

HOUSE BILL No. 6129

June 7, 2018, Introduced by Reps. Kesto, Iden and Calley and referred to the Committee on Law and Justice.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 7704 (MCL 700.7704), as added by 2009 PA 46,
and by adding section 7703b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 7703B. (1) A TRUST INSTRUMENT MAY INCLUDE A SEPARATE
2 TRUSTEES PROVISION.

3 (2) WHILE A SEPARATE TRUSTEES PROVISION APPLIES, THE WHOLE
4 TRUSTEESHIP OF THE AGGREGATE TRUST IS DIVIDED, UNDER THE TERMS OF
5 THE SEPARATE TRUSTEES PROVISION, INTO DISCRETE SETS OF SEPARATELY
6 ACCEPTED FIDUCIARY RESPONSIBILITIES, WITH EACH DISCRETE SET
7 SEPARATELY ALLOCATED TO 1 OR ANOTHER OF THE AGGREGATE TRUST'S
8 SEPARATE TRUSTEES. ALL OF THE FOLLOWING APPLY WHILE A SEPARATE

1 TRUSTEES PROVISION APPLIES:

2 (A) EXCEPT AS PROVIDED IN SUBDIVISION (C) , THE AGGREGATE
3 TRUST'S SEPARATE TRUSTEES ARE NOT TREATED AS COTRUSTEES IN THEIR
4 RELATIONS TO ONE ANOTHER. WITH REGARD TO THE COMMON TITLE TO THE
5 TRUST PROPERTY DESCRIBED IN SUBDIVISION (C) (i) , ALL OF THE
6 FOLLOWING APPLY:

7 (i) A SEPARATE INVESTMENT TRUSTEE ACCEPTS THE COMMON TITLE
8 ONLY FOR PURPOSES OF PERFORMING THE TRUSTEE INVESTMENT FUNCTION
9 DESCRIBED BY THE GOVERNING SEPARATE TRUSTEES PROVISION FOR THE
10 BENEFIT OF THE TRUST BENEFICIARIES.

11 (ii) A SEPARATE DISTRIBUTIONS TRUSTEE ACCEPTS THE COMMON TITLE
12 ONLY FOR PURPOSES OF ADMINISTERING A DISCRETIONARY TRUST PROVISION
13 SPECIFIED IN THE GOVERNING SEPARATE TRUSTEES PROVISION FOR THE
14 BENEFIT OF THE TRUST BENEFICIARIES AFFECTED BY THE SPECIFIED
15 DISCRETIONARY TRUST PROVISIONS.

16 (iii) A SEPARATE RESULTANT TRUSTEE ACCEPTS THE COMMON TITLE
17 ONLY FOR PURPOSES OF PERFORMING ALL TRUSTEE FUNCTIONS NOT ALLOCATED
18 BY THE GOVERNING SEPARATE TRUSTEES PROVISION TO EITHER OF THE
19 FOLLOWING:

20 (A) A SEPARATE INVESTMENT TRUSTEE, IF ANY.

21 (B) A SEPARATE DISTRIBUTIONS TRUSTEE.

22 (B) A SEPARATE TRUSTEE SHALL ACT ON ITS OWN AUTHORITY WITH
23 RESPECT TO EACH OF ITS SEPARATE TRUSTEE FUNCTIONS. A SEPARATE
24 TRUSTEE DOES NOT NEED APPROVAL FROM ANY OTHER SEPARATE TRUSTEE TO
25 CONDUCT ITS SEPARATE TRUSTEE FUNCTIONS.

26 (C) THE AGGREGATE TRUST'S SEPARATE TRUSTEES ARE TREATED AS
27 COTRUSTEES IN THEIR RELATIONS TO ONE ANOTHER ONLY FOR THE FOLLOWING

1 PURPOSES:

2 (i) TAKING, HOLDING, TRANSFERRING, AND DEFENDING TITLE TO
3 TRUST PROPERTY.

4 (ii) DETERMINING VENUE AND INTERESTED PERSONS IN PROCEEDINGS
5 CONCERNING THE AGGREGATE TRUST.

6 (iii) LIABILITY, IF ANY, FOR INCOME, PROPERTY, OR OTHER TAXES
7 ATTRIBUTABLE TO TRUST PROPERTY.

8 (iv) THE PRIVILEGES AND IMMUNITIES OF COTRUSTEES UNDER GENERAL
9 PRINCIPLES OF LAW AND EQUITY TO COMMENT TO A SETTLOR OR BENEFICIARY
10 OF A TRUST OR OTHERS ON ONE ANOTHER'S PERFORMANCE OF FIDUCIARY
11 DUTIES.

12 (D) THE AGGREGATE TRUST'S SEPARATE TRUSTEES ARE NOT COTRUSTEES
13 FOR EITHER OF THE FOLLOWING PURPOSES:

14 (i) JOINDER OF NECESSARY PARTIES IN A PROCEEDING FOR BREACH OF
15 TRUST.

16 (ii) THE REQUIREMENT IN SECTION 7402 THAT THE SAME PERSON IS
17 NOT THE SOLE TRUSTEE AND SOLE BENEFICIARY OF A TRUST. IF THE
18 AGGREGATE TRUST HAS ONLY 1 BENEFICIARY, THE BENEFICIARY MAY NOT BE
19 A SEPARATE TRUSTEE OF THE TRUST UNLESS BOTH OF THE FOLLOWING APPLY:

20 (A) THE SEPARATE TRUSTEE COMPRISES A COTRUSTEESHIP OF WHICH
21 THE BENEFICIARY IS A COTRUSTEE.

22 (B) THE TRUST INSTRUMENT PROHIBITS THE BENEFICIARY FROM
23 SERVING ALONE.

24 (E) A SEPARATE TRUSTEE SHALL NOT ACCEPT THE SEPARATE TRUST
25 ASSOCIATED WITH, OR, EXCEPT AS OTHERWISE PROVIDED IN THIS
26 SUBDIVISION, PARTICIPATE IN OR PROVIDE ADVICE REGARDING THE
27 PERFORMANCE OF, A SEPARATE TRUSTEE FUNCTION OF ANY OTHER SEPARATE

1 TRUSTEE OF THE AGGREGATE TRUST. MINISTERIAL ACTS PERFORMED BY 1
2 SEPARATE TRUSTEE IN CONNECTION WITH A SEPARATE TRUSTEE FUNCTION OF
3 ANOTHER SEPARATE TRUSTEE OF THE AGGREGATE TRUST ARE NOT CONSIDERED
4 AN ACCEPTANCE OF THE SEPARATE TRUST ASSOCIATED WITH THE SEPARATE
5 TRUSTEE FUNCTION OF THE OTHER SEPARATE TRUSTEE. AS USED IN THIS
6 SUBDIVISION, "MINISTERIAL ACTS" INCLUDES ANY OF THE FOLLOWING:

7 (i) CONFIRMING THAT AN INVESTMENT OR DISTRIBUTION DIRECTIVE OF
8 ANOTHER SEPARATE TRUSTEE HAS BEEN CARRIED OUT.

9 (ii) RECORDING AND REPORTING THE ACTIONS OF ANOTHER SEPARATE
10 TRUSTEE OR CONFERRING WITH ANOTHER SEPARATE TRUSTEE FOR PURPOSES OF
11 ADMINISTRATIVE COORDINATION OR EFFICIENCY.

12 (F) A SEPARATE TRUSTEE DOES NOT HAVE A DUTY TO PETITION THE
13 COURT OR TO TAKE OTHER AFFIRMATIVE ACTION TO ENSURE THAT ANY
14 VACANCY IN ANY SEPARATE TRUSTEESHIP IS FILLED. IF A SEPARATE
15 TRUSTEE PETITIONS THE COURT OR TAKES OTHER AFFIRMATIVE ACTION TO
16 ENSURE THAT A VACANCY IN A SEPARATE TRUSTEESHIP IS FILLED, BOTH OF
17 THE FOLLOWING APPLY:

18 (i) THE SEPARATE TRUSTEE IS NOT CONSIDERED TO HAVE ACCEPTED
19 THE SEPARATE TRUST ASSOCIATED WITH THE VACANT SEPARATE TRUSTEESHIP.

20 (ii) THE SEPARATE TRUSTEE DOES NOT HAVE A DUTY TO PETITION THE
21 COURT OR TAKE OTHER AFFIRMATIVE ACTION TO ENSURE THAT ANY OTHER
22 VACANCY IN A SEPARATE TRUSTEESHIP IS FILLED.

23 (3) A SEPARATE TRUSTEES PROVISION MUST DETERMINE ALL OF THE
24 FOLLOWING:

25 (A) IF THERE IS A SEPARATE INVESTMENT TRUSTEE, THAT THE
26 SEPARATE INVESTMENT TRUSTEE SHALL PERFORM THE TRUSTEE INVESTMENT
27 FUNCTION.

1 (B) THAT 1 OR MORE SEPARATE DISTRIBUTIONS TRUSTEES, IF ANY,
2 SHALL EXERCISE DISCRETION UNDER 1 OR MORE SPECIFIED DISCRETIONARY
3 TRUST PROVISIONS.

4 (C) WHICH OF THE AGGREGATE TRUST'S SEPARATE TRUSTEES SHALL
5 PERFORM, DURING ANY PERIOD IN WHICH THE AGGREGATE TRUST IS NOT A
6 UNITRUST, THE FUNCTION OF ALLOCATING BETWEEN PRINCIPAL AND INCOME,
7 FOR FIDUCIARY ACCOUNTING PURPOSES, RECEIPTS AND DISBURSEMENTS OR
8 DISTRIBUTIONS AFFECTED BY THE SEPARATE TRUSTEES' SEPARATE TRUSTEE
9 FUNCTIONS.

10 (D) WHICH OF THE AGGREGATE TRUST'S SEPARATE TRUSTEES IS
11 RESPONSIBLE FOR PREPARATION AND FILING OF TAX AND INFORMATION
12 RETURNS FOR THE AGGREGATE TRUST AND FOR RESPONDING ON BEHALF OF THE
13 AGGREGATE TRUST TO INQUIRIES FROM GOVERNMENTAL AGENCIES.

14 (E) WHICH OF THE AGGREGATE TRUST'S SEPARATE TRUSTEES IS
15 RESPONSIBLE FOR RESPONDING TO A PROCEEDING CHALLENGING A PURPOSE OR
16 THE VALIDITY OF THE TRUST.

17 (F) WHICH OF THE AGGREGATE TRUST'S SEPARATE TRUSTEES IS
18 RESPONSIBLE FOR DETERMINING WHETHER AT ANY TIME CASH OR OTHER
19 PROPERTY WILL BE LOANED BY THE TRUST TO ANY OF THE FOLLOWING:

20 (i) ONE OR MORE TRUST BENEFICIARIES.

21 (ii) ONE OR MORE BUSINESS ENTERPRISES IN WHICH A TRUST
22 BENEFICIARY HAS AN OWNERSHIP INTEREST.

23 (iii) ONE OR MORE BUSINESS ENTERPRISES IN WHICH THE AGGREGATE
24 TRUST ITSELF HAS AN OWNERSHIP INTEREST.

25 (G) FOR A SEPARATE INVESTMENT TRUSTEE, WHETHER THE SEPARATE
26 INVESTMENT TRUSTEE OR THE SEPARATE RESULTANT TRUSTEE SHALL
27 DETERMINE THE AGGREGATE TRUST'S ASSET ALLOCATION FOR INVESTMENT

1 PURPOSES.

2 (H) THAT THE SEPARATE RESULTANT TRUSTEE IS RESPONSIBLE FOR THE
3 CUSTODY OF THE AGGREGATE TRUST'S PROPERTY.

4 (4) WITH REGARD TO A SEPARATE TRUSTEE FUNCTION OF A SEPARATE
5 TRUSTEE, ALL OF THE FOLLOWING APPLY:

6 (A) THE SEPARATE TRUSTEE HAS ALL OF THE DUTIES AND POWERS OF A
7 TRUSTEE DESCRIBED IN THIS PART AND PART 8 OF THIS ARTICLE.

8 (B) THE SEPARATE TRUSTEE IS SUBJECT TO CONTROL BY BOTH OF THE
9 FOLLOWING IN THE SAME CIRCUMSTANCES AS WOULD BE A TRUSTEE OR
10 COTRUSTEESHIP THAT IS NOT A SEPARATE TRUSTEE:

11 (i) EACH SETTLOR OF A REVOCABLE TRUST.

12 (ii) A HOLDER OF A POWER TO DIRECT A TRUSTEE, IF ANY.

13 (C) THE SEPARATE TRUSTEE IS REQUIRED TO SEEK OR CONSIDER THE
14 ADVICE OF A DESIGNATED TRUST ADVISOR, IF ANY, IN THE SAME
15 CIRCUMSTANCES AS WOULD A TRUSTEE OR COTRUSTEESHIP THAT IS NOT A
16 SEPARATE TRUSTEE.

17 (5) IF A SEPARATE TRUSTEE COMPRISES A COTRUSTEESHIP, WITH
18 REGARD TO A SEPARATE TRUSTEE FUNCTION OF THE SEPARATE TRUSTEE, THE
19 COTRUSTEES HAVE ALL OF THE DUTIES AND POWERS OF COTRUSTEES
20 DESCRIBED IN THIS PART.

21 (6) A SEPARATE TRUSTEE HAS THE DUTY TO INFORM AND REPORT ON
22 EACH OF ITS SEPARATE TRUSTEE FUNCTIONS TO BOTH OF THE FOLLOWING:

23 (A) TRUST BENEFICIARIES AS DESCRIBED IN SECTION 7814. HOWEVER,
24 A SEPARATE TRUSTEE IS NOT REQUIRED TO PROVIDE A BENEFICIARY A
25 REPORT THAT THE SEPARATE TRUSTEE KNOWS WILL DUPLICATE A REPORT THAT
26 ANOTHER SEPARATE TRUSTEE OF THE AGGREGATE TRUST PROVIDED OR WILL
27 PROVIDE TO THE BENEFICIARY.

1 (B) EACH OTHER SEPARATE TRUSTEE OF THE AGGREGATE TRUST AS IS
2 REASONABLY NECESSARY FOR THE OTHER SEPARATE TRUSTEE TO PERFORM A
3 SEPARATE TRUSTEE FUNCTION OF THE OTHER SEPARATE TRUSTEE.

4 (7) A SEPARATE TRUSTEE DOES NOT HAVE A DUTY TO DO ANY OF THE
5 FOLLOWING:

6 (A) MONITOR OR REVIEW THE ACTIONS OF ANY OTHER SEPARATE
7 TRUSTEE OF THE AGGREGATE TRUST.

8 (B) NOTIFY OR WARN A SETTLOR OR BENEFICIARY OF THE AGGREGATE
9 TRUST OF A BREACH OF TRUST OR POSSIBLE BREACH OF TRUST ON THE PART
10 OF ANY OTHER SEPARATE TRUSTEE.

11 (8) IF A SEPARATE TRUSTEE NOTIFIES OR WARNS A SETTLOR OR
12 BENEFICIARY AS DESCRIBED IN SUBSECTION (7) (B) , BOTH OF THE
13 FOLLOWING APPLY:

14 (A) THE SEPARATE TRUSTEE IS NOT CONSIDERED TO HAVE ACCEPTED
15 THE SEPARATE TRUST ASSOCIATED WITH THE SEPARATE TRUSTEE FUNCTION OF
16 THE OTHER SEPARATE TRUSTEE.

17 (B) THE SEPARATE TRUSTEE DOES NOT HAVE A DUTY TO NOTIFY OR
18 WARN A SETTLOR OR BENEFICIARY OF ANY OTHER BREACH OR POSSIBLE
19 BREACH OF TRUST ON THE PART OF ANY OTHER SEPARATE TRUSTEE.

20 (9) ABSENT CLEAR AND CONVINCING EVIDENCE OF COLLUSION IN A
21 BREACH OF TRUST, ALL OF THE FOLLOWING APPLY:

22 (A) A SEPARATE TRUSTEE IS NOT LIABLE FOR THE ACT OR OMISSION
23 OF ANY OTHER SEPARATE TRUSTEE OF THE AGGREGATE TRUST.

24 (B) A SEPARATE TRUSTEE IN BREACH OF A TRUSTEE DUTY OF A
25 SEPARATE TRUSTEE FUNCTION OF THE SEPARATE TRUSTEE IS THE ONLY
26 SEPARATE TRUSTEE OF THE AGGREGATE TRUST OBLIGED TO DEFEND OR
27 OTHERWISE RESPOND TO ANY PROCEEDING BROUGHT BY A TRUST BENEFICIARY

1 REGARDING THAT BREACH.

2 (C) EXCEPT AS PROVIDED IN SUBDIVISION (D), A SEPARATE TRUSTEE
3 IS LIABLE TO TRUST BENEFICIARIES FOR BREACH OF A TRUSTEE DUTY OF A
4 SEPARATE TRUSTEE FUNCTION OF THE SEPARATE TRUSTEE AS IF THE OTHER
5 SEPARATE TRUSTEES OF THE AGGREGATE TRUST WERE NOT IN OFFICE AND THE
6 SEPARATE TRUSTEE WERE THE SOLE TRUSTEE OF THE AGGREGATE TRUST.

7 (D) A SEPARATE TRUSTEE MAY BE LIABLE CONCERNING A TRUSTEE
8 FUNCTION OF ANOTHER SEPARATE TRUSTEE OF THE AGGREGATE TRUST ONLY
9 FOR THE SEPARATE TRUSTEE'S OWN ACTIONS IN THE PERFORMANCE OF
10 MINISTERIAL ACTS PURSUANT TO THE OTHER SEPARATE TRUSTEE'S
11 INSTRUCTION AND ONLY TO THE EXTENT THE SEPARATE TRUSTEE ACTS IN BAD
12 FAITH.

13 (10) AS USED IN THIS SECTION:

14 (A) "AFFIRMATIVE ACTION" BY A SEPARATE TRUSTEE DOES NOT
15 INCLUDE A FAILURE TO ACT.

16 (B) "AGGREGATE TRUST" MEANS THE INCLUSIVE SET OF SEPARATE
17 RELATIONS OF TRUST TO BE SEPARATELY ACCEPTED BY THE SEPARATE
18 TRUSTEES UNDER A GIVEN SEPARATE TRUSTEES PROVISION.

19 (C) "COTRUSTEESHIP" MEANS A SET OF 1 OR MORE COTRUSTEES WHOSE
20 RELATIONS TO ONE ANOTHER IN RESPECT OF TRUST PROPERTY IS GOVERNED
21 BY SECTION 7703.

22 (D) "SEPARATE DISTRIBUTIONS TRUSTEE" MEANS A PERSON OR A
23 COTRUSTEESHIP THAT IS DESIGNATED BY A SEPARATE TRUSTEES PROVISION
24 TO EXERCISE DISCRETION AS A TRUSTEE OR TRUSTEES UNDER A
25 DISCRETIONARY TRUST PROVISION.

26 (E) "SEPARATE INVESTMENT TRUSTEE" MEANS A PERSON OR A
27 COTRUSTEESHIP THAT IS DESIGNATED BY A SEPARATE TRUSTEES PROVISION

1 TO PERFORM THE TRUSTEE INVESTMENT FUNCTION AS A TRUSTEE OR
2 TRUSTEES.

3 (F) "SEPARATE RESULTANT TRUSTEE" MEANS A PERSON OR A
4 COTRUSTEESHIP THAT IS DESIGNATED AS A TRUSTEE OR TRUSTEES TO
5 PERFORM ALL TRUSTEE FUNCTIONS NOT ALLOCATED BY THE SEPARATE
6 TRUSTEES PROVISION TO A SEPARATE INVESTMENT TRUSTEE OR TO ANY
7 SEPARATE DISTRIBUTIONS TRUSTEE.

8 (G) "SEPARATE TRUSTEE" MEANS A SEPARATE RESULTANT TRUSTEE,
9 SEPARATE INVESTMENT TRUSTEE, OR SEPARATE DISTRIBUTIONS TRUSTEE.

10 (H) "SEPARATE TRUSTEES PROVISION" MEANS A TRUST PROVISION THAT
11 DESIGNATES OR PROVIDES A METHOD OF DESIGNATING BOTH OF THE
12 FOLLOWING:

13 (i) A SEPARATE RESULTANT TRUSTEE.

14 (ii) A SEPARATE INVESTMENT TRUSTEE OR 1 OR MORE SEPARATE
15 DISTRIBUTIONS TRUSTEES.

16 (I) "SEPARATE TRUSTEESHIP" MEANS THE OFFICE OF A SEPARATE
17 TRUSTEE.

18 (J) "TRUSTEE INVESTMENT FUNCTION" MEANS A TRUSTEE FUNCTION
19 EXPRESSLY ALLOCATED BY THE SEPARATE TRUSTEES PROVISION TO A
20 SEPARATE INVESTMENT TRUSTEE. A TRUSTEE INVESTMENT FUNCTION MAY BE
21 BROADLY OR NARROWLY DEFINED BY THE SEPARATE TRUSTEES PROVISION AND
22 MAY INCLUDE ANY OF THE FOLLOWING:

23 (i) DETERMINING FOR TRUST INVESTMENT PURPOSES THE RETENTION,
24 PURCHASE, SALE, ASSIGNMENT, EXCHANGE, TENDER, OR ENCUMBRANCE OF
25 TRUST PROPERTY AND THE INVESTMENT AND REINVESTMENT OF UNDISTRIBUTED
26 INCOME AND PRINCIPAL OF THE AGGREGATE TRUST.

27 (ii) MANAGEMENT, CONTROL, AND EXERCISE OF VOTING POWERS

1 RELATED DIRECTLY OR INDIRECTLY TO ANY TRUST ASSET.

2 (iii) FOR NONPUBLICLY TRADED INVESTMENTS OR PROPERTY FOR WHICH
3 THERE IS NO READILY AVAILABLE MARKET VALUE, DETERMINING THE
4 METHODOLOGY FOR VALUING THE PROPERTY AND THE FREQUENCY OF
5 VALUATIONS.

6 Sec. 7704. (1) A vacancy in a trusteeship occurs if 1 or more
7 of the following occur:

8 (a) A person designated as trustee rejects the trusteeship.

9 (b) A person designated as trustee cannot be identified or
10 does not exist.

11 (c) A trustee resigns.

12 (d) A trustee is disqualified or removed.

13 (e) A trustee dies.

14 (f) A guardian or conservator is appointed for an individual
15 serving as trustee.

16 (2) If 1 or more cotrustees remain in office, a vacancy in a
17 trusteeship need not be filled. **THOUGH ANY SEPARATE TRUSTEE MAY**
18 **COMPRISE A COTRUSTEESHIP, THE RELATION BETWEEN RESPECTIVE SEPARATE**
19 **TRUSTEES SERVING UNDER A GIVEN SEPARATE TRUSTEES PROVISION IS NOT**
20 **ITSELF A COTRUSTEESHIP.** A vacancy in a trusteeship ~~shall~~ **MUST** be
21 filled if the **VACANCY LEAVES EITHER OF THE FOLLOWING:**

22 (A) A trust ~~has no~~ **THAT IS NOT SUBJECT TO A SEPARATE TRUSTEES**
23 **PROVISION AS OF THE TIME OF THE VACANCY WITHOUT ANY** remaining
24 trustee.

25 (B) **ANY OF THE SEVERAL SEPARATE TRUSTEESHIPS GOVERNED BY AN**
26 **OPERATIVE SEPARATE TRUSTEES PROVISION WITHOUT ANY REMAINING**
27 **TRUSTEE.**

1 (3) If a vacancy in a trusteeship of a noncharitable trust is
2 to be filled, the vacancy ~~shall~~**MUST** be filled in the following
3 order of priority:

4 (a) In the manner designated by the terms of the trust.

5 (b) By a person appointed by the court.

6 (4) If a vacancy in a trusteeship of a charitable trust is to
7 be filled, the vacancy ~~shall~~**MUST** be filled in the following order
8 of priority:

9 (a) In the manner designated by the terms of the trust.

10 (b) By a person selected by the charitable organizations
11 expressly designated to receive distributions under the terms of
12 the trust if the attorney general concurs in the selection.

13 (c) By a person appointed by the court.

14 (5) Whether or not a vacancy in a trusteeship exists or is
15 required to be filled, the court may appoint an additional trustee
16 or special fiduciary upon the showing of good cause.

17 (6) **AS USED IN THIS SECTION, "COTRUSTEESHIP", "SEPARATE**
18 **TRUSTEE", "SEPARATE TRUSTEES PROVISION", AND "SEPARATE TRUSTEESHIP"**
19 **MEAN THOSE TERMS AS DEFINED IN SECTION 7703B.**