

**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, 3715, 3803,  
3917, 3918, 3920, 3923, 7303, 7307, 7406, and 7408 (MCL 700.1105,  
700.2114, 700.2301, 700.2714, 700.2902, 700.3715, 700.3803,  
700.3917, 700.3918, 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           (vi) **If the child is born out of wedlock, the man marries the**  
16 **child's mother after the child is born.**

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

27           (3) The permanent termination of parental rights of a minor

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

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

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

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

27 (a) Property devised to **or in trust for the benefit of a**

1 child of the testator who was born before the testator married  
2 the surviving spouse and who is not the surviving spouse's  
3 child.

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

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

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

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

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

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

21 (3) In satisfying the share provided by this section, devises  
22 made by the will to the testator's surviving spouse, if any, are  
23 applied first, and other devises, other than a devise to **or in**  
24 **trust for the benefit of** a child of the testator who was born  
25 before the testator married the surviving spouse and who is not  
26 the surviving spouse's child or a devise or substitute gift under  
27 section 2603 or 2604 to a descendant of such a child, abate as

1 provided in section 3902.

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

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

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



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

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

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

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

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

1 instrument, may disclaim a disclaimable interest, in whole or in  
2 part, but only to the extent that the governing instrument  
3 expressly gives the trustee the right to disclaim.

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

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

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

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

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 ~~whom~~ **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 end of each year, render to the court, and to the  
26 county board of commissioners, a true account of that money.

27           (c) Deliver over to his or her successor in office the money

1 deposited under authority of this act and books, papers, and  
2 other records relating to that money.

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

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

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

27 (6) If a person whose whereabouts are unknown or who declined

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

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

13 Sec. 3918. (1) A personal representative may discharge the  
 14 personal representative's obligation to distribute to ~~an~~  
 15 ~~individual under legal disability~~ **a minor or legally**  
 16 **incapacitated individual** by distributing in a manner expressly  
 17 provided in the will.

18 (2) Unless contrary to an express provision in the will, the  
 19 personal representative may discharge the personal  
 20 representative's obligation to distribute to ~~an individual under~~  
 21 ~~legal disability~~ **a minor or legally incapacitated individual** as  
 22 authorized by section 5102 or another statute. If the personal  
 23 representative knows that a conservator has been appointed for an  
 24 individual or that a proceeding for appointment of a conservator  
 25 for the individual is pending, the personal representative is  
 26 authorized to distribute only to the conservator. If the  
 27 personal representative knows that a guardian of the estate of an

1 individual with a developmental disability has been appointed  
 2 under the mental health code, 1974 PA 258, MCL 330.1001 to  
 3 330.2106, or that a proceeding for appointment of a guardian of  
 4 the estate for the individual with the developmental disability  
 5 is pending, the personal representative is authorized to  
 6 distribute only to the guardian of the estate.

7 (3) If the heir or devisee is ~~under legal disability other~~  
 8 ~~than minority~~ **a legally incapacitated individual**, the personal  
 9 representative is authorized to distribute to any of the  
 10 following:

11 (a) A trustee appointed by the court under section 3915(4).

12 (b) An attorney in fact who has authority under a power of  
 13 attorney to receive property for that person.

14 (c) The spouse, parent, or other close relative with whom the  
 15 individual under legal disability resides if both of the  
 16 following are true:

17 (i) A conservator has not been appointed for the individual.

18 (ii) The distribution is in amounts not exceeding \$5,000.00 a  
 19 year or property not exceeding \$5,000.00 in value, unless the  
 20 court authorizes a higher amount or value.

21 (4) A person receiving money or property for ~~an individual~~  
 22 ~~under legal disability~~ **a minor or legally incapacitated**  
 23 **individual** shall use the money or property only for ~~that~~ **the**  
 24 **minor's or legally incapacitated** individual's support and for  
 25 reimbursement of out-of-pocket expenses for goods and services  
 26 necessary for ~~that~~ **the minor's or legally incapacitated**  
 27 individual's support. Excess money and property shall be

1 preserved for the **minor's or legally incapacitated** individual's  
2 future support. The personal representative is not responsible  
3 for the proper use of money or property by the recipient if  
4 distribution is made under the authority of this section.

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

13       (a) If a part of the property concerning which the tax is  
14 levied or assessed passed under a will, then, unless the  
15 governing instrument directs otherwise, the tax shall be charged  
16 as follows:

17       (i) If any portion of that property passed under the will as  
18 a devise to be satisfied by reference to a specific property or  
19 type of property, fund, money, or other nonresiduary form, the  
20 net amount of the tax attributable to that portion shall be  
21 charged to and paid from the residuary estate without requiring  
22 contribution from a person receiving or benefiting from the  
23 nonresiduary interest and without apportionment among the  
24 residuary beneficiaries. If the residuary estate is insufficient  
25 to pay the tax attributable to all nonresiduary interests, the  
26 balance of the tax shall be apportioned pro rata among the  
27 recipients of those interests generating the tax based on the

1 value of those interests.

2 (ii) The net amount of a tax attributable to the residuary  
3 estate shall be apportioned pro rata among the residuary  
4 beneficiaries based on the value of the residuary interests  
5 generating the tax. If a residuary interest is a temporary  
6 interest, the tax attributable to it shall be charged to  
7 principal and not apportioned between temporary and remainder  
8 interests.

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

13 (i) If a portion of the trust is directed to pass or to be  
14 held in further trust by reference to a specific property or type  
15 of property, fund, money, or other nonresiduary form, the net  
16 amount of the tax attributable to that portion shall be charged  
17 to and paid from the principal of the residuary share of the  
18 trust without requiring contribution from a person receiving or  
19 benefiting from the nonresiduary interest and without  
20 apportionment among the residuary beneficiaries. If the  
21 residuary share of the trust is insufficient to pay the tax  
22 attributable to all nonresiduary interests, the balance of the  
23 tax shall be apportioned pro rata among the recipients of those  
24 interests generating the tax based on the value of those  
25 interests.

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



1           (A) The net amount of tax attributable to each residuary  
2 temporary interest shall be charged to that portion of residuary  
3 principal that supports the temporary interest without  
4 apportionment.

5           (B) The net amount of tax attributable to the balance of the  
6 residuary share shall be apportioned pro rata among the residuary  
7 beneficiaries by charge to the principal of their interest based  
8 on the value of the residuary interests.

9           (c) Except as otherwise directed by the governing instrument,  
10 tax liability remaining after the application of subdivisions (a)  
11 and (b), including, but not limited to, a tax imposed with  
12 respect to property passing by **beneficiary designation**,  
13 survivorship, ~~to property passing by~~ or intestacy, ~~and~~ or to  
14 an annuity not created under a will or an inter vivos trust,  
15 shall be apportioned pro rata among, and paid by, the recipients  
16 and beneficiaries of the properties or interests, based on the  
17 value of the properties and interests generating the tax. Except  
18 as otherwise directed by the governing instrument, with respect  
19 to a temporary interest not in trust, the amount charged to the  
20 recipients or beneficiaries shall not be apportioned between  
21 temporary and remainder interests, but shall be charged to and  
22 paid out of the principal of the property or fund.

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

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

27           (b) "Net estate" means the gross estate, as defined by the

1 estate, inheritance, or death tax law of the particular state,  
2 country, or political subdivision whose tax is being apportioned,  
3 less the deductions allowed.

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

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

11 Sec. 3923. (1) If the probate court finds that it is  
12 inequitable to apportion **taxes, credits,** interest, and penalties  
13 in the manner provided in sections 3920 to 3922 because of  
14 special circumstances, the court may direct apportionment in the  
15 manner it finds equitable.

16 (2) If the probate court finds that the assessment of  
17 penalties and interest assessed in relation to a tax is due to  
18 delay caused by the negligence of the fiduciary, the court may  
19 charge the fiduciary with the amount of the assessed penalties  
20 and interest.

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

25 Sec. 7303. (1) Subject to subsection (2), the trustee of a  
26 revocable trust shall keep the settlor reasonably informed of the  
27 trust and its administration. Unless otherwise provided in the

1 trust instrument, the trustee of a revocable trust does not have  
2 a duty to inform a trust beneficiary of the trust and its  
3 administration, other than the settlor or, if the settlor is an  
4 incapacitated person, the settlor's designated agent.

5 (2) Unless otherwise provided in the trust instrument, if the  
6 trustee reasonably believes the settlor of a revocable trust is  
7 an incapacitated person and has no designated agent, the trustee  
8 shall keep each beneficiary, who, if the settlor were then  
9 deceased, would be a current trust beneficiary, reasonably  
10 informed of the trust and its administration. Notwithstanding  
11 the provisions of the trust instrument, upon good cause shown,  
12 the court may order the trustee to keep other beneficiaries  
13 reasonably informed of the trust and its administration.

14 (3) For a revocable trust, within 28 days after acceptance of  
15 trust or the death of the settlor, whichever is later, and for  
16 all other trusts, within 28 days after acceptance of the trust,  
17 the trustee shall inform in writing each interested trust  
18 beneficiary of the trust's existence, of the court in which the  
19 trust is registered, if it is registered, of the trustee's name  
20 and address, and of the interested trust beneficiary's right to  
21 request and receive both a copy of the trust's terms that  
22 describe or affect the interested trust beneficiary's interest  
23 and relevant information about the trust property. In addition,  
24 all of the following apply:

25 (a) Upon reasonable request, the trustee shall provide a  
26 beneficiary with a copy of the trust's terms that describe or  
27 affect the beneficiary's interest and with relevant information

1 about the trust property.

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

5 (i) At least annually and on termination of the trust or a  
6 change of the trustee, the trustee shall provide a statement of  
7 account to each current trust beneficiary and shall keep each  
8 current trust beneficiary informed of the trust and its  
9 administration.

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

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

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

18 (c) If the settlor requests or directs the trustee in the  
19 trust instrument to provide accounts and information to less than  
20 all interested trust beneficiaries, the trustee shall provide  
21 statements of account and information as provided in the trust  
22 instrument. At the court's direction, the trustee shall provide  
23 statements of account and other information to persons excluded  
24 by the settlor's request or direction to the extent and in the  
25 manner the court directs.

26 (d) A statement of account under this section is a report by  
27 the trustee that shall, at a minimum, list the trust assets, if

1 feasible giving their market values, the trust liabilities,  
2 receipts, and disbursements, and state the source and amount of  
3 the trustee's compensation. A particular format or formality is  
4 not required for a report or statement of account under this  
5 section unless a court specifies its content and manner of  
6 presentation.

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

22       (2) Persons barred under subsection (1) include all of the  
23 following:

24       (a) A beneficiary when an interested trust beneficiary  
25 possessing the same interest preceding that of the beneficiary  
26 receives ~~an annual or final account~~ the report.

27       (b) An object, taker in default, or another who may receive

1 property by virtue of the exercise of or failure to exercise a  
2 presently exercisable or testamentary general or special power of  
3 appointment if the person possessing the power of appointment  
4 receives the ~~annual or final account~~ **report**.

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

7 ~~(2) A beneficiary or another person is considered to receive~~  
8 ~~an annual or final account if the account is provided to the~~  
9 ~~person in 1 of the manners specified for a notice by section~~  
10 ~~1401.~~

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

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

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

18 ~~—— (c) Contains sufficient information to put interested persons~~  
19 ~~on notice as to all significant transactions affecting~~  
20 ~~administration during the accounting period.~~

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

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

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

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

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

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

9       (b) The termination of the beneficiary's interest in the  
10 trust.

11       (c) The termination of the trust.

12       Sec. 7406. (1) If there are ~~more than~~ 2 **or more** trustees  
13 and the trust instrument expressly makes provision for the  
14 execution of any of the trustees' powers by **both or** all of them  
15 or by any 1 or more of them, the provisions of the trust  
16 instrument govern.

17       (2) If there is no governing provision in the trust  
18 instrument, cotrustees may provide, by written agreement signed  
19 by all of them and filed with and approved by the court where the  
20 trust would be registered, as determined in accordance with  
21 section 7101, that any 1 or more of the powers designated in  
22 section 7401 may be exercised by any designated 1 or more of the  
23 trustees.

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

27       (a) If only 1 trustee votes, in person or by proxy, that

1 trustee's act binds all of the trustees.

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

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

7 (4) Subject to subsections (1) to (3), all other acts and  
8 duties shall be performed by both of the trustees if there are 2  
9 or by a majority of the trustees if there are more than 2. A  
10 trustee who has not joined in exercising a power is not liable to  
11 a beneficiary or another person for the consequences of the  
12 exercise of that power. A dissenting trustee is not liable for  
13 the consequences of an act in which the dissenting trustee joins  
14 at the direction of the other trustees, if the dissenting trustee  
15 expressed dissent in writing to a cotrustee at or before the time  
16 of joinder.

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

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

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

27 (i) Electing to take expenses as estate tax or income tax



1 deductions.

2       (ii) Electing to allocate the exemption from the tax on  
3 generation skipping transfers among transfers subject to estate  
4 or gift tax.

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

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

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

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

12       (d) Join with the surviving spouse or the surviving spouse's  
13 personal representative in the execution and filing of joint  
14 income tax return and consenting to a gift tax return filed by  
15 the surviving spouse or the surviving spouse's personal  
16 representative.

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

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

23       **Sec. 7410. Unless the distribution or payment can no longer**  
24 **be questioned because of adjudication, estoppel, or other**  
25 **limitation, a distributee or claimant that receives property that**  
26 **is improperly distributed or paid from a trust shall return the**  
27 **property and any income and gain from the property since**

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1 distribution, if the recipient has the property. If the  
2 recipient does not have the property, the recipient shall pay the  
3 value of the property as of the date of distribution or payment  
4 and any income and gain from the property since distribution.

<<Enacting section 1. This amendatory act takes effect September 1,  
2004.>>