

SENATE BILL No. 383

March 17, 2009, Introduced by Senator KUIPERS and referred to the Committee on Judiciary.

A bill to amend 1846 RS 81, entitled
"Of fraudulent conveyances and contracts, relative to goods,
chattels, and things in action,"
by amending section 1 (MCL 566.131).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) ~~All deeds of gift, all conveyances, and all~~
2 ~~transfers or assignments~~ **EXCEPT AS PROVIDED IN SUBSECTIONS (2) TO**
3 **(4), A DEED OF GIFT, CONVEYANCE, TRANSFER, OR ASSIGNMENT,** verbal or
4 written, of ~~goods, chattels or things in action,~~ **PROPERTY** made in
5 trust for the use of the person making the ~~same, shall be~~ **GIFT,**
6 **CONVEYANCE, TRANSFER, OR ASSIGNMENT IS** void ~~, as~~ against the
7 creditors, existing or subsequent, of ~~such~~ **THE** person.

8 (2) **SUBSECTION (1) DOES NOT APPLY TO THE LAPSE, RELEASE,**
9 **WAIVER, OR DISCLAIMER OF A POWER OF APPOINTMENT GIVEN TO A DONEE BY**
10 **A THIRD PARTY. AS USED IN THIS SUBSECTION, "DONEE" MEANS THAT TERM**

1 AS DEFINED IN SECTION 2 OF THE POWERS OF APPOINTMENT ACT OF 1967,
2 1967 PA 224, MCL 556.112.

3 (3) SUBSECTION (1) DOES NOT APPLY TO THE CREATION OF A TRUST
4 BY AN INDIVIDUAL IF ALL OF THE FOLLOWING APPLY:

5 (A) THE INDIVIDUAL CREATED THE TRUST FOR THE BENEFIT OF THE
6 INDIVIDUAL'S SPOUSE.

7 (B) THE TRUST IS TREATED AS QUALIFIED TERMINABLE INTEREST
8 PROPERTY UNDER SECTION 2523(F) OF THE INTERNAL REVENUE CODE, 26 USC
9 2523.

10 (C) THE INDIVIDUAL RETAINS A BENEFICIAL INTEREST IN THE TRUST
11 INCOME, TRUST PRINCIPAL, OR BOTH, WHICH BENEFICIAL INTEREST FOLLOWS
12 THE TERMINATION OF THE INDIVIDUAL'S SPOUSE'S PRIOR BENEFICIAL
13 INTEREST IN THE TRUST.

14 (4) SUBSECTION (1) DOES NOT APPLY TO A GIFT, CONVEYANCE,
15 TRANSFER, OR ASSIGNMENT FROM A TRUST TO A PERSON WHO CREATED THE
16 TRUST IF ALL OF THE FOLLOWING APPLY:

17 (A) THE TRUST IS AN IRREVOCABLE TRUST FOR THE BENEFIT OF THIRD
18 PARTIES.

19 (B) THE TRUST IS A GRANTOR TRUST WITH REGARD TO THE PERSON FOR
20 INCOME TAX PURPOSES UNDER SECTIONS 671 TO 679 OF THE INTERNAL
21 REVENUE CODE, 26 USC 671 TO 679.

22 (C) THE TRUSTEE HAS THE DISCRETIONARY AUTHORITY TO REIMBURSE
23 OR ADVANCE TRUST PROPERTY TO THE PERSON FOR TAXES CONCERNING INCOME
24 ATTRIBUTABLE TO THE TRUST PROPERTY.

25 (D) THE GIFT, CONVEYANCE, TRANSFER, OR ASSIGNMENT IS THE
26 EXERCISE BY THE TRUSTEE OF THE DISCRETIONARY AUTHORITY DESCRIBED IN
27 SUBDIVISION (C).

1 Enacting section 1. This amendatory act does not take effect
2 unless Senate Bill No. 387
3 of the 95th Legislature is enacted into law.