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Senate Bills 383 and 384 (as reported without amendment)
Senate Bill 385 (Substitute S-1 as reported)
Senate Bills 386 and 387 (as reported without amendment)
Sponsor: Senator Wayne Kuipers (S.B. 383, 384, & 386)
 Senator Hansen Clark (S.B. 385)
 Senator Alan L. Cropsey (S.B. 387)
Committee: Judiciary

CONTENT

Senate Bill 387 would amend Article 7 (Trust Administration) of the Estates and Protected Individuals Code (EPIC), naming Article 7 the "Michigan Trust Code", to do the following:

- State that the terms of a trust would prevail over Article 7 except in specific areas.
- Provide that the capacity required to create, amend, or revoke a revocable trust, or to direct the actions of its trustee, would be the same as that required to make a will.
- Allow a settlor to revoke or amend a trust unless the terms of the trust provided that it was irrevocable.
- Provide that certain rules of construction that apply to the interpretation and disposition of property by will also would apply to trust property.
- Provide for representation of beneficiaries by fiduciaries and others in such matters as the receipt of notice and consent.
- Specify requirements for the creation of a trust.
- Provide that a trust could be created only to the extent its purposes were lawful, not contrary to public policy, and possible to achieve.
- Allow the settlor, a named beneficiary, or the Attorney General, among others, to maintain a proceeding to enforce a charitable trust.
- Provide that a trust would be void to the extent its creation was induced by fraud, duress, or undue influence.
- Provide for the modification and termination of trusts, and allow the termination of uneconomic trusts.
- Allow the court to modify the terms of a trust to achieve the settlor's tax objectives.
- Allow a creditor or assignee of a beneficiary to reach a mandatory distribution of income or principal, under certain circumstances.
- Establish a limitation on actions to contest a revocable trust.
- Indicate how a trustee would accept a trusteeship.
- Provide for co-trustees, the appointment of a successor trustee if a vacancy in a trusteeship occurred, and circumstances in which a trustee could resign.
- Require a trustee to administer the trust solely in the interests of the trust beneficiaries.
- Allow a trustee to furnish a certificate of trust containing specified information, instead of a copy of the trust instrument, to a person other than a beneficiary.

Senate Bill 383 would amend the statute of frauds to specify exceptions to a provision under which a deed of gift, conveyance, transfer, or assignment of property made in trust for the use of the person making the gift, conveyance, etc. is void against the person's creditors.

Senate Bill 384 would amend the statute entitled, "Of uses and trusts", to provide that Article 7 of EPIC would control in the event of a conflict between that statute and Article 7.

Senate Bill 385 (S-1) would amend the Uniform Fraudulent Transfer Act to exclude from the term "transfer" the creation of a trust or the disposition of an asset held in trust under certain circumstances, and the lapse, release, waiver, or disclaimer of a power of appointment given to a donee by a third party. The bill also would amend the definition of "affiliate" to delete a corporation in which 20% or more of the outstanding voting securities are owned, controlled, or held with power to vote by the debtor or a person who owns, controls, or holds with power to vote 20% or more of the debtor's outstanding voting securities, other than a person who holds the securities as a fiduciary without sole power to vote them or solely to secure a debt if the person has not exercised the power to vote.

Senate Bill 386 would amend the Powers of Appointment Act to provide that the lapse, release, waiver, or disclaimer of a power of appointment given to a donee by a donor would not be a gift, conveyance, transfer, or assignment of property by the donee.

Senate Bills 383 through 386 are tie-barred to Senate Bill 387, which is tie-barred to those bills. Senate Bill 387 specifies that the amendments and additions to Article 7 would take effect on April 1, 2010.

MCL 566.131 (S.B. 383)
Proposed MCL 555.28 (S.B. 384)
MCL 566.31 (S.B. 385)
MCL 556.123 (S.B. 386)
MCL 700.1103 et al. (S.B. 387)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

While the bills would affect the role of the courts on the governance of trusts, there would be no overall fiscal impact on the judiciary.

Date Completed: 4-1-09

Fiscal Analyst: Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.