

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1051

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1105, 2114, 2301, 2714, 2902, 2910, 3715,
3803, 3917, 3920, 3923, 7303, 7307, 7406, and 7408 (MCL 700.1105,
700.2114, 700.2301, 700.2714, 700.2902, 700.2910, 700.3715,
700.3803, 700.3917, 700.3920, 700.3923, 700.7303, 700.7307,
700.7406, and 700.7408), sections 1105, 2114, 3917, and 7303 as
amended by 2000 PA 54, and by adding section 7410.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1105. As used in this act:
- 2 (a) "Incapacitated individual" means an individual who is
- 3 impaired by reason of mental illness, mental deficiency, physical
- 4 illness or disability, chronic use of drugs, chronic
- 5 intoxication, or other cause, not including minority, to the
- 6 extent of lacking sufficient understanding or capacity to make or

1 communicate informed decisions.

2 (b) "Informal proceedings" means proceedings for probate of a
3 will or appointment of a personal representative conducted by the
4 probate register without notice to interested persons.

5 (c) "Interested person" or "person interested in an estate"
6 includes, but is not limited to, **the incumbent fiduciary**; an
7 heir, devisee, child, spouse, creditor, and beneficiary and any
8 other person that has a property right in or claim against a
9 trust estate or the estate of a decedent, ward, or protected
10 individual; a person that has priority for appointment as
11 personal representative; and a fiduciary representing an
12 interested person. Identification of interested persons may vary
13 from time to time and shall be determined according to the
14 particular purposes of, and matter involved in, a proceeding, and
15 by the supreme court rules.

16 (d) "Interested trust beneficiary" means a person that has 1
17 or more of the following interests in ~~a~~ **the** trust:

18 (i) Life estate.

19 (ii) Eligible recipient of a mandatory or discretionary
20 distribution by the trustee of income or principal.

21 (iii) Eligible recipient of a mandatory or discretionary
22 distribution by the trustee of income or principal upon
23 termination of an interest of a person described in subparagraph
24 (i) or (ii).

25 (iv) Presently exercisable or testamentary general or special
26 power of appointment.

27 (e) "Issue" means an individual's descendant.

1 (f) "Joint tenants with the right of survivorship" includes,
2 but is not limited to, co-owners or ownership of property held
3 under circumstances that entitle 1 or more to the whole of the
4 property on the death of the other or others, but does not
5 include forms of co-ownership registration in which the
6 underlying ownership of each party is in proportion to that
7 party's contribution.

8 (g) "Lawyer-guardian ad litem" means an attorney appointed
9 under section 5213 or 5219 who has the powers and duties
10 referenced by and provided in section 5213.

11 (h) "Lease" includes, but is not limited to, an oil, gas, or
12 other mineral lease.

13 (i) "Legally incapacitated individual" means an individual,
14 other than a minor, for whom a guardian is appointed under this
15 act or an individual, other than a minor, who has been adjudged
16 by a court to be an incapacitated individual.

17 (j) "Letters" includes, but is not limited to, letters
18 testamentary, letters of guardianship, letters of administration,
19 and letters of conservatorship.

20 Sec. 2114. (1) Except as provided in subsections (2), (3),
21 and (4), for purposes of intestate succession by, through, or
22 from an individual, an individual is the child of his or her
23 natural parents, regardless of their marital status. The parent
24 and child relationship may be established in any of the following
25 manners:

26 (a) If a child is born or conceived during a marriage, both
27 spouses are presumed to be the natural parents of the child for

1 purposes of intestate succession. A child conceived by a married
2 woman with the consent of her husband following utilization of
3 assisted reproductive technology is considered as their child for
4 purposes of intestate succession. Consent of the husband is
5 presumed unless the contrary is shown by clear and convincing
6 evidence. If a man and a woman participated in a marriage
7 ceremony in apparent compliance with the law before the birth of
8 a child, even though the attempted marriage may be void, the
9 child is presumed to be their child for purposes of intestate
10 succession.

11 ~~(b) Only the individual presumed to be the natural parent of~~
12 ~~a child under subdivision (a) may disprove a presumption that is~~
13 ~~relevant to their relationship, and this exclusive right to do so~~
14 ~~terminates upon the death of the presumed parent.~~

15 **(b)** ~~—(e)—~~ If a child is born out of wedlock or if a child is
16 born or conceived during a marriage but is not the issue of that
17 marriage, a man is considered to be the child's natural father
18 for purposes of intestate succession if any of the following
19 occur:

20 (i) The man joins with the child's mother and acknowledges
21 that child as his child by completing an acknowledgment of
22 parentage as prescribed in the acknowledgment of parentage act,
23 1996 PA 305, MCL 722.1001 to 722.1013.

24 (ii) The man joins the mother in a written request for a
25 correction of certificate of birth pertaining to the child that
26 results in issuance of a substituted certificate recording the
27 child's birth.

1 (iii) The man and child have established a mutually
2 acknowledged relationship of parent and child that begins before
3 the child becomes age 18 and continues until terminated by the
4 death of either.

5 (iv) The man is determined to be the child's father and an
6 order of filiation establishing that paternity is entered as
7 provided in the paternity act, 1956 PA 205, MCL 722.711 to
8 722.730.

9 (v) Regardless of the child's age or whether or not the
10 alleged father has died, the court with jurisdiction over probate
11 proceedings relating to the decedent's estate determines that the
12 man is the child's father, using the standards and procedures
13 established under the paternity act, 1956 PA 205, MCL 722.711 to
14 722.730.

15 **(c) A child who is not conceived or born during a marriage is**
16 **an individual born in wedlock if the child's parents marry after**
17 **the conception or birth of the child.**

18 (2) An adopted individual is the child of his or her adoptive
19 parent or parents and not of his or her natural parents, but
20 adoption of a child by the spouse of either natural parent has no
21 effect on either the relationship between the child and that
22 natural parent or ~~—, except as provided in subsection (3),—~~ the
23 right of the child or a descendant of the child to inherit from
24 or through the other natural parent. An individual is considered
25 to be adopted for purposes of this subsection when a court of
26 competent jurisdiction enters an interlocutory decree of adoption
27 that is not vacated or reversed.

1 (3) The permanent termination of parental rights of a minor
2 child by an order of a court of competent jurisdiction; by a
3 release for purposes of adoption given by the parent, but not a
4 guardian, to the family independence agency or a licensed child
5 placement agency, or before a probate or juvenile court; or by
6 any other process recognized by the law governing the
7 parent-child status at the time of termination, excepting
8 termination by emancipation or death, ends kinship between the
9 parent whose rights are so terminated and the child for purposes
10 of intestate succession by that parent from or through that
11 child.

12 (4) Inheritance from or through a child by either natural
13 parent or his or her kindred is precluded unless that natural
14 parent has openly treated the child as his or hers, and has not
15 refused to support the child.

16 **(5) Only the individual presumed to be the natural parent of**
17 **a child under subsection (1)(a) may disprove a presumption that**
18 **is relevant to that parent and child relationship, and this**
19 **exclusive right to disprove the presumption terminates on the**
20 **death of the presumed parent.**

21 Sec. 2301. (1) Except as provided in subsection (2), if a
22 testator's surviving spouse marries the testator after the
23 testator executes his or her will, the surviving spouse is
24 entitled to receive, as an intestate share, not less than the
25 value of the share of the estate the surviving spouse would have
26 received if the testator had died intestate as to that portion of
27 the testator's estate, if any, that is not any of the following:

1 (a) Property devised to **or in trust for the benefit of** a
2 child of the testator who was born before the testator married
3 the surviving spouse and who is not the surviving spouse's
4 child.

5 (b) Property devised to **or in trust for the benefit of** a
6 descendant of a child described in subdivision (a).

7 (c) Property that passes under section 2603 or 2604 to a
8 child described in subdivision (a) or to a descendant of such a
9 child.

10 (2) Subsection (1) does not apply if any of the following are
11 true:

12 (a) From the will or other evidence, it appears that the will
13 was made in contemplation of the testator's marriage to the
14 surviving spouse.

15 (b) The will expresses the intention that it is to be
16 effective notwithstanding a subsequent marriage.

17 (c) The testator provided for the spouse by transfer outside
18 the will, and the intent that the transfer be a substitute for a
19 testamentary provision is shown by the testator's statements or
20 is reasonably inferred from the amount of the transfer or other
21 evidence.

22 (3) In satisfying the share provided by this section, devises
23 made by the will to the testator's surviving spouse, if any, are
24 applied first, and other devises, other than a devise to **or in**
25 **trust for the benefit of** a child of the testator who was born
26 before the testator married the surviving spouse and who is not
27 the surviving spouse's child or a devise or substitute gift under

1 section 2603 or 2604 to a descendant of such a child, abate as
2 provided in section 3902.

3 Sec. 2714. (1) ~~A~~ **Subject to subsection (2)**, a future
4 interest under the terms of a trust is contingent on the
5 beneficiary surviving the distribution date. If a beneficiary of
6 a future interest under the terms of a trust fails to survive the
7 distribution date, the following apply:

8 (a) Except as provided in subdivision (d), if the future
9 interest is not in the form of a class gift and the deceased
10 beneficiary leaves surviving descendants, a substitute gift is
11 created in the beneficiary's surviving descendants. The
12 surviving descendants take by representation the property to
13 which the beneficiary would have been entitled had the
14 beneficiary survived the distribution date.

15 (b) Except as provided in subdivision (d), if the future
16 interest is in the form of a class gift, other than a future
17 interest to "issue", "descendants", "heirs of the body", "heirs",
18 "next of kin", "relatives", or "family" or a class described by
19 language of similar import, a substitute gift is created in the
20 surviving descendants of a deceased beneficiary. The property to
21 which the beneficiaries would have been entitled had all of them
22 survived the distribution date passes to the surviving
23 beneficiaries and the surviving descendants of the deceased
24 beneficiaries. Each surviving beneficiary takes the share to
25 which he or she would have been entitled had the deceased
26 beneficiaries survived the distribution date. Each deceased
27 beneficiary's surviving descendants who are substituted for the

1 deceased beneficiary take by representation the share to which
 2 the deceased beneficiary would have been entitled had the
 3 deceased beneficiary survived the distribution date. ~~For the~~
 4 ~~purposes of~~ **As used in** this subdivision, "deceased beneficiary"
 5 means a class member who fails to survive the distribution date
 6 and leaves 1 or more surviving descendants.

7 (c) For the purposes of section 2701, words of survivorship
 8 attached to a future interest are not, in the absence of
 9 additional evidence, a sufficient indication of an intent
 10 contrary to the application of this section. Words of
 11 survivorship include words of survivorship that relate to the
 12 distribution date or to an earlier or an unspecified time,
 13 whether those words of survivorship are expressed in
 14 condition-precedent, condition-subsequent, or another form.

15 (d) If a governing instrument creates an alternative future
 16 interest with respect to a future interest for which a substitute
 17 gift is created by subdivision (a) or (b), the substitute gift is
 18 superseded by the alternative future interest only if an
 19 expressly designated beneficiary of the alternative future
 20 interest is entitled to take in possession or enjoyment.

21 **(2) Subsection (1) does not apply to a future interest if the**
 22 **beneficiary of the interest died or irrevocably transferred the**
 23 **interest before April 1, 2000.**

24 Sec. 2902. (1) A person, or a fiduciary representing a
 25 person to whom a disclaimable interest devolves, may disclaim a
 26 disclaimable interest in whole or in part. A trustee, with
 27 respect to the trust as a whole or with respect to a separate

1 trust that is or will be established under the governing
2 instrument, may disclaim a disclaimable interest, in whole or in
3 part, but only to the extent that the governing instrument
4 expressly gives the trustee the right to disclaim.

5 (2) A disclaimer may be of a **specific asset, an interest in a**
6 **specific asset, a pecuniary amount, a** fractional or percentage
7 share, or ~~of~~ a limited interest or estate. A provision in a
8 power of attorney granting the agent the authority to do whatever
9 the principal could do, or words of similar effect, includes the
10 authority to disclaim, unless the authority to disclaim is
11 specifically excluded or limited. ~~Except for a trust or a power~~
12 ~~of attorney, the right to disclaim a disclaimable interest exists~~
13 ~~notwithstanding a spendthrift provision or a restriction or~~
14 ~~limitation on the right to disclaim contained in the governing~~
15 ~~instrument.~~ **Unless the governing instrument is a trust**
16 **instrument that does not authorize the trustee to disclaim or a**
17 **power of attorney that denies the agent the authority to**
18 **disclaim, the right to disclaim exists notwithstanding the**
19 **existence of either of the following:**

20 (a) A spendthrift provision or similar restriction that
21 limits the interest of the disclaimant.

22 (b) A restriction or limitation on the right to disclaim
23 contained in the governing instrument.

24 (3) A fiduciary may disclaim a fiduciary power. The right to
25 disclaim a fiduciary power exists notwithstanding a restriction
26 or limitation on the right to disclaim contained in the governing
27 instrument.

1 Sec. 2910. (1) The right to disclaim property is barred by
2 any of the following events that occur after the event giving
3 rise to the right to disclaim and before the disclaimer is
4 perfected:

5 (a) An assignment, conveyance, encumbrance, pledge, or
6 transfer of the property, or a contract for such a transaction.

7 (b) A written waiver of the right to disclaim.

8 (c) An acceptance of the disclaimable interest or a benefit
9 under the disclaimable interest after actual knowledge that a
10 property right has been conferred.

11 (d) A sale of the property under judicial sale.

12 (e) The expiration of the permitted applicable perpetuities
13 period.

14 (2) The right to disclaim is barred to the extent provided
15 by other applicable law. A partial bar does not preclude the
16 disclaimant from disclaiming all or any part of the balance of
17 the property if the disclaimant has received a portion of the
18 property and there still remains an interest that the disclaimant
19 is yet to receive. An act that bars the right to disclaim a
20 present interest in joint property does not bar the right to
21 disclaim a future interest in joint property.

22 ~~(3) A spouse who is the beneficiary of a property interest~~
23 ~~for which a marital deduction is claimed under the internal~~
24 ~~revenue code of 1986 cannot disclaim his or her interest after 9~~
25 ~~months after the date on which the governing instrument~~
26 ~~containing the transfer is irrevocable.~~

27 Sec. 3715. Except as restricted or otherwise provided by

1 the will or by an order in a formal proceeding, and subject to
2 the priorities stated in section 3902, a personal representative,
3 acting reasonably for the benefit of interested persons, may
4 properly do any of the following:

5 (a) Retain property owned by the decedent pending
6 distribution or liquidation, including property in which the
7 personal representative is personally interested or that is
8 otherwise improper for trust investment.

9 (b) Receive property from a fiduciary or another source.

10 (c) Perform, compromise, or refuse performance of a contract
11 of the decedent that continues as an estate obligation, as the
12 personal representative determines under the circumstances. If
13 the contract is for a conveyance of land and requires the giving
14 of warranties, the personal representative shall include in the
15 deed or other instrument of conveyance the required warranties.
16 The warranties are binding on the estate as though the decedent
17 made them but do not bind the personal representative except in a
18 fiduciary capacity. In performing an enforceable contract by the
19 decedent to convey or lease land, the personal representative,
20 among other possible courses of action, may do any of the
21 following:

22 (i) Execute and deliver a deed of conveyance for cash payment
23 of the amount remaining due or for the purchaser's note for the
24 amount remaining due secured by a mortgage on the land.

25 (ii) Deliver a deed in escrow with directions that the
26 proceeds, when paid in accordance with the escrow agreement, be
27 paid to the decedent's successors, as designated in the escrow

1 agreement.

2 (d) If, in the judgment of the personal representative, the
3 decedent would have wanted the pledge satisfied under the
4 circumstances, satisfy a written charitable pledge of the
5 decedent irrespective of whether the pledge constitutes a binding
6 obligation of the decedent or is properly presented as a claim.

7 (e) If funds are not needed to meet a debt or expenses
8 currently payable and are not immediately distributable, deposit
9 or invest liquid assets of the estate, including funds received
10 from the sale of other property, in accordance with the Michigan
11 prudent investor rule.

12 (f) Acquire or dispose of property, including land in this or
13 another state, for cash or on credit, at public or private sale;
14 and manage, develop, improve, exchange, partition, change the
15 character of, or abandon estate property.

16 (g) Make an ordinary or extraordinary repair or alteration in
17 a building or other structure, demolish an improvement, or raze
18 an existing or erect a new party wall or building.

19 (h) Subdivide, develop, or dedicate land to public use, make
20 or obtain the vacation of a plat or adjust a boundary, adjust a
21 difference in valuation on exchange or partition by giving or
22 receiving consideration, or dedicate an easement to public use
23 without consideration.

24 (i) Enter into a lease as lessor or lessee for any purpose,
25 with or without an option to purchase or renew, for a term within
26 or extending beyond the period of administration.

27 (j) Enter into a lease or arrangement for exploration and

1 removal of minerals or another natural resource, or enter into a
2 pooling or unitization agreement.

3 (k) Abandon property when, in the opinion of the personal
4 representative, it is valueless, or is so encumbered or in such a
5 condition as to be of no benefit to the estate.

6 (l) Vote stocks or another security in person or by general
7 or limited proxy.

8 (m) Pay a call, assessment, or another amount chargeable or
9 accruing against or on account of a security, unless barred by a
10 provision relating to claims.

11 (n) Hold a security in the name of a nominee or in other form
12 without disclosure of the estate's interest. However, the
13 personal representative is liable for an act of the nominee in
14 connection with the security so held.

15 (o) Insure the estate property against damage, loss, and
16 liability and insure the personal representative against
17 liability as to third persons.

18 (p) Borrow money with or without security to be repaid from
19 the estate property or otherwise, and advance money for the
20 estate's protection.

21 (q) Effect a fair and reasonable compromise with a debtor or
22 obligor, or extend, renew, or in any manner modify the terms of
23 an obligation owing to the estate. If the personal
24 representative holds a mortgage, pledge, or other lien upon
25 another person's property, the personal representative may, in
26 lieu of foreclosure, accept a conveyance or transfer of
27 encumbered property from the property's owner in satisfaction of

1 the indebtedness secured by lien.

2 (r) Pay a tax, an assessment, the personal representative's
3 compensation, or another expense incident to the estate's
4 administration.

5 (s) Sell or exercise a stock subscription or conversion
6 right.

7 (t) Consent, directly or through a committee or other agent,
8 to the reorganization, consolidation, merger, dissolution, or
9 liquidation of a corporation or other business enterprise.

10 (u) Allocate items of income or expense to either estate
11 income or principal, as permitted or provided by law.

12 (v) Employ, and pay reasonable compensation for reasonably
13 necessary services performed by, a person, including, but not
14 limited to, an auditor, investment advisor, or agent, even if the
15 person is associated with the personal representative, to advise
16 or assist the personal representative in the performance of
17 administrative duties; act on such a person's recommendations
18 without independent investigation; and instead of acting
19 personally, employ 1 or more agents to perform an act of
20 administration, whether or not discretionary.

21 (w) Employ an attorney to perform necessary legal services or
22 to advise or assist the personal representative in the
23 performance of the personal representative's administrative
24 duties. An attorney employed under this subdivision shall
25 receive reasonable compensation for that employment.

26 (x) Prosecute or defend a claim or proceeding in any
27 jurisdiction for the protection of the estate and of the personal

1 representative in the performance of the personal
2 representative's duties.

3 (y) Sell, mortgage, or lease estate property or an interest
4 in estate property for cash, credit, or part cash and part
5 credit, and with or without security for unpaid balances.

6 (z) Continue a business or venture in which the decedent was
7 engaged at the time of death as a sole proprietor or a general
8 partner, including continuation as a general partner by a
9 personal representative that is a corporation in any of the
10 following manners:

11 (i) In the same business form for a period of not more than 4
12 months after the date of appointment of a general personal
13 representative if continuation is a reasonable means of
14 preserving the value of the business, including goodwill.

15 (ii) In the same business form for an additional period of
16 time ~~that may be~~ if approved by court order in a formal
17 proceeding to which the persons interested in the estate are
18 parties.

19 (iii) Throughout the period of administration if the personal
20 representative incorporates the business or converts the business
21 to a limited liability company and if none of the probable
22 distributees of the business who are competent adults object to
23 its incorporation or conversion and its retention in the estate.

24 (aa) Change the form of a business or venture in which the
25 decedent was engaged at the time of death through incorporation
26 or formation as a limited liability company ~~—~~ or other entity
27 offering protection against or limiting exposure to liabilities.

1 (bb) Provide for the personal representative's exoneration
2 from personal liability in a contract entered into on the
3 estate's behalf.

4 (cc) Respond to an environmental concern or hazard affecting
5 estate property as provided in section 3722.

6 (dd) Satisfy and settle claims and distribute the estate as
7 provided in this act.

8 (ee) Make, ~~tax elections that are~~ **revise, or revoke an**
9 **available allocation, consent, or election in connection with a**
10 **tax matter as** appropriate in order to carry out the decedent's
11 estate planning objectives and to reduce the overall burden of
12 taxation, both in the present and in the future. This authority
13 includes, but is not limited to, all of the following:

14 (i) Electing to take expenses as estate tax or income tax
15 deductions.

16 (ii) Electing to allocate the exemption from the tax on
17 generation skipping transfers among transfers subject to estate
18 or gift tax.

19 (iii) Electing to have all or a portion of a transfer for a
20 spouse's benefit qualify for the marital deduction.

21 (iv) **Electing the date of death or an alternate valuation**
22 **date for federal estate tax purposes.**

23 (v) **Excluding or including property from the gross estate for**
24 **federal estate tax purposes.**

25 (vi) **Valuing property for federal estate tax purposes.**

26 (vii) **Joining with the surviving spouse or the surviving**
27 **spouse's personal representative in the execution and filing of a**

1 joint income tax return and consenting to a gift tax return filed
2 by the surviving spouse or the surviving spouse's personal
3 representative.

4 (ff) Divide portions of the estate, including portions to be
5 allocated into trust, into 2 or more separate portions or trusts
6 with substantially identical terms and conditions, and allocate
7 property between them, in order to simplify administration for
8 generation skipping transfer tax purposes, to segregate property
9 for management purposes, or to meet another estate or trust
10 objective.

11 Sec. 3803. (1) A claim against a decedent's estate that
12 arose before the decedent's death, including a claim of ~~the~~
13 **this** state or a subdivision of ~~the~~ **this** state, whether due or
14 to become due, absolute or contingent, liquidated or
15 unliquidated, **or** based on contract, tort, or another legal basis,
16 if not barred earlier by another statute of limitations or
17 nonclaim statute, is barred against the estate, the personal
18 representative, the decedent's heirs and devisees, and nonprobate
19 transferees of the decedent unless presented within 1 of the
20 following time limits:

21 (a) If notice is given in compliance with section 3801 **or**
22 **7504**, within 4 months after the date of the publication of notice
23 to creditors, except that a claim barred by a statute at the
24 decedent's domicile before the publication for claims in this
25 state is also barred in this state.

26 (b) ~~In the case of~~ **For** a creditor ~~when~~ **known to** the
27 personal representative ~~knows~~ at the time of publication or

1 during the 4 months following publication, within 1 month after
2 the subsequent sending of notice or 4 months after the date of
3 the publication of notice to creditors, whichever is later.

4 (c) If the notice requirements of section 3801 **or 7504** have
5 not been met, within 3 years after the decedent's death.

6 (2) A claim against ~~the~~ **a decedent's** estate that arises at
7 or after the decedent's death, including a claim of ~~the~~ **this**
8 state or a subdivision of ~~the~~ **this** state, whether due or to
9 become due, absolute or contingent, liquidated or unliquidated,
10 **or** based on contract, tort, or another legal basis, is barred
11 against the estate, the personal representative, and the
12 decedent's heirs and devisees, unless presented within 1 of the
13 following time limits:

14 (a) For a claim based on a contract with the personal
15 representative, within 4 months after performance by the personal
16 representative is due.

17 (b) For a claim ~~not within~~ **to which** subdivision (a) **does**
18 **not apply**, within 4 months after the claim arises or the time
19 specified in subsection (1)(a), whichever is later.

20 (3) This section does not affect or prevent any of the
21 following:

22 (a) A proceeding to enforce a mortgage, pledge, or other lien
23 on estate property.

24 (b) A proceeding to establish the decedent's or the personal
25 representative's liability for which the decedent or the personal
26 representative is protected by liability insurance to the
27 insurance protection limits only.

1 (c) Collection of compensation for services rendered and
 2 reimbursement of expenses advanced by the personal representative
 3 or by an attorney, auditor, investment adviser, or other
 4 specialized agent or assistant for the personal representative of
 5 the estate.

6 Sec. 3917. (1) The county treasurer shall receive and
 7 safely keep money deposited under authority of this act in a
 8 separate fund and keep a separate account for each distributee or
 9 claim. The county treasurer shall deposit the money in a county
 10 depository at the current rate of interest, shall pay out from
 11 the fund upon the order of the court, and shall turn over any
 12 surplus left in the treasurer's hands at the termination of the
 13 treasurer's term of office to the treasurer's successor.

14 ~~(2) At the commencement of each term of office and before~~
 15 ~~receiving money under authority of this act, the county treasurer~~
 16 ~~shall give a bond running to the judge and the judge's successor~~
 17 ~~in office, with 2 or more sufficient sureties approved by the~~
 18 ~~court. The bond shall be in the amount the judge directs,~~
 19 ~~conditioned that the county treasurer and his or her deputy shall~~
 20 ~~do all of the following:~~

21 ~~—— (a) Pay out the money only on court order, whether the money~~
 22 ~~was turned over to the treasurer by his or her predecessor in~~
 23 ~~office, or deposited with the treasurer during the term that he~~
 24 ~~or she is then commencing or during a prior term of office.~~

25 ~~—— (b) At~~ **The county treasurer shall, at** the end of each year,
 26 render to the court, and to the county board of commissioners, a
 27 true account of that money.

~~(c) Deliver over to his or her successor in office the money deposited under authority of this act and books, papers, and other records relating to that money.~~

~~—— (3) The court may at any time require the county treasurer to give new or additional bond, as the court considers necessary, conditioned as provided in subsection (2). A bond deposited by the county treasurer and his or her sureties on the bond are discharged from further liability under the bond upon the filing of a new bond by a successor to the office who is named on the new bond, unless the county treasurer fails to account for any money as required in this article, or fails to turn that money over to the successor in office.~~

~~(2) —(4)—~~ For the care of the money received under authority of this act, the county treasurer may take 1% from the different amounts paid out under court order unless the amount paid out to a single individual exceeds \$1,000.00, in which case the county treasurer shall take \$10.00 plus 1/2 of 1% of the excess of the amount over \$1,000.00.

~~(3) —(5)—~~ A person entitled to the money may petition the court having jurisdiction for an order directing the county treasurer to pay over money that is deposited with the county treasurer. Upon receiving the petition, the court shall make an order as to notice of the hearing as the court considers proper. Upon satisfactory proof being made to the court of the claimant's right to the money, the court shall order the county treasurer to pay the money **and interest earned on the money, less the fee of the county treasurer,** to the claimant.

1 **(4)** ~~-(6)-~~ If a person whose whereabouts are unknown or who
 2 declined to accept the money does not make a claim to money
 3 deposited by a fiduciary before the expiration of 3 years after
 4 the deposit date, the money **and interest earned on the money** that
 5 would be distributed under this section to the person, if alive,
 6 less expenses, shall be distributed by court order to each person
 7 who would be entitled to the money if the person had died before
 8 the date that he or she became entitled to the money, and the
 9 person is forever barred from all claim or right to the money.

10 ~~(7) An action on the bond given by the county treasurer~~
 11 ~~under this section may be started in the name of the state, for~~
 12 ~~the use and benefit of anyone interested, in the same manner and~~
 13 ~~with the same effect as allowed by law upon fiduciary bonds.~~

14 Sec. 3920. (1) An estate, inheritance, or other death tax
 15 levied or assessed under the laws of this or another state,
 16 political subdivision, or country or under a United States
 17 revenue act concerning property included in the gross estate
 18 under the law, but excluding taxes for which sources of payment
 19 are provided within sections 2206, 2207, 2207A, 2207B, and 2603
 20 of the internal revenue code, **26 USC 2206, 2207, 2207A, 2207B,**
 21 **and 2603**, shall be apportioned in the following manner:

22 (a) If a part of the property concerning which the tax is
 23 levied or assessed passed under a will, then, unless the
 24 governing instrument directs otherwise, the tax shall be charged
 25 as follows:

26 (i) If any portion of that property passed under the will as
 27 a devise to be satisfied by reference to a specific property or

1 type of property, fund, money, or other nonresiduary form, the
2 net amount of the tax attributable to that portion shall be
3 charged to and paid from the residuary estate without requiring
4 contribution from a person receiving or benefiting from the
5 nonresiduary interest and without apportionment among the
6 residuary beneficiaries. If the residuary estate is insufficient
7 to pay the tax attributable to all nonresiduary interests, the
8 balance of the tax shall be apportioned pro rata among the
9 recipients of those interests generating the tax based on the
10 value of those interests.

11 (ii) The net amount of a tax attributable to the residuary
12 estate shall be apportioned pro rata among the residuary
13 beneficiaries based on the value of the residuary interests
14 generating the tax. If a residuary interest is a temporary
15 interest, the tax attributable to it shall be charged to
16 principal and not apportioned between temporary and remainder
17 interests.

18 (b) If a part of the property concerning which the tax is
19 levied or assessed is held under the terms of an inter vivos
20 trust, then, unless the governing instrument directs otherwise,
21 the tax shall be charged as follows:

22 (i) If a portion of the trust is directed to pass or to be
23 held in further trust by reference to a specific property or type
24 of property, fund, money, or other nonresiduary form, the net
25 amount of the tax attributable to that portion shall be charged
26 to and paid from the principal of the residuary share of the
27 trust without requiring contribution from a person receiving or

1 benefiting from the nonresiduary interest and without
2 apportionment among the residuary beneficiaries. If the
3 residuary share of the trust is insufficient to pay the tax
4 attributable to all nonresiduary interests, the balance of the
5 tax shall be apportioned pro rata among the recipients of those
6 interests generating the tax based on the value of those
7 interests.

8 (ii) The net amount of tax attributable to the residuary
9 share of the trust shall be charged as follows:

10 (A) The net amount of tax attributable to each residuary
11 temporary interest shall be charged to that portion of residuary
12 principal that supports the temporary interest without
13 apportionment.

14 (B) The net amount of tax attributable to the balance of the
15 residuary share shall be apportioned pro rata among the residuary
16 beneficiaries by charge to the principal of their interest based
17 on the value of the residuary interests.

18 (c) Except as otherwise directed by the governing instrument,
19 tax liability remaining after the application of subdivisions (a)
20 and (b), including, but not limited to, a tax imposed with
21 respect to property passing by **beneficiary designation,**
22 survivorship, ~~to property passing by~~ or intestacy, ~~and~~ or to
23 an annuity not created under a will or an inter vivos trust,
24 shall be apportioned pro rata among, and paid by, the recipients
25 and beneficiaries of the properties or interests, based on the
26 value of the properties and interests generating the tax. Except
27 as otherwise directed by the governing instrument, with respect

1 to a temporary interest not in trust, the amount charged to the
2 recipients or beneficiaries shall not be apportioned between
3 temporary and remainder interests, but shall be charged to and
4 paid out of the principal of the property or fund.

5 (2) As used in this section and sections 3921 to 3923:

6 (a) "Governing instrument" means a will, trust agreement, or
7 other document that controls the devolution of property at death
8 with respect to which the tax is being levied.

9 (b) "Net estate" means the gross estate, as defined by the
10 estate, inheritance, or death tax law of the particular state,
11 country, or political subdivision whose tax is being apportioned,
12 less the deductions allowed.

13 (c) "Temporary interest" means an interest in income or an
14 estate for a specific period of time, for life, or for some other
15 period controlled by reference to extrinsic events.

16 (d) "Value" means the pecuniary worth of the interest
17 involved as finally determined for purposes of the tax then under
18 consideration, without regard to a diminution of the interest by
19 reason of the charge of a part of the tax.

20 Sec. 3923. (1) If the probate court finds that it is
21 inequitable to apportion **taxes, credits,** interest, and penalties
22 in the manner provided in sections 3920 to 3922 because of
23 special circumstances, the court may direct apportionment in the
24 manner it finds equitable.

25 (2) If the probate court finds that the assessment of
26 penalties and interest assessed in relation to a tax is due to
27 delay caused by the negligence of the fiduciary, the court may

1 charge the fiduciary with the amount of the assessed penalties
2 and interest.

3 (3) In an action or proceeding to recover from a person
4 interested in the estate the amount of a tax apportioned to the
5 person in accordance with this act, the court's determination in
6 respect to the apportionment is prima facie correct.

7 Sec. 7303. (1) Subject to subsection (2), the trustee of a
8 revocable trust shall keep the settlor reasonably informed of the
9 trust and its administration. Unless otherwise provided in the
10 trust instrument, the trustee of a revocable trust does not have
11 a duty to inform a trust beneficiary of the trust and its
12 administration, other than the settlor or, if the settlor is an
13 incapacitated person, the settlor's designated agent.

14 (2) Unless otherwise provided in the trust instrument, if the
15 trustee reasonably believes the settlor of a revocable trust is
16 an incapacitated person and has no designated agent, the trustee
17 shall keep each beneficiary, who, if the settlor were then
18 deceased, would be a current trust beneficiary, reasonably
19 informed of the trust and its administration. Notwithstanding
20 the provisions of the trust instrument, upon good cause shown,
21 the court may order the trustee to keep other beneficiaries
22 reasonably informed of the trust and its administration.

23 (3) For a revocable trust, within 28 days after acceptance of
24 trust or the death of the settlor, whichever is later, and for
25 all other trusts, within 28 days after acceptance of the trust,
26 the trustee shall inform in writing each interested trust
27 beneficiary of the trust's existence, of the court in which the

1 trust is registered, if it is registered, of the trustee's name
2 and address, and of the interested trust beneficiary's right to
3 request and receive both a copy of the trust's terms that
4 describe or affect the interested trust beneficiary's interest
5 and relevant information about the trust property. In addition,
6 all of the following apply:

7 (a) Upon reasonable request, the trustee shall provide a
8 beneficiary with a copy of the trust's terms that describe or
9 affect the beneficiary's interest and with relevant information
10 about the trust property.

11 (b) Unless the settlor directs or requests in the trust
12 instrument that the trustee provide accounts to less than all
13 interested trust beneficiaries, all of the following apply:

14 (i) At least annually and on termination of the trust or a
15 change of the trustee, the trustee shall provide a statement of
16 account to each current trust beneficiary and shall keep each
17 current trust beneficiary informed of the trust and its
18 administration.

19 (ii) Upon reasonable request, the trustee shall provide a
20 statement of account to each interested trust beneficiary who is
21 not also a current trust beneficiary and shall keep each of those
22 persons reasonably informed of the trust and its administration.

23 (iii) The trustee shall provide a statement of account and
24 other information to a beneficiary as the court directs.

25 (iv) In the trustee's discretion, the trustee may provide a
26 statement of account and other information to any beneficiary.

27 (c) If the settlor requests or directs the trustee in the

1 trust instrument to provide accounts and information to less than
2 all interested trust beneficiaries, the trustee shall provide
3 statements of account and information as provided in the trust
4 instrument. At the court's direction, the trustee shall provide
5 statements of account and other information to persons excluded
6 by the settlor's request or direction to the extent and in the
7 manner the court directs.

8 (d) A statement of account under this section is a report by
9 the trustee that shall, at a minimum, list the trust assets, if
10 feasible giving their market values, the trust liabilities,
11 receipts, and disbursements, and state the source and amount of
12 the trustee's compensation. A particular format or formality is
13 not required for a report or statement of account under this
14 section unless a court specifies its content and manner of
15 presentation.

16 Sec. 7307. (1) ~~Unless previously barred by adjudication,~~
17 ~~consent, or limitation, a claim against a trustee for breach of~~
18 ~~trust is barred unless a proceeding to assert the claim is~~
19 ~~commenced within 1 year after receipt of an annual or final~~
20 ~~account as to each beneficiary who receives the annual or final~~
21 ~~account. Those barred~~ A beneficiary is barred from commencing a
22 proceeding against a trustee for breach of trust if the
23 proceeding is not commenced within 1 year after the date the
24 beneficiary or a representative of the beneficiary is sent a
25 report that adequately discloses the existence of a potential
26 claim for breach of trust and informs the beneficiary of the time
27 allowed for commencing a proceeding. A beneficiary may also be

1 barred from commencing a proceeding against a trustee for breach
 2 of trust by adjudication, consent, ratification, estoppel, or
 3 other limitation.

4 (2) Persons barred under subsection (1) include all of the
 5 following:

6 (a) A beneficiary when an interested trust beneficiary
 7 possessing the same interest preceding that of the beneficiary
 8 receives ~~an annual or final account~~ **the report**.

9 (b) An object, taker in default, or another who may receive
 10 property by virtue of the exercise of or failure to exercise a
 11 presently exercisable or testamentary general or special power of
 12 appointment if the person possessing the power of appointment
 13 receives the ~~annual or final account~~ **report**.

14 (c) A person described in section 1403(b) as bound by another
 15 if that other receives the ~~annual or final account~~ **report**.

16 ~~(2) A beneficiary or another person is considered to receive~~
 17 ~~an annual or final account if the account is provided to the~~
 18 ~~person in 1 of the manners specified for a notice by section~~
 19 ~~1401.~~

20 ~~—— (3) For purposes of subsections (1) and (2), an accounting~~
 21 ~~shall be considered an annual or final account if the account~~
 22 ~~does all of the following:~~

23 ~~—— (a) Is stated in a manner and with terminology that is~~
 24 ~~reasonably understandable.~~

25 ~~—— (b) Begins with a concise summary of its purpose and~~
 26 ~~content.~~

27 ~~—— (c) Contains sufficient information to put interested persons~~

1 ~~on notice as to all significant transactions affecting~~
2 ~~administration during the accounting period.~~

3 ~~—— (d) Includes both the carrying values, representing the value~~
4 ~~of property at tax cost, and current values at the beginning and~~
5 ~~end of the accounting period.~~

6 ~~—— (e) Shows gains and losses incurred during the accounting~~
7 ~~period separately in the same schedule.~~

8 ~~—— (f) Shows significant transactions that do not affect the~~
9 ~~amount for which the trustee is accountable.~~

10 (3) A report adequately discloses the existence of a
11 potential claim for breach of trust if it provides sufficient
12 information so that the beneficiary or representative knows of
13 the potential claim or should have inquired into its existence.

14 (4) If subsection (1) does not apply, a proceeding by a
15 beneficiary against a trustee for breach of trust shall be
16 commenced within 5 years of the first of the following to occur:

17 (a) The removal, resignation, or death of the trustee.

18 (b) The termination of the beneficiary's interest in the
19 trust.

20 (c) The termination of the trust.

21 Sec. 7406. (1) If there are ~~more than~~ 2 **or more** trustees
22 and the trust instrument expressly makes provision for the
23 execution of any of the trustees' powers by **both or** all of them
24 or by any 1 or more of them, the provisions of the trust
25 instrument govern.

26 (2) If there is no governing provision in the trust
27 instrument, cotrustees may provide, by written agreement signed

1 by all of them and filed with and approved by the court where the
2 trust would be registered, as determined in accordance with
3 section 7101, that any 1 or more of the powers designated in
4 section 7401 may be exercised by any designated 1 or more of the
5 trustees.

6 (3) Subject to subsection (1), if 2 or more trustees own
7 securities, their acts with respect to voting have 1 of the
8 following effects:

9 (a) If only 1 trustee votes, in person or by proxy, that
10 trustee's act binds all of the trustees.

11 (b) If more than 1 trustee votes, in person or by proxy, the
12 act of the majority so voting binds all of the trustees.

13 (c) If more than 1 trustee votes, in person or by proxy, but
14 the vote is evenly split on a particular matter, each faction is
15 entitled to vote the securities proportionately.

16 (4) Subject to subsections (1) to (3), all other acts and
17 duties shall be performed by both of the trustees if there are 2
18 or by a majority of the trustees if there are more than 2. A
19 trustee who has not joined in exercising a power is not liable to
20 a beneficiary or another person for the consequences of the
21 exercise of that power. A dissenting trustee is not liable for
22 the consequences of an act in which the dissenting trustee joins
23 at the direction of the other trustees, if the dissenting trustee
24 expressed dissent in writing to a cotrustee at or before the time
25 of joinder.

26 (5) A trustee is not relieved of liability by entering into
27 an agreement under this section.

1 Sec. 7408. (1) A trustee may do any of the following in
2 connection with a tax matter:

3 (a) Make, revise, or revoke an available allocation, consent,
4 or election affecting a tax that is appropriate in order to carry
5 out the settlor's estate planning objectives and to reduce the
6 overall burden of taxation, both in the present and in the
7 future. This authority includes, but is not limited to, all of
8 the following:

9 (i) Electing to take expenses as estate tax or income tax
10 deductions.

11 (ii) Electing to allocate the exemption from the tax on
12 generation skipping transfers among transfers subject to estate
13 or gift tax.

14 (iii) Electing to have all or a portion of a transfer for a
15 spouse's benefit qualify for the marital deduction.

16 (iv) Electing the date of death or an alternate valuation
17 date for federal estate tax purposes.

18 (b) Exclude or include property from the gross estate for
19 federal estate tax purposes.

20 (c) Value property for federal estate tax purposes.

21 (d) Join with the surviving spouse or the surviving spouse's
22 personal representative in the execution and filing of joint
23 income tax return and consenting to a gift tax return filed by
24 the surviving spouse or the surviving spouse's personal
25 representative.

26 (2) A trustee's decision on a matter described in subsection
27 (1)(a) binds all beneficiaries.

1 (3) After making a decision described in subsection (1)(a), a
2 trustee may make compensating adjustments between principal and
3 income in the manner provided by the uniform principal and income
4 act.

5 Sec. 7410. Unless the distribution or payment can no longer
6 be questioned because of adjudication, estoppel, or other
7 limitation, a distributee or claimant that receives property that
8 is improperly distributed or paid from a trust shall return the
9 property and any income and gain from the property since
10 distribution, if the recipient has the property. If the
11 recipient does not have the property, the recipient shall pay the
12 value of the property as of the date of distribution or payment
13 and any income and gain from the property since distribution.

14 Enacting section 1. This amendatory act takes effect
15 September 1, 2004.