

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 including relief from liability or penalty for failure to post
 2 bond or to perform other duties, the sole holder or all coholders
 3 of a presently exercisable or testamentary general or special
 4 power of appointment, including 1 in the form of a power of
 5 amendment or revocation, are deemed to act for beneficiaries to
 6 the extent their interests, as permissible appointees, takers in
 7 default, or otherwise, are subject to the power. ~~and to the~~
 8 ~~extent there is no conflict of interest between the holder and~~
 9 ~~the persons represented.~~

10 Sec. 2519. (1) A will executed in the form prescribed by
 11 subsection (2) and otherwise in compliance with the terms of the
 12 Michigan statutory will form is a valid will. A person printing
 13 and distributing the Michigan statutory will shall print and
 14 distribute the form verbatim as it appears in subsection (2). The
 15 notice provisions shall be printed in 10-point boldfaced type.

16 (2) The form of the Michigan statutory will is as follows:

17 MICHIGAN STATUTORY WILL NOTICE

18 1. An individual age 18 or older who has sufficient mental
 19 capacity may make a will.

20 2. There are several kinds of wills. If you choose to
 21 complete this form, you will have a Michigan statutory will. If
 22 this will does not meet your wishes in any way, you should talk
 23 with a lawyer before choosing a Michigan statutory will.

24 3. Warning! It is strongly recommended that you do not add
 25 or cross out any words on this form except for filling in the

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 (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 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.