

HOUSE BILL No. 6131

June 7, 2018, Introduced by Reps. Iden, Kesto 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 sections 7103, 7105, 7108, 7411, and 7703 (MCL 700.7103, 700.7105, 700.7108, 700.7411, and 700.7703), section 7103 as amended by 2012 PA 483, sections 7105 and 7411 as amended by 2010 PA 325, and sections 7108 and 7703 as added by 2009 PA 46; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 7103. As used in this article:

(a) "Action", with respect to a trustee, ~~or a trust protector,~~ includes an act or a failure to act.

(b) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the

1 meaning of section 2041(b) (1) (A) or 2514(c) (1) of the internal
2 revenue code **OF 1986**, 26 USC 2041 and 2514.

3 (c) "Charitable trust" means a trust, or portion of a trust,
4 created for a charitable purpose described in section 7405(1).

5 (d) "Discretionary trust provision" means a provision in a
6 trust, regardless of whether the terms of the trust provide a
7 standard for the exercise of the trustee's discretion and
8 regardless of whether the trust contains a spendthrift provision,
9 that provides that the trustee has discretion, or words of similar
10 import, to determine 1 or more of the following:

11 (i) Whether to distribute to or for the benefit of an
12 individual or a class of beneficiaries the income or principal or
13 both of the trust.

14 (ii) The amount, if any, of the income or principal or both of
15 the trust to distribute to or for the benefit of an individual or a
16 class of beneficiaries.

17 (iii) Who, if any, among a class of beneficiaries will receive
18 income or principal or both of the trust.

19 (iv) Whether the distribution of trust property is from income
20 or principal or both of the trust.

21 (v) When to pay income or principal, except that a power to
22 determine when to distribute income or principal within or with
23 respect to a calendar or taxable year of the trust is not a
24 discretionary trust provision if the distribution must be made.

25 (e) "Interests of the trust beneficiaries" means the
26 beneficial interests provided in the terms of the trust.

27 (f) "Power of withdrawal" means a presently exercisable

1 general power of appointment other than a power that is either of
2 the following:

3 (i) Exercisable by a trustee and limited by an ascertainable
4 standard.

5 (ii) Exercisable by another person only ~~upon~~ **ON** consent of the
6 trustee or a person holding an adverse interest.

7 (g) "Qualified trust beneficiary" means a trust beneficiary to
8 whom 1 or more of the following apply on the date the trust
9 beneficiary's qualification is determined:

10 (i) The trust beneficiary is a distributee or permissible
11 distributee of trust income or principal.

12 (ii) The trust beneficiary would be a distributee or
13 permissible distributee of trust income or principal if the
14 interests of the distributees under the trust described in
15 subparagraph (i) terminated on that date without causing the trust
16 to terminate.

17 (iii) The trust beneficiary would be a distributee or
18 permissible distributee of trust income or principal if the trust
19 terminated on that date.

20 (h) "Revocable", as applied to a trust, means revocable by the
21 settlor without the consent of the trustee or a person holding an
22 adverse interest. A trust's characterization as revocable is not
23 affected by the settlor's lack of capacity to exercise the power of
24 revocation, regardless of whether an agent of the settlor under a
25 durable power of attorney, a conservator of the settlor, or a
26 plenary guardian of the settlor is serving.

27 (i) "Settlor" means a person, including a testator or a

1 trustee, who creates a trust. If more than 1 person creates a
2 trust, each person is a settlor of the portion of the trust
3 property attributable to that person's contribution. The lapse,
4 release, or waiver of a power of appointment ~~shall~~**DOES** not cause
5 the holder of a power of appointment to be treated as a settlor of
6 the trust.

7 (j) "Spendthrift provision" means a term of a trust that
8 restrains either the voluntary or involuntary transfer of a trust
9 beneficiary's interest.

10 (k) "Support provision" means a provision in a trust that
11 provides the trustee shall distribute income or principal or both
12 for the health, education, support, or maintenance of a trust
13 beneficiary, or language of similar import. A provision in a trust
14 that provides a trustee has discretion whether to distribute income
15 or principal or both for these purposes or to select from among a
16 class of beneficiaries to receive distributions ~~pursuant to~~**UNDER**
17 the trust provision is not a support provision, but rather is a
18 discretionary trust provision.

19 (l) "Trust beneficiary" means a person to whom 1 or both of
20 the following apply:

21 (i) The person has a present or future beneficial interest in
22 a trust, vested or contingent.

23 (ii) The person holds a power of appointment over trust
24 property in a capacity other than that of trustee **OR TRUST**
25 **DIRECTOR.**

26 (M) **"TRUST DIRECTOR" MEANS THAT TERM AS DEFINED IN SECTION**
27 **7703A.**

1 **(N)** ~~(m)~~ "Trust instrument" means a governing instrument that
 2 contains the terms of the trust, including any amendment to a term
 3 of the trust.

4 ~~(n) "Trust protector" means a person or committee of persons~~
 5 ~~appointed pursuant to the terms of the trust who has the power to~~
 6 ~~direct certain actions with respect to the trust. Trust protector~~
 7 ~~does not include either of the following:~~

8 ~~(i) The settlor of a trust.~~

9 ~~(ii) The holder of a power of appointment.~~

10 Sec. 7105. (1) Except as otherwise provided in the terms of
 11 the trust, this article governs the duties and powers of a trustee,
 12 relations among trustees, and the rights and interests of a trust
 13 beneficiary.

14 (2) The terms of a trust prevail over any provision of this
 15 article except the following:

16 (a) The requirements under ~~section~~ **SECTIONS** 7401 **AND**
 17 **7402 (1) (E)** for creating a trust.

18 (b) The duty of a trustee to administer a trust in accordance
 19 with section 7801.

20 (c) The requirement under section 7404 that the trust have a
 21 purpose that is lawful, not contrary to public policy, and possible
 22 to achieve.

23 (d) The power of the court to modify or terminate a trust
 24 under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.

25 (e) The effect of a spendthrift provision, a support
 26 provision, and a discretionary trust provision on the rights of
 27 certain creditors and assignees to reach a trust as provided in

1 part 5.

2 (f) The power of the court under section 7702 to require,
3 dispense with, or modify or terminate a bond.

4 (g) The power of the court under section 7708(2) to adjust a
5 trustee's compensation specified in the terms of the trust that is
6 unreasonably low or high.

7 (h) ~~Except as permitted under section 7809(2), the~~ **THE**
8 obligations imposed on a trust ~~protector~~ **DIRECTOR** in section
9 ~~7809(1).~~ **7703A(4) AND (5).**

10 (i) The duty under section 7814(2)(a) to (c) to provide
11 beneficiaries with the terms of the trust and information about the
12 trust's property, and to notify qualified trust beneficiaries of an
13 irrevocable trust of the existence of the trust and the identity of
14 the trustee.

15 (j) The power of the court to order the trustee to provide
16 statements of account and other information ~~pursuant to~~ **UNDER**
17 section 7814(4).

18 (k) The effect of an exculpatory term under section ~~7809(8)~~
19 **7703A(5) (B)** or 7908.

20 **(l) THE EFFECT OF A RELEASE OF A TRUSTEE OR TRUST DIRECTOR**
21 **FROM LIABILITY FOR BREACH OF TRUST UNDER SECTION 7703A(8).**

22 **(M)** ~~(l)~~ The rights under sections 7910 to 7913 of a person
23 other than a trustee or beneficiary.

24 **(N)** ~~(m)~~ Periods of limitation under this article for
25 commencing a judicial proceeding.

26 **(O)** ~~(n)~~ The power of the court to take action and exercise
27 jurisdiction.

1 **(P)** ~~(e)~~—The subject-matter jurisdiction of the court and venue
2 for commencing a proceeding as provided in sections 7203 and 7204.

3 **(Q)** ~~(p)~~—The requirement under section 7113 that a provision in
4 a trust that purports to penalize an interested person for
5 contesting the trust or instituting another proceeding relating to
6 the trust shall not be given effect if probable cause exists for
7 instituting a proceeding contesting the trust or another proceeding
8 relating to the trust.

9 **(R) THE REQUIREMENT UNDER SECTION 7703B(2) (D) REGARDING THE**
10 **ELIGIBILITY OF A TRUST'S SOLE BENEFICIARY TO BE A SEPARATE TRUSTEE**
11 **AS THAT TERM IS DEFINED IN SECTION 7703B.**

12 Sec. 7108. (1) Without precluding other means for establishing
13 a sufficient connection with the designated jurisdiction, terms of
14 a trust designating the principal place of administration are valid
15 and controlling if either ~~ANY~~ of the following ~~applies~~:**APPLY:**

16 (a) A trustee's principal place of business is located in or a
17 trustee is a resident of the designated jurisdiction.

18 **(B) A TRUST DIRECTOR'S PRINCIPAL PLACE OF BUSINESS IS LOCATED**
19 **IN, OR A TRUST DIRECTOR IS A RESIDENT OF, THE DESIGNATED**
20 **JURISDICTION.**

21 **(C)** ~~(b)~~—All or part of the administration occurs in the
22 designated jurisdiction.

23 (2) A trustee is under a continuing duty to administer the
24 trust at a place appropriate to its purposes, its administration,
25 and the interests of the qualified trust beneficiaries.

26 (3) Without precluding the right of the court to order,
27 approve, or disapprove a transfer, the trustee, in furtherance of

1 the duty prescribed by subsection (2), may transfer the trust's
2 principal place of administration to another state or to a
3 jurisdiction outside of the United States.

4 (4) The trustee shall notify the qualified trust beneficiaries
5 in writing of a proposed transfer of a trust's principal place of
6 administration not less than 63 days before initiating the
7 transfer. The notice of proposed transfer ~~shall~~**MUST** include all of
8 the following:

9 (a) The name of the jurisdiction to which the principal place
10 of administration is to be transferred.

11 (b) The address and telephone number at the new location at
12 which the trustee can be contacted.

13 (c) An explanation of the reasons for the proposed transfer.

14 (d) The date on which the proposed transfer is anticipated to
15 occur.

16 (e) In a conspicuous manner, the date, not less than 63 days
17 after the giving of the notice, by which a qualified trust
18 beneficiary must notify the trustee in writing of an objection to
19 the proposed transfer.

20 (5) The authority of a trustee under this section to transfer
21 a trust's principal place of administration without the approval of
22 the court terminates if a qualified trust beneficiary notifies the
23 trustee in writing of an objection to the proposed transfer on or
24 before the date specified in the notice.

25 (6) In connection with a transfer of the trust's principal
26 place of administration, the trustee may transfer some or all of
27 the trust property to a successor trustee designated in the terms

1 of the trust or appointed ~~pursuant to~~ **UNDER** section 7704.

2 (7) The view of an adult beneficiary ~~shall~~ **MUST** be given
3 weight in determining the suitability of the trustee and the place
4 of administration.

5 Sec. 7411. (1) Subject to subsection (2), a noncharitable
6 irrevocable trust may be modified or terminated in any of the
7 following ways:

8 (a) By the court ~~upon~~ **ON** the consent of the trustee and the
9 qualified trust beneficiaries, if the court concludes that the
10 modification or termination of the trust is consistent with the
11 material purposes of the trust or that continuance of the trust is
12 not necessary to achieve any material purpose of the trust.

13 (b) ~~Upon~~ **ON** the consent of the qualified trust beneficiaries
14 and a ~~trust protector who is~~ **PERSON OR COMMITTEE THAT IS** given the
15 power under the terms of the trust to grant, veto, or withhold
16 approval of termination or modification of the trust.

17 (c) By a trustee or ~~trust protector to whom~~ **OTHER PERSON OR**
18 **COMMITTEE THAT IS GIVEN** a power **BY THE TERMS OF THE TRUST** to direct
19 the termination or modification of the trust. ~~has been given by the~~
20 ~~terms of a trust.~~

21 (2) Subsection (1) does not apply to irrevocable trusts
22 created before or to revocable trusts that become irrevocable
23 before April 1, 2010.

24 (3) Notice of any proceeding to terminate or modify a trust
25 ~~shall~~ **MUST** be given to the settlor, the settlor's representative if
26 the petitioner has a reasonable basis to believe the settlor is an
27 incapacitated individual, the trust ~~protector,~~ **DIRECTOR**, if any, **A**

1 **POWERHOLDER DESCRIBED IN SUBSECTION (1) (B) OR (C), IF ANY,** the
 2 trustee, and any other person named in the terms of the trust to
 3 receive notice of such a proceeding.

4 (4) ~~Upon~~**ON** termination of a trust under subsection (1), the
 5 trustee shall distribute the trust property as agreed by the
 6 qualified trust beneficiaries.

7 (5) If the trustee fails or refuses to consent, or fewer than
 8 all of the qualified trust beneficiaries consent, to a proposed
 9 modification or termination of the trust under subsection (1), the
 10 modification or termination may be approved by the court if the
 11 court is satisfied that both of the following apply:

12 (a) If the trustee and all of the qualified trust
 13 beneficiaries had consented, the trust could have been modified or
 14 terminated under this section.

15 (b) The interests of a qualified trust beneficiary who does
 16 not consent will be adequately protected.

17 (6) As used in this section, "settlor's representative" means
 18 the settlor's agent under a durable power of attorney, if the agent
 19 is known to the petitioner, or, if an agent has not been appointed,
 20 the settlor's conservator, plenary guardian, or partial guardian.

21 Sec. 7703. (1) ~~Cotrustees~~**EXCEPT AS OTHERWISE PROVIDED IN THIS**
 22 **SECTION, COTRUSTEES** shall act by majority decision.

23 ~~—— (2) If a vacancy occurs in a cotrusteeship, the remaining~~
 24 ~~cotrustee or cotrustees may act for the trust.~~

25 **(2)** ~~(3)~~A cotrustee shall participate in the performance of a
 26 trustee's function unless the cotrustee is unavailable to perform
 27 the function because of absence, illness, disqualification under

1 other law, or other temporary incapacity or the cotrustee has
2 properly delegated the performance of the function to another
3 trustee.

4 **(3)** ~~(4)~~—If prompt action is necessary to avoid injury to the
5 trust property, the remaining cotrustee or a majority of the
6 remaining cotrustees may act for the trust if either of the
7 following applies:

8 (a) A cotrustee is unavailable to perform duties because of
9 absence, illness, disqualification under other law, or other
10 temporary incapacity.

11 (b) A cotrustee who is available fails or refuses to
12 participate in the administration of the trust following notice
13 from the remaining cotrustee or cotrustees.

14 **(4)** ~~(5)~~—By agreement of the trustees, a trustee may delegate
15 to a cotrustee 1 or both of the following:

16 (a) Any power that is permitted to be delegated ~~pursuant to~~
17 **UNDER** section 7817(v) to an agent who is not a trustee.

18 (b) Any power that can only be performed by a trustee, if
19 notice of the delegation is provided to the qualified trust
20 beneficiaries within 28 days.

21 **(5)** ~~(6)~~—Unless a delegation under subsection ~~(5)~~ **(4)** was
22 irrevocable, a trustee may revoke the delegation previously made. A
23 revocation under this subsection ~~shall~~ **MUST** be in writing and ~~shall~~
24 **MUST** be given to all of the remaining cotrustees. If notice of the
25 delegation was required to be provided to the qualified trust
26 beneficiaries, notice of the revocation ~~shall~~ **MUST** be given to the
27 qualified trust beneficiaries within 28 days after the revocation.

1 (6) ~~(7)~~—If 2 or more trustees own securities, their acts with
2 respect to voting have 1 of the following effects:

3 (a) If only 1 trustee votes, in person or by proxy, that
4 trustee's act binds all of the trustees.

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

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

10 (7) ~~(8)~~—A trustee is not liable for the action or omission of
11 a cotrustee if all of the following apply:

12 (a) The trustee is not unavailable to perform a trustee's
13 function because of absence, illness, disqualification under other
14 law, or other incapacity or has not properly delegated the
15 performance of the function to a cotrustee.

16 (b) The trustee is aware of but does not join in the action or
17 omission of the cotrustee.

18 (c) The trustee dissents in writing to each cotrustee at or
19 before the time of the action or omission.

20 (8) ~~(9)~~—A trustee ~~who~~ **THAT** is not aware of an action by a
21 cotrustee is not liable for that action unless the trustee should
22 have known that the action would be taken and, if the trustee had
23 known, would have had an affirmative duty to take action to prevent
24 the action.

25 (9) ~~(10)~~—A dissenting trustee ~~who~~ **THAT** joins in an action at
26 the direction of the majority of the trustees and ~~who~~ **THAT** notified
27 any cotrustee in writing of the dissent at or before the time of

1 the action is not liable for the action.

2 (10) NOTWITHSTANDING ANY PROVISION IN THIS SECTION, THE TERMS
3 OF A TRUST MAY RELIEVE A COTRUSTEE FROM DUTY AND LIABILITY WITH
4 RESPECT TO ANOTHER COTRUSTEE'S EXERCISE OR NONEXERCISE OF A POWER
5 OF THE OTHER COTRUSTEE TO THE SAME EXTENT THAT A DIRECTED TRUSTEE
6 DESCRIBED IN SECTION 7703A MAY BE RELIEVED FROM DUTY AND LIABILITY
7 WITH RESPECT TO A TRUST DIRECTOR'S POWER OF DIRECTION UNDER SECTION
8 7703A.

9 Enacting section 1. Section 7809 of the estates and protected
10 individuals code, 1998 PA 386, MCL 700.7809, is repealed.

11 Enacting section 2. This amendatory act does not take effect
12 unless Senate Bill No. _____ or House Bill No. 6130 (request no.
13 05224'17) of the 99th Legislature is enacted into law.