

# Legislative Analysis

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## EPIC REVISIONS: WILLS AND TRUSTS

**Senate Bill 1051 with committee amendments**

**Sponsor: Sen. Alan L. Cropsey**

**House Committee: Judiciary**

**Senate Committee: Judiciary**

### **First Analysis (6-9-04)**

**BRIEF SUMMARY:** The bill would make a number of technical amendments to provisions of the Estates and Protected Individuals Code (EPIC) that pertain to estates and trusts.

**FISCAL IMPACT:** The bill would have an indeterminate fiscal impact on the judiciary; the impact would depend on how the bill affected litigation over wills and trusts.

### **THE APPARENT PROBLEM:**

The state's probate code was replaced in 1998 with the Estates and Protected Individuals Code (EPIC). Reportedly, the project was so lengthy (over nine years) to bring to culmination and involved so many different interest groups that some say the legislation was outdated by time it was enacted. Indeed, the year after the bill's enactment, some of the individuals involved in the EPIC legislation began to scrutinize its provisions to see where further revisions would be needed. Legislation is now being offered to correct ambiguities in the code and to address several other issues.

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

The bill would amend provisions of the Estates and Protected Individuals Code (EPIC) that pertain to estates and trusts. Among other things, the bill would do the following:

- Revise the information that a trustee must give to beneficiaries in a statement of account.
- Provide that a beneficiary's claim for breach of trust would be barred one year after he or she was sent a report disclosing the existence of a potential claim, rather than an annual or final account; and provide for a five-year statute of limitations in other cases.
- Require the repayment of improper distributions from a trust.
- Require the payment of interest on money that a fiduciary deposited with a county treasurer, when the money was paid to a claimant.
- Provide that a child conceived or born out of wedlock would be an individual born in wedlock for purposes of intestate succession (inheritance without a will) if the child's parents married after the conception or birth of the child.

- Exclude the value of property in trust for the benefit of a child of a decedent, from the intestate share of a surviving spouse who married the decedent after he or she made a will.
- Revise provisions for the disclaimer of a property interest.
- Expand the authority of a personal representative to make certain decisions regarding taxation.
- Allow the probate court to apportion taxes and credits in the manner it found equitable, if the court found that it would be inequitable to apportion them as provided in the code.
- Delete current language that restricts a spouse who was the beneficiary of a property interest for which a federal marital deduction had been claimed from disclaiming his or her interest after nine months after the date on which the governing instrument containing the transfer became irrevocable.

The bill would take effect September 1, 2004.

MCL 700.1105 et al.

#### ***HOUSE COMMITTEE ACTION:***

The House Judiciary Committee adopted two amendments. The first further clarified that a child conceived or born out of wedlock but whose parents subsequently married would be an heir of the father should the father die intestate. The second amendment deleted a provision in current law that bars a spouse who inherits a property interest from disclaiming that interest after nine months after the date that the governing instrument became irrevocable.

#### ***BACKGROUND INFORMATION:***

Additional information on the bill can be found in a Senate Fiscal Agency analysis of an earlier version of the bill available on the Michigan Legislature web site.

#### ***ARGUMENTS:***

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

There is broad agreement that the changes proposed by the bill are technical in nature and do not represent substantive changes to law. Reportedly, almost as soon as the 1998 legislation creating the Estates and Protective Individuals Code took effect, ambiguities that needed correction began to surface. The proposed changes came about through discussions between the Michigan Bankers Association and the Probate and Estate Planning Section of the State Bar of Michigan; both groups have indicated support for the amendments.

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

The two amendments adopted by the House Judiciary Committee are also technical in nature. One amendment would clarify that a child conceived out of wedlock would be an

heir of the father for purposes of intestate succession (dying without a will) even if the father died before the child was born if the parents married before the father's death.

A second amendment adopted by the committee would delete a provision that has now been determined to be unnecessary. Originally, it was thought a disclaimer of interest in property inherited by a spouse would jeopardize the marital deduction claimed under federal tax laws. However, this fear has since proved unfounded and the restriction should therefore be eliminated.

***POSITIONS:***

A representative of the Probate and Estate Planning Section of the State Bar of Michigan testified in support of the bill. (6-8-04)

A representative of the Michigan Bankers Association indicated support for the bill. (6-8-04)

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