

HOUSE BILL No. 6471

November 7, 2018, Introduced by Reps. Elder and Lucido and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 7103, 7105, 7110, 7302, and 7402 (MCL 700.7103, 700.7105, 700.7110, 700.7302, and 700.7402), section 7103 as amended by 2012 PA 483, section 7105 as amended by 2010 PA 325, and section 7110 as added and sections 7302 and 7402 as amended by 2009 PA 46, and by adding sections 7409 and 7409a.

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 meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal

1 revenue code **OF 1986**, 26 USC 2041 and 2514.

2 (c) "Charitable trust" means a trust, or portion of a trust,
3 created for a charitable purpose described in section 7405(1) **IF**
4 **THE CHARITABLE PURPOSE IS A MATERIAL PURPOSE OF THE TRUST.**

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 consent of the
6 trustee or a person holding an adverse interest.

7 (g) "Qualified trust beneficiary" means ~~a~~**EITHER OF THE**
8 **FOLLOWING:**

9 (i) **A** trust beneficiary **AS** to whom **A SETTLOR'S INTENT TO**
10 **BENEFIT IS A MATERIAL PURPOSE OF THE TRUST AND TO WHOM** 1 or more of
11 the following apply on the date the trust beneficiary's
12 qualification is determined:

13 (A) ~~(i)~~The trust beneficiary is a distributee or permissible
14 distributee of trust income or principal.

15 (B) ~~(ii)~~The trust beneficiary would be a distributee or
16 permissible distributee of trust income or principal if the
17 interests of the distributees under the trust described in
18 ~~subparagraph (i)~~**SUB-SUBPARAGRAPH (A)** terminated on that date
19 without causing the trust to terminate.

20 (C) ~~(iii)~~The trust beneficiary would be a distributee or
21 permissible distributee of trust income or principal if the trust
22 terminated on that date.

23 (ii) **IF ON THE DATE A TRUST BENEFICIARY'S QUALIFICATION IS**
24 **DETERMINED THERE IS NO TRUST BENEFICIARY DESCRIBED IN SUBPARAGRAPH**
25 **(i) , A TRUST BENEFICIARY TO WHOM 1 OR MORE OF THE FOLLOWING APPLY**
26 **ON THE DATE THE TRUST BENEFICIARY'S QUALIFICATION IS DETERMINED:**

27 (A) **THE TRUST BENEFICIARY IS A DISTRIBUTEE OR PERMISSIBLE**

1 DISTRIBUTE OF TRUST INCOME OR PRINCIPAL.

2 (B) THE TRUST BENEFICIARY WOULD BE A DISTRIBUTE OR
3 PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL IF THE
4 INTERESTS OF THE DISTRIBUTEES UNDER THE TRUST DESCRIBED IN SUB-
5 SUBPARAGRAPH (A) TERMINATED ON THAT DATE WITHOUT CAUSING THE TRUST
6 TO TERMINATE.

7 (C) THE TRUST BENEFICIARY WOULD BE A DISTRIBUTE OR
8 PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL IF THE TRUST
9 TERMINATED ON THAT DATE.

10 (h) "Revocable", as applied to a trust, means revocable by the
11 settlor without the consent of the trustee or a person holding an
12 adverse interest. A trust's characterization as revocable is not
13 affected by the settlor's lack of capacity to exercise the power of
14 revocation, regardless of whether an agent of the settlor under a
15 durable power of attorney, a conservator of the settlor, or a
16 plenary guardian of the settlor is serving.

17 (i) "Settlor" means a person, including a testator or a
18 trustee, who creates a trust. If more than 1 person creates a
19 trust, each person is a settlor of the portion of the trust
20 property attributable to that person's contribution. The lapse,
21 release, or waiver of a power of appointment ~~shall~~**DOES** not cause
22 the holder of a power of appointment to be treated as a settlor of
23 the trust.

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

27 (k) "Support provision" means a provision in a trust that

1 provides the trustee shall distribute income or principal or both
2 for the health, education, support, or maintenance of a trust
3 beneficiary, or language of similar import. A provision in a trust
4 that provides a trustee has discretion whether to distribute income
5 or principal or both for these purposes or to select from among a
6 class of beneficiaries to receive distributions ~~pursuant to~~ **UNDER**
7 the trust provision is not a support provision, but rather is a
8 discretionary trust provision.

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

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

13 (ii) The person holds a power of appointment over trust
14 property in a capacity other than that of trustee.

15 (m) "Trust instrument" means a governing instrument that
16 contains the terms of the trust, including any amendment to a term
17 of the trust.

18 (n) "Trust protector" means a person or committee of persons
19 appointed pursuant to the terms of the trust who has the power to
20 direct certain actions with respect to the trust. Trust protector
21 does not include either of the following:

22 (i) The settlor of a trust.

23 (ii) The holder of a power of appointment.

24 Sec. 7105. (1) Except as otherwise provided in the terms of
25 the trust, this article governs the duties and powers of a trustee,
26 relations among trustees, and the rights and interests of a trust
27 beneficiary.

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

3 (a) The requirements under section 7401 for creating a trust.

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

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

9 **(D) THE DURATIONAL LIMITS SPECIFIED IN SECTION 7409 FOR THE**
10 **CARE OF ANIMALS AND IN SECTION 7409A FOR OTHER NONCHARITABLE**
11 **PURPOSE TRUSTS.**

12 **(E)** ~~(d)~~—The power of the court to modify or terminate a trust
13 under sections 7410, 7412(1) to (3), 7414(2), 7415, and 7416.

14 **(F)** ~~(e)~~—The effect of a spendthrift provision, a support
15 provision, and a discretionary trust provision on the rights of
16 certain creditors and assignees to reach a trust as provided in
17 part 5.

18 **(G)** ~~(f)~~—The power of the court under section 7702 to require,
19 dispense with, or modify or terminate a bond.

20 **(H)** ~~(g)~~—The power of the court under section 7708(2) to adjust
21 a trustee's compensation specified in the terms of the trust that
22 is unreasonably low or high.

23 **(I)** ~~(h)~~—Except as permitted under section 7809(2), the
24 obligations imposed on a trust protector in section 7809(1).

25 **(J)** ~~(i)~~—The duty under section 7814(2) (a) to (c) to provide
26 beneficiaries with the terms of the trust and information about the
27 trust's property, and to notify qualified trust beneficiaries of an

1 irrevocable trust of the existence of the trust and the identity of
2 the trustee.

3 (K) ~~(j)~~—The power of the court to order the trustee to provide
4 statements of account and other information pursuant to section
5 7814(4).

6 (L) ~~(k)~~—The effect of an exculpatory term under section
7 7809(8) or 7908.

8 (M) ~~(l)~~—The rights under sections 7910 to 7913 of a person
9 other than a trustee or beneficiary.

10 (N) ~~(m)~~—Periods of limitation under this article for
11 commencing a judicial proceeding.

12 (O) ~~(n)~~—The power of the court to take action and exercise
13 jurisdiction.

14 (P) ~~(o)~~—The subject-matter jurisdiction of the court and venue
15 for commencing a proceeding as provided in sections 7203 and 7204.

16 (Q) ~~(p)~~—The requirement under section 7113 that a provision in
17 a trust that purports to penalize an interested person for
18 contesting the trust or instituting another proceeding relating to
19 the trust ~~shall~~ **MUST** not be given effect if probable cause exists
20 for instituting a proceeding contesting the trust or another
21 proceeding relating to the trust.

22 Sec. 7110. (1) A charitable organization expressly named in
23 the terms of a trust to receive distributions under the terms of a
24 charitable trust has the rights of a qualified trust beneficiary
25 under this article if 1 or more of the following are applicable to
26 the charitable organization on the date the charitable
27 organization's qualification is being determined:

1 (a) The charitable organization is a distributee or
2 permissible distributee of trust income or principal.

3 (b) The charitable organization would be a distributee or
4 permissible distributee of trust income or principal on the
5 termination of the interests of other distributees or permissible
6 distributees then receiving or eligible to receive distributions.

7 (c) The charitable organization would be a distributee or
8 permissible distributee of trust income or principal if the trust
9 terminated on that date.

10 (2) A person appointed to enforce a trust created for the care
11 of an animal **UNDER SECTION 7409** or another noncharitable ~~purpose as~~
12 ~~provided in section 2722~~ **TRUST UNDER SECTION 7409A** has the rights
13 of a qualified trust beneficiary under this article.

14 (3) The attorney general of this state has the following
15 rights with respect to a charitable trust having its principal
16 place of administration in this state:

17 (a) The rights provided in the supervision of trustees for
18 charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

19 (b) The right to notice of any judicial proceeding and any
20 nonjudicial settlement agreement under section 7111.

21 Sec. 7302. (1) ~~The~~ **TO THE EXTENT THERE IS NO CONFLICT OF**
22 **INTEREST BETWEEN THE HOLDER OF A POWER OF APPOINTMENT AND THE**
23 **PERSON REPRESENTED WITH RESPECT TO A PARTICULAR QUESTION OR**
24 **DISPUTE, THE** holder of a ~~power of revocation or amendment or a~~
25 ~~presently exercisable or testamentary general or special power of~~
26 **appointment, INCLUDING A POWER OF APPOINTMENT IN THE FORM OF A**
27 **POWER OF AMENDMENT OR REVOCATION,** may represent and bind a person

~~whose~~ **TO THE EXTENT THE PERSON'S** interest, as a permissible appointee, taker in default, or otherwise, is subject to the power. For the purpose, however, of granting consent or approval to modification or termination of a trust or to deviation from its terms, including consent or approval to a settlement agreement described in section 7111, only the holder of a presently exercisable or testamentary general power of appointment may represent and bind such a person.

(2) FOR PURPOSES OF SUBSECTION (1), BOTH OF THE FOLLOWING APPLY:

(A) THERE IS NO CONFLICT OF INTEREST BETWEEN THE HOLDER OF A NONFIDUCIARY POWER OF APPOINTMENT AND A PERSON WHOSE INTEREST IS SUBJECT TO THE POWER TO THE EXTENT THE SUBJECT INTEREST IS LIABLE TO BE EXTINGUISHED BY AN EXERCISE OF THE POWER.

(B) IF A POWER OF APPOINTMENT IS SUBJECT TO A CONDITION PRECEDENT OTHER THAN THE DEATH OF THE HOLDER OF A TESTAMENTARY POWER, NO INTEREST IS SUBJECT TO THE POWER UNTIL THE CONDITION PRECEDENT IS SATISFIED.

(3) AS USED IN THIS SECTION, "NONFIDUCIARY" MEANS, WITH RESPECT TO A POWER OF APPOINTMENT, THAT THE POWER IS NOT HELD IN A FIDUCIARY CAPACITY.

Sec. 7402. (1) A trust is created only if all of the following apply:

(a) The settlor has capacity to create a trust.

(b) The settlor indicates an intention to create the trust.

(c) The trust has a definite beneficiary or is either of the following:

1 (i) A charitable trust.

2 (ii) A trust for a noncharitable purpose **UNDER SECTION 7409A**
3 or **A TRUST** for the care of an animal ~~, as provided in section~~
4 ~~2722.~~ **UNDER SECTION 7409.**

5 (d) The trustee has duties to perform.

6 (e) The same person is not the sole trustee and sole
7 beneficiary.

8 (2) A trust beneficiary is definite if the trust beneficiary
9 can be ascertained now or in the future, subject to any applicable
10 rule against perpetuities.

11 (3) A power in a trustee to select a trust beneficiary from an
12 indefinite class is valid only in a charitable trust.

13 **SEC. 7409. (1) A TRUST MAY BE CREATED TO PROVIDE FOR THE CARE**
14 **OF A DESIGNATED DOMESTIC PET OR ANIMAL ALIVE DURING THE SETTLOR'S**
15 **LIFETIME. A TRUST CREATED UNDER THIS SUBSECTION TERMINATES ON THE**
16 **DEATH OF THE ANIMAL OR, IF THE TRUST WAS CREATED TO PROVIDE FOR THE**
17 **CARE OF MORE THAN 1 DOMESTIC OR PET ANIMAL ALIVE DURING THE**
18 **SETTLOR'S LIFETIME, ON THE DEATH OF THE LAST SURVIVING ANIMAL.**

19 **(2) A TRUST AUTHORIZED UNDER THIS SECTION MAY BE ENFORCED BY A**
20 **PERSON APPOINTED IN THE TERMS OF THE TRUST OR, IF THERE IS NOT A**
21 **PERSON APPOINTED IN THE TERMS OF THE TRUST, BY A PERSON APPOINTED**
22 **BY THE COURT. A PERSON THAT HAS AN INTEREST IN THE WELFARE OF AN**
23 **ANIMAL FOR WHICH THE TRUST IS CREATED MAY REQUEST THE COURT TO**
24 **APPOINT A PERSON TO ENFORCE THE TRUST OR TO REMOVE A PERSON**
25 **APPOINTED IN THE TERMS OF THE TRUST.**

26 **(3) PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE**
27 **APPLIED ONLY TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT**

1 DETERMINES THAT THE VALUE OF THE TRUST PROPERTY EXCEEDS THE AMOUNT
2 REQUIRED FOR THE INTENDED USE. EXCEPT AS OTHERWISE PROVIDED IN THE
3 TERMS OF THE TRUST, PROPERTY NOT REQUIRED FOR THE INTENDED USE MUST
4 BE DISTRIBUTED TO THE SETTLOR, IF THEN LIVING, OR OTHERWISE TO THE
5 SETTLOR'S SUCCESSORS IN INTEREST.

6 SEC. 7409A. EXCEPT AS OTHERWISE PROVIDED IN SECTION 7409 OR
7 ANY OTHER LAW, THE FOLLOWING RULES APPLY:

8 (A) A TRUST MAY BE CREATED FOR A NONCHARITABLE PURPOSE WITHOUT
9 A DEFINITE OR DEFINITELY ASCERTAINABLE BENEFICIARY OR FOR A
10 NONCHARITABLE BUT OTHERWISE VALID PURPOSE TO BE SELECTED BY THE
11 TRUSTEE. A TRUST CREATED UNDER THIS SECTION MAY BE PERFORMED BY THE
12 TRUSTEE ACCORDING TO THE TERMS OF THE TRUST FOR NOT MORE THAN 25
13 YEARS WHETHER OR NOT THE TERMS OF THE TRUST CONTEMPLATE A LONGER
14 DURATION.

15 (B) A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A
16 PERSON APPOINTED IN THE TERMS OF THE TRUST OR, IF THERE IS NOT A
17 PERSON APPOINTED IN THE TERMS OF THE TRUST, BY A PERSON APPOINTED
18 BY THE COURT.

19 (C) PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE
20 APPLIED ONLY TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT
21 DETERMINES THAT THE VALUE OF THE TRUST PROPERTY EXCEEDS THE AMOUNT
22 REQUIRED FOR THE INTENDED USE. EXCEPT AS OTHERWISE PROVIDED IN THE
23 TERMS OF THE TRUST, PROPERTY NOT REQUIRED FOR THE INTENDED USE MUST
24 BE DISTRIBUTED TO THE SETTLOR, IF THEN LIVING, OR OTHERWISE TO THE
25 SETTLOR'S SUCCESSORS IN INTEREST.

26 Enacting section 1. This amendatory act does not take effect
27 unless Senate Bill No. _____ or House Bill No. 6468 (request no.

1 06613'18) of the 99th Legislature is enacted into law.