

# SENATE BILL No. 1376

June 8, 2010, Introduced by Senators CROPSEY and STAMAS and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 1209, 2519, 3207, 7105, 7411, 7414, 7817, 7821, and 7910 (MCL 700.1209, 700.2519, 700.3207, 700.7105, 700.7411, 700.7414, 700.7817, 700.7821, and 700.7910), sections 1209, 2519, and 7105 as amended and sections 7411, 7414, 7817, 7821, and 7910 as added by 2009 PA 46 and section 3207 as added by 2006 PA 299, by amending the headings of the parts of article VII, by amending the heading of article VIII, and by designating sections 8101 and 8102 as part 1 and sections 8201 to 8206 as part 2 of article VIII and adding headings for those parts.

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

1           Sec. 1209. For the purpose of granting consent or approval  
2 with regard to the acts or accounts of a personal representative,



1 blanks because all or part of this will may not be valid if you  
2 do so.

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

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

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

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

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

18 INSTRUCTIONS:

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

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

1 MICHIGAN STATUTORY WILL OF

\_\_\_\_\_

2 (Print or type your full name)

3 ARTICLE 1. DECLARATIONS

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

5 I live in \_\_\_\_\_ County, Michigan.

6 My spouse is \_\_\_\_\_.

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

8 My children now living are:

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 (Insert names or write "none")

13 ARTICLE 2. DISPOSITION OF MY ASSETS

14 2.1 CASH GIFTS TO PERSONS OR CHARITIES.

15 (Optional)

16 I can leave no more than two (2) cash gifts. I make the  
17 following cash gifts to the persons or charities in the amount  
18 stated here. Any transfer tax due upon my death shall be paid  
19 from the balance of my estate and not from these gifts. Full name  
20 and address of person or charity to receive cash gift (name only  
21 1 person or charity here):

22 \_\_\_\_\_

23 (Insert name of person or charity)

24 \_\_\_\_\_

25 (Insert address)

26 AMOUNT OF GIFT (In figures): \$

\_\_\_\_\_

27 AMOUNT OF GIFT (In words): \_\_\_\_\_ Dollars

1 \_\_\_\_\_

2 (Your signature)

3 Full name and address of person or charity to receive cash gift

4 (Name only 1 person or charity):

5 \_\_\_\_\_

6 (Insert name of person or charity)

7 \_\_\_\_\_

8 (Insert address)

9 AMOUNT OF GIFT (In figures): \$

\_\_\_\_\_

10 AMOUNT OF GIFT (In words): \_\_\_\_\_ Dollars

11 \_\_\_\_\_

12 (Your signature)

13 2.2 PERSONAL AND HOUSEHOLD ITEMS.

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

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

2.3 ALL OTHER ASSETS.

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

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

(Select only 1)

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

\_\_\_\_\_

(Your signature)

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

\_\_\_\_\_

(Your signature)

**ARTICLE 3. NOMINATIONS OF PERSONAL REPRESENTATIVE, GUARDIAN, AND CONSERVATOR**

1 Personal representatives, guardians, and conservators have a  
 2 great deal of responsibility. The role of a personal  
 3 representative is to collect your assets, pay debts and taxes  
 4 from those assets, and distribute the remaining assets as  
 5 directed in the will. A guardian is a person who will look after  
 6 the physical well-being of a child. A conservator is a person who  
 7 will manage a child's assets and make payments from those assets  
 8 for the child's benefit. Select them carefully. Also, before you  
 9 select them, ask them whether they are willing and able to serve.

10 3.1 PERSONAL REPRESENTATIVE.

11 (Name at least 1)

12 I nominate \_\_\_\_\_  
 13 (Insert name of person or eligible financial institution)  
 14 of \_\_\_\_\_ to serve as personal representative.

15 (Insert address)

16 If my first choice does not serve, I nominate \_\_\_\_\_  
 17 \_\_\_\_\_

18 (Insert name of person or eligible financial institution)

19 of \_\_\_\_\_ to serve as personal representative.

20 (Insert address)

21 3.2 GUARDIAN AND CONSERVATOR.

22 Your spouse may die before you. Therefore, if you have a  
 23 child under age 18, name an individual as guardian of the child,  
 24 and an individual or eligible financial institution as  
 25 conservator of the child's assets. The guardian and the  
 26 conservator may, but need not be, the same person.

1 If a guardian or conservator is needed for a child of  
2 mine, I nominate \_\_\_\_\_  
3 (Insert name of individual)  
4 of \_\_\_\_\_ as guardian and  
5 (Insert address)

6 \_\_\_\_\_  
7 (Insert name of individual or eligible financial institution)  
8 of \_\_\_\_\_ to serve as conservator.  
9 (Insert address)

10 If my first choice cannot serve, I nominate

11 \_\_\_\_\_  
12 (Insert name of individual)  
13 of \_\_\_\_\_ as guardian and  
14 (Insert address)

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

19 3.3 BOND.

20 A bond is a form of insurance in case your personal  
21 representative or a conservator performs improperly and  
22 jeopardizes your assets. A bond is not required. You may choose  
23 whether you wish to require your personal representative and any  
24 conservator to serve with or without bond. Bond premiums would be  
25 paid out of your assets. (Select only 1)

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

28 \_\_\_\_\_



1 (Your signature)

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

4 \_\_\_\_\_

5 (Your signature)

6 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

7 Definitions and additional clauses found at the end of this  
8 form are part of this will.

9 I sign my name to this Michigan statutory will on

10 \_\_\_\_\_ , 20\_\_\_\_.

11 \_\_\_\_\_

12 (Your signature)

13 NOTICE REGARDING WITNESSES

14 You must use 2 adults as witnesses. It is preferable to have  
15 3 adult witnesses. All the witnesses must observe you sign the  
16 will, have you tell them you signed the will, or have you tell  
17 them the will was signed at your direction in your presence.

18 STATEMENT OF WITNESSES

19 We sign below as witnesses, declaring that the individual  
20 who is making this will appears to have sufficient mental  
21 capacity to make this will and appears to be making this will  
22 freely, without duress, fraud, or undue influence, and that the  
23 individual making this will acknowledges that he or she has read

1 the will, or has had it read to him or her, and understands the  
2 contents of this will.

3 \_\_\_\_\_

4 (Print Name)

5 \_\_\_\_\_

6 (Signature of witness)

7 \_\_\_\_\_

8 (Address)

9 \_\_\_\_\_

10 (City) (State) (Zip)

11 \_\_\_\_\_

12 (Print name)

13 \_\_\_\_\_

14 (Signature of witness)

15 \_\_\_\_\_

16 (Address)

17 \_\_\_\_\_

18 (City) (State) (Zip)

19 \_\_\_\_\_

20 (Print name)

21 \_\_\_\_\_

22 (Signature of witness)

23 \_\_\_\_\_

24 (Address)

25 \_\_\_\_\_

26 (City) (State) (Zip)

27 DEFINITIONS

28 The following definitions and rules of construction apply to  
29 this Michigan statutory will:

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

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

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

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

13 (e) "Spouse" means your husband or wife at the time you sign  
14 this will.

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

27 (g) "Heirs" means those persons who would have received your

1 assets if you had died without a will, domiciled in Michigan,  
2 under the laws that are then in effect.

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

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

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

11 ADDITIONAL CLAUSES

12 Powers of personal representative

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

23 2. The personal representative may distribute estate assets  
24 otherwise distributable to a minor beneficiary to the minor's  
25 conservator or, in amounts not exceeding \$5,000.00 per year,

1 either to the minor, if married; to a parent or another adult  
2 with whom the minor resides and who has the care, custody, or  
3 control of the minor; or to the guardian. The personal  
4 representative is free of liability and is discharged from  
5 further accountability for distributing assets in compliance with  
6 the provisions of this paragraph.

7 POWERS OF GUARDIAN AND CONSERVATOR

8 A guardian named in this will has the same authority with  
9 respect to the child as a parent having legal custody would have.  
10 A conservator named in this will has all of the powers conferred  
11 by law.

12 Sec. 3207. (1) If there is a disagreement as described in  
13 section 3206(4) or if 1 or more of the individuals described in  
14 section 3206(2) or (3) cannot be located, 1 or more of the  
15 following may petition the court to determine who has the  
16 authority to exercise the rights and powers under section  
17 3206(1):

18 (a) An individual with the rights and powers under section  
19 3206(1).

20 (b) A funeral establishment that has custody of the  
21 decedent's body.

22 (2) Venue for a petition filed under subsection (1) is in  
23 the county in which the decedent was domiciled at the time of  
24 death.

25 (3) On receipt of a petition under this section, the court  
26 shall set a date for a hearing on the petition. The hearing date

1 shall be as soon as possible, but not later than 7 business days  
2 after the date the petition is filed. Notice of the petition and  
3 the hearing shall be served not less than 2 days before the date  
4 of the hearing on every individual who has highest priority as  
5 determined under section 3206(2) and (3), unless the court orders  
6 that service on every such individual is not required. Unless an  
7 individual cannot be located after a reasonable good-faith effort  
8 has been made to contact the individual, service shall be made on  
9 the individual personally or in a manner reasonably designed to  
10 give the individual notice. Notice of the hearing shall include  
11 notice of the individual's right to appear at the hearing. An  
12 individual served with notice of the hearing may waive his or her  
13 rights. If written waivers from all persons entitled to notice  
14 are filed, the court may immediately hear the petition. The court  
15 may waive or modify the notice and hearing requirements of this  
16 subsection if the decedent's body must be disposed of promptly to  
17 accommodate the religious beliefs of the decedent or his or her  
18 next of kin.

19 (4) If a funeral establishment is the petitioner under this  
20 section, the funeral establishment's actual costs and reasonable  
21 attorney fees in bringing the proceeding shall be included in the  
22 reasonable funeral and burial expenses under section ~~3805(b)~~  
23 **3805(1)(B)** or the court may assess such costs and fees against 1  
24 or more parties or intervenors.

25 (5) In deciding a petition brought under this section, the  
26 court shall consider all of the following, in addition to other  
27 relevant factors:

1 (a) The reasonableness and practicality of the funeral  
2 arrangements or the handling or disposition of the body proposed  
3 by the person bringing the action in comparison with the funeral  
4 arrangements or the handling or disposition of the body proposed  
5 by 1 or more individuals with the rights and powers under section  
6 3206(1).

7 (b) The nature of the personal relationship to the deceased  
8 of the person bringing the action compared to other individuals  
9 with the rights and powers under section 3206(1).

10 (c) Whether the person bringing the action is ready,  
11 willing, and able to pay the costs of the funeral arrangements or  
12 the handling or disposition of the body.

13 PART 1

14 **GENERAL PROVISIONS AND DEFINITIONS**

15 Sec. 7105. (1) Except as otherwise provided in the terms of  
16 the trust, this article governs the duties and powers of a  
17 trustee, relations among trustees, and the rights and interests  
18 of a trust beneficiary.

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

21 (a) The requirements under section 7401 for creating a  
22 trust.

23 (b) The duty of a trustee to administer a trust in  
24 accordance with section 7801.

25 (c) The requirement under section 7404 that the trust have a

1 purpose that is lawful, not contrary to public policy, and  
2 possible to achieve.

3 (d) The power of the court to modify or terminate a trust  
4 under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.

5 (e) The effect of a spendthrift provision, a support  
6 provision, and a discretionary trust provision on the rights of  
7 certain creditors and assignees to reach a trust as provided in  
8 part 5.

9 (f) The power of the court under section 7702 to require,  
10 dispense with, or modify or terminate a bond.

11 (g) The power of the court under section 7708(2) to adjust a  
12 trustee's compensation specified in the terms of the trust that  
13 is unreasonably low or high.

14 (h) Except as permitted under section 7809(2), the  
15 obligations imposed on a trust protector in section 7809(1).

16 (i) The duty under section 7814(2)(a) to (c) to provide  
17 beneficiaries with the terms of the trust and information about  
18 the trust's property, and to notify qualified trust beneficiaries  
19 of an irrevocable trust of the existence of the trust and the  
20 identity of the trustee.

21 (j) The power of the court to order the trustee to provide  
22 statements of account and other information pursuant to section  
23 7814(4).

24 (k) The effect of an exculpatory term under section 7809(8)  
25 or 7908.

26 (l) The rights under sections 7910 to 7913 of a person other  
27 than a trustee or beneficiary.



1 (m) Periods of limitation under this article for commencing  
2 a judicial proceeding.

3 (n) The power of the court to take action and exercise  
4 jurisdiction.

5 (o) The subject-matter jurisdiction of the court and venue  
6 for commencing a proceeding as provided in sections 7203 and  
7 7204.

8 (P) THE REQUIREMENT UNDER SECTION 7113 THAT A PROVISION IN A  
9 TRUST THAT PURPORTS TO PENALIZE AN INTERESTED PERSON FOR  
10 CONTESTING THE TRUST OR INSTITUTING ANOTHER PROCEEDING RELATING  
11 TO THE TRUST SHALL NOT BE GIVEN EFFECT IF PROBABLE CAUSE EXISTS  
12 FOR INSTITUTING A PROCEEDING CONTESTING THE TRUST OR ANOTHER  
13 PROCEEDING RELATING TO THE TRUST.

14 PART 2  
15 JUDICIAL PROCEEDINGS

16 PART 3  
17 REPRESENTATION

18 PART 4  
19 CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

20 Sec. 7411. (1) Subject to subsection (2), a noncharitable  
21 irrevocable trust may be modified or terminated in any of the  
22 following ways:

23 (a) By the court upon the consent of the trustee and the  
24 qualified trust beneficiaries, if the court concludes that the  
25 modification or termination of the trust is consistent with the

1 material purposes of the trust or that continuance of the trust  
2 is not necessary to achieve any material purpose of the trust.

3 (b) Upon the consent of the qualified trust beneficiaries  
4 and a trust protector who is given the power under the terms of  
5 the trust to grant, veto, or withhold approval of termination or  
6 modification of the trust.

7 (c) By a trustee or trust protector to whom a power to  
8 direct the termination or modification of the trust has been  
9 given by the terms of a trust.

10 (2) Subsection (1) does not apply to irrevocable trusts  
11 created before or to revocable trusts that become irrevocable  
12 before ~~the effective date of the amendatory act that added this~~  
13 ~~section.~~ **APRIL 1, 2010.**

14 (3) Notice of any proceeding to terminate or modify a trust  
15 shall be given to the settlor, ~~or~~ the settlor's representative if  
16 the petitioner has a reasonable basis to believe the settlor is  
17 an incapacitated individual, the trust protector, if any, the  
18 trustee, and any other person named in the terms of the trust to  
19 receive notice of such a proceeding.

20 (4) Upon termination of a trust under subsection (1), the  
21 trustee shall distribute the trust property as agreed by the  
22 qualified trust beneficiaries.

23 (5) If the trustee fails or refuses to consent, or fewer  
24 than all of the qualified trust beneficiaries consent, to a  
25 proposed modification or termination of the trust under  
26 subsection (1), the modification or termination may be approved  
27 by the court if the court is satisfied that both of the following

1 apply:

2 (a) If the trustee and all of the qualified trust  
3 beneficiaries had consented, the trust could have been modified  
4 or terminated under this section.

5 (b) The interests of a qualified trust beneficiary who does  
6 not consent will be adequately protected.

7 (6) As used in this section, "settlor's representative"  
8 means the settlor's agent under a durable power of attorney, if  
9 the ~~attorney in fact~~ **AGENT** is known to the petitioner, or, if an  
10 agent has not been appointed, the settlor's conservator, plenary  
11 guardian, or partial guardian.

12 Sec. 7414. (1) After 63 days after notice to the qualified  
13 trust beneficiaries and, if the trust is a charitable trust, to  
14 the attorney general of this state, the trustee of a trust  
15 consisting of trust property having a total value less than  
16 \$50,000.00 may terminate the trust if the trustee concludes that  
17 the value of the trust property is insufficient to justify the  
18 cost of administration. The \$50,000.00 amount expressed in this  
19 section shall be adjusted each year as provided in section 1210.

20 (2) The court may modify or terminate a trust or remove the  
21 trustee and appoint a different trustee if it determines that the  
22 value of the trust property is insufficient to justify the cost  
23 of administration.

24 (3) Upon termination of a **NONCHARITABLE** trust under this  
25 section, the trustee shall distribute the trust property in the  
26 manner provided for in the terms of the trust, if any, and  
27 otherwise to the current income beneficiaries or, if there are no

1 current income beneficiaries, in the manner directed by the  
2 court. **UPON TERMINATION OF A CHARITABLE TRUST UNDER THIS SECTION,**  
3 **THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY IN A MANNER**  
4 **CONSISTENT WITH THE PURPOSES OF THE TRUST.**

5 (4) This section does not apply to an easement for  
6 conservation or preservation.

7 PART 5

8 **CREDITOR'S CLAIMS; SPENDTHRIFT, SUPPORT,**  
9 **AND DISCRETIONARY TRUSTS**

10 PART 6

11 **REVOCABLE TRUSTS**

12 PART 7

13 **OFFICE OF TRUSTEE**

14 PART 8

15 **DUTIES AND POWERS OF TRUSTEE**

16 Sec. 7817. Without limiting the authority conferred by  
17 section 7816, a trustee has all of the following powers:

18 (a) To take possession, custody, or control of property  
19 transferred to the trust and accept or reject additions to the  
20 trust.

21 (b) To retain property that the trustee receives, including  
22 property in which the trustee is personally interested, in  
23 accordance with the Michigan prudent investor rule.

24 (c) To receive property from a fiduciary or another source  
25 that is acceptable to the trustee.

1           (d) To perform, compromise, or refuse to perform a contract  
2 of the settlor that is an obligation of the trust, as the trustee  
3 may determine under the circumstances. In performing an  
4 enforceable contract by the settlor to convey or lease land, if  
5 the contract for a conveyance requires the giving of a warranty,  
6 the deed or other instrument of conveyance to be given by the  
7 trustee shall contain the warranty required. The warranty is  
8 binding on the trust as though made by the settlor, but does not  
9 bind the trustee except in the trustee's fiduciary capacity. The  
10 trustee, among other possible courses of action, may do either of  
11 the following:

12           (i) Execute and deliver a deed of conveyance for cash payment  
13 of money remaining due or the purchaser's note for the money  
14 remaining due secured by a mortgage on the land.

15           (ii) Deliver a deed in escrow with directions that the  
16 proceeds, when paid in accordance with the escrow agreement, be  
17 paid to the trustee, as designated in the escrow agreement.

18           (e) To satisfy a settlor's written charitable pledge  
19 irrespective of whether the pledge constitutes a binding  
20 obligation of the settlor or was properly presented as a claim,  
21 if in the trustee's judgment the settlor would have wanted the  
22 pledge completed under the circumstances.

23           (f) To deposit trust property in a financial institution,  
24 including a financial institution operated by or affiliated with  
25 the trustee and to invest and reinvest trust property as would a  
26 prudent investor acting in accordance with the Michigan prudent  
27 investor rule and to deposit securities with a depository or

1 other financial institution.

2 (g) To acquire property, including property in this or  
3 another state or country, in any manner for cash or on credit, at  
4 public or private sale; and to manage, develop, improve,  
5 exchange, partition, or change the character of trust property.

6 (h) To make an ordinary or extraordinary repair or  
7 alteration in a building or another structure, to demolish an  
8 improvement, or to raze an existing or erect a new party wall or  
9 building.

10 (i) To subdivide, develop, or dedicate land to public use;  
11 to make or obtain the vacation of a plat or adjust a boundary; to  
12 adjust a difference in valuation on exchange or partition by  
13 giving or receiving consideration; or to dedicate an easement to  
14 public use without consideration.

15 (j) To enter for any purpose into a lease as lessor or  
16 lessee, with or without an option to purchase or renew, for a  
17 period within or extending beyond the duration of the trust.

18 (k) To enter into a lease or arrangement for exploration and  
19 removal of minerals or another natural resource or to enter into  
20 a pooling or unitization agreement for a period within or  
21 extending beyond the duration of the trust.

22 (l) To abandon or decline to administer property if, in the  
23 trustee's opinion, the property is valueless, or is so encumbered  
24 or in such a condition that it is of no benefit to the trust.

25 (m) To vote a stock or other security in person, by general  
26 or limited proxy, or in another manner provided by law, or enter  
27 into or continue a voting trust agreement.

1           (n) To pay a call, assessment, or other amount chargeable or  
2 accruing against or on account of a security, and sell or  
3 exercise stock subscription or conversion rights.

4           (o) To hold property in the name of a nominee or in another  
5 form without disclosure of the interest of the trust. However,  
6 the trustee is liable for an act of the nominee in connection  
7 with the property so held.

8           (p) To insure the trust property against damage, loss, or  
9 liability and to insure the trustee, the trustee's agents, and  
10 the trust beneficiaries against liability arising from the  
11 administration of the trust.

12           (q) To borrow property, with or without security, for any  
13 purpose from the trustee or others and to mortgage or pledge  
14 trust property for a period within or extending beyond the  
15 duration of the trust.

16           (r) To effect a fair and reasonable compromise with a debtor  
17 or obligor, or extend, renew, or in any manner modify the terms  
18 of an obligation owing to the trust. If the trustee holds a  
19 mortgage, pledge, or another lien on property of another person,  
20 the trustee may, instead of foreclosure, accept a conveyance or  
21 transfer of encumbered property from the property's owner in  
22 satisfaction of the indebtedness secured by a lien.

23           (s) To pay a tax, an assessment, the trustee's compensation,  
24 or another expense incident to the administration of the trust.

25           (t) To sell or exercise a subscription or conversion right  
26 or to consent, directly or through a committee or another agent,  
27 to the reorganization, consolidation, merger, dissolution, or

1 liquidation of a business enterprise.

2 (u) To allocate an item of income or expense to either trust  
3 income or principal, as permitted or provided by law.

4 (v) To employ, and pay reasonable compensation for services  
5 performed by, a person, including an auditor, investment advisor,  
6 accountant, appraiser, broker, custodian, rental agent, realtor,  
7 or agent, even if the person is associated with the trustee, for  
8 the purpose of advising or assisting the trustee in the  
9 performance of an administrative duty; to act without independent  
10 investigation upon such a person's recommendation; and, instead  
11 of acting personally, to employ 1 or more agents to perform an  
12 act of administration, whether or not discretionary.

13 (w) To employ an attorney to perform necessary legal  
14 services or to advise or assist the trustee in the performance of  
15 the trustee's administrative duties, **EVEN IF THE ATTORNEY IS**  
16 **ASSOCIATED WITH THE TRUSTEE, AND TO ACT WITHOUT INDEPENDENT**  
17 **INVESTIGATION UPON THE ATTORNEY'S RECOMMENDATION.** An attorney  
18 employed under this subdivision shall receive reasonable  
19 compensation for ~~that~~**HIS OR HER** employment.

20 (x) To prosecute, defend, arbitrate, settle, release,  
21 compromise, or agree to indemnify an action, claim, or proceeding  
22 in any jurisdiction or under an alternative dispute resolution  
23 procedure. The trustee may act under this subdivision for the  
24 trustee's protection in the performance of the trustee's duties.

25 (y) To sell, exchange, partition, or otherwise dispose of,  
26 or grant an option with respect to, trust property for any  
27 purpose upon any terms or conditions for a period within or



- 1 extending beyond the duration of the trust.
- 2 (z) To continue or participate in a business or enterprise  
3 in any manner, in any form, and for any length of time.
- 4 (aa) To change the form, in any manner, of a business or  
5 enterprise in which the settlor was engaged at the time of death.
- 6 (bb) To provide for exoneration of the trustee from personal  
7 liability in a contract entered into on behalf of the trust.
- 8 (cc) To respond to environmental concerns and hazards  
9 affecting trust property as provided in section 7818.
- 10 (dd) To collect, pay, contest, settle, release, agree to  
11 indemnify against, compromise, or abandon a claim of or against  
12 the trust, including a claim against the trust by the trustee.
- 13 (ee) To respond to a tax matter as provided in section 7819.
- 14 (ff) To make a payment of money, or other property instead  
15 of money, to or for a minor or incapacitated trust beneficiary as  
16 provided in section 7820.
- 17 (gg) To make a distribution or division of trust property in  
18 cash or in kind, or both; to allot a different kind or  
19 disproportionate portion of, or an undivided interest in, trust  
20 property among beneficiaries and determine the value of allotted  
21 trust property; or to distribute an unclaimed share in the same  
22 manner as described in section 3916.
- 23 (hh) To transfer the property of a trust to another  
24 jurisdiction and appoint, compensate, or remove a successor  
25 trustee, individual or corporate, for trust property in another  
26 jurisdiction, with any trust powers set out in this part that the  
27 trustee delegates to the successor trustee.

1           (ii) To execute and deliver an instrument that accomplishes  
2 or facilitates the exercise of a power vested in the trustee.

3           (jj) To select a mode of payment under any employee benefit  
4 or retirement plan, annuity, or life insurance payable to the  
5 trustee, exercise rights thereunder, including exercise of the  
6 right to indemnification for expenses and against liabilities,  
7 and take appropriate action to collect the proceeds.

8           (kk) To make loans out of trust property, including loans to  
9 a trust beneficiary on terms and conditions the trustee considers  
10 to be fair and reasonable under the circumstances. The trustee  
11 has a lien on future distributions for repayment of loans made  
12 under this subdivision.

13           (ll) To pledge trust property to guarantee loans made by  
14 others to the trust beneficiary.

15           (mm) To resolve a dispute concerning the interpretation of  
16 the trust or its administration by mediation, arbitration, or  
17 other procedure for alternative dispute resolution.

18           (nn) On termination of the trust, to exercise the powers  
19 appropriate to wind up the administration of the trust and  
20 distribute the trust property to the persons entitled to it.

21           Sec. 7821. (1) Upon termination or partial termination of a  
22 trust, the trustee may send to the trust beneficiaries a proposal  
23 for distribution. The right of any trust beneficiary to object to  
24 the proposed distribution terminates if the trust beneficiary  
25 does not notify the trustee of an objection within 28 days after  
26 the proposal was sent, but only if the proposal informed the  
27 trust beneficiary of the right to object and of the time allowed

1 for objection.

2 (2) Upon the occurrence of an event terminating or partially  
3 terminating a trust, the trustee shall proceed expeditiously to  
4 distribute the trust property to the persons entitled to it,  
5 subject to the right of the trustee to retain a reasonable  
6 reserve for the payment of debts, taxes, and expenses, including  
7 attorney fees and other expenses incidental to the allowance of  
8 the trustee's accounts.

9 (3) A release by a trust beneficiary of a trustee from  
10 liability for breach of trust is invalid to the extent either of  
11 the following applies:

12 (a) The release was induced by improper conduct of the  
13 trustee.

14 (b) The trust beneficiary, at the time of the release, did  
15 not know of the ~~trust beneficiary's rights or of the material~~  
16 facts relating to the breach.

17 PART 9

18 LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS

19 DEALING WITH TRUSTEE

20 Sec. 7910. (1) Unless otherwise provided in the contract, a  
21 trustee is not personally liable on a contract properly entered  
22 into in the trustee's fiduciary capacity in the course of  
23 administration of the trust estate unless the trustee fails to  
24 reveal the trustee's representative capacity. ~~and identify the~~  
25 ~~trust estate in the contract.~~

26 (2) A trustee is personally liable for an obligation arising

1 from ownership or control of the trust estate property or for a  
 2 tort committed in the course of administration of the trust  
 3 estate only if the trustee is personally at fault.

4 (3) A claim based on a contract entered into by a trustee in  
 5 the trustee's fiduciary capacity, on an obligation arising from  
 6 ownership or control of the trust estate, or on a tort committed  
 7 in the course of trust administration may be asserted against the  
 8 trust estate by proceeding against the trustee in the trustee's  
 9 fiduciary capacity, whether or not the trustee is personally  
 10 liable for the claim.

11 (4) The question of liability as between the trust estate  
 12 and the trustee individually may be determined in a proceeding  
 13 for accounting, surcharge, or indemnification or in another  
 14 appropriate proceeding.

15 ARTICLE VIII ~~EFFECTIVE DATE AND REPEALER~~

16 MISCELLANEOUS PROVISIONS

17 PART 1

18 EFFECTIVE DATE AND REPEALER

19 PART 2

20 MICHIGAN TRUST CODE MISCELLANEOUS PROVISIONS; EFFECTIVE DATE

21 Enacting section 1. (1) Except as provided in subsection  
 22 (2), this amendatory act takes effect April 1, 2010.

23 (2) Section 3207 of the estates and protected individuals  
 24 code, 1998 PA 386, MCL 700.3207, as amended by this amendatory  
 25 act, takes effect on the date this amendatory act is enacted into

1 law.