

HOUSE BILL No. 4464

March 16, 1989, Introduced by Reps. Gire, Power, Joe Young, Jr., DeBeaussaert, Pitoniak, Gubow, Profit, Miller, Gilmer, Bandstra, Fitzgerald, Oxender, Jondahl and Perry Bullard and referred to the Committee on Judiciary.

A bill to amend sections 2 and 4 of Act No. 185 of the Public Acts of 1966, entitled

"An act to provide for the compromise, settlement or adjustment of any controversy concerning the interpretation, effect or validity of irrevocable inter vivos trust instruments or arising in the administration of any trust estate created by such irrevocable inter vivos trust agreement, when there is or may be any person interested who is a minor or otherwise without legal capacity to act in person or whose present existence or whereabouts cannot be ascertained, or when there is any estate or interest of any person not competent to act for himself which will or may be affected by such compromise, settlement or adjustment,"

being sections 555.82 and 555.84 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 4 of Act No. 185 of the Public
2 Acts of 1966, being sections 555.82 and 555.84 of the Michigan
3 Compiled Laws, are amended to read as follows:

4 Sec. 2. (1) The terms and conditions of ~~the~~ A compromise,
5 settlement, or adjustment MADE PURSUANT TO THIS ACT shall be set

1 forth in an agreement in writing which shall be executed by all
2 competent persons, except ~~such as may be living but~~ PERSONS
3 whose present existence or whereabouts is unknown and WHOSE
4 PRESENCE cannot after diligent search and inquiry be ascertained,
5 having estates, interests, or claims which ~~will or~~ may be
6 limited, diminished, or changed ~~in either extent or value~~ by
7 the compromise, settlement, or adjustment. ~~if consummated.~~ The
8 agreement shall be submitted to the ~~circuit~~ PROBATE court of
9 the county in which the trustee ~~—~~ or 1 of the trustees has his
10 OR HER residence or principal place of business or to any other
11 ~~circuit~~ PROBATE court otherwise having jurisdiction of the
12 trust ~~—~~ for the COURT'S approval ~~thereof and the authorizing~~
13 ~~of the entering into and execution thereof by the~~ AND THE
14 COURT'S AUTHORIZATION THAT THE AGREEMENT MAY BE ENTERED INTO AND
15 EXECUTED BY THE FOLLOWING:

16 (A) THE qualified trustee of every trust created by the
17 trust instrument which will be affected by ~~such~~ THE compromise,
18 ~~or~~ settlement, ~~and by the~~ OR ADJUSTMENT.

19 (B) THE guardian of each person who is an infant or other-
20 wise incompetent to act in person for whom a guardian has been
21 appointed and qualified and who shall have an estate or interest
22 of any kind or nature which ~~will or~~ may be limited, diminished,
23 or changed ~~— and~~ by the COMPROMISE, SETTLEMENT, OR ADJUSTMENT.

24 (C) THE persons named in the trust instrument as trustees of
25 every trust THAT MAY BE AFFECTED BY THE RESULT OF THE COMPROMISE,
26 SETTLEMENT, OR ADJUSTMENT of which no trustee has as yet

1 qualified or by a guardian ad litem appointed by the court to
2 represent ~~such~~ THE trust. ~~If there is any~~

3 (2) THE PROBATE COURT TO WHICH AN AGREEMENT MADE PURSUANT TO
4 THIS ACT HAS BEEN SUBMITTED SHALL APPOINT A GUARDIAN AD LITEM TO
5 REPRESENT THE FOLLOWING PERSON, ESTATE, INTEREST, OR TRUST:

6 (A) A person who if living has an estate or interest of any
7 kind or nature ~~whose~~ WHICH MAY BE LIMITED, DIMINISHED, OR
8 CHANGED BY THE AGREEMENT AND THE PERSON'S whereabouts or present
9 existence cannot after diligent search and inquiry be
10 ascertained. ~~, or who is a~~

11 (B) A minor or PERSON otherwise without legal capacity to
12 act ~~in person and~~ WHO has no guardian ~~, or if there is any~~
13 AND HAS AN ESTATE OR INTEREST OF ANY KIND OR NATURE WHICH MAY BE
14 LIMITED, DIMINISHED, OR CHANGED BY THE AGREEMENT.

15 (C) AN estate or interest, which might be taken by any
16 person not then in being, which may be limited, diminished, or
17 changed ~~, the court to which the agreement has been submitted~~
18 ~~shall appoint a guardian ad litem to represent such person,~~
19 ~~estate or interest. If there is any trust which the trust~~
20 ~~instrument creates or purports to create~~ BY THE AGREEMENT.

21 (D) A TRUST CREATED OR PURPORTED TO BE CREATED BY A TRUST
22 INSTRUMENT which will be affected by the result of the com-
23 promise, ~~or~~ settlement, OR ADJUSTMENT of which no trustee has
24 qualified, and no person named in the trust instrument as trustee
25 of the trust has joined in the petition for approval ~~and~~
26 ~~authorization,~~ or otherwise voluntarily appeared in the
27 proceeding for ~~the authorization or approval, the court, if~~

1 APPROVAL, AND no person is named in the trust instrument as
 2 trustee of the trust, or ~~if~~ the person or persons named in the
 3 trust instrument as trustees of the trust ~~, shall~~ fail to
 4 appear after due notice ~~in~~ OF the proceeding. ~~, shall appoint~~
 5 ~~a guardian ad litem to represent the trust. Each~~

6 (3) A guardian ad litem APPOINTED PURSUANT TO SUBSECTION (2)
 7 may be authorized to enter into and sign the agreement on behalf
 8 of ~~such~~ THE person, ~~or~~ estate, ~~or~~ interest, or trust.

9 Sec. 4. The provisions of sections 1 to 3 ~~are intended to~~
 10 SHALL provide a definite method for the exercise of the existing
 11 power and jurisdiction of the ~~circuit~~ PROBATE court in addition
 12 to and ~~in nowise~~ NOT in exclusion of any other regular method
 13 or methods of exercising ~~such~~ THE COURT'S power and
 14 jurisdiction. ~~, but nevertheless if necessary to the validity~~
 15 ~~or operative effect of this act or any part thereof, the same~~
 16 ~~shall be deemed to be a grant of power and jurisdiction.~~

17 Sections 1 to 3 ~~are intended to~~ apply to ~~all~~ cases ~~as well~~
 18 where the decedent has died ~~heretofore as where~~ REGARDLESS OF
 19 THE DATE OF DEATH OF the decedent. ~~hereafter dies.~~ Any com-
 20 promise, settlement, and adjustment ~~heretofore~~ made and
 21 approved by ~~any~~ A circuit court of this state ~~by any~~ PRIOR TO
 22 THE EFFECTIVE DATE OF THE 1989 AMENDATORY ACT THAT AMENDED THIS
 23 SECTION, THAT WAS MADE AND APPROVED PURSUANT TO THIS ACT OR PUR-
 24 SUANT TO A method substantially similar to ~~that herein~~ THE
 25 METHOD provided ~~is declared to~~ IN THIS ACT SHALL be valid and
 26 binding with like force and effect as provided in section 1. ANY
 27 COMPROMISE, SETTLEMENT, AND ADJUSTMENT MADE AND APPROVED BY A

1 PROBATE COURT OF THIS STATE PURSUANT TO A METHOD SUBSTANTIALLY
2 SIMILAR TO THE METHOD PROVIDED IN THIS ACT SHALL BE VALID AND
3 BINDING WITH LIKE FORCE AND EFFECT AS PROVIDED IN SECTION 1.

4 Section 2. This amendatory act shall not take effect unless
5 all of the following bills of the 85th Legislature are enacted
6 into law:

7 (a) Senate Bill No. _____ or House Bill No. _____ (request
8 no. 01628'89).

9 (b) Senate Bill No. _____ or House Bill No. 4463 (request
10 no. 01628'89 a).