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## TESTAMENTARY TRUSTS

House Bill 4987 as introduced  
First Analysis (10-12-93)

Sponsor: Rep. Frank M. Fitzgerald  
Committee: Judiciary

### ***THE APPARENT PROBLEM:***

A testamentary trust is a trust that is set up within a will, rather than through a separate document, the way an inter vivos (literally, "between the living") trust is. Certain complications have arisen regarding testamentary trusts, however.

An important reform of the 1978 revision of the probate code was the establishment of a streamlined "independent probate" process as an alternative to the more administratively cumbersome "supervised probate." Under independent probate, an independent personal representative administers an estate with a minimum of court supervision.

Questions have arisen whether a testamentary trust that is within a will that goes through independent probate may also be administered independently. Many courts maintain that it may not, arguing that a strict reading of the probate code requires that once a testamentary trustee is appointed, provisions for supervised administration apply. Other courts have adopted a more informal approach, allowing a testamentary trust within an independently probated will to be administered independently. What is needed, say experts in probate law, are amendments to the probate code that would excuse testamentary trusts from provisions on court-supervised probate, and make the administration of testamentary trusts more like inter vivos trusts. Such amendments have been proposed by the Probate and Estate Planning Section of the State Bar of Michigan.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Revised Probate Code to make the administration of testamentary trusts more like administration of inter vivos trusts. It would delete language requiring a testamentary trustee to petition the probate court for letters of authority to qualify as a trustee, allowing instead for a testamentary trustee to file an acceptance of trust with the probate court (the naming of a particular trustee could be challenged under existing

provisions). Also deleted would be specific language on the powers of a testamentary trustee to manage an estate (Article 8, which deals with trust administration, would govern), and language requiring a testamentary trustee to file an annual accounting with the court (a testamentary trustee would continue to have to provide each beneficiary with an annual statement).

MCL 700.5 et al.

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill could yield minor administrative savings for the probate courts, and thus the counties which fund them. (10-11-93)

### ***ARGUMENTS:***

#### ***For:***

The bill would simplify the administration of testamentary trusts, thus allowing them to be treated like inter vivos trusts, and preventing the necessity for supervised probate when the will in question can go through independent probate. Procedures would be simplified, and unnecessary reporting requirements eliminated, with concomitant savings for the probate courts and an estate's beneficiaries. Beneficiaries would not be left unprotected, however: they would still be entitled to regular accountings from testamentary trustees, and could seek court intervention if problems arose.

### ***POSITIONS:***

The Probate and Estate Planning Section of the State Bar of Michigan supports the bill. (10-7-93)

The Michigan Probate Judges Association has no formal position at present, but does not oppose the bill. (10-5-93)

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