

SUBSTITUTE FOR
HOUSE BILL NO. 6130

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
(MCL 700.1101 to 700.8206) by adding section 7703a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 7703A. (1) EXCEPTING THE RULES OF CONSTRUCTION IN
2 SUBSECTION (2), THIS SECTION DOES NOT APPLY TO:

3 (A) A POWER OF APPOINTMENT THAT IS INTENDED TO BE HELD BY THE
4 DONEE IN A NONFIDUCIARY CAPACITY.

5 (B) A POWER THAT IS INTENDED TO BE HELD IN A NONFIDUCIARY
6 CAPACITY THAT ENABLES THE HOLDER TO CREATE A POWER OF APPOINTMENT,
7 REGARDLESS OF WHETHER THE CREATED POWER IS INTENDED TO BE HELD BY
8 THE DONEE OF THE CREATED POWER IN A FIDUCIARY OR A NONFIDUCIARY
9 CAPACITY.

10 (C) A POWER TO APPOINT OR REMOVE A TRUSTEE OR TRUST DIRECTOR.

1 (D) A POWER OF A SETTLOR OVER A TRUST TO THE EXTENT THE
2 SETTLOR HAS A POWER TO REVOKE THE TRUST.

3 (E) A POWER OF A BENEFICIARY OVER A TRUST TO THE EXTENT THE
4 EXERCISE OR NONEXERCISE OF THE POWER AFFECTS EITHER OF THE
5 FOLLOWING:

6 (i) THE BENEFICIAL INTEREST OF THE BENEFICIARY.

7 (ii) THE BENEFICIAL INTEREST OF ANOTHER BENEFICIARY
8 REPRESENTED BY THE BENEFICIARY UNDER PART 3 OF THIS ARTICLE WITH
9 RESPECT TO THE EXERCISE OR NONEXERCISE OF THE POWER.

10 (F) A POWER OVER A TRUST IF BOTH OF THE FOLLOWING APPLY:

11 (i) THE TERMS OF THE TRUST PROVIDE THAT THE POWER IS HELD IN A
12 NONFIDUCIARY CAPACITY.

13 (ii) THE POWER MUST BE HELD IN A NONFIDUCIARY CAPACITY TO
14 ACHIEVE THE SETTLOR'S TAX OBJECTIVES UNDER THE INTERNAL REVENUE
15 CODE OF 1986, 26 USC 1 TO 9834.

16 (2) ALL OF THE FOLLOWING RULES OF CONSTRUCTION APPLY TO POWERS
17 UNDER A TRUST:

18 (A) A POWER DESCRIBED IN SUBSECTION (1) THAT IS INTENDED TO BE
19 HELD IN A NONFIDUCIARY CAPACITY IS NOT SUBJECT TO FIDUCIARY
20 CONSTRAINT AND MAY BE EXERCISED BY THE HOLDER IN ANY MANNER
21 CONSISTENT WITH THE SCOPE OF THE POWER AND ANY EXPRESS REQUIREMENTS
22 OR LIMITATIONS IMPOSED BY THE TERMS OF THE TRUST. A TRUSTEE SHALL
23 TAKE ACTION TO COMPLY WITH THE EXERCISE OR NONEXERCISE OF A POWER
24 DESCRIBED IN THIS SUBDIVISION. A TRUSTEE IS NOT LIABLE FOR TAKING
25 AN ACTION REQUIRED UNDER THIS SUBDIVISION. HOWEVER, A TRUSTEE SHALL
26 NOT COMPLY WITH THE EXERCISE OR NONEXERCISE OF A POWER DESCRIBED IN
27 THIS SUBDIVISION IF THE EXERCISE OR NONEXERCISE WAS OBTAINED WITH

1 THE TRUSTEE'S COLLUSION OR BY THE TRUSTEE'S FRAUD AND COMPLIANCE
2 WOULD BE IN PURSUANCE OF THAT COLLUSION OR FRAUD.

3 (B) EXCEPT AS PROVIDED IN SUBDIVISION (C), ALL OF THE
4 FOLLOWING POWERS ARE INTENDED TO BE HELD IN A NONFIDUCIARY CAPACITY
5 IF GRANTED TO A PERSON OTHER THAN A TRUSTEE OF THE TRUST:

6 (i) A POWER OF APPOINTMENT, INCLUDING A POWER OF APPOINTMENT
7 IN THE FORM OF A POWER TO DO ANY OF THE FOLLOWING:

8 (A) ADJUST BETWEEN PRINCIPAL AND INCOME.

9 (B) CONVERT TO OR FROM A UNITRUST.

10 (C) MODIFY, REFORM, OR TERMINATE THE TRUST.

11 (D) DISTRIBUTE TRUST ASSETS IN FURTHER TRUST.

12 (ii) A POWER THAT ENABLES THE HOLDER TO CREATE A POWER OF
13 APPOINTMENT.

14 (C) A POWER TO DO ANY OF THE FOLLOWING IS INTENDED TO BE HELD
15 IN A FIDUCIARY CAPACITY EVEN THOUGH THE HOLDER IS NOT A TRUSTEE OF
16 THE TRUST IF THE HOLDER OTHERWISE DOES NOT HAVE A BENEFICIAL
17 INTEREST IN THE TRUST:

18 (i) ADJUST BETWEEN PRINCIPAL AND INCOME.

19 (ii) CONVERT TO OR FROM A UNITRUST.

20 (iii) MODIFY, REFORM, OR TERMINATE THE TRUST.

21 (iv) DISTRIBUTE TRUST ASSETS IN FURTHER TRUST.

22 (3) SUBJECT TO SUBSECTION (4), THE TERMS OF A TRUST MAY GRANT
23 A POWER OF DIRECTION TO A TRUST DIRECTOR. BOTH OF THE FOLLOWING
24 RULES OF CONSTRUCTION APPLY TO POWERS OF DIRECTION:

25 (A) A TRUST DIRECTOR MAY EXERCISE ANY FURTHER POWER
26 APPROPRIATE TO THE EXERCISE OR NONEXERCISE OF THE DIRECTOR'S POWER
27 OF DIRECTION.

1 (B) TRUST DIRECTORS WITH JOINT POWERS MUST ACT BY MAJORITY
2 DECISION.

3 (4) A TRUST DIRECTOR IS SUBJECT TO THE SAME RULES AS A TRUSTEE
4 IN A LIKE POSITION AND UNDER SIMILAR CIRCUMSTANCES IN THE EXERCISE
5 OR NONEXERCISE OF A POWER OF DIRECTION OR A FURTHER POWER UNDER
6 SUBSECTION (3) (A) REGARDING BOTH OF THE FOLLOWING:

7 (A) A PAYBACK PROVISION IN THE TERMS OF THE TRUST NECESSARY
8 FOR COMPLIANCE WITH THE REIMBURSEMENT REQUIREMENTS OF MEDICAID LAW
9 IN SECTION 1917 OF THE SOCIAL SECURITY ACT, 42 USC 1396P(D) (4) (A) .

10 (B) A CHARITABLE INTEREST IN THE TRUST, INCLUDING REQUIRED
11 NOTICES REGARDING THE INTEREST TO THE ATTORNEY GENERAL.

12 (5) SUBJECT TO SUBSECTION (6) , BOTH OF THE FOLLOWING APPLY
13 WITH RESPECT TO A POWER OF DIRECTION OR A FURTHER POWER UNDER
14 SUBSECTION (3) (A) :

15 (A) A TRUST DIRECTOR HAS THE SAME FIDUCIARY DUTY AND LIABILITY
16 IN THE EXERCISE OR NONEXERCISE OF THE POWER AS A SOLE TRUSTEE IN A
17 LIKE POSITION AND UNDER SIMILAR CIRCUMSTANCES IF THE POWER IS HELD
18 INDIVIDUALLY OR, IF THE POWER IS HELD JOINTLY WITH A TRUSTEE OR
19 ANOTHER TRUST DIRECTOR, AS A COTRUSTEE IN A LIKE POSITION AND UNDER
20 SIMILAR CIRCUMSTANCES.

21 (B) A TERM OF A TRUST THAT RELIEVES A TRUST DIRECTOR FROM
22 LIABILITY FOR BREACH OF FIDUCIARY DUTY IS UNENFORCEABLE TO THE
23 EXTENT THAT EITHER OF THE FOLLOWING APPLIES:

24 (i) THE TERM RELIEVES THE TRUST DIRECTOR OF LIABILITY FOR ACTS
25 COMMITTED IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE
26 PURPOSES OF THE TRUST OR THE INTERESTS OF THE TRUST BENEFICIARIES.

27 (ii) THE TERM WAS INSERTED AS THE RESULT OF AN ABUSE BY THE

1 TRUST DIRECTOR OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP TO THE
2 SETTLOR.

3 (6) IF A TRUST DIRECTOR IS LICENSED, CERTIFIED, OR OTHERWISE
4 AUTHORIZED OR PERMITTED BY LAW OTHER THAN THIS SECTION TO PROVIDE
5 HEALTH CARE IN THE ORDINARY COURSE OF THE DIRECTOR'S BUSINESS OR
6 PRACTICE OF A PROFESSION, TO THE EXTENT THE DIRECTOR ACTS IN THAT
7 CAPACITY, THE DIRECTOR HAS NO DUTY OR LIABILITY UNDER THIS SECTION.

8 (7) A DIRECTED TRUSTEE SHALL TAKE ACTION TO COMPLY WITH THE
9 EXERCISE OR NONEXERCISE OF A POWER OF DIRECTION OR FURTHER POWER OF
10 A TRUST DIRECTOR UNDER SUBSECTION (3) (A). A DIRECTED TRUSTEE IS NOT
11 LIABLE FOR TAKING AN ACTION REQUIRED UNDER THIS SUBSECTION.

12 HOWEVER, A DIRECTED TRUSTEE SHALL NOT COMPLY WITH THE EXERCISE OR
13 NONEXERCISE OF A POWER DESCRIBED IN THIS SUBSECTION IF THE EXERCISE
14 OR NONEXERCISE WAS OBTAINED WITH THE DIRECTED TRUSTEE'S COLLUSION
15 OR BY THE DIRECTED TRUSTEE'S FRAUD AND COMPLIANCE WOULD BE IN
16 PURSUANCE OF THAT COLLUSION OR FRAUD.

17 (8) AN EXERCISE OF A POWER OF DIRECTION UNDER WHICH A TRUST
18 DIRECTOR MAY RELEASE A TRUSTEE OR ANOTHER TRUST DIRECTOR FROM
19 LIABILITY FOR BREACH OF TRUST IS NOT EFFECTIVE IF ANY OF THE
20 FOLLOWING APPLY:

21 (A) THE BREACH INVOLVED THE TRUSTEE'S OR OTHER DIRECTOR'S BAD
22 FAITH OR RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE
23 INTERESTS OF THE TRUST BENEFICIARIES.

24 (B) THE RELEASE WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE
25 OR OTHER DIRECTOR IN PROCURING THE RELEASE.

26 (C) AT THE TIME OF THE RELEASE, THE DIRECTOR DID NOT KNOW THE
27 MATERIAL FACTS RELATING TO THE BREACH.

1 (9) SUBJECT TO SUBSECTION (11), A TRUSTEE SHALL PROVIDE
2 INFORMATION TO A TRUST DIRECTOR TO THE EXTENT THE INFORMATION IS
3 REASONABLY RELATED TO BOTH OF THE FOLLOWING:

4 (A) THE POWERS OR DUTIES OF THE TRUSTEE.

5 (B) THE POWERS OR DUTIES OF THE DIRECTOR.

6 (10) SUBJECT TO SUBSECTION (13), A TRUST DIRECTOR SHALL
7 PROVIDE INFORMATION TO A TRUSTEE OR ANOTHER TRUST DIRECTOR TO THE
8 EXTENT THE INFORMATION IS REASONABLY RELATED TO BOTH OF THE
9 FOLLOWING:

10 (A) THE POWERS OR DUTIES OF THE DIRECTOR.

11 (B) THE POWERS OR DUTIES OF THE TRUSTEE OR OTHER DIRECTOR.

12 (11) A TRUSTEE DOES NOT HAVE A DUTY TO DO EITHER OF THE
13 FOLLOWING:

14 (A) MONITOR A TRUST DIRECTOR.

15 (B) INFORM OR GIVE ADVICE TO A SETTLOR, BENEFICIARY, TRUSTEE,
16 OR TRUST DIRECTOR CONCERNING AN INSTANCE IN WHICH THE TRUSTEE MIGHT
17 HAVE ACTED DIFFERENTLY THAN THE DIRECTOR.

18 (12) BY TAKING AN ACTION DESCRIBED IN SUBSECTION (11), A
19 TRUSTEE DOES NOT ASSUME THE DUTY EXCLUDED BY SUBSECTION (11).

20 (13) A TRUST DIRECTOR DOES NOT HAVE A DUTY TO DO EITHER OF THE
21 FOLLOWING:

22 (A) MONITOR A TRUSTEE OR ANOTHER TRUST DIRECTOR.

23 (B) INFORM OR GIVE ADVICE TO A SETTLOR, BENEFICIARY, TRUSTEE,
24 OR ANOTHER TRUST DIRECTOR CONCERNING AN INSTANCE IN WHICH THE
25 DIRECTOR MIGHT HAVE ACTED DIFFERENTLY THAN A TRUSTEE OR ANOTHER
26 TRUST DIRECTOR.

27 (14) BY TAKING AN ACTION DESCRIBED IN SUBSECTION (13), A TRUST

1 DIRECTOR DOES NOT ASSUME THE DUTY EXCLUDED BY SUBSECTION (13) .

2 (15) A TRUSTEE THAT ACTS IN RELIANCE ON INFORMATION PROVIDED
3 BY A TRUST DIRECTOR IS NOT LIABLE FOR A BREACH OF TRUST TO THE
4 EXTENT THE BREACH RESULTED FROM THE RELIANCE IF THE TRUSTEE'S
5 RELIANCE IS NOT IN BAD FAITH.

6 (16) A TRUST DIRECTOR THAT ACTS IN RELIANCE ON INFORMATION
7 PROVIDED BY A TRUSTEE OR ANOTHER TRUST DIRECTOR IS NOT LIABLE FOR A
8 BREACH OF TRUST TO THE EXTENT THE BREACH RESULTED FROM THE RELIANCE
9 IF THE TRUST DIRECTOR'S RELIANCE IS NOT IN BAD FAITH.

10 (17) AN ACTION AGAINST A TRUST DIRECTOR FOR BREACH OF TRUST
11 MUST BE COMMENCED WITHIN THE SAME LIMITATION PERIOD AS AN ACTION
12 FOR BREACH OF TRUST AGAINST A TRUSTEE IN A LIKE POSITION AND UNDER
13 SIMILAR CIRCUMSTANCES UNDER SECTION 7905.

14 (18) A REPORT OR ACCOUNTING HAS THE SAME EFFECT ON THE
15 LIMITATION PERIOD FOR AN ACTION AGAINST A TRUST DIRECTOR FOR BREACH
16 OF TRUST THAT THE REPORT OR ACCOUNTING WOULD HAVE IN AN ACTION FOR
17 BREACH OF TRUST AGAINST A TRUSTEE IN A LIKE POSITION AND UNDER
18 SIMILAR CIRCUMSTANCES UNDER SECTION 7905.

19 (19) IN AN ACTION AGAINST A TRUST DIRECTOR FOR BREACH OF
20 TRUST, THE DIRECTOR MAY ASSERT THE SAME DEFENSES A TRUSTEE IN A
21 LIKE POSITION AND UNDER SIMILAR CIRCUMSTANCES COULD ASSERT IN AN
22 ACTION FOR BREACH OF TRUST AGAINST THE TRUSTEE.

23 (20) BY ACCEPTING APPOINTMENT AS A TRUST DIRECTOR, THE
24 DIRECTOR SUBMITS PERSONALLY TO JURISDICTION IN THIS STATE REGARDING
25 ANY MATTER RELATED TO A POWER OR DUTY OF THE DIRECTOR. THIS SECTION
26 DOES NOT PRECLUDE USE OF ANOTHER METHOD TO OBTAIN JURISDICTION OVER
27 A TRUST DIRECTOR.

1 (21) THE RULES APPLICABLE TO A TRUSTEESHIP APPLY TO A TRUST
2 DIRECTORSHIP REGARDING ALL OF THE FOLLOWING MATTERS:

3 (A) ACCEPTANCE UNDER SECTION 7701(1) .

4 (B) GIVING OF BOND TO SECURE PERFORMANCE UNDER SECTION 7702 .

5 (C) REASONABLE COMPENSATION UNDER SECTION 7708 .

6 (D) RESIGNATION UNDER SECTION 7705 .

7 (E) REMOVAL UNDER SECTION 7706 .

8 (F) VACANCY AND APPOINTMENT OF SUCCESSORS UNDER SECTION 7704 ,
9 TREATING ANY INSTANCE IN WHICH 2 OR MORE TRUST DIRECTORS HAVE THE
10 SAME POWER OF DIRECTION AS ANALOGOUS TO A COTRUSTEESHIP FOR
11 PURPOSES OF SECTION 7704(2) .

12 (22) THE APPLICATION OF THIS SECTION WITH RESPECT TO A GIVEN
13 TRUST IS SUBJECT TO BOTH OF THE FOLLOWING:

14 (A) IF THE TRUST WAS CREATED BEFORE THE EFFECTIVE DATE OF THE
15 AMENDATORY ACT THAT ADDED THIS SECTION, THIS SECTION APPLIES ONLY
16 TO DECISIONS OR ACTIONS TAKEN ON OR AFTER THAT DATE.

17 (B) IF THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION IS
18 CHANGED TO THIS STATE ON OR AFTER THE EFFECTIVE DATE OF THE
19 AMENDATORY ACT THAT ADDED THIS SECTION, THIS SECTION APPLIES ONLY
20 TO DECISIONS OR ACTIONS TAKEN ON OR AFTER THE DATE OF THE CHANGE.

21 (23) IN APPLYING AND CONSTRUING THE PROVISIONS OF THIS SECTION
22 THAT ARE BASED ON THE UNIFORM DIRECTED TRUST ACT, WEIGHT SHOULD BE
23 GIVEN TO THE GOAL OF PROMOTING UNIFORMITY IN THE LAW ON DIRECTED
24 TRUSTEESHIPS AMONG THE STATES THAT HAVE ENACTED THE UNIFORM
25 DIRECTED TRUST ACT.

26 (24) AS USED IN SECTION:

27 (A) "BREACH OF TRUST" INCLUDES A VIOLATION BY A TRUST DIRECTOR

1 OR TRUSTEE OF A DUTY IMPOSED ON THAT DIRECTOR OR TRUSTEE BY THE
2 TERMS OF THE TRUST OR BY THIS ARTICLE.

3 (B) "DIRECTED TRUSTEE" MEANS A TRUSTEE THAT IS SUBJECT TO A
4 POWER OF DIRECTION.

5 (C) "DONEE" MEANS THAT TERM AS DEFINED IN SECTION 2 OF THE
6 POWERS OF APPOINTMENT ACT OF 1967, 1967 PA 224, MCL 556.112.

7 (D) "POWER OF APPOINTMENT" MEANS THAT TERM AS DEFINED IN
8 SECTION 2 OF THE POWERS OF APPOINTMENT ACT OF 1967, 1967 PA 224,
9 MCL 556.112.

10 (E) "POWER OF DIRECTION" MEANS A POWER OVER A TRUST GRANTED BY
11 THE TERMS OF THE TRUST TO THE EXTENT THE POWER IS EXERCISABLE WHILE
12 THE PERSON TO WHOM IT IS GRANTED IS NOT SERVING AS A TRUSTEE. POWER
13 OF DIRECTION INCLUDES A POWER OVER THE INVESTMENT, MANAGEMENT, OR
14 DISTRIBUTION OF TRUST PROPERTY OR OTHER MATTERS OF TRUST
15 ADMINISTRATION. POWER OF DIRECTION DOES NOT INCLUDE THE POWERS
16 DESCRIBED IN SUBSECTION (1).

17 (F) "TRUST DIRECTOR" MEANS AN ORGANIZATION PERMITTED TO
18 EXERCISE TRUST POWERS IN THIS STATE AS DESCRIBED IN SECTION 1105(2)
19 OF THE BANKING CODE OF 1999, 1999 PA 276, MCL 487.11105, OR AN
20 INDIVIDUAL, IF THAT PERSON IS GRANTED A POWER OF DIRECTION WHETHER
21 OR NOT EITHER OF THE FOLLOWING APPLIES:

22 (i) THE TERMS OF THE TRUST REFER TO THE PERSON AS A TRUST
23 DIRECTOR.

24 (ii) THE PERSON IS A BENEFICIARY OR SETTLOR OF THE TRUST.

25 Enacting section 1. This amendatory act does not take effect
26 unless all of the following bills of the 99th Legislature are
27 enacted into law:

- 1 (a) House Bill No. 6129.
- 2 (b) House Bill No. 6131.