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Senate Bills 1376, 1377, and 1378 (as introduced 6-8-10)

Sponsor: Senator Alan L. Cropsey (S.B. 1376)

Senator Hansen Clarke (S.B. 1377)

Senator Tony Stamas (S.B. 1378)

Committee: Judiciary

Date Completed: 9-21-10

CONTENT

Senate Bill 1376 would make amendments to the Michigan Trust Code, Article 7 of the Estates and Protected Individuals Code (EPIC), concerning the powers and liability of a trustee, the distribution of property of a trust worth less than \$50,000, and a provision of Article 7 that would override the terms of a trust. The bill also would make an amendment to EPIC regarding the representation of beneficiaries by the holder of a power of appointment.

Senate Bills 1377 and 1378 would amend the Cemetery Regulation Act and the Prepaid Funeral and Cemetery Sales Act, respectively, to revise citations to several sections of the Michigan Trust Code.

A more detailed description of Senate Bill 1376 follows.

The Michigan Trust Code (MTC) states that a provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding related to the trust may not be given effect if there is probable cause to institute a proceeding to contest the trust or another proceeding related to the trust. Under the bill, this requirement would prevail over the terms of a trust. (Under the MTC, the terms of a trust prevail over any provision of Article 7 except for specified requirements, duties, powers of the court, rights, etc. under particular sections of the Code.)

If a trust consists of property worth less than \$50,000, the MTC allows the trustee to terminate the trust upon concluding that the value of the property is insufficient to justify the cost of administration. Upon termination, the trustee must distribute the trust property as provided in the terms of the trust, if any, and otherwise to current income beneficiaries or, if none, as directed by the court. Under the bill, this would apply to a noncharitable trust. If the trust were a charitable trust, the trustee would have to distribute the property in a manner consistent with the purposes of the trust.

The MTC lists specific powers of a trustee, including the power to employ an attorney to perform necessary legal services or to advise or assist the trustee in performing administrative duties. Under the bill, the trustee could do so even if the attorney were associated with the trustee, and the trustee could act without independent investigation upon the attorney's recommendation.

Currently, unless otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust estate, unless the trustee fails to reveal the trustee's representative capacity and to identify the trust estate in the contract. The bill would delete the requirement that the trustee identify the trust estate in the contract.

Under EPIC, for the purpose of granting consent or approval regarding acts or accounts of a personal representative, the holder or coholders of a power of appointment are considered to act for beneficiaries to the extent their interests are subject to the power, and to the extent there is no conflict of interest between the holder or holders and the people represented. The bill would delete the requirement that there be no conflict of interest. (A power of appointment is the authority conferred upon a person to create new ownership interests in assets or select the recipient of an interest in property.)

The bill also would amend the heading of Article 3 of EPIC and add headings to the parts of Article 7.

MCL 700.1209 et al. (S.B. 1376)
456.536 (S.B. 1377)
328.222 (S.B. 1378)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Bill Bowerman
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.