

SENATE BILL No. 905

March 15, 2018, Introduced by Senator JONES and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
(MCL 700.1101 to 700.8206) by adding section 7509.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 7509. (1) ANY PROPERTY CONVEYED BY A SETTLOR OR A
2 SETTLOR'S SPOUSE, OR BOTH, TO A TRUSTEE OF 1 OR MORE TRUSTS, AND
3 THE PROCEEDS OF THAT PROPERTY, HAVE THE SAME IMMUNITY FROM THE
4 CLAIMS OF EACH SPOUSE'S SEPARATE CREDITORS IN THE SAME MANNER AS IF
5 THE PROPERTY OR ITS PROCEEDS WERE OWNED BY THE SPOUSES AS TENANTS
6 BY THE ENTIRETY, WHILE ALL OF THE FOLLOWING APPLY:

7 (A) THE SPOUSES REMAIN MARRIED.

8 (B) THE PROPERTY OR ITS PROCEEDS CONTINUE TO BE HELD IN TRUST
9 BY A TRUSTEE.

1 (C) THE TRUST OR TRUSTS ARE REVOCABLE BY EITHER SPOUSE ACTING
2 ALONE OR BOTH SPOUSES ACTING TOGETHER.

3 (D) EACH SPOUSE IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF
4 THE TRUST OR TRUSTS.

5 (E) THE TRUST INSTRUMENT, DEED, OR OTHER INSTRUMENT OF
6 CONVEYANCE PROVIDES THAT THIS SECTION APPLIES TO THE PROPERTY OR
7 ITS PROCEEDS.

8 (2) ON THE DEATH OF THE FIRST SPOUSE, ALL OF THE FOLLOWING
9 APPLY:

10 (A) ALL PROPERTY HELD IN TRUST THAT, UNDER SUBSECTION (1), WAS
11 IMMUNE FROM THE CLAIMS OF THE DECEASED SPOUSE'S SEPARATE CREDITORS
12 IMMEDIATELY BEFORE HIS OR HER DEATH CONTINUES TO HAVE IMMUNITY FROM
13 THE CLAIMS OF THE DECEDENT'S SEPARATE CREDITORS AS IF BOTH SPOUSES
14 WERE STILL ALIVE.

15 (B) TO THE EXTENT THAT THE SURVIVING SPOUSE REMAINS A
16 DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF THE TRUST OR TRUSTS AND
17 HAS THE POWER, EXERCISABLE IN HIS OR HER INDIVIDUAL CAPACITY, TO
18 VEST INDIVIDUALLY IN THE SURVIVING SPOUSE TITLE TO THE PROPERTY
19 THAT, UNDER SUBSECTION (1), WAS IMMUNE FROM THE CLAIMS OF THE
20 DECEASED SPOUSE'S SEPARATE CREDITORS, THE PROPERTY IS SUBJECT TO
21 THE CLAIMS OF THE SEPARATE CREDITORS OF THE SURVIVING SPOUSE.

22 (C) IF THE SURVIVING SPOUSE REMAINS A DISTRIBUTE OR
23 PERMISSIBLE DISTRIBUTE OF THE TRUST OR TRUSTS, BUT DOES NOT HAVE
24 THE POWER, EXERCISABLE IN HIS OR HER INDIVIDUAL CAPACITY, TO VEST
25 INDIVIDUALLY IN THE SURVIVING SPOUSE TITLE TO THE PROPERTY THAT,
26 UNDER SUBSECTION (1), WAS IMMUNE FROM CLAIMS OF EACH SPOUSE'S
27 SEPARATE CREDITORS, THE PROPERTY CONTINUES TO HAVE IMMUNITY FROM

1 THE CLAIMS OF THE SEPARATE CREDITORS OF THE SURVIVING SPOUSE.

2 (3) THE IMMUNITY FROM THE CLAIMS OF SEPARATE CREDITORS UNDER
3 SUBSECTIONS (1) AND (2) MAY BE WAIVED BY THE EXPRESS PROVISIONS OF
4 A TRUST INSTRUMENT, DEED, OR OTHER INSTRUMENT OF CONVEYANCE, OR BY
5 THE WRITTEN CONSENT OF BOTH SPOUSES, AS TO ANY SPECIFIC CREDITOR OR
6 ANY SPECIFICALLY DESCRIBED TRUST PROPERTY, INCLUDING ALL SEPARATE
7 CREDITORS OF A SPOUSE OR ALL PROPERTY CONVEYED TO A TRUSTEE.

8 (4) ON THE REVOCATION OF A TRUST DESCRIBED IN SUBSECTION (1),
9 ALL OF THE PROPERTY HELD BY THE TRUSTEE OF THE TRUST AT THE TIME OF
10 THE REVOCATION IS CONSIDERED TO BE HELD BY BOTH SPOUSES AS TENANTS
11 BY THE ENTIRETY.

12 (5) IN A DISPUTE RELATING TO THE IMMUNITY OF TRUST PROPERTY
13 FROM THE CLAIM OF EITHER SPOUSE'S SEPARATE CREDITOR UNDER THIS
14 SECTION, THE CREDITOR HAS THE BURDEN OF PROVING, BY CLEAR AND
15 CONVINCING EVIDENCE, THAT THE TRUST PROPERTY IS NOT IMMUNE FROM THE
16 CREDITOR'S CLAIMS.

17 (6) A TRANSFER TO A TRUST DESCRIBED IN SUBSECTION (1) DOES NOT
18 AFFECT OR CHANGE ANY MARITAL PROPERTY RIGHTS OF EITHER SPOUSE TO
19 THE TRANSFERRED PROPERTY OR INTEREST IN THE TRANSFERRED PROPERTY
20 IMMEDIATELY BEFORE THE TRANSFER IN THE EVENT OF DISSOLUTION OF
21 MARRIAGE OF THE SPOUSES, UNLESS BOTH SPOUSES EXPRESSLY AGREE
22 OTHERWISE IN WRITING. ON ENTRY OF A JUDGMENT OF DIVORCE OR
23 ANNULMENT BETWEEN THE SPOUSES, THE IMMUNITY FROM THE CLAIMS OF
24 SEPARATE CREDITORS UNDER SUBSECTION (1) TERMINATES.

25 (7) THIS SECTION APPLIES ONLY TO PROPERTY CONVEYED TO A
26 TRUSTEE AFTER DECEMBER 31, 2018, OR HELD BY A TRUSTEE ACTING
27 PURSUANT TO A TRUST INSTRUMENT DATED AFTER DECEMBER 31, 2018.

1 (8) AS USED IN THIS SECTION, "PROCEEDS" MEANS:

2 (A) PROPERTY ACQUIRED BY A TRUSTEE ON THE SALE, LEASE,
3 LICENSE, EXCHANGE, OR OTHER DISPOSITION OF PROPERTY HELD BY A
4 TRUSTEE.

5 (B) INTEREST, DIVIDENDS, RENTS, AND OTHER PROPERTY COLLECTED
6 BY A TRUSTEE ON, OR DISTRIBUTED ON ACCOUNT OF, PROPERTY HELD BY A
7 TRUSTEE.

8 (C) RIGHTS ARISING OUT OF PROPERTY HELD BY A TRUSTEE.

9 (D) CLAIMS AND RESULTING DAMAGE AWARDS AND SETTLEMENT PROCEEDS
10 ARISING OUT OF THE LOSS, NONCONFORMITY, OR INTERFERENCE WITH THE
11 USE OF, DEFECTS OR INFRINGEMENT OF RIGHTS IN, OR DAMAGE TO,
12 PROPERTY HELD BY A TRUSTEE.

13 (E) INSURANCE PROCEEDS OR BENEFITS PAYABLE BY REASON OF THE
14 LOSS OR NONCONFORMITY OF, DEFECTS OR INFRINGEMENT OF RIGHTS IN, OR
15 DAMAGE TO, PROPERTY HELD BY A TRUSTEE.

16 (F) PROPERTY HELD BY A TRUSTEE THAT IS OTHERWISE TRACEABLE TO
17 PROPERTY ORIGINALLY CONVEYED TO A TRUSTEE OR THE PROPERTY PROCEEDS
18 DESCRIBED IN SUBDIVISIONS (A) TO (E).