criminal history record information is  
4 obtained and the individual is eligible for that employment. If  
5 required under this subdivision, the adult foster care facility  
6 shall provide on-site supervision of an individual in the facility  
7 on a conditional basis under this subsection by an individual who  
8 has undergone a criminal history check conducted in compliance with  
9 this section. An adult foster care facility may permit an  
10 individual in the facility on a conditional basis under this  
11 subsection to have regular direct access to or provide direct  
12 services to residents in the adult foster care facility without  
13 supervision if all of the following conditions are met:

14 (i) The adult foster care facility, at its own expense and  
15 before the individual has direct access to or provides direct  
16 services to residents of the facility, conducts a search of public  
17 records on that individual through the internet criminal history  
18 access tool maintained by the department of state police and the  
19 results of that search do not uncover any information that would  
20 indicate that the individual is not eligible to have regular direct  
21 access to or provide direct services to residents under this  
22 section.

23 (ii) Before the individual has direct access to or provides  
24 direct services to residents of the adult foster care facility, the  
25 individual signs a statement in writing that he or she has resided  
26 in this state without interruption for at least the immediately  
27 preceding 12-month period.

1           (iii) If applicable, the individual provides to the department  
2 of state police a set of fingerprints on or before the expiration  
3 of 10 business days following the date the individual was  
4 conditionally employed under this subsection.

5           (7) The department shall develop and distribute the model form  
6 for the statements required under subsection (6) (b) and (c). The  
7 department shall make the model form available to adult foster care  
8 facilities upon request at no charge.

9           (8) If an individual is conditionally employed under  
10 subsection (6), and the information under subsection (3) or report  
11 under subsection (4) or (5), if applicable, does not confirm the  
12 individual's statement under subsection (6) (b) (i) to (iii), the  
13 adult foster care facility shall terminate the individual's  
14 employment as required by subsection (1).

15           (9) An individual who knowingly provides false information  
16 regarding his or her identity, criminal convictions, or  
17 substantiated findings on a statement described in subsection  
18 (6) (b) (i) to (iii) is guilty of a misdemeanor punishable by  
19 imprisonment for not more than 93 days or a fine of not more than  
20 \$500.00, or both.

21           (10) An adult foster care facility or staffing agency shall  
22 use criminal history record information obtained under subsection  
23 (3), (4), or (5) only for the purpose of evaluating an individual's  
24 qualifications for employment in the position for which he or she  
25 has applied and for the purposes of subsections (6) and (8). An  
26 adult foster care facility or staffing agency or an employee of the  
27 adult foster care facility or staffing agency shall not disclose



1 criminal history record information obtained under this section to  
2 a person who is not directly involved in evaluating the  
3 individual's qualifications for employment or independent contract.  
4 An individual who knowingly uses or disseminates the criminal  
5 history record information obtained under subsection (3), (4), or  
6 (5) in violation of this subsection is guilty of a misdemeanor  
7 punishable by imprisonment for not more than 93 days or a fine of  
8 not more than \$1,000.00, or both. Except for a knowing or  
9 intentional release of false information, an adult foster care  
10 facility or staffing agency has no liability in connection with a  
11 criminal history check conducted in compliance with this section or  
12 the release of criminal history record information under this  
13 subsection.

14 (11) Upon consent of an individual as required in subsection  
15 (3) and upon request from an adult foster care facility or staffing  
16 agency that has made a good faith offer of employment or an  
17 independent contract to the individual, the relevant licensing or  
18 regulatory department shall review the criminal history record  
19 information, if any, and notify the requesting adult foster care  
20 facility or staffing agency of the information in the manner  
21 prescribed in subsection (4) or (5). Until the ~~federal bureau of~~  
22 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** implements an  
23 automatic notification system similar to the system required of the  
24 state police under subsection (14) and federal regulations allow  
25 the federal criminal record to be used for subsequent authorized  
26 uses, as determined in an order issued by the department, an adult  
27 foster care facility or staffing agency may rely on the criminal

1 history record information provided by the relevant licensing or  
2 regulatory department under this subsection and a request to the  
3 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to  
4 make a subsequent determination of the existence of any national  
5 criminal history pertaining to the individual is not necessary if  
6 all of the following requirements are met:

7 (a) The criminal history check was conducted during the  
8 immediately preceding 12-month period.

9 (b) The individual has been continuously employed by an adult  
10 foster care facility, mental health facility, or covered health  
11 facility, or the staffing agency since the criminal history check  
12 was conducted in compliance with this section or meets the  
13 continuous employment requirement of this subdivision other than  
14 being on layoff status for less than 1 year from an adult foster  
15 care facility, mental health facility, or covered health facility.

16 (c) The individual can provide evidence acceptable to the  
17 relevant licensing or regulatory department that he or she has been  
18 a resident of this state for the immediately preceding 12-month  
19 period.

20 (12) As a condition of continued employment, each employee or  
21 independent contractor shall do both of the following:

22 (a) Agree in writing to report to the adult foster care  
23 facility or staffing agency immediately upon being arraigned on 1  
24 or more of the criminal offenses listed in subsection (1)(a) to  
25 (g), upon being convicted of 1 or more of the criminal offenses  
26 listed in subsection (1)(a) to (g), upon becoming the subject of an  
27 order or disposition described under subsection (1)(h), and upon

1 becoming the subject of a substantiated finding described under  
2 subsection (1) (i). Reporting of an arraignment under this  
3 subdivision is not cause for termination or denial of employment.

4 (b) If a set of fingerprints is not already on file with the  
5 department of state police, provide the department of state police  
6 with a set of fingerprints.

7 (13) In addition to sanctions set forth in this act, a  
8 licensee, owner, administrator, or operator of an adult foster care  
9 facility or staffing agency who knowingly and willfully fails to  
10 conduct the criminal history checks as required under this section  
11 is guilty of a misdemeanor punishable by imprisonment for not more  
12 than 1 year or a fine of not more than \$5,000.00, or both.

13 (14) In collaboration with the department of state police, the  
14 department of technology, management, and budget shall establish  
15 and maintain an automated fingerprint identification system  
16 database that would allow the department of state police to store  
17 and maintain all fingerprints submitted under this section and  
18 would provide for an automatic notification at the time a  
19 subsequent criminal arrest fingerprint card submitted into the  
20 system matches a set of fingerprints previously submitted under  
21 this section. Upon such notification, the department of state  
22 police shall immediately notify the department and the department  
23 shall immediately contact each respective adult foster care  
24 facility or staffing agency with which that individual is  
25 associated. Information in the database established under this  
26 subsection is confidential, is not subject to disclosure under the  
27 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and

1 ~~shall~~**MUST** not be disclosed to any person except for purposes of  
2 this act or for law enforcement purposes.

3 (15) If an individual independently contracts with an adult  
4 foster care facility, subsections (1) and (2) do not apply if the  
5 individual is not under the adult foster care facility's control  
6 and the contractual work performed by the individual is not  
7 directly related to the clinical, health care, or personal services  
8 delivered by the adult foster care facility or if the individual's  
9 duties are not performed on an ongoing basis with direct access to  
10 residents. This exception includes, but is not limited to, an  
11 individual who independently contracts with the adult foster care  
12 facility to provide utility, maintenance, construction, or  
13 communication services.

14 (16) The department shall maintain an electronic web-based  
15 system to assist the adult foster care facilities and staffing  
16 agencies required to check relevant registries and conduct criminal  
17 history checks of its employees and independent contractors and to  
18 provide for an automated notice to the adult foster care facilities  
19 and staffing agencies for the individuals entered in the system  
20 who, since the initial criminal history check, have been convicted  
21 of a disqualifying offense or have been the subject of a  
22 substantiated finding of abuse, neglect, or misappropriation of  
23 property. The department may charge a staffing agency a 1-time set-  
24 up fee of up to \$100.00 for access to the electronic web-based  
25 system under this section.

26 (17) An adult foster care facility, staffing agency, or a  
27 prospective employee covered under this section may not be charged

1 for the cost of a criminal history check required under this act.

2 (18) As used in this section:

3 (a) "Convicted" means either of the following:

4 (i) For a crime that is not a relevant crime, a final  
5 conviction, the payment of a fine, a plea of guilty or nolo  
6 contendere if accepted by the court, or a finding of guilt for a  
7 criminal law violation or a juvenile adjudication or disposition by  
8 the juvenile division of probate court or family division of  
9 circuit court for a violation that if committed by an adult would  
10 be a crime.

11 (ii) For a relevant crime described under 42 USC 1320a-7(a),  
12 convicted means that term as defined in 42 USC 1320a-7.

13 (b) "Covered health facility" means a nursing home, county  
14 medical care facility, hospice, hospital that provides swing bed  
15 services, home for the aged, or home health agency licensed under  
16 article 17 of the public health code, 1978 PA 368, MCL 333.20101 to  
17 333.22260.

18 (c) "Criminal history check conducted in compliance with this  
19 section" includes a criminal history check conducted under this  
20 section, under section 134a of the mental health code, 1974 PA 258,  
21 MCL 330.1134a, or under section 20173a of the public health code,  
22 1978 PA 368, MCL 333.20173a.

23 (d) "Direct access" means access to a resident or resident's  
24 property, financial information, medical records, treatment  
25 information, or any other identifying information.

26 (e) "Home health agency" means that term as defined in section  
27 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

1 (f) "Independent contract" means a contract entered into by an  
2 adult foster care facility with an individual who provides the  
3 contracted services independently or a contract entered into by an  
4 adult foster care facility with a staffing agency that complies  
5 with the requirements of this section to provide the contracted  
6 services to the adult foster care facility on behalf of the  
7 staffing agency.

8 (g) "Mental health facility" means a psychiatric facility or  
9 other facility defined in 42 USC 1396d(d) as described under the  
10 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

11 (h) "Staffing agency" means an entity that recruits candidates  
12 and provides temporary and permanent qualified staffing for adult  
13 foster care facilities, including independent contractors.

14 (i) "Title XIX" means title XIX of the social security act, 42  
15 USC 1396 to 1396w-5.

16 (j) "Under the adult foster care facility's control" means an  
17 individual employed by or under independent contract with an adult  
18 foster care facility for whom the adult foster care facility does  
19 both of the following:

20 (i) Determines whether the individual who has access to  
21 residents may provide care, treatment, or other similar support  
22 service functions to residents served by the adult foster care  
23 facility.

24 (ii) Directs or oversees 1 or more of the following:

25 (A) The policy or procedures the individual must follow in  
26 performing his or her duties.

27 (B) The tasks performed by the individual.

1 (C) The individual's work schedule.

2 (D) The supervision or evaluation of the individual's work or  
3 job performance, including imposing discipline or granting  
4 performance awards.

5 (E) The compensation the individual receives for performing  
6 his or her duties.

7 (F) The conditions under which the individual performs his or  
8 her duties.

9 Enacting section 1. This amendatory act takes effect 90 days  
10 after the date it is enacted into law.

11 Enacting section 2. This amendatory act does not take effect  
12 unless Senate Bill No. \_\_\_\_ or House Bill No. 4254 (request no.  
13 00483'19) of the 100th Legislature is enacted into law.

8



# HOUSE BILL No. 4258

February 26, 2019, Introduced by Reps. Yancey, Anthony, Wozniak, Pagan, Bolden, Hope, Elder, Manoogian, Liberati, Shannon, Ellison, Clemente, Gay-Dagnogo, Crawford, Sabo, Sneller, Kuppa, Hood, Sowerby, Stone, Cynthia Johnson, Farrington, Vaupel, Whitsett, Yaroach, Lasinski, Calley, Filler, Cherry and Coleman and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending section 2802 (MCL 700.2802), as amended by 2012 PA 173.

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

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

2       (a) "Abuse, neglect, or exploitation" means an act, the  
3 commission of which is a felony, under any of the following:

4       (i) An act that constitutes child abuse under section 136b of  
5 the Michigan penal code, 1931 PA 328, MCL 750.136b.

6       (ii) A criminal act that is an offense under chapter XXA of  
7 the Michigan penal code, 1931 PA 328, MCL 750.145m to ~~750.145r~~.  
8 **750.145S.**

9       (iii) A violation of section 174a of the Michigan penal code,

1 1931 PA 328, MCL 750.174a.

2 (iv) A criminal act that is an offense involving domestic  
3 violence as that term is defined in section 27b of chapter VIII of  
4 the code of criminal procedure, 1927 PA 175, MCL 768.27b.

5 (v) A criminal act that constitutes abuse, neglect, or  
6 exploitation as those terms are defined in section 11 of the social  
7 welfare act, 1939 PA 280, MCL 400.11.

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

11 (c) "Felon" means the individual who was convicted of  
12 committing the abuse, neglect, or exploitation.

13 (d) "Governing instrument" means a governing instrument  
14 executed by the decedent.

15 (e) "Revocable" means, with respect to a disposition,  
16 appointment, provision, or nomination, one under which the  
17 decedent, at the time of or immediately before death, was alone  
18 empowered, by law or under the governing instrument, to cancel the  
19 designation in favor of the killer or felon, whether or not the  
20 decedent was then empowered to designate himself or herself in  
21 place of his or her killer or felon and whether or not the decedent  
22 then had the capacity to exercise the power.

23 Enacting section 1. This amendatory act takes effect 90 days  
24 after the date it is enacted into law.

25 Enacting section 2. This amendatory act does not take effect  
26 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 4254 (request no.  
27 00483'19) of the 100th Legislature is enacted into law.

9

# HOUSE BILL No. 4259

February 26, 2019, Introduced by Reps. Guerra, Anthony, Wozniak, Pagan, Bolden, Hope, Elder, Manoogian, Liberati, Shannon, Ellison, Clemente, Gay-Dagnogo, Crawford, Sabo, Sneller, Yancey, Kuppa, Hood, Sowerby, Stone, Chirkun, Cynthia Johnson, Farrington, Vaupel, Whitsett, Yaroch, Lasinski, Calley, Filler, Cherry and Coleman and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 16i of chapter XVII (MCL 777.16i), as amended by 2012 PA 169.

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

1 CHAPTER XVII

2 Sec. 16i. This chapter applies to the following felonies  
3 enumerated in chapter 750 of the Michigan Compiled Laws:

4	M.C.L.	Category	Class	Description	Stat Max
5	750.158	Pub ord	E	Sodomy	15
6	<del>750.159j</del> 750.159I	Pub saf	B	Racketeering	20
7	750.160	Pu ord	D	Disinterring or mutilating dead human body	10

1	750.160a	Pub ord	H	Photographing dead human body	2
2	750.160c	Pub ord	D	Improper disposal of dead human body after more than 180 days	10
3	750.161	Pub ord	G	Desertion, abandonment, or nonsupport	3
4	750.164	Pub ord	F	Desertion to escape prosecution	4
5	750.165	Pub ord	F	Failing to pay support	4
6	<del>750.168(2)(a)</del> 750.167D	Pub ord	G	Disorderly conduct at a funeral, memorial service, viewing, procession, or burial	2
7	<del>750.168(2)(b)</del> 750.167D	Pub ord	F	Disorderly conduct at a funeral, memorial service, viewing, procession, or burial - subsequent offense	4
8	750.174(4)	Property	E	Embezzlement by agent of \$1,000 to \$20,000, or with prior convictions, or of \$200 to \$1,000 from nonprofit corporation or charitable organization	5
9	750.174(5)	Property	D	Embezzlement by agent of \$20,000 to \$50,000, or with prior convictions, or of \$1,000 to \$20,000 from nonprofit corporation or charitable organization	10
10	750.174(6)	Property	C	Embezzlement by agent of \$50,000 to \$100,000	15

1	750.174(7)	Property	B	Embezzlement by agent of \$100,000 or more	20
2	750.174a(4)	Property	E	Embezzlement from vulnerable <b>OR ELDER</b> adult of \$1,000 to \$20,000 or with prior convictions	5
3	750.174a(5)	Property	D	Embezzlement from vulnerable <b>OR ELDER</b> adult of \$20,000 to \$50,000 or with prior convictions	10
4	750.174a(6)	Property	C	Embezzlement from vulnerable <b>OR ELDER</b> adult of \$50,000 to \$100,000 or with prior convictions	15
5	750.174a(7)	Property	B	Embezzlement from vulnerable <b>OR ELDER</b> adult of \$100,000 or more or with prior convictions	20
6	750.175	Pub trst	D	Embezzlement by public officer of more than \$50	10
7	750.176	Pub trst	E	Embezzlement by administrator, executor, or guardian	10
8	750.177(2)	Property	D	Embezzlement by chattel mortgagor of \$20,000 or more or with prior convictions	10
9	750.177(3)	Property	E	Embezzlement by chattel mortgagor of \$1,000 to \$20,000 or with prior convictions	5

1	750.178 (2)	Property	D	Embezzling mortgaged or leased property of \$20,000 or <b>MORE OR</b> with prior convictions	10
2	750.178 (3)	Property	E	Embezzling mortgaged or leased property of \$1,000 to \$20,000 or with prior convictions	5
3	750.180	Property	D	Embezzlement by financial institution	20
4	750.181 (4)	Property	E	Embezzling jointly held property with value of \$1,000 to \$20,000 or with prior convictions	5
5	750.181 (5)	Property	D	Embezzling jointly held property with value of \$20,000 or more or with prior convictions	10
6	750.182	Property	G	Embezzlement by warehouses	4
7	750.182a	Pub trst	H	Falsifying school records	2

8           Enacting section 1. This amendatory act takes effect 90 days  
9 after the date it is enacted into law.

10           Enacting section 2. This amendatory act does not take effect  
11 unless Senate Bill No. \_\_\_\_ or House Bill No. 4260 (request no.  
12 00482'19) of the 100th Legislature is enacted into law.

10



# HOUSE BILL No. 4265

February 26, 2019, Introduced by Reps. Farrington, Guerra, Anthony, Wozniak, Pagan, Bolden, Hope, Markkanen, Elder, Liberati, Manoogian, Shannon, Ellison, Clemente, Gay-Dagnogo, Crawford, Sabo, Sneller, Yancey, Kuppa, Hood, Sowerby, Stone, Cynthia Johnson, Vaupel, Lasinski, Calley, Yaroch, Whitsett, Filler, Cherry, Coleman and Neeley and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1927 PA 175, entitled  
 "The code of criminal procedure,"  
 by amending section 16g of chapter XVII (MCL 777.16g), as amended  
 by 2017 PA 74.

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

1 CHAPTER XVII

2 Sec. 16g. (1) This chapter applies to the following felonies  
 3 enumerated in chapter 750 of the Michigan Compiled Laws:

4	M.C.L.	Category	Class	Description	Stat Max
5	750.135	Person	D	Exposing children with intent to injure or abandon	10
6	750.135a(2)(c)	Person	D	Leaving child unattended in vehicle resulting in serious physical harm	10

1	750.135a(2)(d)	Person	B	Leaving child unattended in vehicle resulting in death	15
2	750.136	Person	B	Female genital mutilation violation	15
3	750.136a	Person	B	Transporting person for purpose of female genital mutilation	15
4	750.136b(2)	Person	A	First degree child abuse	Life
5	750.136b(4)(a)	Person	C	Second degree child abuse - first offense	10
6	750.136b(4)(b)	Person	B	Second degree child abuse - second or subsequent offense	20
7	750.136b(6)	Person	G	Third degree child abuse	2
8	750.136c	Person	B	Buying or selling an individual	20
9	750.136d(1)(a)	Person	A	First degree child abuse in presence of another child	Life
10	750.136d(1)(b)	Person	D	Second degree child abuse in presence of another child - first offense	10
11	750.136d(1)(c)	Person	B	Second degree child abuse in presence of another child - second or subsequent offense	20
12	750.136d(1)(d)	Person	G	Third degree child abuse in presence of another child	2
13	750.145a	Person	F	Soliciting child to commit an immoral act	4
14	750.145b	Person	D	Accosting children for immoral purposes with prior conviction	10
15	750.145c(2)	Person	B	Producing child sexually abusive activity or material	20

1	750.145c(3)	Person	D	Distributing, promoting, or financing the distribution of child sexually abusive activity or material	7
2	750.145c(4)	Person	F	Possessing child sexually abusive material	4
3	750.145d(2) (b)	Variable	G	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 1 year but less than 2 years	2
4	750.145d(2) (c)	Variable	F	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 2 years but less than 4 years	4
5	750.145d(2) (d)	Variable	D	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 4 years but less than 10 years	10
6	750.145d(2) (e)	Variable	C	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 10 years but less than 15 years	15
7	750.145d(2) (f)	Variable	B	Using internet or computer to commit crime punishable by a maximum term of imprisonment of at least 15 years or for life	20
8	750.145n(1)	Person	C	First degree vulnerable adult abuse	15

1	750.145n(2)	Person	F	Second degree vulnerable adult abuse	4
2	750.145n(3)	Person	G	Third degree vulnerable adult abuse	2
3	750.145o	Person	E	Death of vulnerable adult caused by unlicensed caretaker	5
4	750.145p(1)	Person	G	Commingling funds of, obstructing investigation regarding, or filing false information regarding, vulnerable adult	2
5	750.145p(2)	Person	G	Retaliation or discrimination by caregiver against vulnerable adult	2
6	750.145p(5)	Person	E	Caregiver or licensee violation against vulnerable adult – second or subsequent offense	5
7	750.145S(2)	PERSON	F	<b>ELDER ABUSE OR VULNERABLE ADULT ABUSE CAUSING PHYSICAL INJURY, PAIN, OR MENTAL SUFFERING</b>	4
8	750.145S(3)	PERSON	C	<b>ELDER ABUSE OR VULNERABLE ADULT ABUSE CAUSING SERIOUS IMPAIRMENT OF A BODY FUNCTION</b>	15
9	750.145S(4)	PERSON	A	<b>ELDER ABUSE OR VULNERABLE ADULT ABUSE CAUSING DEATH</b>	25
10	750.145S(5)	PERSON	F	<b>RESTRAINING AN ELDER ADULT OR VULNERABLE ADULT BY VIOLENCE, MENACE, FRAUD, OR DECEIT</b>	4
11	750.147b	Person	G	Ethnic intimidation	2

1           (2) For a violation of section 145d of the Michigan penal  
2 code, 1931 PA 328, MCL 750.145d, determine the offense category,  
3 offense variable level, and prior record variable level based on  
4 the underlying offense.

5           Enacting section 1. This amendatory act takes effect 90 days  
6 after the date it is enacted into law.

7           Enacting section 2. This amendatory act does not take effect  
8 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 4254 (request no.  
9 00483'19) of the 100th Legislature is enacted into law.

11

**What to do about the new Safe Families for Children Act, MCL 722.1551 et seq.**

Josh Ard

January 2019

Contrary to representations made, the act was not amended before passage to clarify that it does not create more burdens on families who wish to use the existing temporary powers of attorneys authorized under EPIC. Thus, we need to provide suggestions as to how this should be done.

The problem is obvious is looking at the text of the act. In some places, such as in Section 9, the drafters were careful to use language such as “a power of attorney under this act”. In Sections 11 and 13, this clarifying phrase is missing and the act only refers to “a power of attorney”. Sections 11 and 13 place significant burdens both on state government and on families who wish to use powers of attorneys for relatively mundane tasks such as ensuring grandparents’ power to take actions while the parents are out of town for short trips.

There are two logical methods to address the problem:

- ❖ Add a section saying something like “this act does not apply to powers of attorneys created under the authority of MCL 700.5103.
- ❖ Add clarifying language in the new statute where appropriate.

I suggest that the second approach is better for two reasons:

- ❖ There are some cases where protections ought to apply to EPIC powers of attorney, such in Section 15. I don’t know if anybody has ever said that executing a power of attorney under EPIC is in itself a sign of neglect, but it makes sense to make it plain that it does not.
- ❖ Even if a new section is added, some clever lawyers may make something of the fact that “under this act” is found in some section but not others.

Therefore, I submit that we ought to add “under this act” where necessary. Please consider the following, where the added language is in red and underlined.

By the way, I have no idea why some things are in blue and double underlined.

## SAFE FAMILIES FOR CHILDREN ACT

Act 434 of 2018

AN ACT to establish the safe families for children program; to prescribe the powers and duties of certain state departments and public and private agencies; to allow for temporary delegation of a parent's or guardian's powers regarding care, custody, or property of a minor child; and to prescribe procedures for providing host families for the temporary care of children.

722.1551.new Short title.

Sec. 1.

This act shall be known and may be cited as the "safe families for children act".

722.1553.new Definitions.

Sec. 3.

As used in this act:

(a) "Automatic notification system" means a system that stores and retains fingerprints and that provides for an automatic notification to a participant when a fingerprint is submitted into the system that matches an individual whose fingerprints are retained in the system or when the criminal history of an individual whose fingerprints are retained in the system is updated.

(b) "Child placing agency" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(c) "Department" means the department of health and human services.

(d) "Family service agency" means an agency that assists a tax-exempt charitable organization recruiting persons and families under section 7 with obtaining and reviewing criminal history records checks required under section 9 and conducting home safety assessments and training as required under sections 11 and 13. A family service agency must also be licensed as a child placing agency.

(e) "FBI automatic notification system" means the automatic notification system that is maintained by the Federal Bureau of Investigation.

(f) "Minor child" means an individual less than 18 years of age.



722.1555.new Temporary delegation of parental power; limitations; revocation or withdrawal.  
Sec. 5.

(1) By a properly executed power of attorney, a parent or guardian of a minor child may temporarily delegate to another person his or her powers regarding care, custody, or property of the minor child under this act. This temporary delegation of power may be for up to 180 days, except that if a parent or guardian is serving in the United States Armed Forces and is deployed to a foreign nation, a power of attorney may be effective until the thirty-first day after the end of the deployment. A person to whom the parent or guardian delegates these powers is required to have undergone the criminal history records check, home safety assessment and inspection, and training required under this act. A parent or guardian cannot delegate, under this act, his or her power to consent to marriage or adoption of the minor child, consent to an abortion or inducement of an abortion to be performed on or for the minor child, or to terminate parental rights to the minor child.

(2) The parent or guardian executing a power of attorney may revoke or withdraw the power of attorney at any time. [I see no reason for this not to apply to EPIC powers of attorney]

722.1557.new Recruitment of persons or families by charitable organizations to serve as resource families.  
Sec. 7.

A tax-exempt charitable organization, including, but not limited to, a church or faith-based organization, may recruit persons or families to whom a temporary power of attorney may be executed under section 5. A tax-exempt charitable organization recruiting persons and families under this section must use the services of a family service agency to assist the tax-exempt charitable organization in obtaining and reviewing criminal history records checks required under section 9 and conducting home safety assessments and training as required under sections 11 and 13.

722.1559.new Recruitment of persons or families by charitable organizations to serve as resource families.  
Sec. 9.

(1) For each person over 18 years of age residing in a home where a minor child may be temporarily hosted according to a power of attorney under this act, a criminal history records check must be conducted as follows:

(a) A family service agency must request the department of state police to do both of the following:

(i) Conduct a criminal history records check on the person.

(ii) Conduct a criminal history records check through the Federal Bureau of Investigation on the person.

(b) Each person must submit his or her fingerprints to the department of state police for the criminal history records check required under this act. Both of the following apply concerning fingerprints submitted to the department of state police under this subdivision:

(i) The department of state police shall store and retain all fingerprints submitted under this section in an automated fingerprint identification system database that searches against latent fingerprints and provides for an automatic notification when a subsequent fingerprint is submitted into the system that matches a set of fingerprints previously submitted under this section or when the criminal history of an individual whose fingerprints are retained in the system is updated. Upon receiving a notification under this subparagraph, the department of state police shall immediately notify the family service agency that requested the criminal history records check under this section. Information in the database maintained under this section is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(ii) The department of state police shall forward all fingerprints submitted to it under this section to the Federal Bureau of Investigation to be retained in the FBI automatic notification system that provides for automatic notification if subsequent criminal history record information matches fingerprints previously submitted to the Federal Bureau of Investigation under this section. The fingerprints retained under this section may be searched by using future submissions to the FBI automatic notification system, including, but not limited to, latent fingerprint searches. This subparagraph does not apply until the department of state police is a participant in the FBI automatic notification system.

(c) A family service agency requesting a criminal history records check under this section shall notify the department of state police within 5 days after the individual for which the criminal history records check was requested is no longer residing in a home where a minor child may be temporarily hosted or the individual's home is no longer hosting or available to host a minor child under this act. After receiving this notice from a family service agency, the department of state police is no longer required to provide any notice to the family service agency under subdivision (b)(i) for that individual.

(2) When a home is hosting or is available to host a minor child according to a power of attorney, each person residing in that home for whom a criminal history records check has been conducted under subsection (1) must report to a family service agency within 3 business days after he or she has been arraigned for 1 or more of the crimes listed in section 5r of 1973

PA 116, MCL 722.115r, or any disqualifying offense under the national child protection act of 1993, Public Law 103-209.

(3) If a person residing in a home in which a minor child is or is proposed to be hosted according to a power of attorney under this act is not of good moral character as that term is defined in and determined under 1974 PA 381, MCL 338.41 to 338.47, or has been arraigned for 1 or more disqualifying offenses under the national child protection act of 1993, Public Law 103-209, a minor child shall not be hosted in that home.

(4) A family service agency may request the criminal history records checks under this section as allowed under state and federal law, including, but not limited to, being a qualified entity under the national child protection act of 1993, Public Law 103-209.

722.1561.new Home safety assessment.  
Sec. 11.

A family service agency shall conduct a home safety assessment and inspection as follows:

(a) A family service agency shall conduct a home safety assessment for each home where a minor child may be temporarily hosted according to a power of attorney under this act. The home safety assessment must include an inspection of the physical dwelling, assessment of the person's or family's financial ability to provide care for the minor child, and assessment of the person's or family's ability and capacity to provide care for the minor child. As part of the home safety assessment, the family service agency shall obtain 3 current references from persons not related to the person or family.

(b) A family service agency shall conduct a home safety assessment every 2 years while a home is hosting or is available to host a minor child according to a power of attorney under this act.

(c) A family service agency shall conduct periodic inspections of a home that is hosting a minor child under this act to monitor the well-being of the minor child and any change impacting the most recent home safety assessment. The family service agency must conduct this inspection within 48 hours after a person or family begins hosting a minor child in a home, 1 day per week for the first month during which a minor child is hosted in the home, and 1 day per month after that for the duration of the period of time that the minor child is being hosted in the home.

(d) A family service agency's home safety assessment and inspection under subdivisions (a), (b), and (c) must result in a determination that a home is safe for a minor child before the home may host or continue to host a minor child under this section.

722.1563.new Training for preparing, developing, training, and supporting resource families.  
Sec. 13.

(1) Before a minor child is hosted in a home according to a power of attorney under this act, a family service agency shall provide training for the persons in that home. The training must be based on a national model for preparing, developing, training, and supporting resource families for the temporary care of minor children and must include training on identifying child maltreatment, understanding grief and loss, behavior management strategies, environmental safety and universal precautions, and unique child-specific needs-based training.

(2) A person to whom power related to a minor child is delegated according to a power of attorney under this act shall not be compensated for serving as the temporary attorney-in-fact. This subsection does not prohibit an individual, private organization, or governmental entity from providing funds to a family service agency for providing services under this act.

722.1565.new Execution of power attorney does not constitute abuse or neglect; services under this act by resource family not subject to licensing or regulation by the department.  
Sec. 15.

(1) A parent or guardian executing a power of attorney does not, by itself, constitute evidence of abandonment, child abuse, child neglect, delinquency, or other maltreatment of a minor child unless the parent or guardian fails to take custody of the minor child when a power of attorney expires. This act does not prevent or delay an investigation of child abuse, child neglect, abandonment, delinquency, or other mistreatment of a minor child.

(2) Executing a power of attorney does not subject a parent, guardian, or person in a home in which a minor child is hosted under this act to any law, rule, or regulation concerning licensing or regulation of foster care or a child care organization. Providing a service under this act does not subject a family service agency to regulation by the department.

722.1567.new Records; availability; liability; rules prohibited; referral.  
Sec. 17.

(1) A family service agency shall maintain records for each criminal history records check, home safety assessment, and training it conducts under this act for a period of not less than 7 years after the minor child attains 18 years of age. The family service agency shall make the records available to any local, state, or federal authority requesting the records as part of an investigation involving the minor child, parent or guardian, or person in a home in which a minor child is or was hosted according to a power of attorney.

(2) The department is not liable for any action arising out of this act.

(3) The department shall not promulgate rules under this act.

(4) The department, a local office of the department, or a law enforcement agency or officer may refer cases or families to a tax-exempt charitable organization that is recruiting persons and families under this act. The services provided under this act are community-based services that may be recommended commensurate with the risk to the child under section 8d(1)(b) and (c) of the child protection law, 1975 PA 238, MCL 722.628d.

12

Drafter/Beneficiary Committee  
Andrew Mayoras, Chair  
March 25, 2019

To facilitate the discussion of the Drafter/Beneficiary Committee in connection with proposing new legislation to address: (1) Gifts to lawyer/drafters who are a beneficiaries of a written instrument, and (2) Gifts to a non-lawyer/drafters who are a beneficiaries of a written instrument, we'd like to address the following questions and seek feedback as to our draft "lawyer-only" version of the statute.

The Committee has discovered that it is much more challenging to draft proposed legislation for non-lawyer/drafters who will presumably be ignorant of the new law (unlike lawyers), and for whom different standards, definitions, and/or scope of the statute might be appropriate.

Open Items to discuss at CSP:

1. For lawyers:
  - a. Do we limit gifts to "substantial" and if so, at what level?
  - b. Definition of "related" – do we want to broaden or narrow? Specifically, what about live-in companions, fiancées, etc.? note – Florida included a "close, familial relationship" inclusion of "related."
  - c. Do we want to include a reduction for gifts to lawyers even by relatives if the gift exceeds intestate amount? If so, do we carve out spouses?
  - d. Do we want a limitations period for triggering the voiding, especially as to inter vivos gifts?
  - e. Do we want to limit scope to testamentary instruments only?
2. For non-lawyers:
  - a. All of the above – i.e., does the "substantial" limit change for non-lawyers? Do we exclude inter-vivos gifts?
  - b. Is automatic voiding too harsh when drafter may be ignorant of this new law (i.e., lawyers ought to know better, but lay people won't?)
  - c. Would some type of "Safe Harbor" protection be warranted (i.e., if recipient establishes by C&C evidence that gift was intended, can gift be protected? How would this work?)
  - d. Is there greater need for exculpatory language for financial institutions?
  - e. How would this work with a POA making gift to himself/herself that is expressly permitted under instrument? Would this statute limit Medicaid-friendly gift-giving?
3. Approval

Depending on the outcome of the discussion, it may make sense to submit the "lawyer-only" draft version for a vote.

13



700. \_\_\_\_ Gifts to lawyers and other disqualified persons.

(1) Any part of a written instrument which makes a substantial gift to a lawyer, or a person or entity related to the lawyer is void, unless the lawyer or other recipient of the gift is related to the person making the gift.

(2) This section is not applicable to a provision in a written instrument appointing a lawyer, or a person related to the lawyer, as a fiduciary. Reasonable fiduciary fees that may be received by a lawyer, or a person related to the lawyer, who acts as a fiduciary are not considered to be gifts under this section.

(3) A provision in a written instrument purporting to waive the application of this section is unenforceable.

(4) If property distributed in kind, or a security interest in property, is acquired by a purchaser or lender for value from a person who has received a gift in violation of this section, the purchaser or lender takes title free of any claims arising under this section and incurs no personal liability by reason of this section, whether or not the gift is void under this section. Additionally, this section cannot directly or indirectly impose liability on a financial institution or other third-party who honors or relies on a written instrument that contains or effectuates a gift that is void under this section.

(5) If a part of a written instrument is invalid by reason of this section, the invalid part is severable and will not affect any other part of the written instrument which can be given effect, including a term that makes an alternate or substitute gift. In the case of a power of appointment, this section does not affect the power to appoint in favor of persons other than the lawyer or a person related to the lawyer.

(6) For purposes of this section:

(a) The term "lawyer" refers to an individual who is licensed to practice law either when the instrument is prepared and/or when it is executed, and who prepared or supervised the preparation and/or execution of a written instrument. A lawyer is deemed to have prepared, or supervised the execution of, a written instrument if the preparation, or supervision of the execution, of the written instrument was performed by an employee, subordinate, partner, co-owner, or another person or lawyer employed by the same firm or company as the lawyer.

(b) A person is "related" to an individual if, at the time the lawyer prepared or supervised the preparation or execution of the written instrument or solicited the gift, the person is:

1. A spouse of the individual;
2. A lineal ascendant or descendant of the individual;
3. A sibling of the individual;
4. A spouse of a person described in subparagraph 2., subparagraph 3., or subparagraph 4.

Additionally, an entity is "related" to a lawyer if the lawyer owns a 50% or greater interest in the entity or otherwise controls the entity.

(c) The term "written instrument" includes, but is not limited to, a will, a trust, a deed, a document exercising a power of appointment, a check, a form or other document that adds a person as a joint owner or beneficiary of an account at a financial institution, or a beneficiary designation under a life insurance contract or any other contractual arrangement that creates an ownership interest or permits the naming of a beneficiary.

(d) The term "gift" includes an inter vivos gift, a testamentary transfer of real or personal property or any interest therein, and the power to make such a transfer regardless of whether the gift is outright or in trust; regardless of when the transfer is to take effect; and regardless of whether the power is held in a fiduciary or nonfiduciary capacity.

(e) A gift is considered "substantial" if the value of the gift, when combined with the value of all gifts to the lawyer or a related person or entity, exceeds \$15,000.00.

(7) The rights and remedies granted in this section are in addition to any other rights or remedies a person may have at law or in equity. For example, a gift or instrument that is not rendered void under this section can still be challenged under other legal grounds.

(8) This section applies only to written instruments executed on or after October 1, 2019.

**14**

700. ~~806~~ Gifts to lawyers lawyers and other disqualified persons.

Formatted: Underline

Formatted: Line spacing: Double

Formatted: Not Highlight

(1) ~~Any part of a written instrument which makes a substantial gift to a lawyer-lawyer, or a person or entity-related to the lawyer lawyer is void if the lawyer prepared or supervised the execution of the written instrument, or solicited the gift, unless the lawyer-lawyer or other recipient of the gift is related to the person making the gift.~~

Formatted: Line spacing: Double

(2) This section is not applicable to a provision in a written instrument appointing a ~~lawyer-lawyer~~, or a person related to the ~~lawyer-lawyer~~, as a fiduciary. Reasonable fiduciary fees that may be received by a lawyer, or a person related to the lawyer, who acts as a fiduciary are not considered to be gifts under this section.

Formatted: Line spacing: Double

(3) A provision in a written instrument purporting to waive the application of this section is unenforceable.

Formatted: Line spacing: Double

(4) If property distributed in kind, or a security interest in that property, is acquired by a purchaser or lender for value from a person who has received a gift in violation of this section, the purchaser or lender takes title free of any claims arising under this section and incurs no personal liability by reason of this section, whether or not the gift is void under this section. Additionally, this section cannot directly or indirectly impose liability on a financial institution or other third-party who honors or relies on a written instrument that contains or effectuates a gift that is void under this section.

Formatted: Line spacing: Double

~~(5) In all actions brought under this section, the court must award taxable costs as in chancery actions, including attorney fees. When awarding taxable costs and attorney fees under this section, the court may direct payment from a party's interest in the estate or trust, or enter a judgment that may be satisfied from other property of the party, or both.~~

~~Attorney fees and costs may not be awarded against a party who, in good faith, initiates an action under this section to declare a gift void.~~

(65) If a part of a written instrument is invalid by reason of this section, the invalid part is severable and will may not affect any other part of the written instrument which can be given effect, including a term that makes an alternate or substitute gift. In the case of a power of appointment, this section does not affect the power to appoint in favor of persons other than the ~~lawyer~~ lawyer or a person related to the ~~lawyer~~ lawyer.

Formatted: Line spacing: Double

(76) For purposes of this section:

(a) The term "lawyer" refers to an individual who is licensed to practice law either when the instrument is prepared and/or when it is executed, and who prepared or supervised the preparation and/or execution of a written instrument. A lawyer ~~lawyer~~ is deemed to have prepared, or supervised the execution of, a written instrument if the preparation, or supervision of the execution, of the written instrument was performed by an employee, subordinate, partner, co-owner, or another person or lawyer ~~or lawyer~~ employed by the same firm or company as the ~~lawyer~~ lawyer.

(b) A person is "related" to an individual if, at the time the ~~lawyer~~ lawyer prepared or supervised the preparation or execution of the written instrument or solicited the gift, the person is:

1. A spouse of the individual;
2. A lineal ascendant or descendant of the individual;
3. A sibling of the individual;
4. A relative of the individual or of the individual's spouse with whom the lawyer maintains a close, familial relationship;
5. ~~A spouse of a person described in subparagraph 2., subparagraph 3., or subparagraph~~
4. ~~or~~

Additionally, an entity is "related" to a lawyer if the lawyer owns a 50% or greater interest in the entity or otherwise controls the entity. ~~A person who cohabitates with the individual.~~

Formatted: Line spacing: Double

(c) The term "written instrument" includes, but is not limited to, a will, a trust, a deed, a document exercising a power of appointment, a check, a form or other document that adds a person as a joint owner or beneficiary of an account at a financial institution, or a beneficiary designation under a life insurance contract or any other contractual arrangement that creates an ownership interest or permits the naming of a beneficiary.

(d) The term "gift" includes an inter vivos gift, a testamentary transfer of real or personal property or any interest therein, and the power to make such a transfer regardless of whether the gift is outright or in trust; regardless of when the transfer is to take effect; and regardless of whether the power is held in a fiduciary or nonfiduciary capacity.

(e) A gift is considered "substantial" if the value of the gift, when combined with the value of all gifts to the lawyer or a related person or entity, exceeds \$15,000.00.

Formatted: Line spacing: Double

~~(87)~~ The rights and remedies granted in this section are in addition to any other rights or remedies a person may have at law or in equity. For example, a gift or instrument that is not rendered void under this section can still be challenged under other legal grounds.

Formatted: Line spacing: Double

~~(98)~~ This section applies only to written instruments executed on or after October 1, 2019.

# Council Materials



**MEETING OF THE COUNCIL OF THE  
PROBATE AND ESTATE PLANNING SECTION  
OF THE STATE BAR OF MICHIGAN**

April 12, 2019

**Agenda**

- I. Call to Order
- II. Introduction of Guests
- III. Excused Absences
- IV. Monthly Reports:
  - A. Minutes of Prior Council Meeting -- Attachment A
  - B. Chair's Report – Attachment B
    - Appointment of Nathan R. Piwowarski and Nazneen S. Hasan as liaisons to the Elder Abuse Task Force
    - Opportunity to use SBM Lawyer Referral Service
    - Updated Committee and Liaison Lists
  - C. Treasurer's Report – Attachment C
  - D. Committee on Special Projects
- V. Other Committees Presenting Oral Reports
  - A. Fiduciary Exception to the Attorney Client Privilege Ad Hoc Committee—Warren H. Krueger, III
  - B. Guardianships, Conservatorships, & End of Life Committee—Kathleen M. Goetsch—Attachment D
  - C. Legislative Development and Drafting Committee—Nathan Piwowarski—Attachment E
  - D. Tax Committee—Raj A. Malviya—Attachment F
- VI. Committees Present Written Reports
  - A. Court Rules, Forms, & Proceedings Committee—Melisa M.W. Mysliwicz—Attachment G
  - B. State Bar & Section Journals—Nancy Little—Written report:

"I am working with Rick Mills and Melisa Mysliwicz to get them both fully up to speed on the Journal production because eventually I will want to cut back from this role. Rick is taking the lead on the production of the next issue of the Journal, and Melisa is taking the lead on the following issue. They both have lots of great ideas and enthusiasm. I appreciate all their hard work, and I know the upcoming issues will be very well done."
  - C. Taxation Section Liaison—Neal Nusholtz—Attachment H
- VII. Other Business
- VIII. Adjournment

Next Probate Council Meeting: Friday, June 14, 2019

A

**Meeting of the Council of the  
Probate and Estate Planning Section of the  
State Bar of Michigan**

**March 8, 2019  
Lansing, Michigan**

**Minutes**

I. Call to Order

The Chair of the Council, Marguerite Munson Lentz, called the meeting to order at 11:32 a.m.

II. Introduction of Guests

- A. Meeting attendees introduced themselves.
- B. The following officers and members of the Council were present: Marguerite Munson Lentz, Chair; Christopher A. Ballard, Chair Elect; David P. Lucas, Vice Chair; David L.J.M. Skidmore, Secretary; James F. Anderton; Kathleen M. Goetsch; Nazneen S. Hasan (via remote attendance); Angela M. Hentkowski; Robert C. Labe; Michael G. Lichterman; Katie Lynwood; Raj A. Malviya; Melisa M.W. Mysliwiec; Richard C. Mills (via remote attendance); Lorraine F. New (via remote attendance); Kurt A. Olson; and Nathan R. Piwowarski (via remote attendance). A total of 17 Council officers and members were present, constituting a quorum.
- C. The following ex officio members of the Council were present: Douglas G. Chalgian; and Susan S. Westerman.
- D. The following liaisons to the Council were present: Susan L. Chalgian (SCAO); Hon. David M. Murkowski (Michigan Probate Judges Association); and Jeanne Murphy (ICLE).
- E. Others present: Laura Brownfield; Sandra Glazier; John Roy Castillo; Paul Vaidya; Diane Huff; Warren Krueger; Alex Stratilatov; Ryan Bourjaily; Joe Weiler; and Dan Hilker.

III. Excused Absences

The following officers and members of the Council were absent: Christopher J. Caldwell; Hon. Michael L. Jaconette; Mark E. Kellogg, Treasurer; Christine M. Savage; Andrew W. Mayoras; and Neal Nusholtz.

IV. Lobbyist Report – Public Affairs Associates

Public Affairs Associates provided a written report, which is attached hereto.

V. Monthly Reports

- A. Minutes of Prior Council Meeting (David L.J.M. Skidmore):

It was moved and seconded to approve the Minutes of the February 15, 2019 meeting of the Council, as included in the meeting agenda materials and presented to the meeting. On voice vote, the Chair declared the motion approved.

B. Chair's Report (Marguerite Munson Lentz):

The Chair reported on various legislative matters, as well as her upcoming attendance at the Brunch for Bars on April 7, 2019.

C. Treasurer's Report (Mark E. Kellogg):

It was reported that the Treasurer's Report is included in the materials.

D. Committee on Special Projects (Katie Lynwood):

Katie Lynwood reported on the discussion at the Committee on Special Projects meeting.

The committee's first motion is:

To add the revised definition of "armed forces" (MCL 700.3206(14)(a)) included in the CSP materials, to the EPIC amendments omnibus legislation.

The Chair stated that since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question, and the Secretary recorded a vote of 17 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 6 not voting.

The committee's second motion is:

To add the revised versions of MCL 700.7103 and 700.7506, as included in the CSP materials, to the EPIC amendments omnibus legislation.

The Chair stated that since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question, and the Secretary recorded a vote of 17 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 6 not voting.

The committee's third motion is:

To add to the EPIC amendments omnibus legislation the standby guardian sections, as included in the CSP materials, with the following revisions: (1) in MCL 700.531new(2), add "nominated" before "standby guardian;" and (2) in MCL 700.531new(4), add "in writing" after "notify the court and interested persons."

The Chair stated that since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question, and the Secretary recorded a vote of 17 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 6 not voting.

The committee's fourth motion is:

To add to the EPIC amendments omnibus legislation the revised MCL 700.5506(1) ("2nd Alternative" version) as included in the CSP materials.

The Chair stated that since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question, and the Secretary recorded a vote of 17 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 6 not voting.

The committee's fifth motion is:

To add to the EPIC amendments omnibus legislation a revised MCL 700.5507(2), providing: "A patient advocate designation may also include instructions about how the patient advocate is to make decisions."

The Chair stated that since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question, and the Secretary recorded a vote of 16 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 7 not voting.

The committee's sixth motion is:

The Section votes to add to the EPIC amendments omnibus legislation the revised MCL 700.5508, as included in the CSP materials, with the following revision to (4)(b): "Attending medical professional" means a medical professional who has primary responsibility for the treatment and care of the patient."

The Chair stated that since this would be a public policy position of the Section, the vote of the Council would have to be recorded. Following discussion, the Chair called the question, and the Secretary recorded a vote of 16 in favor of the motion, 0 opposed to the motion, 0 abstaining, and 7 not voting.

## VI. Other Committees Presenting Oral Reports

### A. Court Rules, Forms, & Proceedings Committee

Melisa Mysliwec led a discussion on ADM File No. 2018-19, noting that the Section's prior comments were followed in the proposed revisions to MCR 5.131. See her memorandum attached to these minutes. On behalf of the committee, Ms. Mysliwec also made the following motion:

To authorize the committee to submit to the State Bar the rationale for its previously submitted comments to the proposed e-filing rules.

The motion was seconded. On voice vote, the Chair declared the motion approved.

VII. Other Business

Sandra Glazier reported that Sen. Lucido had reintroduced his proposed legislation regarding visitation of vulnerable adults. The Chair advised that the Legislation Development and Drafting Committee would be taking up such matter.

VIII. Adjournment

Seeing no other matters or business to be brought before the meeting, the Chair declared the meeting adjourned at 12:01 p.m.

Respectfully submitted,  
David L.J.M. Skidmore, Secretary

097777.900655 #18249611-1

## COURT RULES, FORMS, AND PROCEEDINGS COMMITTEE

---

**To:** Probate and Estate Planning Council Members  
**From:** Melisa M. W. Mysliwicz, Chair  
**RE:** ADM File No. 2018-19 re: Civil Discovery Rules  
**Date:** February 28, 2019

---

ADM File No. 2018-19 proposes to amend several court rules relative to discovery in general civil actions, including in probate civil actions, and new mandatory disclosures in probate proceedings. These proposed rules stemmed from the proposed rules to civil discovery that we reviewed in draft form a year ago. At that time, we had concentrated our review on the proposed changes to MCR 5.131. We took a public policy position on the Draft Proposed Rules, the language of which is below. The proposed changes to 5.131 under ADM File No. 2018-19 are quite different than in the Draft, which is good because it appears the drafters took our comments to heart, and fixed things as suggested.

Here is a link to ADM File No. 2018-19:  
[courts.michigan.gov/Courts/MichiganSupremeCourt/rules/...](https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/...) (MCR 5.131 begins on page 44 of the Order, but it is also attached to this report.)

The Draft Proposed Rules we reviewed last year are located in the materials from the November 11, 2017 meeting (link: <https://higherlogicdownload.s3.amazonaws.com/MICHBAR/36b40f18-75e7-4b75-a650-4e26fe2c65ac/UploadedImages/pdfs/agenda11-11-17.pdf>), but I have attached the draft proposed changes to MCR 5.131 for anyone who would like to compare the draft to ADM File No. 2018-19. Our public policy position with respect to the draft proposed rules follows:

Rule 5.131 identifies that the general discovery rules within subchapter 2.300 apply in probate court; specifically, in all civil actions in probate court and in probate proceedings as well, except that the initial and mandatory disclosures required under MCR 2.302(A) are only required in probate proceedings that are contested. (MCR 5.131(A), (B))

Rule 5.131 goes on to define a laundry list of certain actions that are considered "contested proceedings." (MCR 5.131(B)(1)(a))

*Comment: We struggle with the idea of listing what is considered a "contested proceeding" because it may not include everything that is contested, or, it may include something in the list that actually isn't being contested at all. Any list used is likely going to be over-inclusive or under-inclusive, or both. Would it be better to consider a proceeding "contested" only upon the occurrence of some triggering event, such as the filing of an objection or a response that opposes the relief sought? What if an action on the list is resolved at the first hearing without challenge, and the court doesn't specifically order that no mandatory disclosures are needed under Rule 2.302(A), does Rule 5.131(B)(1)(a) require them anyway?*

As a proposed solution, we believe the laundry list of items in Rule 5.131(B)(1)(a) be removed entirely. In the alternative, if you disagree, we believe that the list needs to be more inclusive of other matters and include the following additional language in the *first line of Rule 5.131(B)(1)(a) if the laundry list of "contested" proceedings is left intact:*

***"Unless otherwise ordered by the court or unless the petition is unopposed under MCR 5.104(C), actions for the following are contested proceedings: ..."***

Rule 5.131 goes on to include other proceedings as "contested" if an interested person has executed a "declaration of contest," serves it on other interested persons, and files it and proof of service with the court. (MCR 5.131(B)(1)(b).) However, it provides that the

COURT RULES, FORMS, AND PROCEEDINGS COMMITTEE

---

"declaration of contest" must be served and filed within 21 days after the filing of the petition initiating the proceedings, or prior to the first hearing on the petition, whichever is earlier.

*Comment: The deadline to file a declaration of contest is tied to the date of filing, which could happen weeks before service leaving someone with inadequate notice. We would suggest tying the deadline for filing a declaration of contest to the date of service of the petition initiating the proceedings as opposed to the date of filing.*

*Comment: Considering the number of unrepresented parties in probate court, mandatory disclosures seem problematic. Perhaps a standard Notice should be created and served on all persons interested in a proceeding that is deemed "contested" under Rule 5.131(B)(1)(a) informing them of these disclosure obligations.*

Respectfully submitted,

Melisa M. W. Mysliwicz



court, the court must, if the child is in foster care, or may, if the child is not in foster care, following a dispositional review hearing under MCR 3.975, a progress review under MCR 3.974, or a permanency planning hearing under MCR 3.976, take action on a supplemental petition that seeks to terminate the parental rights of a respondent over the child on the basis of one or more grounds listed in MCL 712A.19b(3).

- (1) [Unchanged.]
- (2) Discovery, Prehearing Disclosures, and Evidence. Parties shall make disclosures as detailed in MCR 3.922(A) at least 21 days prior to the termination hearing and have rights to discovery consistent with that rule. The Michigan Rules of Evidence do not apply at the hearing, other than those with respect to privileges, except to the extent such privileges are abrogated by MCL 722.631. At the hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties must be afforded an opportunity to examine and controvert written reports received by the court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.
- (3) [Unchanged.]
- (I) – (K) [Unchanged.]

#### Rule 5.131 Discovery Generally

- (A) Civil Actions. ~~The general discovery rules apply in probate proceedings.~~
- (B) Scope of Discovery in Probate Proceedings. ~~Discovery in a probate proceeding is limited to matters raised in any petitions or objections pending before the court.~~ Discovery for civil actions in probate court is governed by subchapter 2.300.
- (B) Proceedings.
  - (1) Discovery in General. ~~With the exception of mandatory initial disclosures under MCR 2.302(A), the discovery rules in subchapter 2.300 apply in probate proceedings, and, except as otherwise ordered by the court, any interested person in a probate proceeding is considered a party for the purpose of applying discovery rules.~~
  - (2) Mandatory Initial Disclosure.

- (a) Demand or Objection. Mandatory disclosures under MCR 2.302(A) are required in probate proceedings if, by the time of the first hearing on the petition initiating the proceeding:
- (i) an interested person other than the petitioner files a demand for mandatory initial disclosure and properly serves the demand on all interested persons or
  - (ii) an interested person objects to or otherwise contests the petition, in writing or orally, properly serves any written objection or response on all interested persons, and the judge determines mandatory initial disclosure is appropriate.

When mandatory initial disclosures are required through demand or objection, and except as otherwise ordered by the court, such disclosures must be made by the petitioner and any demandant or objecting interested person.

- (b) Court Order. At any time, on its own motion or on a motion filed by an interested person, the court may require:
- (i) mandatory disclosures and designate those interested persons who must make disclosures or
  - (ii) in a proceeding with some parties already making disclosures, an additional interested person or persons to make disclosures.
- (c) Time for Initial Disclosures.
- (i) The petitioner must serve initial disclosures within 14 days after the first scheduled hearing on the petition subject to a demand or objection.
  - (ii) The demandant or objecting interested person must serve initial disclosures within the later of 14 days after the petitioner's disclosures are due or 28 days after the demand or objection is filed.
  - (iii) When mandatory disclosures are ordered pursuant to MCR 5.131(B)(2)(b)(ii), an interested person's disclosures are due within 21 days after the court's order.

- (3) Scope of Discovery in Probate Proceedings. Discovery in a probate proceeding is limited to matters raised in any petitions or objections pending before the court.

*Staff Comment:* This proposal was created by special committee of the State Bar of Michigan and approved for submission to the Court by the Bar's Representative Assembly. The proposal would require mandatory discovery disclosure in many cases, implement a presumptive limit on interrogatories (20 in most cases, but 35 in domestic relations proceedings) and limit a deposition to 7 hours. The proposal also would update the rules to more specifically address issues related to electronically stored information, and would encourage early action on discovery issues during the discovery period. The special committee's report, which provides substantial background on the process and information regarding the reasoning for many of the proposed changes, is being published in conjunction with this publication order.

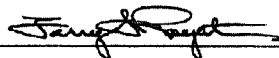
The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by March 1, 2019, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2018-19. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 28, 2018

  
Clerk

**SUBCHAPTER 5.000 GENERAL PROVISIONS**

**RULE 5.131 DISCOVERY GENERALLY**

~~(A) The general discovery rules apply in probate proceedings.~~

~~(B) Scope of Discovery in Probate Proceedings. Discovery in a probate proceeding is limited to matters raised in any petitions or objections pending before the court. Discovery for civil actions in probate court is governed by subchapter 2.300.~~

(A) Civil Actions. Discovery for civil actions in probate court is governed by subchapter 2.300.

(B) Proceedings.

(1) The general discovery rules in subchapter 2.300 apply in probate proceedings, except that the initial and other mandatory disclosures under MCR 2.302(A) are required only in a proceeding or matter that is contested. Notwithstanding the time for initial disclosures specified at 2.302(A)(1)(b), initial disclosures in probate proceedings are due within 21 days after a pre-trial conference under MCR 2.401, or within 21 days after the first hearing on the contested petition, whichever is earlier.

(a) Specific Contested Proceedings. Unless otherwise ordered by the court, actions for the following are contested proceedings: remove a fiduciary; surcharge a fiduciary; probate a lost or destroyed will or later-discovered will; determine heirs, devisees, or beneficiaries; construe, reform, or modify a governing instrument; cancel a devise or gift; partition property for the purposes of distribution; determine pretermitted status or pretermitted share; determine amount of elective share and contribution; and revocation of probate of a will.

(b) Declared Contested Proceedings. In addition to matters deemed contested under subrule (a), proceedings are contested if an interested person executes a declaration of contest, serves the declaration on other interested persons, and files the declaration and proof of service with the court. Any declaration of contest must be served and filed within 21 days after the filing of the petition initiating the proceedings, or prior to the first hearing on the petition, whichever is earlier.

(c) Contested Status by Order. The court may determine any proceeding to be a contested proceeding at any time.

(2) For purposes of discovery, an interested person is considered a party under the general discovery rules if that interested person is the petitioner or respondent, files a responsive pleading, or otherwise serves a declaration under MCR 5.120(B). The probate court, on its own motion or a motion filed by an interested

person, may designate an interested person a party for purposes of discovery upon good cause shown.

(3) Scope of Discovery in Probate Proceedings. Discovery in a probate proceeding is limited to matters raised in any petitions or objections pending before the court.

Not all probate proceedings are candidates for discovery. This rule change specifies which cases and which parties have access to discovery and are bound by its mandatory disclosure requirements.

As part of the discussion to the amendments to MCR 5.131, some supported limiting mandatory disclosures to contesting parties and thought that the rule should not identify the types of cases that required such a disclosures.

**B**

**Lentz, Marguerite**

---

**From:** Bartlett, Renee (AG) <BartlettR@michigan.gov>  
**Sent:** Friday, March 15, 2019 12:57 PM  
**To:** Lentz, Marguerite  
**Cc:** Nathan Piwowski (nathan@mwplegal.com); nhasan@dykema.com  
**Subject:** RE: Elder Abuse Task Force

Thank you for following up with me regarding my request. Yes, we would be more than happy to have Nathan and Nazneen be part of this endeavor. I be more than happy to add them to the requested committees. Nathan and Nazneen, if you could please advise me if your scheduled allows you to attend the press conference I will add your name to the list of attendees.

Thank you all again for being part of this endeavor.

Renee

**From:** Lentz, Marguerite <MLentz@BODMANLAW.COM>  
**Sent:** Friday, March 15, 2019 12:22 PM  
**To:** Bartlett, Renee (AG) <BartlettR@michigan.gov>  
**Cc:** Nathan Piwowski (nathan@mwplegal.com) <nathan@mwplegal.com>; nhasan@dykema.com  
**Subject:** RE: Elder Abuse Task Force

Hello Ms. Bartlett:

I regret that I am not able to serve on the task force, but two members of the Probate Council (governing body of the Probate and Estate Planning Section) expressed an interest in being part of the Task Force: Nathan Piwowski and Nazneen Hasan. I have copied them on this email. May they join in my place?

Nazneen said she would like to be on the policy and legislation committee. Nathan has not yet specified a committee preference. Neither indicated whether they wanted to attend the press conference.

Contact information for Nathan and Nazneen:

**Nathan R. Piwowski**  
McCurdy Wotila & Porteous PC

(231) 775-1391 Work  
nathan@mwplegal.com

120 W Harris St Ste 1  
Cadillac, Michigan 49601-2165  
<http://www.mwplegal.com>

<b>Nazneen S. Hasan</b> Attorney <a href="mailto:NHasan@dykema.com">NHasan@dykema.com</a>	248-203-0825 Direct 248-203-0700 Main 855-258-3523 Fax	39577 Woodward Avenue, Suite 300 Bloomfield Hills, Michigan 48304 <a href="http://www.dykema.com">www.dykema.com</a>
---	--	--

Thank you for the invitation,  
Meg

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755  
LANSING, MICHIGAN 48909

DANA NESSEL  
ATTORNEY GENERAL

March 8, 2019

Marguerite Munson Lentz  
State Bar of Michigan Probate Section  
1901 Saint Antoine St., Floor 6  
Detroit, Michigan 48226

Dear Ms. Munson Lentz,

The Department of Attorney General and the Michigan Supreme Court have created an Elder Abuse Task Force to be chaired by the Attorney General. The Task Force will be performing a system-wide review of the elder issues in the State of Michigan. Building on the work done by the Supreme Court Task Force on Guardianships and Conservatorships in 1998 and the Governor's Task Force on Elder Abuse in 2007 we hope to review, supplement and then implement many of the recommendations made in those reports that remain unfulfilled. Because of your demonstrated commitment to elder issues Attorney General Nessel has asked that I invite you to sit on the task force and work on this important assignment.

Enclosed is a list of committees that will serve as working committees within the task force. Please respond indicating your willingness to serve and the committee you would prefer to serve on. A press conference has been scheduled on March 25, 2019 at 10:00 a.m. in the Department of Attorney General, Kelley Library, 7<sup>th</sup> floor, 525 W. Ottawa, Lansing, MI. Please respond with who will be attending from your organization.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott L. Teter", written over a large, stylized flourish.

Scott L. Teter  
Division Chief  
Child, Elder & Family  
Financial Crimes Division  
(517) 335-7560

SLT/rdb



## **Committees for Elder Abuse Task Force**

### **Training and Education**

AG Staff Member: Brian McLaughlin, Geraldine Brown, Martin May

### **Data Collection and Research**

AG Staff Member: HCFD

### **Public Awareness**

AG Staff Member: Katharyn Barron, HCFD, Communications

### **Policy and Legislation**

AG Staff Member: Michael Moody, Kristen Stinedurf, David Knezek, HCFD

### **Courts/SCAO**

AG Staff Member: Tom Clement, Michael Moody, David Knezek

### **Attorney General's Office/Attorney General Criminal Division/Law Enforcement**

AG Staff Member: HCFD, Martin May, Scott Teter, Kevin Hiller

### **Funding and Resources**

AG Staff Member: HCFD, Katharyn Barron

## **Lentz, Marguerite**

---

**From:** Darin Day <DDAY@michbar.org>  
**Sent:** Friday, April 5, 2019 10:12 AM  
**To:** Lentz, Marguerite  
**Subject:** Great Opportunity for Probate and Estate Planning Section Members

Hi Marguerite.

Here's a great opportunity for members of the Probate and Estate Planning Section to increase the visibility of their practices and attract new clients. Would you please distribute this message to your section?

The SBM Lawyer Referral Service (LRS) currently receives more than 500 calls each week from people looking for lawyers. Many of these are unable to find a match because there are not enough attorneys in some geographic areas or in some practice areas. For more than a year we've been revising and improving the LRS. The resulting system produces far better matches for attorneys and consumers alike. We're ready to begin a significant marketing initiative to consumers and we need more lawyers to participate as panel members.

Here are few examples of concrete improvements: Better matches mean a higher likelihood of securing paying clients than ever before. The new online platform now automates much of the tracking and reporting that attorneys had to do in the past. In addition to traditional cases, LRS has added Modest Means panels for family law and bankruptcy, and opportunities for attorneys to market Limited Scope practice.

[Click here to learn more about LRS](#)

[Click here to learn more about joining one or more of our LRS panels](#)

[Click here to learn more about Limited Scope practice](#)

Thank you very much. We're very excited about this opportunity for lawyers to expand their practices while enhancing access to quality legal services throughout Michigan.

Darin

---

**Darin Day, PL1077**  
Director of Outreach  
STATE BAR OF MICHIGAN  
Michael Franck Building  
306 Townsend Street  
Lansing, MI 48933-2012  
(517) 346-6330  
[dday@michbar.org](mailto:dday@michbar.org)  
[www.michbar.org](http://www.michbar.org)

## Probate and Estate Planning Section

## 2018-2019 Committee Chairs

<b>Committee/Mission</b>	<b>Chair</b>	<b>Other Members</b>
<b>Amicus Curiae Committee</b> To review requests made to the Section to file, and to identify cases in which the Section should file, amicus briefs in pending appeals and to engage and oversee the work of legal counsel retained by the Section to prepare and file its amicus briefs.	Andrew W. Mayoras	Ryan P. Bourjaily Nazneen Hasan Kurt A. Olson Patricia M. Ouellette David L.J.M. Skidmore Trevor J. Weston Timothy White
<b>Annual Meeting</b> To arrange the annual meeting at a time and place and with an agenda to accomplish all necessary and proper annual business of the Section.	Christopher A. Ballard	
<b>Assisted Reproductive Technology Ad Hoc Committee</b> To review the 2008 Uniform Probate Code Amendments for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction.	Nancy Welber	Christopher A. Ballard Edward Goldman James P. Spica Lawrence W. Waggoner
<b>Awards Committee</b> To periodically award the Michael Irish Award to a deserving recipient and to consult with ICLE concerning periodic induction of members in the George A. Cooney Society.	Amy Morrissey	Mark Harder Thomas Sweeney
<b>Budget Committee</b> To develop the annual budget and to alert the Council to revenue and spending trends.	David L.J.M. Skidmore	David P. Lucas Mark Kellogg
<b>Bylaws Committee</b> To review the Section Bylaws and recommend changes to ensure compliance with State	David Lucas	Christopher A. Ballard Nazneen Hasan John Roy Castillo

<p>Bar requirements, best practices for similar organizations and assure conformity of the Bylaws to current practices and procedures of the Section and the Council.</p>		
<p><b>Charitable &amp; Exempt Organization Committee</b> To educate the Section about charitable giving and exempt organizations and to make recommendations to the Section concerning federal and state legislative developments and initiatives in the fields of charitable giving and exempt organizations.</p>	Christopher J. Caldwell	<p>Celeste E. Arduino Christopher A. Ballard Michael W. Bartnik William R. Bloomfield Robin D. Ferriby Mark E. Kellogg Richard C. Mills</p>
<p><b>Citizens Outreach Committee</b> To provide for education of the public on matters related to probate, estate planning, and trust administration, including the publication of pamphlets and online guidance to the public, and coordinating the Section's efforts to educate the public with the efforts of other organizations affiliated with the State Bar of Michigan.</p>	Kathleen M. Goetsch	<p>Michael J. McClory Neal Nusholtz Jessica M. Schilling Nicholas J. Vontroba</p>
<p><b>Committee on Special Projects</b> To consider and study in depth a limited number of topics and make recommendations to the Council of the Section with respect to those matters considered by the Committee.</p>	Katie Lynwood	<p>All members of the Section who attend a meeting of the Committee on Special Projects ("CSP") are considered members of CSP and are entitled to vote on any matter brought before the CSP.</p>
<p><b>Community Property Trusts Ad Hoc Committee</b> To review the statutes, case law, and legislative analysis of Michigan and other jurisdictions (including pending legislation) concerning community property trusts and, if advisable, to recommend changes to Michigan law in this area.</p>	Neal Nusholtz	<p>Brandon Dornbusch George W. Gregory Lorraine F. New Nicholas A. Reister Rebecca K. Wrock</p>

<p><b>Court Rules, Forms, &amp; Proceedings Committee</b> To consider and recommend to the Council action with respect to contested and uncontested proceedings, the Michigan Court Rules, and published court forms, including their development, interpretation, use, and amendment.</p>	Melisa M.W. Mysliwec	James F. (J.V.) Anderton Susan L. Chalgian Phillip E. Harter Hon. Michael L. Jaconette Warren H. Krueger, III Michael J. McClory Andrew W. Mayoras Shaina Reed Marlaine Teahan
<p><b>Drafter/beneficiary ad hoc committee</b> To make recommendations for possible statutory changes to deal with the situation where a drafter (whether a lawyer or a non-lawyer) prepares an instrument for a non-relative which includes a gift to that drafter or members of that drafter's family.</p>	Andrew Mayoras	Erica Berezny George W. Gregory Kenneth Silver David P. Lucas Kurt A. Olson
<p><b>Electronics Communications Committee</b> To oversee all forms of electronic communications with and among members of the Section, including communication via the Section's web site (SBM Connect site) and the ICLE Online Community site, to identify emerging technological trends of important to the Section and its members, and to recommend to the Council of the Section best practices to take advantage of technology in carrying out the Section's and Council's mission and work.</p>	Michael G. Lichterman	William J. Ard Amy N. Morrissey Jeanne Murphy (Liaison to ICLE) Neal Nusholtz Marlaine Teahan
<p><b>Electronic Wills Ad Hoc Committee</b> To study the proposal on electronic wills of the Uniform Law Commission, determine problems and pitfalls of the formation, validity, and recognition of electronic wills, and be prepared to respond to</p>	Kurt A. Olson	Kimberly Browning Douglas A. Mielock Neal Nusholtz Christine Savage James P. Spica (Special Advisor)

<p>both the Uniform Law Commission's proposal and any related legislation introduced in Michigan.</p>		
<p><b>Ethics &amp; Unauthorized Practice of Law</b> To consider and recommend to the Council action with respect to the Michigan Rules of Professional Conduct and their interpretation, application, and amendment, including identifying the unauthorized practices of law, reporting of such practices to the appropriate authorities, and educating the public regarding the inherent problems relying on non-lawyers.</p>	<p>Kurt A. Olson</p>	<p>William J. Ard Raymond A. Harris J. David Kerr Robert M. Taylor Amy Rombyer Tripp</p>
<p><b>Fiduciary Exception to the Attorney Client Privilege Ad Hoc Committee</b> To determine whether to develop legislation to determine the extent (if any) to which a fiduciary exception should exist to the attorney client privilege and if so, draft proposed legislation.</p>	<p>Warren H. Krueger, III</p>	<p>Aaron A. Bartell Ryan P. Bourjaily</p>
<p><b>Guardianships, Conservatorships, &amp; End of Life Committee</b> To monitor the need for, and make recommendations with respect to, statutory and court rule changes in Michigan related to the areas of legally incapacitated individuals, guardianships, and conservatorships.</p>	<p>Kathleen M. Goetsch</p>	<p>William J. Ard Michael W. Bartnik Kimberly Browning Raymond A. Harris Phillip E. Harter Hon. Michael L. Jaconette Michael J. McClory Kurt A. Olson James B. Steward Paul S. Vaidya</p>
<p><b>Legislative Analysis &amp; Monitoring Committee</b> In cooperation with the Section's lobbyist, to bring to the attention of the Council recent developments in the Michigan legislature and to further achievement of the</p>	<p>Daniel S. Hilker</p>	<p>Christopher A. Ballard Ryan P. Bourjaily Georgette E. David Mark E. Kellogg Jonathan R. Nahhat</p>

<p>Section's legislative priorities, as well as to study legislation and recommend action on legislation not otherwise assigned to another committee of the Section.</p>		
<p><b>Legislation Development &amp; Drafting Committee</b> To review, revise, communicate, and recommend proposed legislation affecting Michigan's trusts and estates law with the goal of achieving and maintaining leadership in promulgating trusts and estates laws in changing times.</p>	<p>Nathan Piwowarski</p>	<p>Heidi Aull Aaron A. Bartell Howard H. Collens Georgette E. David Kathleen M. Goetsch Daniel S. Hilker Henry P. Lee Michael G. Lichterman David P. Lucas Katie Lynwood Richard C. Mills Kurt A. Olson Christine M. Savage James P. Spica Marlaine Teahan Robert P. Tiplady II</p>
<p><b>Legislative Testimony Committee</b> To testify on behalf of the Section regarding pending bills before Michigan House or Senate Committees and to promote and explain the Council's Public Policy Positions to Michigan Representatives and Senators or members of their staff.</p>	<p>Marguerite Munson Lentz</p>	<p>Gary Bauer Susan L. Chalgian Howard Collens Mark T. Evelyn Ashley Gorman Raymond A. Harris Mark E. Kellogg Carol Kramer Katie Lynwood Amy E. Peterman Nathan Piwowarski Kenneth Silver Marlaine C. Teahan Robert W. Thomas</p>
<p><b>Membership Committee</b> To strengthen relations with Section members, encourage new membership, and promote awareness of and participation in Section activities.</p>	<p>Nicholas A. Reister</p>	<p>Daniel S. Hilker, Vice-Chair Daniel W. Borst Ryan P. Bourjaily Nicholas R. Dekker Angela Hentkowski David A. Kosmowski Robert B. Labe Raj A. Malviya Ryan S. Mills Robert O'Reilly Theresa A. Rose</p>

<b>Nominating Committee</b> To annual nominate candidates for election as the officers of the Section and members of the Council.	Shaheen I. Imami	James B. Steward Marlaine C. Teahan
<b>Planning Committee</b> To review and update the Council's Plan of Work	Marguerite Munson Lentz	Christopher A. Ballard David P. Lucas David L.J.M. Skidmore Mark E. Kellogg
<b>Premarital Agreements Legislation Ad Hoc Committee</b> To review and compare Michigan's statutes and case law (particularly the <i>Allard</i> decision) regarding enforcement and potential effects on estate planning and estate administration with the Uniform Premarital and Marital Agreements Act and similar acts from other states and, if advisable, recommend changes to Michigan law in this regard.	Christine Savage	Kathleen M. Goetsch Patricia M. Ouellette (Family Law Liaison) Rebecca Wrock
<b>Probate Institute</b> To consult with ICLE in the planning and execution of the Annual Probate and Estate Planning Institute.	David P. Lucas	
<b>Real Estate Committee</b> To recommend new legislation related to real estate matters of interest and concern to the Section and its members.	Mark E. Kellogg	Jeffrey S. Ammon William J. Ard David S. Fry J. David Kerr Michael G. Lichterman James T. Ramer James B. Steward
<b>State Bar &amp; Section Journals Committee</b> To oversee the publication of the Section's Journal and periodic theme issues of the State Bar Journal that are dedicated to probate, estate planning, and trusts.	Richard C. Mills	Nancy L. Little, Managing Editor Melisa M.W. Mysliwicz, Associate Editor.
<b>Tax Committee</b>	Raj A. Malviya	James F. (J.V.) Anderton Christopher J. Caldwell



<p>To monitor, provide regular updates on, and deliver select educational programs concerning federal and state income and transfer taxes and, if applicable, to recommend appropriate actions by the Section in response to developments.</p>		<p>Mark J. DeLuca  Angela Hentkowski  Robert B. Labe  Richard C. Mills  Lorraine F. New  Christine M. Savage  Michael David Shelton  James P. Spica  Timothy White</p>
<p><b>Uniform Fiduciary Income &amp; Principal Ad Hoc Committee</b>  To review the Uniform Law Commission's draft and final version of the Uniform Fiduciary and Principal Act, and, if advisable, to recommend changes to Michigan law in this area.</p>	<p>James P. Spica</p>	<p>Anthony J. Belloli  Marguerite Munson Lentz  Raj A. Malviya  Richard C. Mills  Robert P. Tiplady  Joseph Viviano</p>

**Probate and Estate Planning Section**

2018-2019 Liaisons

<b>Liaison To:</b>	
Alternative Dispute Resolution Section	John A. Hohman, Jr.
Business Law Section	John R. Dresser
Elder Abuse Task Force	Nathan Piwowarski and Nazneen Hasan
Elder Law and Disability Rights Section	Angela Hentkowski
Family Law Section	Patricia M. Ouellette
ICLE	Jeanne Murphy
Laws Schools	J.V. Anderton
Modest Means Work Group	Georgette E. David
Michigan Bankers Association	Daniel W. Borst
Probate Judges Association	Hon. David M. Murkowski Hon. Michael L. Jaconette
Probate Register	
SCAO	Melisa M.W. Mysliwiec Susan L. Chalgian Nathan Piwowarski
Solutions on Self-Help Task Force	Kathleen M. Goetsch
State Bar Commissioner	Shauna L. Dunnings
Taxation Section	Neal Nusholtz
Uniform Law Commission	James P. Spica

C

Probate and Estate Planning Section: 2018-2019

**TREASURER'S MONTHLY ACTIVITY REPORT (FEBRUARY)**

Revenue	State Bar Activity Report (February)	Cumulative Monthly (through February)	Budget 2018-19	Comments
1-7-99-775-1050 Probate/Estate Planning Dues	\$ 1,015.00	\$ 108,205.00	\$ 112,000.00	
1-7-99-775-1055 Probate/Estate Stud/Affil Dues	\$ 35.00	\$ 875.00	\$ 800.00	
1-7-99-775-1330 Subscription to Newsletter	\$ -	\$ -	\$ -	
1-7-99-775-1470 Publishing Agreement Account	\$ -	\$ -	\$ 650.00	
1-7-99-775-1755 Pamphlet Sales Revenue	\$ -	\$ -	\$ -	
<b>Total Revenue</b>	<b>\$ 1,050.00</b>	<b>\$ 109,080.00</b>	<b>\$ 113,450.00</b>	
<b>Hearts and Flowers Fund (in Fraser Law Trust Acct)</b>	\$ -	\$ 1,038.81	\$ 1,038.81	Not budgeted item, but this is the current carryover balance in Fraser Firm trust account.
<b>Total Fund</b>	<b>\$ -</b>	<b>\$ 1,038.81</b>	<b>\$ 1,038.81</b>	
<b>Expenses</b>				
1-9-99-775-1127 Multi-Section Lobbying Group	\$ 2,500.00	\$ 12,500.00	\$ 30,000.00	
1-9-99-775-1145 ListServ	\$ 10.00	\$ 40.00	\$ 225.00	
1-9-99-775-1276 Meetings	\$ 1,166.00	\$ 9,718.62	\$ 16,000.00	
1-9-99-775-1283 Seminars	\$ -	\$ -	\$ 20,000.00	
1-9-99-775-1297 Annual Meeting Expenses	\$ -	\$ -	\$ -	
1-9-99-775-1493 Travel	\$ 881.68	\$ 4,128.73	\$ 15,000.00	
1-9-99-775-1528 Telephone	\$ 83.82	\$ 83.82	\$ 1,250.00	
1-9-99-775-1549 Books & Subscriptions	\$ -	\$ -	\$ 750.00	
1-9-99-775-1822 Litigation-Amicus Curiae Brief	\$ -	\$ -	\$ 55,000.00	
1-9-99-775-1833 Newsletter		\$ 8,200.00	\$ 10,000.00	
1-9-99-775-1987 Miscellaneous		\$ 143.10	\$ 7,500.00	Line item increased by \$3,000 (networking reception @ Probate Institute) & \$5,000 (networking lunch @ Drafting Estate Planning Documents Seminar) as budget amdmts.
1-9-99-775-1297 Annual Meeting Expenses	\$ -	\$ -	\$ 1,000.00	
1-9-99-775-1861 Printing	\$ -	\$ -	\$ 100.00	
1-9-99-775-1868 Postage	\$ -	\$ -	\$ -	
<b>Total Expenses</b>	<b>\$ 4,641.50</b>	<b>\$ 34,814.27</b>	<b>\$ 156,825.00</b>	
<b>Net Income</b>	<b>\$ (3,591.50)</b>	<b>\$ 74,265.73</b>	<b>\$ (43,375.00)</b>	
Beginning Fund Balance				
1-5-00-775-0001 Fund Bal-Probate/Estate Plan		\$ 172,927.32	\$ 172,927.32	
<b>Ending Fund Balance</b>		<b>\$ 247,193.05</b>	<b>\$ 129,552.32</b>	
<b>Amicus Reserve</b>				
Beginning Fund Balance		\$ 19,167.25	\$ 19,167.25	
Withdrawals		\$ -		
Ending Fund Balance		\$ -		
General Fund		\$ 153,760.07	\$ 153,760.07	
<b>Total Fund</b>		<b>\$ 172,927.32</b>	<b>\$ 172,927.32</b>	



306 Townsend St., Lansing MI 48933-2012, (800) 968-1442

### Section Expense Reimbursement Form

Staple receipts to back of form as required. For electronic transmittal, scan and PDF receipts and send with form by e-mail. Policies and procedures on reverse side.

Payee Name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City \_\_\_\_\_  
 State \_\_\_\_\_ Zip Code \_\_\_\_\_  
 E-Mail \_\_\_\_\_  
 Phone \_\_\_\_\_

Select your section

Please provide account no. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Amount \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Amount Total \$ 0.00

Date	Description & Purpose (Note start and end point for mileage)	Mileage		Lodging/Other Travel	Meals (Self + attach list of guests)	Miscellaneous (i.e. copying, phone, etc.)	Total
		Rate	Mileage   Reimbursement				
		.58	0				\$ 0.00
		.58	0				\$ 0.00
		.58	0				\$ 0.00
		.58	0				\$ 0.00
		.58	0				\$ 0.00
		.58	0				\$ 0.00
		.58	0				\$ 0.00
<b>GrandTotal</b>							<b>\$ 0.00</b>

I certify that the reported expense was actually incurred while performing my duties for the State Bar of Michigan as

Date \_\_\_\_\_ Title \_\_\_\_\_ Signature \_\_\_\_\_  
 Date \_\_\_\_\_ Title \_\_\_\_\_ Approved by (Signature) \_\_\_\_\_

Reset Form  
Print

## STATE BAR OF MICHIGAN Section Expense Reimbursement Policies and Procedures

### General Policies

1. Requests for reimbursement of individual expenses should be submitted as soon as practical after being incurred, but not to exceed 45 days. However, at the end of the fiscal year, any remaining expense reimbursement requests for the fiscal year just ended must be submitted by the 3<sup>rd</sup> workday in October. The State Bar reserves the right to deny a reimbursement request that is untimely or where the State Bar's ability to verify an expense has been compromised due to any delay. Expense reimbursement forms, along with instructions for completing and transmitting expense reimbursement forms, are found on the State Bar of Michigan website at: <http://michbar.org/programs/forms>

2. All out of pocket expenses must be itemized. Each reimbursed expense must be clearly described and the business purpose indicated.

3. Reimbursement in all instances is limited to reasonable and necessary expenses.

4. Detailed receipts are recommended for all expenses but required for expenses over \$25.

5. An itemized receipt is required before reimbursement will be made for any meal. The reimbursement request must identify whether the meal is a breakfast, lunch or dinner. If the receipt covers more than one person, the reimbursement request must identify the names of all those in attendance for whom reimbursement is claimed, and the business purpose of the meal. If the receipt includes charges for guests for whom reimbursement is not claimed, the guests need not be identified by name, but their presence and number should be noted. Reimbursed meals while traveling (except group meals) are taxable if no overnight stay is required.

For subsidized sections (Young Lawyers Section, Master Lawyers Section, and Judicial Section) the presumptive limits on meal reimbursement are the per diem amounts published on the State of Michigan Department of Technology, Management and Budget's website at [http://www.michigan.gov/dtmb/0,5552,7-150-9141\\_13132--,00.html](http://www.michigan.gov/dtmb/0,5552,7-150-9141_13132--,00.html) referencing Travel Rates and Select Cities for the current fiscal year. This policy applies to each individual meal - breakfast, lunch and/or dinner. Meal reimbursements exceeding the per diem amounts due to special circumstances must be approved by the section treasurer or section chair, whenever possible in advance of the expenditure. Reimbursement for meals exceeding the presumptive limits without an acceptable explanation of special circumstances will be limited to the published per diem amount. The presumptive limit on meal reimbursement

applies to any meal expense (individual or group) reimbursed under this policy, but does not apply to meals for group meetings and seminars invoiced directly to the SBM. For all other sections, the amount of the meal reimbursement shall be deemed what is reasonable and necessary.

6. Spouse expenses are not reimbursable.

7. Mileage is reimbursed at the current IRS approved rate for business mileage. Reimbursed mileage for traveling on State Bar business is limited to actual distance traveled for business purposes.

8. Receipts for lodging expenses must be supported by a copy of the itemized bill showing per night charge, meal expenses and all other charges, not simply a credit card receipt, for the total paid. Barring special circumstances such as the need for handicap accessibility accommodations, for conference attendance, the reimbursement will be limited to the least expensive available standard room conference hotel rate.

9. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.

A. Tickets should be at the best rate available for as direct a path as possible. The use of travel websites such as Travelocity, Priceline and Hotwire are recommended to identify the most economical airfare alternatives.

B. Reimbursement of airfare will be limited to the cost of coach class tickets available for the trip at the time the tickets are purchased. The additional cost of business class or first class airfare will not be reimbursed.

C. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.

D. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.

10. Reimbursement for car, bus, or train will be limited to the maximum reimbursable air fare if airline service to the location is available.

11. Outside speakers must be advised in advance of the need for receipts and the above requirements.

12. Bills for copying done by a firm should be approved in advance and include the numbers of copies made, the cost per page and general purpose (committee or section meeting notice, seminar materials, etc.).

13. Bills for reimbursement of phone expenses should be supported by copies of the actual phone bills. If that is not

possible, the party called and the purpose of the call should be provided.

14. The State Bar of Michigan is exempt from sales tax. Suppliers of goods and services should be advised that the State Bar of Michigan is the purchaser and that tax should not be charged.

15. Refunds from professional organizations (Example: ABA/NABE) for registration fees and travel must be made payable to the State Bar of Michigan and sent to the attention of the Finance Department. The State Bar of Michigan is paying your expenses or reimbursing you for a conference and you are aware you will receive a refund, please notify the finance department staff at the time you submit your request for payment.

16. Gift cards (Visa, AMEX) that are reimbursed are taxable for any amount, and tangible gifts (other than recognition items such as plaques, gavels, etc.) and gift certificates (for restaurants, department stores, etc.) purchased and reimbursed are considered taxable if greater than \$100.

### Specific Policies

1. Sections may not exceed their fund balance in any year without express authorization of the Board of Commissioners.

2. Individuals seeking reimbursement for expenditures of funds must have their request approved by the chairperson or treasurer. Chairpersons must have their expenses approved by the treasurer and vice versa.

3. Requests for reimbursement of expenses which require council approval must be accompanied by a copy of the minutes of the meeting showing approval granted.

4. Payments to vendors for \$5,000 or greater are not reimbursable. Payments to vendors for \$5,000 or greater should be paid directly by the State Bar.

**D**

## **MEMORANDUM**

**To:** *Meg Lentz, Chair of PEPC*

**From:** Kathleen Goetsch

**Date:** *April 4, 2019*

**Re:** *Proposed Modifications to MCL 333.20403 7  
Legislative Proposal regarding DeFacto Parent*

Hello Meg:

Here is a written report/summary of my thoughts on the above proposals.

### **Proposed Modifications to MCL 333.20403**

Proposal to modify MCL 333.20403 which is a part of the “Medical Good Faith Provisions Act found at 333.2040 *et. seq.*, in particular a proposal to amend 333.20403 entitled “Life Sustaining or Non-Beneficial Treatment;; Policy of Health Facility or Agency; disclosure to patient or resident; Patient as a minor or Ward.”

The proposed modification not appear to affect the execution, interpretation or validity of a properly executed Medical Power of Attorney/Patient Advocate Designation. Nor does it appear to affect the powers and authority of a guardian authorized under EPIC.

Conclusion: there does not appear to be any impact on EPIC. It’s affect is on health facilities and/or agencies – requiring much greater documentation of and communication of how the decision is made determining that discontinuing treatment which is “non-beneficial”. It would allow a patient, agent or guardian to challenge the decision to discontinue “non-beneficial” treatment and remove the patient to a different facility.

**Conclusion:** I don’t believe there is a need for Council to take any public policy position on this proposal.

If this proposal does become law – I think it is important for Estate Planning Attorneys and Elder Law Attorneys to share this information with clients when advising guardians and drafting Patient Advocate Designations. It may be a topic to be included in ICLE materials.



## **Proposed Modifications to “The Probate Code of 1939 – in particular**

Rep Clara Clement (D-Lincoln Park) asked council through Becky Bechler’s office if we would look at proposed legislation she is working on:

De-Facto parent legislation proposes to add Section 50 to Chapter X of 1939 PA 288 entitled Probate Code of 1939. Specifically involved are the statutes MCL 710.21 - 712B.41 inclusive. These statutes address Adoption, the Safe-Delivery of Infants Act and the Delinquency & Abuse laws.

The proposed new Section 50 creates the idea of a “deFacto Parent”, who is someone who seeks a court determination that they are a “deFacto Parent”, based on clear and convincing evidence. If a court determines that an individual is a “deFacto Parent” the court may then issue other orders regarding parental rights of the “deFacto Parent, including support orders. Under the proposed legislation, a finding that someone is a “deFacto Parent”, “does not terminate the parental rights of any other parent.” A “deFacto Parent” is someone other than a natural or adoptive parent. The proposed legislation does not address what happens after the child involved turns 18.

This appears to be similar to a concept in Family Law known as the “Equitable Parent” doctrine, wherein, a party to a divorce or separate maintenance action, under a very limited set of circumstances and proofs, may gain the right to exercise parenting time with a child, who is not a child of the party to the divorce action seeking the order for parenting time. The “equitable parent” doctrine applies only to divorce and separate maintenance actions. To my knowledge it has not been used to create a parental relationship as contemplated in EPIC.

So long as a finding that a person is a “deFacto Parent” does not expand the inheritance rights of a parent to a deceased child’s estate this proposal does not appear to affect our section. Nor do I believe it would affect any of the priorities of appointment in guardianship, conservatorship or personal representative statutes.

Except for the fact that MCL 710.21(1) refers to the Probate Code of 1939” it does not appear that this proposed legislation has any effect on EPIC – or otherwise affects our section.

**Conclusion:** I don’t believe Council needs to take any public policy on this proposal. I appreciate that the Representative did think to ask Council for our input. This would be better subjection matter for either Family Law or the Children’s Law Section. I thank Rep. Clement for considering us & offer to assist her in any future endeavors involving EPIC.

As a side note:

710.21(1) states this act may be known and cited as the “The Probate Code of 1939.

Probate Code of 1939 -- found at 710.1 – is the term “probate Code of 1939” still appropriate? -- its been replaced by the Revised Probate Code –effective 1979 and again by EPIC – effective 2001 – or thereabouts.

**E**

**To: Probate and Estate Planning Council**

**From: Legislation Development and Drafting Committee**

**Re: April 2019 Committee Report**

Our Committee offers the following updates:

- **Omnibus.** Sen. Lucido and Rep. Elder are willing to sponsor the omnibus again this session. We have received a blueback of the bill, which is attached for your reference. Many thanks to our committee and the CSP for their valuable contributions to this proposal.
- **Elder visitation contests.** We are wrestling with the difficult subject matter and personal jurisdiction issues that come along with any legislation that involves elder visitation disputes. Dan Hilker contributed several short memoranda with helpful suggestions, and we aim to put together a solid first draft proposal before summer.
- **TODs for motor vehicles.** Katie and Georgette are drafting a decision memo concerning the creation of transfer-on-death designations for motor vehicles.
- **Protective order notice fix.** This project remains active. The committee reviewed a first draft of proposed amendments to the protective order provisions of Art. V, Part 4. We will likely review a second draft in March.
- **Delaware Tax Trap/ MCL 554.92-.93.** Jim Spica's spearheading a proposal that would improve the planning options available to individuals who want to intentionally triggering the Delaware tax trap (which sometimes is desirable for basis step-up purposes). We expect to introduce the proposal at the next CSP meeting.
- **Estate planning document retention requirements and mechanisms.** Rep. Lucido's office has suggested that we consider drafting legislation that creates safekeeping filing mechanisms for trusts that are similar to wills, as well as documentation retention requirements for original estate planning documents for estate planning lawyers. We anticipate making a short verbal report on the topic at this month's meeting, and will seek Council's guidance as to whether this should be addressed by our committee, the Ethics & Unauthorized Practice of Law Committee, or both.
- **Entireties trusts (SB 905).** Nothing new to report this month.

DRAFT 1

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 3206, 5301, 5305, 5306a, 5310, 5313, 5314, 5506, 5507, 5508, 5510, 5511, 7103, and 7506 (MCL 700.3206, 700.5301, 700.5305, 700.5306a, 700.5310, 700.5313, 700.5314, 700.5506, 700.5507, 700.5508, 700.5510, 700.5511, 700.7103, and 700.7506), section 3206 as amended by 2016 PA 57, section 5301 as amended by 2005 PA 204, section 5305 as amended by 2017 PA 155, section 5306a as added by 2012 PA 173, section 5310 as amended by 2000 PA 54, section 5313 as amended by 2012 PA 545, section 5314 as amended by 2018 PA 594, sections 5506, 5507, 5508, and 5510 as amended by 2008 PA 41, section 5511 as amended by 2004 PA 532, section 7103 as amended by 2018 PA 664, and section 7506 as amended by 2009 PA 46, and by adding section 5301c.



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

1           Sec. 3206. (1) Subject to 1953 PA 181, MCL 52.201 to 52.216,  
2 part 28 and article 10 of the public health code, 1978 PA 368, MCL  
3 333.2801 to 333.2899 and 333.10101 to 333.11101, and subsection  
4 (12), a funeral representative designated under subsection (2), a  
5 person with priority under subsections (3) to (5) or a person  
6 acting under subsection (6), (7), (8), or (9) is presumed to have  
7 the right and power to make decisions about funeral arrangements  
8 and the handling, disposition, or disinterment of a decedent's  
9 body, including, but not limited to, decisions about cremation, and  
10 the right to retrieve from the funeral establishment and possess  
11 cremated remains of the decedent immediately after cremation. The  
12 handling, disposition, or disinterment of a body must be under the  
13 supervision of a person licensed to practice mortuary science in  
14 this state.

15           (2) Except as otherwise provided in this subsection and  
16 subject to the priority in subsection (3), an individual 18 years  
17 of age or older who is of sound mind at the time a funeral  
18 representative designation is made may designate in writing another  
19 individual who is 18 years of age or older and who is of sound mind  
20 to have the rights and powers under subsection (1). All of the  
21 following apply to a funeral representative designation under this  
22 subsection:

23           (a) For purposes of this section and sections 3206a and 3206b,  
24 an individual who is named in a funeral representative designation  
25 to have the rights and powers described in subsection (1) is known  
26 as a funeral representative and an individual who makes a funeral



1 representative designation is known as a declarant.

2 (b) A funeral representative designation under this subsection  
3 must be in writing, dated, and signed voluntarily by the declarant  
4 or signed by a notary public on the declarant's behalf under  
5 section 33 of the Michigan notary public act, 2003 PA 238, MCL  
6 55.293. A funeral representative designation may be included in the  
7 declarant's will, patient advocate designation, or other writing.  
8 If a funeral representative designation is contained in an  
9 individual's will, the will is not required to be admitted to  
10 probate for the funeral representative designation to be valid. A  
11 funeral representative designation must be 1 or both of the  
12 following:

13 (i) Signed in the presence of and signed by 2 witnesses. A  
14 witness under this section may not be the funeral representative or  
15 an individual described in subdivision (c) (ii) to (iv). A witness  
16 shall not sign the funeral representative designation unless the  
17 declarant appears to be of sound mind and under no duress, fraud,  
18 or undue influence.

19 (ii) Acknowledged by the declarant before a notary public, who  
20 endorses on the funeral representative designation a certificate of  
21 the acknowledgment and the true date of taking the acknowledgment.

22 (c) The following individuals may not act as a funeral  
23 representative for the declarant unless the individual is the  
24 surviving spouse or is a relative of the declarant:

25 (i) An officer, partner, member, shareholder, owner,  
26 representative, or employee of a funeral establishment that will  
27 provide services to the declarant.



1           (ii) A health professional, or an employee of or volunteer at  
 2 a health facility or veterans facility, who provided medical  
 3 treatment or nursing care to the declarant during the final illness  
 4 or immediately before the declarant's death, or a partner, member,  
 5 shareholder, owner, or representative of the health facility where  
 6 medical treatment or nursing care was provided.

7           (iii) An officer, partner, member, shareholder, owner,  
 8 representative, or employee of a cemetery at which the declarant's  
 9 body will be interred, entombed, or inurned.

10           (iv) An officer, partner, member, shareholder, owner,  
 11 representative, or employee of a crematory that will provide the  
 12 declarant's cremation services.

13           (3) The following have the rights and powers under subsection  
 14 (1) in the following order of priority:

15           (a) If the decedent was a service member at the time of the  
 16 decedent's death, a person designated to direct the disposition of  
 17 the service member's remains according to a statute of the United  
 18 States or regulation, policy, directive, or instruction of the  
 19 Department of Defense.

20           (b) A funeral representative designated under subsection (2).

21           (c) The surviving spouse.

22           (d) Subject to subdivision (e), the individual or individuals  
 23 18 years of age or older in the following order of priority:

24           (i) The decedent's children.

25           (ii) The decedent's grandchildren.

26           (iii) The decedent's parents.

27           (iv) The decedent's grandparents.



1 (v) The decedent's siblings.

2 (vi) A descendant of the decedent's parents who first notifies  
3 the funeral establishment in possession of the decedent's body of  
4 the descendant's decision to exercise his or her rights under  
5 subsection (1).

6 (vii) A descendant of the decedent's grandparents who first  
7 notifies the funeral establishment in possession of the decedent's  
8 body of the descendant's decision to exercise his or her rights  
9 under subsection (1).

10 (e) If an individual described in subdivision (d) had the  
11 right to dispose of the decedent's body under subsection (1), but  
12 affirmatively declined to exercise his or her right or failed to  
13 exercise his or her right within 48 hours after receiving  
14 notification of the decedent's death, the individual does not have  
15 the right to make a decision about the disinterment of the  
16 decedent's body or possession of the decedent's cremated remains.

17 (4) If the individual or individuals with the highest priority  
18 as determined under subsection (3) cannot be located after a good-  
19 faith effort to contact and inform them of the decedent's death,  
20 affirmatively decline to exercise their rights or powers under  
21 subsection (1), or fail to exercise their rights or powers under  
22 subsection (1) within 48 hours after receiving notification of the  
23 decedent's death, the rights and powers under subsection (1) may be  
24 exercised by the individual or individuals in the same order of  
25 priority under subsection (3). If the individual or each of the  
26 individuals in an order of priority as determined under this  
27 subsection similarly affirmatively declines or fails to exercise





1 his or her rights or powers within 48 hours after receiving  
2 notification that he or she may act under this subsection or cannot  
3 be located, the rights or powers under subsection (1) pass to the  
4 next order of priority under subsection (3). For purposes of this  
5 subsection only, "exercise their rights or powers under subsection  
6 (1)" means notifying the funeral establishment in possession of the  
7 decedent's body of an individual's decision to exercise his or her  
8 rights or powers under subsection (1).

9 (5) If 2 or more individuals share the rights and powers  
10 described in subsection (1) as determined under subsection (3) or  
11 (4), the rights and powers shall be exercised as decided by a  
12 majority of the individuals who can be located after reasonable  
13 efforts. If a majority cannot agree, any of the individuals may  
14 file a petition under section 3207.

15 (6) If no individual described in subsections (3) and (4)  
16 exists, exercises the rights or powers under subsection (1), or can  
17 be located after a sufficient attempt as described in subsection  
18 (10), and if subsection (7) does not apply, then the personal  
19 representative or nominated personal representative may exercise  
20 the rights and powers under subsection (1), either before or after  
21 his or her appointment.

22 (7) If no individual described in subsections (3) and (4)  
23 exists, exercises the rights or powers under subsection (1), or can  
24 be located after a sufficient attempt as described in subsection  
25 (10), and if the decedent was under a guardianship at the time of  
26 death, the guardian may exercise the rights and powers under  
27 subsection (1) and may make a claim for the reimbursement of burial



1 expenses as provided in section 5216 or 5315, as applicable.

2 (8) If no individual described in subsections (3) and (4)  
3 exists, exercises the rights or powers under subsection (1), or can  
4 be located after a sufficient attempt as described in subsection  
5 (10), if the decedent died intestate, and if subsection (7) does  
6 not apply, a special fiduciary appointed under section 1309 or a  
7 special personal representative appointed under section 3614(c) may  
8 exercise the rights and powers under subsection (1).

9 (9) If there is no person under subsections (3) to (8) to  
10 exercise the rights and powers under subsection (1), 1 of the  
11 following, as applicable, shall exercise the rights and powers  
12 under subsection (1):

13 (a) Unless subdivision (b) applies, the medical examiner for  
14 the county where the decedent was domiciled at the time of his or  
15 her death.

16 (b) If the decedent was incarcerated in a state correctional  
17 facility at the time of his or her death, the director of the  
18 department of corrections or the designee of the director.

19 (10) An attempt to locate a person described in subsection (3)  
20 or (4) is sufficient if a reasonable attempt is made in good faith  
21 by a family member, personal representative, or nominated personal  
22 representative of the decedent to contact the person at his or her  
23 last known address, telephone number, or electronic mail address.

24 (11) This section does not void or otherwise affect an  
25 anatomical gift made under part 101 of the public health code, 1978  
26 PA 368, MCL 333.10101 to 333.10123.

27 (12) An individual who has been criminally charged with the



1 intentional killing of the decedent shall not exercise a right  
2 under subsection (1) while the charges are pending.

3 (13) Except as otherwise provided in this subsection, a person  
4 who has the rights and powers under subsection (1) and who  
5 exercises the right over the disposition of the decedent's body  
6 must ensure payment for the costs of the disposition through a  
7 trust, insurance, a commitment by another person, a prepaid  
8 contract under the prepaid funeral and cemetery sales act, 1986 PA  
9 255, MCL 328.211 to 328.235, or other effective and binding means.  
10 To the extent payment is not ensured under this subsection, the  
11 person described in this subsection is liable for the costs of the  
12 disposition. This subsection does not apply to a person who  
13 exercises the rights and powers under subsection (1) as provided in  
14 subsection (8) or (9).

15 (14) As used in this section:

16 (a) "Armed forces" means ~~that term as defined in section 2 of~~  
17 ~~the veteran right to employment services act, 1994 PA 39, MCL~~  
18 ~~35.1092.~~ **THE ARMY, AIR FORCE, NAVY, MARINE CORPS, COAST GUARD, OR**  
19 **OTHER MILITARY FORCE DESIGNATED BY CONGRESS AS A PART OF THE ARMED**  
20 **FORCES OF THE UNITED STATES.**

21 (b) "Health facility" means that term as defined in section  
22 5653 of the public health code, 1978 PA 368, MCL 333.5653.

23 (c) "Health professional" means that term as defined in  
24 section 5883 of the public health code, 1978 PA 368, MCL 333.5883.

25 (d) "Medical treatment" means that term as defined in section  
26 5653 of the public health code, 1978 PA 368, MCL 333.5653.

27 (e) "Michigan National Guard" means that term as defined in



1 section 105 of the Michigan military act, 1967 PA 150, MCL 32.505.

2 (f) "Nominated personal representative" means a person  
3 nominated to act as personal representative in a will that the  
4 nominated person reasonably believes to be the valid will of the  
5 decedent.

6 (g) "Service member" means a member of the armed forces, a  
7 reserve branch of the armed forces, or the Michigan National Guard.

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



1 died later has priority.

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

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

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



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

6 SEC. 5301C. (1) AT A HEARING CONVENED UNDER THIS PART, THE  
7 COURT MAY DESIGNATE 1 OR MORE STANDBY GUARDIANS. THE COURT MAY  
8 DESIGNATE AS STANDBY GUARDIAN A COMPETENT PERSON THAT IS SUITABLE  
9 AND WILLING TO SERVE IN THE ORDER OF PRIORITY UNDER SECTION 5313.

10 (2) THE NOMINATED STANDBY GUARDIAN MUST RECEIVE A COPY OF THE  
11 PETITION NOMINATING THE PERSON TO SERVE, THE COURT ORDER  
12 ESTABLISHING OR MODIFYING GUARDIANSHIP, AND THE ORDER DESIGNATING  
13 THE STANDBY GUARDIAN.

14 (3) A STANDBY GUARDIAN SHALL FILE AN ACCEPTANCE OF THE  
15 PERSON'S DESIGNATION UNDER SUBSECTION (2) WITHIN 28 DAYS AFTER  
16 RECEIVING NOTICE OF THE ORDER DESIGNATING THE STANDBY GUARDIAN.

17 (4) IF THE STANDBY GUARDIAN IS UNABLE OR UNWILLING TO SERVE,  
18 THE STANDBY GUARDIAN SHALL PROMPTLY NOTIFY THE COURT AND INTERESTED  
19 PERSONS IN WRITING.

20 (5) A STANDBY GUARDIAN DOES NOT HAVE AUTHORITY TO ACT UNLESS  
21 THE GUARDIAN IS UNAVAILABLE FOR ANY REASON, INCLUDING ANY OF THE  
22 FOLLOWING:

23 (A) THE GUARDIAN DIES.

24 (B) THE GUARDIAN IS PERMANENTLY OR TEMPORARILY UNAVAILABLE.

25 (C) THE COURT REMOVES OR SUSPENDS THE GUARDIAN.

26 (6) DURING AN EMERGENCY AFFECTING THE LEGALLY INCAPACITATED  
27 INDIVIDUAL'S WELFARE WHEN THE GUARDIAN IS UNAVAILABLE, THE STANDBY



1 GUARDIAN MAY TEMPORARILY ASSUME THE POWERS AND DUTIES OF THE  
 2 GUARDIAN. A PERSON MAY RELY ON THE STANDBY GUARDIAN'S  
 3 REPRESENTATION THAT THE STANDBY GUARDIAN HAS THE AUTHORITY TO ACT  
 4 IF THE PERSON IS GIVEN THE ORDER ISSUED UNDER SUBSECTION (2) AND  
 5 ACCEPTANCE FILED UNDER SUBSECTION (3). A PERSON THAT ACTS IN  
 6 RELIANCE ON THE REPRESENTATIONS AND DOCUMENTATION DESCRIBED IN THIS  
 7 SUBSECTION WITHOUT KNOWLEDGE THAT THE REPRESENTATIONS ARE INCORRECT  
 8 IS NOT LIABLE TO ANY PERSON FOR SO ACTING AND MAY ASSUME WITHOUT  
 9 FURTHER INQUIRY THE EXISTENCE OF THE STANDBY GUARDIAN'S AUTHORITY.

10 (7) A STANDBY GUARDIAN'S APPOINTMENT AS GUARDIAN IS EFFECTIVE,  
 11 WITHOUT FURTHER PROCEEDINGS OR REITERATION OF ACCEPTANCE,  
 12 IMMEDIATELY ON THE GUARDIAN'S UNAVAILABILITY AS DESCRIBED IN  
 13 SUBSECTION (5). THE STANDBY GUARDIAN HAS THE SAME POWERS AND DUTIES  
 14 AS THE PRIOR GUARDIAN.

15 (8) ON ASSUMING OFFICE, THE STANDBY GUARDIAN SHALL PROMPTLY  
 16 NOTIFY THE COURT, ANY KNOWN AGENT APPOINTED UNDER A POWER OF  
 17 ATTORNEY EXECUTED UNDER SECTION 5103, AND INTERESTED PERSONS. ON  
 18 RECEIVING NOTICE UNDER THIS SUBSECTION, THE COURT MAY ENTER AN  
 19 ORDER APPOINTING A STANDBY GUARDIAN AS GUARDIAN WITHOUT THE NEED  
 20 FOR ADDITIONAL PROCEEDINGS. THE GUARDIAN APPOINTED UNDER THIS  
 21 SUBSECTION SHALL SERVE THE COURT'S ORDER ON THE INTERESTED PERSONS.

22 Sec. 5310. (1) On petition of the guardian and subject to the  
 23 filing and approval of a report prepared as required by section  
 24 5314, the court shall accept the guardian's resignation and make  
 25 any other order that is appropriate.

26 (2) The ward, A PERSON APPOINTED GUARDIAN IN A WILL OR OTHER  
 27 WRITING BY A PARENT OR SPOUSE UNDER SECTION 5301, or ~~a~~ ANY OTHER



1 person interested in the ward's welfare may petition for an order  
2 removing the guardian, **CHANGING THE DESIGNATED STANDBY GUARDIAN**,  
3 appointing a successor guardian, modifying the guardianship's  
4 terms, or terminating the guardianship. A request for this order  
5 may be made by informal letter to the court or judge. **IF A REQUEST**  
6 **UNDER THIS SUBSECTION IS MADE BY THE PERSON APPOINTED BY WILL OR**  
7 **OTHER WRITING UNDER SECTION 5301, THE PERSON SHALL ALSO PRESENT**  
8 **PROOF OF THE PERSON'S APPOINTMENT BY WILL OR OTHER WRITING.** A  
9 person who knowingly interferes with the transmission of this kind  
10 of request to the court or judge is subject to a finding of  
11 contempt of court.

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

22 (4) Before removing a guardian, appointing a successor  
23 guardian, **CHANGING THE DESIGNATED STANDBY GUARDIAN**, modifying the  
24 guardianship's terms, or terminating a guardianship, and following  
25 the same procedures to safeguard the ward's rights as apply to a  
26 petition for a guardian's appointment, the court may send a visitor  
27 to the present guardian's residence and to the place where the ward





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

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

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

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

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

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

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

25       **(E) A PERSON APPOINTED BY A PARENT OR SPOUSE OF A LEGALLY**  
26 **INCAPACITATED INDIVIDUAL BY WILL OR OTHER WRITING UNDER SECTION**  
27 **5301.**



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

6 (a) The legally incapacitated individual's spouse. This  
 7 subdivision ~~shall be~~ **IS** considered to include a person nominated by  
 8 will or other writing signed by a deceased spouse.

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

10 (c) A parent of the legally incapacitated individual. This  
 11 subdivision ~~shall be~~ **IS** considered to include a person nominated by  
 12 will or other writing signed by a deceased parent.

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

16 (e) A person nominated by a person who is caring for the  
 17 legally incapacitated individual or paying benefits to the legally  
 18 incapacitated individual.

19 (4) If none of the persons as designated or listed in  
 20 subsection (2) or (3) are suitable or willing to serve, the court  
 21 may appoint any competent person who is suitable and willing to  
 22 serve, including a professional guardian as provided in section  
 23 5106.

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

27 (a) Personally visiting the individual.



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

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

6 (i) The right to contest the petition.

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

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

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

12 (iii) The right to object to a particular person being  
13 appointed guardian **OR DESIGNATED AS STANDBY GUARDIAN.**

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

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

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

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

23 (e) Informing the individual that if a guardian is appointed,  
24 the guardian may have the power to execute a physician orders for  
25 scope of treatment form on behalf of the individual and, if  
26 meaningful communication is possible, discern if the individual  
27 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 **OR DESIGNATION AS STANDBY**  
 4 **GUARDIAN.**

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

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

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

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

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

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



1 authority, or duration.

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

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

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

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

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

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

14 (viii) Whether the individual objects to a particular person  
15 being appointed guardian **OR DESIGNATED A STANDBY GUARDIAN.**

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

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



1 (4) If the individual alleged to be incapacitated requests  
 2 legal counsel or the guardian ad litem determines it is in the  
 3 individual's best interest to have legal counsel, and if legal  
 4 counsel has not been secured, the court shall appoint legal  
 5 counsel. If the individual alleged to be incapacitated is indigent,  
 6 this state shall bear the expense of legal counsel.

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

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 **OR DESIGNATION OF A STANDBY GUARDIAN**, as provided in  
 22 section 5303. **[SECTION 5303 DOES NOT PROVIDE FOR AN INDIVIDUAL TO**  
 23 **PETITION THE COURT TO HAVE A STANDBY GUARDIAN DESIGNATION.]**

24 (d) To have legal counsel of his or her own choice represent  
 25 him or her on the petition to appoint a guardian **OR DESIGNATE A**  
 26 **STANDBY GUARDIAN**, as provided in sections 5303, 5304, and 5305.

27 (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 **OR DESIGNATE A STANDBY GUARDIAN,**  
 3 as provided in section 5303. **[SECTION 5303 DOES NOT PROVIDE FOR THE**  
 4 **DESIGNATION OF A STANDBY GUARDIAN.]**

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

8 (g) To be present at the hearing on the petition to appoint a  
 9 guardian **OR DESIGNATE A STANDBY GUARDIAN** and to have all practical  
 10 steps taken to ensure this, including, if necessary, moving the  
 11 hearing site, as provided by section 5304. **[SECTION 5304 DOES NOT**  
 12 **PROVIDE THAT THE INDIVIDUAL BE PRESENT AT A HEARING ON A PETITION**  
 13 **TO DESIGNATE A STANDBY GUARDIAN.]**

14 (h) To see or hear all the evidence presented in the hearing  
 15 on the petition to appoint a guardian **OR DESIGNATE A STANDBY**  
 16 **GUARDIAN,** as provided in section 5304. **[SECTION 5304 IS SILENT ON**  
 17 **DESIGNATING A STANDBY GUARDIAN.]**

18 (i) To present evidence and cross-examine witnesses in the  
 19 hearing on the petition to appoint a guardian **OR DESIGNATE A**  
 20 **STANDBY GUARDIAN,** as provided in section 5304. **[SECTION 5304 IS**  
 21 **SILENT ON DESIGNATING A STANDBY GUARDIAN.]**

22 (j) To a trial by jury on the petition to appoint a guardian  
 23 **OR DESIGNATE A STANDBY GUARDIAN,** as provided in section 5304.  
 24 **[SECTION 5304 IS SILENT ON DESIGNATING A STANDBY GUARDIAN.]**

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

27 (l) If a guardian ad litem is appointed, to be personally



1 visited by the guardian ad litem, as provided in section 5305.

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

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

8 (o) If a guardian ad litem is appointed, to be informed by the  
9 guardian ad litem of the right to contest the petition, to request  
10 limits on the guardian's powers, to object to a particular person  
11 being appointed guardian **OR DESIGNATED AS STANDBY GUARDIAN**, to be  
12 present at the hearing, to be represented by legal counsel, and to  
13 have legal counsel appointed if the individual is unable to afford  
14 legal counsel, as provided in section 5305.

15 (p) To be informed of the name of each person known to be  
16 seeking appointment as guardian **OR DESIGNATION AS STANDBY GUARDIAN**,  
17 including, if a guardian ad litem is appointed, to be informed of  
18 the names by the guardian ad litem as provided in section 5305.

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

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

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

27 (t) To prevent the grant of powers to a guardian if those





1 powers are already held by a valid patient advocate, as provided in  
2 section 5306.

3 (u) To periodic review of the guardianship by the court,  
4 including the right to a hearing and the appointment of an attorney  
5 if issues arise upon the review of the guardianship, as provided in  
6 section 5309.

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

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

13 (x) To the same rights on a petition for modification or  
14 termination of the guardianship including the appointment of a  
15 visitor as apply to a petition for appointment of a guardian, as  
16 provided in section 5310.

17 (y) To personal notice of a petition for appointment or  
18 removal of a guardian **OR STANDBY GUARDIAN**, as provided in section  
19 5311. **[SECTION 5311 IS SILENT ON STANDBY GUARDIANS. ALSO, STANDBY**  
20 **GUARDIANS ARE "DESIGNATED" - NOT APPOINTED.]**

21 (z) To written notice of the nature, purpose, and legal  
22 effects of the appointment of a guardian, as provided in section  
23 5311.

24 (aa) To choose the person who will serve as guardian **AND THE**  
25 **PERSON DESIGNATED AS STANDBY GUARDIAN**, if the chosen person is  
26 suitable and willing to serve, as provided in ~~section~~ **SECTIONS** 5313  
27 **AND 5301C, AS APPLICABLE.**



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

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

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

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

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

15 (2) A guardian ad litem shall inform the ward in writing of  
16 his or her rights enumerated in this section. The state court  
17 administrative office and the office of services to the aging  
18 created in section 5 of the older Michiganians act, 1981 PA 180,  
19 MCL 400.585, shall promulgate a form to be used to give the written  
20 notice under this section, which shall include space for the court  
21 to include information on how to contact the court or other  
22 relevant personnel with respect to the rights enumerated in this  
23 section.

24 Sec. 5314. If meaningful communication is possible, a legally  
25 incapacitated individual's guardian shall consult with the legally  
26 incapacitated individual before making a major decision affecting  
27 the legally incapacitated individual. To the extent a guardian of a



1 legally incapacitated individual is granted powers by the court  
2 under section 5306, the guardian is responsible for the ward's  
3 care, custody, and control, but is not liable to third persons  
4 because of that responsibility for the ward's acts. In particular  
5 and without qualifying the previous sentences, a guardian has all  
6 of the following powers and duties, to the extent granted by court  
7 order:

8 (a) The custody of the person of the ward and the power to  
9 establish the ward's place of residence in or outside this state.  
10 The guardian shall visit the ward within 3 months after the  
11 guardian's appointment and not less than once within 3 months after  
12 each previous visit. The guardian shall notify the court within 14  
13 days of a change in the ward's place of residence or a change in  
14 the guardian's place of residence.

15 (b) If entitled to custody of the ward, the duty to make  
16 provision for the ward's care, comfort, and maintenance and, when  
17 appropriate, arrange for the ward's training and education. The  
18 guardian shall secure services to restore the ward to the best  
19 possible state of mental and physical well-being so that the ward  
20 can return to self-management at the earliest possible time.  
21 Without regard to custodial rights of the ward's person, the  
22 guardian shall take reasonable care of the ward's clothing,  
23 furniture, vehicles, and other personal effects and commence a  
24 protective proceeding if the ward's other property needs  
25 protection. If a guardian commences a protective proceeding because  
26 the guardian believes that it is in the ward's best interest to  
27 sell or otherwise dispose of the ward's real property or interest



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

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

24 (d) The power to execute, reaffirm, and revoke a do-not-  
25 resuscitate order on behalf of a ward. However, a guardian shall  
26 not execute a do-not-resuscitate order unless the guardian does all  
27 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  
16 to specific medical indications that may warrant reaffirming the  
17 do-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  
25 orders for scope of treatment form, visits the ward and, if  
26 meaningful communication is possible, consults with the ward about  
27 executing the physician orders for scope of treatment form.



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

26 (ix) Services received by the ward.

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



1 behalf of, the ward.

2 (xi) A recommendation as to the need for continued  
3 guardianship.

4 (xii) IF A STANDBY GUARDIAN HAS BEEN DESIGNATED, A STATEMENT  
5 SIGNED BY THE STANDBY GUARDIAN THAT THE STANDBY GUARDIAN CONTINUES  
6 TO BE WILLING TO SERVE IN THE EVENT OF THE UNAVAILABILITY, DEATH,  
7 INCAPACITY, OR RESIGNATION OF THE GUARDIAN.

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

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





1 necessary to ensure the medical suitability of the anatomical gift.  
2 **IF MORE THAN 1 INDIVIDUAL IS DESIGNATED AS A PATIENT ADVOCATE TO**  
3 **SERVE AT THE SAME TIME, A PERSON PROVIDING CARE, CUSTODY, OR**  
4 **MEDICAL OR MENTAL HEALTH TREATMENT MAY RELY ON THE REPRESENTATIONS**  
5 **OF ANY DESIGNATED PATIENT ADVOCATE WITHOUT FURTHER INQUIRY.**

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

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

27 (4) A patient advocate designation under this section must be



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

14 (5) As used in this section, "community mental health services  
15 program or hospital" means a community mental health services  
16 program as that term is defined in section 100a of the mental  
17 health code, 1974 PA 258, MCL 330.1100a, or a hospital as that term  
18 is defined in section 100b of the mental health code, 1974 PA 258,  
19 MCL 330.1100b.

20 Sec. 5507. (1) A patient advocate designation may include a  
21 statement of the patient's desires on care, custody, and medical  
22 treatment or mental health treatment, or both. A patient advocate  
23 designation may also include a statement of the patient's desires  
24 on the making of an anatomical gift of all or part of the patient's  
25 body under part 101 of the public health code, 1978 PA 368, MCL  
26 333.10101 to 333.10123. The statement regarding an anatomical gift  
27 under this subsection may include a statement of the patient's



1 desires regarding the resolution of a conflict between the terms of  
2 the advance health care directive and the administration of means  
3 necessary to ensure the medical suitability of the anatomical gift.  
4 The patient may authorize the patient advocate to exercise 1 or  
5 more powers concerning the patient's care, custody, medical  
6 treatment; mental health treatment, the making of an anatomical  
7 gift, or the resolution of a conflict between the terms of the  
8 advance health care directive and the administration of means  
9 necessary to ensure the medical suitability of the anatomical gift  
10 that the patient could have exercised on his or her own behalf.

11 **(2) A PATIENT ADVOCATE DESIGNATION MAY ALSO INCLUDE THE**  
12 **PATIENT'S INSTRUCTIONS ABOUT HOW THE PATIENT ADVOCATE IS TO MAKE**  
13 **DECISIONS.**

14 **(3)** ~~(2)~~—A patient may designate in the patient advocate  
15 designation a successor individual as a patient advocate who may  
16 exercise the powers described in subsection (1) for the patient if  
17 the first individual named as patient advocate does not accept, is  
18 incapacitated, resigns, or is removed.

19 **(4)** ~~(3)~~—Before a patient advocate designation is implemented,  
20 a copy of the patient advocate designation must be given to the  
21 proposed patient advocate and must be given to a successor patient  
22 advocate before the successor acts as patient advocate. Before  
23 acting as a patient advocate, the proposed patient advocate must  
24 sign an acceptance of the patient advocate designation.

25 **(5)** ~~(4)~~—The acceptance of a designation as a patient advocate  
26 must include substantially all of the following statements:

27 1. This patient advocate designation is not effective unless



1 the patient is unable to participate in decisions regarding the  
2 patient's medical or mental health, as applicable. If this patient  
3 advocate designation includes the authority to make an anatomical  
4 gift as described in section 5506, the authority remains  
5 exercisable after the patient's death.

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

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

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

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

25 6. A patient advocate shall act in accordance with the  
26 standards of care applicable to fiduciaries when acting for the  
27 patient and shall act consistent with the patient's best interests.



1 The known desires of the patient expressed or evidenced while the  
 2 patient is able to participate in medical or mental health  
 3 treatment decisions are presumed to be in the patient's best  
 4 interests.

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

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

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

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

19 Sec. 5508. (1) Except as provided under subsection (3), the  
 20 authority under a patient advocate designation is exercisable by a  
 21 patient advocate only when the patient is unable to participate in  
 22 medical treatment or, as applicable, mental health treatment  
 23 decisions. The patient's attending ~~physician~~**MEDICAL PROFESSIONAL**  
 24 and another ~~physician~~**MEDICAL PROFESSIONAL** or licensed psychologist  
 25 shall determine upon examination of the patient whether the patient  
 26 is unable to participate in medical treatment decisions, shall put  
 27 the determination in writing, shall make the determination part of



1 the patient's medical record, and shall review the determination  
2 not less than annually. If the patient's religious beliefs prohibit  
3 an examination and this is stated in the designation, the patient  
4 must indicate in the designation how the determination under this  
5 subsection shall be made. The determination of the patient's  
6 ability to make mental health treatment decisions shall be made  
7 under section 5515.

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



1 (3) In the case of a patient advocate designation that  
 2 authorizes a patient advocate to make an anatomical gift of all or  
 3 part of the patient's body, the patient advocate shall act on the  
 4 patient's behalf in accordance with part 101 of the public health  
 5 code, 1978 PA 368, MCL 333.10101 to 333.10123, and may do so only  
 6 after the patient has been declared unable to participate in  
 7 medical treatment decisions as provided in subsection (1) or  
 8 declared dead by a licensed physician. The patient advocate's  
 9 authority to make an anatomical gift remains exercisable after the  
 10 patient's death.

11 (4) AS USED IN THIS SECTION:

12 (A) "ATTENDING MEDICAL PROFESSIONAL" MEANS A MEDICAL  
 13 PROFESSIONAL WHO HAS PRIMARY RESPONSIBILITY FOR THE TREATMENT AND  
 14 CARE OF THE PATIENT.

15 (B) "MEDICAL PROFESSIONAL" MEANS ANY OF THE FOLLOWING:

16 (i) A PHYSICIAN WHO IS LICENSED TO PRACTICE MEDICINE OR  
 17 OSTEOPATHIC MEDICINE AND SURGERY IN THIS STATE UNDER ARTICLE 15 OF  
 18 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101 TO 333.18838.

19 (ii) A PHYSICIAN'S ASSISTANT LICENSED TO PRACTICE IN THIS  
 20 STATE UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL  
 21 333.16101 TO 333.18838.

22 (iii) A CERTIFIED NURSE PRACTITIONER UNDER PART 172 OF THE  
 23 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17201 TO 333.17242.

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

26 (a) The patient's death, except that part of the patient  
 27 advocate designation, if any, that authorizes the patient advocate



1 to make an anatomical gift of all or part of the deceased patient's  
2 body in accordance with this act and part 101 of the public health  
3 code, 1978 PA 368, MCL 333.10101 to 333.10123.

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

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

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

26 (e) A subsequent patient advocate designation that revokes the  
27 prior patient advocate designation either expressly or by





1 inconsistency.

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

4 (g) If a patient advocate designation is executed during a  
5 patient's marriage naming the patient's spouse as the patient  
6 advocate, the patient advocate designation is suspended during the  
7 pendency of an action for separate maintenance, annulment, or  
8 divorce and is revoked upon the entry of a judgment of separate  
9 maintenance, annulment, or divorce, unless the patient has named a  
10 successor individual to serve as a patient advocate. If a successor  
11 patient advocate is named, that individual acts as the patient  
12 advocate.

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

27 Sec. 5511. (1) Irrespective of a previously expressed or



1 evidenced desire, a current desire by a patient to have provided,  
 2 and not withheld or withdrawn, a specific life-extending care,  
 3 custody, or medical treatment is binding on the patient advocate,  
 4 if known by the patient advocate, regardless of the then ability or  
 5 inability of the patient to participate in care, custody, or  
 6 medical treatment decisions or the patient's competency.

7 (2) A person providing, performing, withholding, or  
 8 withdrawing care, custody, or medical or mental health treatment as  
 9 a result of the decision of an individual who is reasonably  
 10 believed to be a patient advocate and who is reasonably believed to  
 11 be acting within the authority granted by the designation is liable  
 12 in the same manner and to the same extent as if the patient had  
 13 made the decision on his or her own behalf.

14 (3) A person providing care, custody, or medical or mental  
 15 health treatment to a patient is bound by sound medical or, if  
 16 applicable, mental health treatment practice and by a patient  
 17 advocate's instructions if the patient advocate complies with  
 18 sections 5506 to 5515, but is not bound by the patient advocate's  
 19 instructions if the patient advocate does not comply with these  
 20 sections.

21 (4) A PERSON PROVIDING CARE, CUSTODY, OR MEDICAL OR MENTAL  
 22 HEALTH TREATMENT TO A PATIENT IS NOT REQUIRED TO DETERMINE IF A  
 23 PATIENT ADVOCATE COMPLIES WITH ANY OF THE PATIENT'S INSTRUCTIONS  
 24 UNDER SECTION 5507(2). A PERSON PROVIDING CARE, CUSTODY, OR MEDICAL  
 25 OR MENTAL HEALTH TREATMENT TO A PATIENT IS NOT LIABLE IF THE  
 26 PATIENT ADVOCATE FAILS TO COMPLY WITH ANY OF THE PATIENT'S  
 27 INSTRUCTIONS UNDER SECTION 5507(2). [IS A PERSON PROVIDING CARE TO



1 A PATIENT LIABLE IF ALL OF THE FOLLOWING APPLY?:

2 (A) THE PATIENT ADVOCATE DESIGNATION INCLUDES THE PATIENT'S  
 3 INSTRUCTIONS UNDER SECTION 5507(2) .

4 (B) THE PERSON PROVIDING CARE TO THE PATIENT KNOWS OF THE  
 5 PATIENT'S INSTRUCTIONS UNDER SECTION 5507(2) .

6 (C) THE PATIENT ADVOCATE DOES NOT COMPLY WITH THE PATIENT'S  
 7 INSTRUCTIONS UNDER SECTION 5507(2) .]

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

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

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

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

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

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

25 (6) ~~(5)~~—If a dispute arises as to whether a patient advocate  
 26 is acting consistent with the patient's best interests or is not  
 27 complying with sections 5506 to 5515, a petition may be filed with



1 the court in the county in which the patient resides or is located  
 2 requesting the court's determination as to the continuation of the  
 3 designation or the removal of the patient advocate. [IF A PATIENT  
 4 ADVOCATE IS DISREGARDING THE PATIENT'S INSTRUCTIONS UNDER SECTION  
 5 5507(2), DOES THIS SUBSECTION APPLY?]

6 Sec. 7103. As used in this article:

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

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

13 (c) "Charitable trust" means a trust, or portion of a trust,  
 14 created for a charitable purpose described in section 7405(1).

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

21 (i) Whether to distribute to or for the benefit of an  
 22 individual or a class of beneficiaries the income or principal or  
 23 both of the trust.

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

27 (iii) Who, if any, among a class of beneficiaries will receive



1 income or principal or both of the trust.

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

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

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

10 (f) "Power of withdrawal" means a presently exercisable  
11 general power of appointment other than a power that is either of  
12 the following:

13 (i) Exercisable by a trustee and limited by an ascertainable  
14 standard.

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

17 (g) "Qualified trust beneficiary" means a trust beneficiary to  
18 whom 1 or more of the following apply on the date the trust  
19 beneficiary's qualification is determined:

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

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

27 (iii) The trust beneficiary would be a distributee or



1 permissible distributee of trust income or principal if the trust  
2 terminated on that date.

3 (h) "Revocable", as applied to a trust, means revocable by the  
4 settlor without the consent of the trustee or a person holding an  
5 adverse interest. A trust's characterization as revocable is not  
6 affected by the settlor's lack of capacity to exercise the power of  
7 revocation, regardless of whether an agent of the settlor under a  
8 durable power of attorney, a conservator of the settlor, or a  
9 plenary guardian of the settlor is serving.

10 (i) "Settlor" means, **EXCEPT AS PROVIDED IN SECTION 7506**, a  
11 person, including a testator or a trustee, who creates a trust. If  
12 more than 1 person creates a trust, each person is a settlor of the  
13 portion of the trust property attributable to that person's  
14 contribution. The lapse, release, or waiver of a power of  
15 appointment does not cause the holder of a power of appointment to  
16 be treated as a settlor of the trust.

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

20 (k) "Support provision" means a provision in a trust that  
21 provides the trustee shall distribute income or principal or both  
22 for the health, education, support, or maintenance of a trust  
23 beneficiary, or language of similar import. A provision in a trust  
24 that provides a trustee has discretion whether to distribute income  
25 or principal or both for these purposes or to select from among a  
26 class of beneficiaries to receive distributions under the trust  
27 provision is not a support provision, but rather is a discretionary



1 trust provision.

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

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

6 (ii) The person holds a power of appointment over trust  
7 property in a capacity other than that of trustee or trust  
8 director.

9 (m) "Trust director" means that term as defined in section  
10 7703a.

11 (n) "Trust instrument" means a governing instrument that  
12 contains the terms of the trust, including any amendment to a term  
13 of the trust.

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

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

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

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

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



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

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

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

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

16           (a) ~~The individual creates, or has created, the trust for the~~  
17 ~~benefit of the individual's spouse.~~ **DURING THE LIFETIME OF THE**  
18 **INDIVIDUAL'S SPOUSE, THE ONLY DISTRIBUTEES OR PERMISSIBLE**  
19 **DISTRIBUTEES OF THE TRUST INCOME OR PRINCIPLE ARE EITHER OF THE**  
20 **FOLLOWING:**

21           (i) **THE INDIVIDUAL'S SPOUSE.**

22           (ii) **THE INDIVIDUAL'S SPOUSE AND EITHER OF THE FOLLOWING:**

23           **(A) THE INDIVIDUAL'S ISSUE.**

24           **(B) THE ISSUE OF THE INDIVIDUAL'S SPOUSE.**

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





1           **(B)** ~~(c)~~ The individual retains a beneficial interest in the  
2 trust income, trust principal, or both, which beneficial interest  
3 follows the termination of the individual's spouse's prior  
4 beneficial interest in the trust.

5           **(5) AN INDIVIDUAL IS NOT CONSIDERED A SETTLOR OF A TRUST FOR**  
6 **THE BENEFIT OF THE INDIVIDUAL:**

7           **(A) IF THE SETTLOR IS THE INDIVIDUAL'S SPOUSE, REGARDLESS OF**  
8 **WHETHER OR WHEN THE INDIVIDUAL WAS THE SETTLOR OF A TRUST FOR THE**  
9 **BENEFIT OF THAT SPOUSE.**

10           **(B) TO THE EXTENT THAT THE PROPERTY OF TRUST WAS SUBJECT TO A**  
11 **GENERAL POWER OF APPOINTMENT IN ANOTHER INDIVIDUAL.**



**F**



45 Ottawa Avenue SW  
Suite 1100  
P.O. Box 306  
Grand Rapids, MI 49501-0306

616.831.1700  
616.831.1701 fax  
www.millerjohnson.com

## MEMORANDUM

**TO** SBM Probate Council                      **CLIENT** SBM Probate Council  
**FROM** Raj A. Malviya                              **DATE** April 2019  
**SUBJECT** Tax Nugget: Two Recent Estate Tax Proposals

---

### **The Bernie Sanders "For the 99.8% Act"**

Senator Bernie Sanders (I-Vt.) introduced S. 309 named "For the 99.8% Act." The act would radically modify federal estate, gift and generation-skipping transfer taxes.

The name of the act is interesting. IRS filing statistics can be interpreted to imply that 99.8% of the population pays no federal transfer tax.

Key parts of it include:

- eliminating GST exemptions for trusts lasting longer than 50 years,
- requiring estate inclusion for assets inside an irrevocable grantor trust,
- lowering the estate tax exemption to 2009 levels,
- lowering the gift tax exclusion even further,
- raising the tax rates from 40% to at least 45% and as high as 77%,
- creating a clawback tax for large gift amounts,
- applying the basis consistency rules to gifts,
- eliminating many valuation discounts,
- establishing a 10-year minimum for grantor retained annuity trusts,
- treating distributions from an irrevocable grantor trust as taxable gifts,
- changing the annual gift exclusion, including eliminating Crummey trusts.
- raising the amount to which the farm and ranch provisions under 2032A apply, and
- changing amounts in conservation easements.

## **GST Limit**

For trusts lasting longer than 50 years, transferors would no longer be able to allocate any GST exemption to that trust. So, the inclusion ratio would be 1. Such trusts would be deemed to be non-qualifying, and transfers such as distributions to beneficiaries made from a non-qualifying trust would be subject to GST tax. The rate of tax would be the rates for estates under the Sanders act.

While such tax rates could be as high as 77% for distributions of \$1 billion or more, what may be more impactful is the potential application to existing lifetime and generational trusts subject to GST tax. For long term trusts that benefit grandchildren, at the death of the child the distributions to the grandchild will be fully taxable.

The tax rates will be the rates in 2001(c). Those start at 18% for amounts up to \$10,000, increase to 20% for amounts over that up to \$20,000.

The 50 years would be measured from the date on which the trust is created. Grandfathering is limited, providing that trust created before the date of enactment shall be deemed to be qualifying for a period of 50 years after the date of enactment. Presumably that means after 50 years, it would be non-qualifying and all distributions subject to GST tax.

## **Lowered Exemption**

The current exemption of \$11.4 million would be reduced to \$3.5 million. Presumably the indexing of that amount to inflation would stay in place, retroactive back to 2010.

Portability is not mentioned in the Sanders act. The act may have the effect of causing more portability returns to be filed.

## **Lowered Exemption for Gifts**

The current exemption for gifts would be reduced to \$1 million. It appears that would also be inflation adjusted.

## **Raised Rates**

Transfers at death in excess of the exemption would be taxed at higher rates. Currently, the rate for amounts exceeding the exemption is 40%. Under the Sanders act, the rate increases would be:

- amounts over \$3.5 million up to \$10 million, from 40% to 45%,
- amounts over \$10 million up to \$50 million, 50%,
- amounts over \$50 million up to \$1 billion, 55%, and
- amounts over \$1 billion, 77%.

In 2011, the staff of the Joint Committee on Taxation released its report entitled "Present Law and Historical Overview of the Federal Tax System." In it, we can see that 77% rate was part of the law prior to the enactment of the Tax Reform Act of 1976, when the estate tax exemption was \$60,000. The 77% rate applied to estates over \$10 million. In today's dollars, that's \$47 million.

## **Clawback**

The new statute would create a clawback for the aggregate of gifts over \$3.5 million.

## **Basis Consistency**

The basis consistency rules added by the Service Transportation and Veterans Health Care Choice Improvement Act of 2015 (Form 8971 and its Schedule A) would be continued under the new statute.

Proposed regulations on the estate tax side include controversial elements such as \$0 basis for assets that are not included on the estate tax return regardless of their actual basis or value, and a requirement that estate beneficiaries must prepare and file their own Form 8971 and Schedule A if assets received are later transferred to another.

## **Elimination of Valuation Discounts**

The act would provide that a transfer of a business interest would be treated as a direct transfer of non-business assets inside the entity from the donor to the donee, undiscounted for any purpose. The business itself would be valued as though it did not own the non-business assets. Certain assets are excluded from the rule such as accounts receivable, inventory and a reasonable amount of working capital.

## **GRAT Term**

Under current rules, grantor retained annuity trusts or GRATs can have terms as short as two years (some practitioners believe that one year and a day is sufficient). The Sanders act would require a minimum 10-year span of time.

## **Grantor Trusts**

Under current rules, a person (the "grantor") can create an irrevocable trust for the benefit of others (the "beneficiaries"), the assets of which are not countable as belonging to the grantor for estate tax purposes, but the income of the trust is treated as the income of and taxable to the grantor. The beneficiaries can then receive income and distribution of principal from the trust, without the trust or the beneficiaries having to pay income tax. Rev.Rul. 2004-64 held that if certain conditions are met, the payment of that income tax by the grantor is not treated as a gift to the beneficiaries. The only gifts

under current law are the gratuitous transfers of assets from the grantor to the trust. In many cases, the grantor also sells assets to the trust and, because of the special income tax status of such trusts, that transaction is not treated as a sale triggering income tax.

**The Sanders act would change all those results. Under his proposed legislation, the assets in the trust would be countable as belonging to the grantor for estate tax purposes at the grantor's death.** The text of the statute seems to indicate that the value would be the value as of the date of death, and not the value at the time the grantor transferred the assets to the trust. In addition, distributions from the trust to a beneficiary would be treated as gifts from the grantor to the beneficiary. Presumably, the grantor would have to file gift tax returns annually to report those gifts, utilizing the grantor's lifetime gift tax exclusion (which would be \$1 million under the Sanders act) and paying gift tax on amounts in excess of that. In addition, if the grantor were to attempt to terminate the special income tax status (as is done in some cases where grantors don't wish to continue being liable for the income tax of the trust), the grantor would be treated as making a taxable gift of all of the trust assets to the beneficiaries.

**If passed in this act, or in any similar form in any other legislation, sales to grantor trusts would be eliminated.**

### **Annual Gifts**

The Sanders act would remove the concept of present interest. It would provide simply that gifts made to any person by the donor during the calendar year would be exempt for the first \$10,000. The amendment is written in such a way so that indexing would still be in place, presumably meaning that, this year, the \$15,000 figure would still be in place. What's new would be a cumulative limit on donors. Transfers to a trust (without regard to the number of beneficiaries), transfers of an interest in a pass-through entity, transfers of an interest subject to a prohibition on sale and any other transfer where the donee cannot immediately liquidate the asset received would be subject to a maximum annual gift exclusion of twice the annual exclusion amount.

Importantly, the last line of the limitations section relating to transfers where the donee cannot immediately liquidate includes the phrase "without regard to withdrawal, put, or other such rights in the donee..." That appears to reference the limitations on a present interest gift from the *Hackl* line of cases.

### **Special Use Valuation for Farms and Ranches**

The \$750,000 figure currently set forth in 2032A(a) would be increased to \$3 million, the inflation adjustment reset to begin after 2018.

## **Changing Amounts in Conservation Easements**

The act would increase the amount that might be excludable from an estate where an election is made for a conservation easement. Current law allows an exclusion of up to \$500,000. The Sanders act would increase the ceiling on the exclusion up to \$2 million. In addition, the Sanders act would put into place a 50% increase in the so-called "applicable percentage." That percentage reduces the amount that can be excluded if the value of the qualified conservation easement is less than 30% of the value of the land determined without regard to the value of the easement. That percentage would rise from 40% up to 60%.

## **The New Elizabeth Warren, Kirsten Gillibrand and Ed Markey Estate Tax Act**

Sen. Elizabeth Warren (D-Mass.), Sen. Kirsten Gillibrand (D-NY) and Sen. Ed Markey (D-Mass.) have reintroduced a 2018 bill that include their own estate and generation-skipping transfer tax changes. Titled The American Housing and Economic Mobility Act of 2019, which is not yet officially showing up on federal government websites, but probably will be S. 787. The text of the bill can be found here:

<https://www.warren.senate.gov/imo/media/doc/American%20Housing%20and%20Economic%20Mobility%20Act%20-%20116th%20Congress.pdf>

Allegedly, only 14,000 American families would be affected. But that just isn't true given the way the GST provisions are written (see above).

Like the Sanders act, it:

- eliminates GST exemptions for trusts lasting longer than 50 years,
- requires estate inclusion for assets inside an irrevocable grantor trust,
- lowers the estate tax exemption to 2009 levels,
- raises the tax rates from 40% to at least 55% and as high as 75%,
- creates a clawback tax for large gift amounts,
- establishes a 10-year minimum for grantor retained annuity trusts,
- treats distributions from an irrevocable grantor trust as taxable gifts, and
- changes the annual gift exclusion, including eliminating Crummey trusts.

The provisions related to grantor trusts, GST exemptions and the annual gift tax exclusion are duplicates of what is in the Sanders act, with one important exception concerning the GST provisions.

The Warren-Gillibrand-Markey act, like the Sanders act, has a special provision for billionaires but it would also impact much smaller estates in a very negative way. Because so much of this act is similar to the Sanders act, the following is a brief explanation of the parts that differ.

## **GST Provisions - Higher Tax Than Sanders Bill**

In the Sanders act, trusts that fail to meet the requirements and for which there can be no GST exemption are taxed at rates in 2001(c) starting at 18%. The Warren-Gillibrand-Markey act completely eliminates all of the lower rate brackets so that the lowest rate is 55%. Using the same example in the analysis of the Sanders act above with \$100,000 passing to a grandchild, the tax would not be \$23,800 as it would be under the Sanders act but instead would be \$55,000.

## **Tax Rates**

The Warren-Gillibrand-Markey act would set a minimum estate tax rate of 55% for all estates up to \$13 million. In other words, for a \$13 million estate, the tax would be \$7,150,000. Between \$13,000,000 and \$93 million, the rate would be 60%. Over \$93 million up to \$1 billion, the rate would be 65%.

## **Billionaire Surtax**

On top of the increased rates, estates over \$1 billion would pay an additional surtax of 10%.

## **Clawback**

The way the Warren-Gillibrand-Markey act is written, there would be a clawback. The act doesn't spend the time detailing how it would be computed and so it appears there would be no credit whatsoever for the higher exemptions now.

RAM:



**G**

COURT RULES, FORMS, AND PROCEEDINGS COMMITTEE

---

**To:** Probate and Estate Planning Council Members  
**From:** Melisa M. W. Mysliwiec, Chair  
**RE:** Order Issued 3/20/19 re ADM File No. 2002-37  
**Date:** March 29, 2019

---

On March 20, 2019, the Michigan Supreme Court issued an Order in ADM File No. 2002-37, adopting amendments to several court rules to accommodate e-filing, effective May 1, 2019.

A link to the full Order is here:

[https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2002-37\\_2019-03-20\\_FormattedOrder\\_AmendtOfMCR1.109.pdf](https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2002-37_2019-03-20_FormattedOrder_AmendtOfMCR1.109.pdf)

When these amendments were proposed in the fall of 2018, Council took a public policy position opposing several of the proposed amendments. Below is a summary of what we had opposed vs. what was, ultimately, adopted.

- Rule 5.107 Other ~~Papers~~Documents Required to be Served

**As Adopted:**

(A) Other ~~Papers~~Documents to be Served. The person filing a petition, an application, a completed SCAO-approved sworn testimony identifying heirs form, a completed SCAO-approved supplemental sworn testimony identifying heirs form, a motion or objection, a response ~~or objection~~, an instrument offered or admitted to probate, an accounting, or a sworn closing statement with the court must serve a copy of that document on interested persons. The person who obtains an order from the court must serve a copy of the order on interested persons.

(B) [Unchanged.]

**Previously Proposed:**

(A) Other ~~Papers~~Documents to be Served. The person filing a petition, an application, a ~~sworn testimony form~~verified statement identifying heirs, supplemental ~~sworn testimony form~~verified statement identifying heirs, a motion or objection, a response ~~or objection~~, an instrument offered or admitted to probate, an accounting, or a sworn closing statement with the court must serve a copy of that document on interested persons. The person who obtains an order from the court must serve a copy of the order on interested persons.

(B) Exceptions.

(1) Service of the ~~papers~~documents listed in subrule (A) is not required to be made on an interested person whose address or whereabouts, on diligent inquiry, is unknown, previous mailings to the last known address have been returned at

least two times as undeliverable, or on an unascertained or unborn person. The court may excuse service on an interested person for good cause.

(2) [Unchanged.]

**Comment:**

We had taken a public policy position stating that we opposed the proposed revisions to MCR 5.107(B)(1), specifically, the addition of "previous mailings to the last known address have been returned at least two times as undeliverable." It is good news that MCR 5.107(B) was unchanged.

- Rule 5.113 Form, Captioning, Signing, and Verifying Documents

**As Adopted:**

(A) Forms of Documents Generally. The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D) and (E). ~~Documents must be substantially in the form approved by the~~ If the State Court Administrative Office, ~~if a form has been approved~~ a form for a particular purpose, it must be used when preparing that particular document for filing with the court for the use. An application, petition, inventory, accounting, proof of claim, or proof of service must be verified in accordance with MCR 1.109(D)(3).

**Previously Proposed:**

(A) Forms of Documents Generally. The form, captioning, signing, and verifying of documents are prescribed in MCR 1.109(D) and (E). Documents must be ~~substantially in the~~ filed on a form approved by the State Court Administrative Office, if a form has been approved for the use. An application, petition, inventory, accounting, proof of claim, or proof of service must be verified in accordance with MCR 1.109(D)(3).

**Comment:**

We had taken a public policy position stating that we opposed the proposed revisions to MCR 5.113(A), specifically, the addition of "substantially in the" and the addition of "filed on a" because there is not a SCAO form that fits each and every unique situation. The rule was modified slightly to reflect that if a SCAO form has been approved for a particular purpose, it must be used when filing something for that purpose.

- Rule 5.307 Requirements Applicable to All Decedent Estates

**As Adopted:**

(A) [Unchanged.]

\*\*\*

(C) Notice to Personal Representative. At the time of appointment, the court must provide the personal representative with written notice of information to be provided to the court. The notice should be substantially in the following form or in the form specified by MCR 5.310(E), if applicable:

“Inventory Information: Within 91 days of the date of the letters of authority, you must submit to the court the information necessary for computation of the probate inventory fee. You must also provide the name and address of each financial institution listed on your inventory at the time the inventory is presented to the court. The address for a financial institution shall be either that of the institution’s main headquarters or the branch used most frequently by the personal representative.

**Previously Proposed:**

(A) Inventory Fee. Within 91 days of the date of the letters of authority, the personal representative must ~~submit to~~ file with the court the information necessary for ~~computation of~~ the probate inventory fee. The inventory fee must be paid no later than the filing of the petition for an order of complete estate settlement under MCL 700.3952, the petition for settlement order under MCL 700.3953, or the sworn statement under MCL 700.3954, or one year after appointment, whichever is earlier.

\*\*\*

(C) Notice to Personal Representative. At the time of appointment, the court must provide the personal representative with written notice of information to be provided to the court. The notice should be substantially in the following form or in the form specified by MCR 5.310(E), if applicable:

“Inventory Information: Within 91 days of the date of the letters of authority, you must ~~submit to~~ file the inventory with the court the information necessary for computation of the probate inventory fee. You must also provide the name and address of each financial institution listed on your inventory at the time the inventory is presented to the court. The address for a financial institution shall be either that of the institution’s main headquarters or the branch used most frequently by the personal representative.

**Comment:**

We had taken the public policy position stating that we opposed the proposed revisions to MCR 5.307(A), specifically, the deletion of "submit to," the addition of "file with," and the deletion of "computation of," and, with respect to MCR 5.307(C), the deletion of "submit to," the addition of "file with," and the deletion of "computation of," which would have created a substantive change in the law and would have been in direct

COURT RULES, FORMS, AND PROCEEDINGS COMMITTEE

---

conflict with MCL 700.3706(2). It is good news that MCR 5.307(A) was unchanged and the portion of MCR 5.307(C) relating to Inventory Information was also unchanged.

- Rule 5.310: Supervised Administration

**As Adopted:**

(A)-(B) [Unchanged.]

(C) Filing ~~Papers~~Documents With the Court. The personal representative must file the following additional ~~papers~~documents with the court and serve copies on the interested persons:

(1) Inventory. The personal representative must file an inventory as prescribed by MCR 5.307(A).

~~(a) Administration Commenced Supervised. If supervised administration is ordered at the commencement of the estate administration, the personal representative must file the inventory within 91 days of the date of the letters of authority.~~

~~(b) Administration Commenced Without Supervision. If supervised administration is ordered after a personal representative has been appointed, the court must specify in the order a time for that personal representative to file the inventory.~~

(2)-(6) [Unchanged.]

(7) Such other ~~papers~~documents as are ordered by the court.

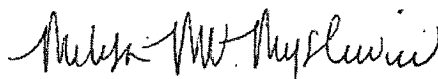
**Previously Proposed:**

Same as Adopted.

**Comment:**

We had opposed this change since we rejected the proposed amendment to MCR 5.307(A), but the Supreme Court has adopted it. In doing so, the requirement for an Inventory to be filed in a supervised administration seems to have been (inadvertently) omitted in that this rule refers back to MCR 5.307(A), which doesn't require filing of the Inventory.

Respectfully submitted,



Melisa M. W. Mysliwicz

**H**

March 28, 2019

To: Probate Section  
From: Neal Nusholtz, Liaison to the Tax Section  
Re: March 14, 2019 - Tax Section Council Meeting

The Tax Section Counsel met on March 14, 2019, from 9:15 a.m. to 11:00 a.m. at the offices of the State Bar at 306 Townsend, Lansing Michigan. The delay in the start of the meeting was because of traffic.

- The Tax Section is holding a networking tutorial for MSU law students 5:30 p.m. to 7:30 p.m. on March 27, 2019. A panel of 4-6 attorneys with a moderator will discuss “How to Network” followed by real time networking with the attendees.
- The last Tax Court Luncheon was cancelled because of the Government Shutdown and will be rescheduled at the next trial calendar.
- The following upcoming events are listed on the Tax Section website.
  - Tax Section: Employee Benefits Committee Happy Hour  
Apr 18, 6:00 PM - 8:00 PM (ET)  
Grand Rapids, MI, United States
  - Tax Section: Annual Tax Conference  
May 23, 9:00 AM - 5:30 PM (ET)  
Plymouth, MI, United States
  - Tax Section: Employee Benefits Committee Retirement Plan Panel & Breakfast  
Jun 13, 7:00 AM - 9:00 AM (ET)  
Lansing, MI, United States
  - Tax Section: Employee Benefits Committee DOL Presentation  
Oct 17, 9:00 AM - 11:00 AM (ET)  
TBD, MI, United States
- At a future date the Michigan Tax Lawyer will be emailed in PDF format. One of the issues will be devoted to a student writing contest.

Sean Cook’s Tax Update:  
Proposed and Passed Tax Legislation

Federal	Michigan
H.R. 7227, the "Taxpayer First Act"	SB 0016 of 2019: Business tax – provides for recapture of tax credits for businesses relocating outside of this state
JCX-1-19 “Tax Technical Clerical Corrections Act Discussion Draft”	SB 0018 of 2019: Individual income tax – provides for student loan forgiveness for disabled veterans under the total and permanent disability discharge program

H.R. 264 "Financial Services and General Government Appropriations Act" which will fund the IRS through September 2019. Passed the House. Read for a second time in the Senate on 1/10/19.	SB 0015/0017 of 2019: Individual income tax – creates child care credit
	SB 0013 of 2019: Individual income tax – eliminate 3-tier limitations and restrictions on deduction for retirement or pensions benefits based on taxpayer's age
	HB 4038 of 2019: Individual income tax – credit for donation of agricultural products to hunger relief charitable organizations
	PA 0460 of 2018: ( <i>SB 0361 (2017)</i> ): Corporate Income Tax – clarifies tax base of financial institutions. Approved by the Governor 12/26/18.
	PA 0589 of 2018: Individual tax- additional personal exemption for stillborn birth.
	PA 0588 of 2018: Individual tax- compensation for wrongful imprisonment and exempt from taxable income and total household resources under homestead property tax credit.
	PA 0456: HB 5025 and HB 4618 (see below)
	HB 5656 (2018): Excise Taxes – tax on bottled water from non-muni source
	PA 0530 of 2018 ( <i>HB 5913 (2018)</i> ): Sales tax – tax exempt status for 501(c)(19) organizations. Approved by Governor 12/27/18.
	HB 6550 (2018): Use tax – purchase of certain aviation equipment – exemption. Vetoed by the Governor 12/28/18.
	HB 6549 (2018): Sales tax – purchase of certain aviation equipment – exemption. Vetoed by the Governor 12/28/18.
	HB 6433 (2018): Individual tax- credit for donation to certain charitable organizations
	HB 6434 (2018): Individual tax- credit for donation to a community foundation
	HB 6485 (2018): Individual tax- elimination of income and expenses of producing oil and gas Vetoed by the Governor 12/28/18.
	PA 438 of 2018 ( <i>HB 4412 (2018)</i> ): Tax Tribunal Reform. Approved by Governor on 12/20/18.



	PA 0553 of 2018 ( <i>HB 5025 (2017)</i> ): Individual tax – Withholding tax refunds for unpaid city taxes administered by the state. Approved by Governor on 12/27/18.
	PA 456 of 2018 ( <i>HB 4618 (2017)</i> ): Individual tax – Modification to city income tax administration by the state. Approved by Governor on 12/20/18.
	HB 4926 (2017) Gaming – allow and regulate. Vetoed by the Governor 12/28/18.
	PA 464-466, 625-626 of 2018 ( <i>SB 0703-0707 (2018)</i> ): Taxation- convention and tourism promotion act. Approved by Governor on 12/12/18.
	SB 0304 (2017): Cigarette tax. Vetoed by Governor 12/28/18.
	SB 0511 (2017): Individual income tax – First time home buyer savings program act. Vetoed by the Governor 12/21/18.
	SB 0512 (2017): Individual income tax – Tax incentive for contributions made to first time home buyers program. Vetoed by the Governor 12/21/18.
	PA 0673 of 2018 ( <i>SB 0906 (2018)</i> ): Sales Tax – Exemption of school bus. Approved by the Governor 12/28/18.
	PA 0679 of 2018 ( <i>SB 0907 (2018)</i> ): Use Tax – Exemption of school bus. Approved by the Governor 12/28/18.
	SB 1097 (2018): Corporate Income Tax Interest Expense Deduction. Vetoed by the Governor 12/28/18.
	SB 1170 (2018): Taxation of Flow through entities. Vetoed by the Governor 12/28/18.

Final Federal Tax Regulations Issued

<b>TD</b>	<b>Primary Code Section</b>	<b>Description</b>	<b>Date Issued</b>
107892-18 [TD XXXX]	199A	Qualified Business Income Deduction	1/18/2019
104226-18 [TD XXXX]	965	Transition Tax	1/15/2019
9845	147	Private Activity Bonds	12/28/2018
9844	6221, et al	Centralized Partnership Audit Regime	12/21/2018
9843	263A	Simplified Method Cost Allocation	11/29/2018

Notices of Proposed Rulemaking - TCJA and other 2018 highlights Vol. 83 (2018)

<b>No.</b>	<b>Date</b>	<b>Description</b>
141739-08	12/31/2018	Retirement Standards for Tax Exempt Bonds
104352-18	12/28/2018	Rules re Hybrid Arrangements under 245A
106089-18	12/28/2018	Limit Deduction for Business Interest Expense
113604-18	12/27/2018	Sale of Partnership Interests under 846
104259-18	12/21/2018	Base Erosion and Anti-Abuse Tax
132884-17	12/18/2018	Reducing Burden under FACTA and Chapter 3
105600-18	12/07/2018	Foreign Tax Credit
106089-18	11/28/2018	Business Interest Expense
106706-18	11/23/2018	Estate and Gift Tax Exclusion "Clawback"
103163-18	11/07/2018	Discounting Rules for Insurance Companies
114540-18	11/05/2018	Controlled Foreign Corporation
115420-18	10/29/2018	Qualified Opportunity Fund
104226-18	10/10/2018	Transition Tax under 965
104390-18	10/10/2018	Global Intangible Low Tax Income (GILTI)
130244-17	9/24/2018	Debt-Equity: Removal of Documentation
112176-18	8/27/2018	Contributions: State and Local Tax Credits
136118-15, 119337-17, 118067-17, 120232-17, 120233-17	8/17/2018	Centralized Partnership Audit Regime
107892-18	8/16/2018	Qualified Business Income Deduction
104226-18	8/09/2018	Repatriation Tax
104397-18	8/08/2018	Additional First Year Depreciation
103474-18	7/18/2018	Preparer Due Diligence
106977-18	6/12/2018	Arbitrage Restrictions on Tax Exempt Bonds
132197-17	2/15/2018	Eliminating Unnecessary Regulations

Notices – TCJA

<b>No.</b>	<b>Date</b>	<b>IRC Section/Topic</b>
2019-11	1/16/2019	6654/Penalty Relief
2019-9	12/31/2018	4960
2019-07	1/18/2019	199A
2019-6	12/19/2018	846
2019-1	12/14/2018	959/Previously Taxed E&P
2018-100	12/10/2018	6655
2018-99	12/10/2018	274
2018-97	12/07/2018	83(i)(2)(c)
2018-76	10/03/2018	274
2018-67	08/21/2018	512(a)(6)
2018-30	05/21/2018	338, 382, 168(k)

Revenue Rulings and Procedures – TCJA

<b>Citation</b>	<b>IRB/CB</b>	<b>IRC Section</b>
Rev Proc 2019-12	2019-4 IRB	162, 170
Rev Proc 2019-10	2019-2 IRB	807(f)
Rev Proc 2019-8	2019-3 IRB	179, 168, 163(j)
Rev Proc 2019-6	2019-2 IRB	846
Rev Proc 2018-59	2018-50 IRB	163(j)