



PROBATE & ESTATE PLANNING SECTION

Agenda and Attachments for

Saturday, October 14, 2023

Meeting of Committee on Special Projects (CSP)

and

Meeting of the Council of the Probate and Estate Planning Section

at Interlochen Center for the Arts
4000 J. Maddy Parkway, Interlochen, MI 49643

Or *via* Zoom

**Probate & Estate Planning Section of the
State Bar of Michigan**

You are invited to the October meetings of the Committee on Special Projects (CSP) and
the Council of the Probate & Estate Planning Section:

Saturday, October 14, beginning at 9 AM
at Interlochen Center for the Arts
4000 J. Maddy Parkway, Interlochen, MI 49643

Remote participation by Zoom will be available. So, you are also invited . . .

to a Zoom meeting.

When: Oct 14, 2023, 09:00 AM Eastern Time (US and Canada)

Register in advance for this meeting:

<https://us02web.zoom.us/meeting/register/tZAscuCvqzwtHdbirRqZfT-5L6BsW-7oRGai>

After registering, you will receive a confirmation email containing information about joining the meeting.

If you are calling in by phone, email your name and phone number to Angela Hentkowski

ahentkowski@stewardsheridan.com, *we will put your name in a zoom user list that*

will identify you by name when you call in.

Please note that the Zoom feature of these meetings entails that they will be recorded.

This will be a regular in person and remote meetings of the Council of the Probate & Estate Planning Section. The Council meeting will be preceded by a meeting of the Council's Committee on Special Projects (CSP), which will begin at 9:00 AM. The CSP meeting will end at about 10:15 AM, and the Council meeting will begin shortly thereafter. The agenda and meeting materials will be posted on the Probate & Estate Planning Section page of the SBM website. Once those things are posted, you should be able to download them from: <http://connect.michbar.org/probate/events/schedule>.

Richard C. Mills
Section Secretary

SMITH HAUGHEY RICE & ROEGGE
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**Officers of the Council
for 2023-2024 Term**

Office	Officer
Chairperson	James P. Spica
Chairperson Elect	Katie Lynwood
Vice Chairperson	Nathan R. Piwowarski
Secretary	Richard C. Mills
Treasurer	Christine M. Savage

**Council Members
for 2023-2024 Term**

Council Member	Year Elected to Current Term (partial, first or second full term)	Current Term Expires	Eligible after Current Term?
Glazier, Sandra D.	2021 (1 st term)	2024	Yes
Hentkowski, Angela M.	2021 (2 nd term)	2024	No
Mysliwiec, Melisa M. W.	2021 (2 nd term)	2024	No
Nusholtz, Neal	2021 (2 nd term)	2024	No
Sprague, David	2021 (1 st term)	2024	Yes
Wrock, Rebecca K.	2021 (1 st term)	2024	Yes
Mayoras, Andrew W.	2022 (2 nd term)	2025	No
Silver, Kenneth	2022 (2 nd term)	2025	No
Dunnings, Hon. Shauna L.	2022 (1 st term)	2025	Yes
Chalgian, Susan L.	2022 (1 st term)	2025	Yes
Shelton, Michael D.	2022 (1 st term)	2025	Yes
Borst, Daniel W.	2022 (1 st term)	2025	Yes
Augustin, Ernschie	2023 (1 st term)	2026	Yes
Mallory, Alexander S.	2023 (1 st term)	2026	Yes
Anderton V, James F.	2023 (2 nd term)	2026	No
David, Georgette E.	2023 (2 nd term)	2026	No
Hilker, Daniel	2023 (2 nd term)	2026	No
Krueger III, Warren H.	2023 (2 nd term)	2026	No

Ex Officio Members of the Council

Christopher Ballard; Robert D. Brower, Jr.; Douglas G. Chalgian; Henry M. Grix; Mark K. Harder; Philip E. Harter; Dirk C. Hoffius; Shaheen I. Imami; Robert B. Joslyn; Mark E. Kellogg; Kenneth E. Konop; Marguerite Munson Lentz; Nancy L. Little; James H. LoPrete; Richard C. Lowe; David P. Lucas; John D. Mabley; John H. Martin; Michael J. McClory; Douglas A. Mielock; Amy N. Morrissey; Patricia Gormely Prince; Douglas J. Rasmussen; Harold G. Schuitmaker; John A. Scott; David L.J.M. Skidmore; James B. Steward; Thomas F. Sweeney; Fredric A. Sytsma; Marlaine C. Teahan; Lauren M. Underwood; W. Michael Van Haren; Susan S. Westerman; Everett R. Zack

State Bar of Michigan
Probate and Estate Planning Section

2023–24 Standing Committees

Standing Committee	Mission	Chairperson	Members
Amicus Curiae	Review litigants’ applications and Courts’ requests for the Section to sponsor amicus curiae briefs in pending appeals cases relating to probate, and estate and trust planning, and oversee the work of legal counsel retained to prepare and file amicus briefs	Andrew W. Mayoras	Ryan P. Bourjaily Angela Hentkowski Neil J. Marchand Kurt A. Olson David L.J.M. Skidmore Trevor J. Weston Timothy White Scott Kraemer
Annual meeting	Plan the Section’s Annual Meeting	James P. Spica[as Chair]	[Chair only]
Awards	Periodically make recommendations regarding recipients of the Michael Irish Award, and consult with ICLE regarding periodic induction of members in the George A. Cooney Society	Mark E. Kellogg [as immediate past Chair]	David L.J.M. Skidmore David Lucas [as 2nd and 3rd most recent past Chairs]
Budget	Develop the Section’s annual budget	Richard C. Mills [as immediate past Treasurer]	Christine M. Savage Nathan R. Piwowarski [as incoming Treasurer and immediate past Secretary]
Bylaws	Review the Section’s Bylaws, to ensure compliance with State Bar requirements, to include best practices for State Bar Sections, and to assure conformity to current practices and procedures of the Section and the Council, and make recommendations to the Council regarding such matters	David Lucas	Christopher A. Ballard John Roy Castillo Nancy H. Welber
Charitable and Exempt Organizations	Consider federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations, and make recommendations to the Council regarding such matters	Rebecca K. Wrock	Celeste E. Arduino Robin Ferriby Brian Heckman Richard C. Mills John McFarland Kate L. Ringler Matt Wiebe
Citizens Outreach	Provide opportunities for education of the public on matters relating to probate, and estate and trust planning	Kathleen M. Goetsch	Kathleen Cieslik David Lucas Hon. Michael J. McClory Neal Nusholtz Ernschie Augustin

State Bar of Michigan
 Probate and Estate Planning Section
 2023–24 Standing Committees

Committee on Special Projects	Consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Melisa M.W. Mysliwicz	[Committee of the whole]
Court Rules, Forms, & Proceedings	Consider matters relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Georgette E. David	JV Anderton Susan L. Chalgian Hon. Michael L. Jaconette Andrew W. Mayoras Hon. Michael J. McClory Dawn Santamarina Marlaine C. Teahan
Electronic Communications	Oversee all matters relating to electronic and virtual communication matters, and make recommendations to the Council regarding such matters	Angela Hentkowski	Michael G. Lichterman Richard C. Mills [as Secretary]
Ethics & Unauthorized Practice of Law	Consider matters relating to ethics and the unauthorized practice of law with respect to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Alex Mallory	William J. Ard Raymond A. Harris J. David Kerr Neil J. Marchand Robert M. Taylor Amy Rombyer Tripp
Guardianship, Conservatorship, & End of Life Committee	Consider matters relating to Guardianships and Conservatorships, and make recommendations to the Council regarding such matters	Sandra Glazier	William J. Ard Michael W. Bartnik Kimberly Browning Kathleen A. Cieslik Georgette E. David Kathleen M. Goetsch Elizabeth Sue Graziano Raymond A. Harris Hon. Michael L. Jaconette Hon. Michael J. McClory Hon. David M. Murkowski Kurt A. Olson Nathan R. Piwowarski Katie Lynn Ringler Hon. Avery Rose Dawn Santamarina David L.J.M. Skidmore James B. Steward Paul S. Vaidya Karen S. Willard

State Bar of Michigan
 Probate and Estate Planning Section
 2023–24 Standing Committees

Legislation Development and Drafting	Consider matters with respect to statutes relating to probate, and estate and trust legislation, consider the provisions of introduced legislation and legislation anticipated to be introduced with respect to probate, and estate and trust planning, draft proposals for legislation relating to probate, and estate and trust planning, and make recommendations to the Council regarding such matters	Robert P. Tiplady and Richard C. Mills	Aaron A. Bartell Howard H. Collens Georgette David Kathleen M. Goetsch Daniel S. Hilker Michael G. Lichterman David P. Lucas Katie Lynwood Alex Mallory Nathan Piwowarski Christine M. Savage James P. Spica David Sprague Stephen Dunn
Legislation Monitoring & Analysis	Monitor the status of introduced legislation, and legislation anticipated to be introduced, regarding probate, and estate and trust planning, and communicate with the Council and the Legislation Development and Drafting Committee regarding such matters	Michael D. Shelton	Stephen Dunn Brian K. Elder Elizabeth Graziano Katie Lynwood David Sprague
Legislative Testimony	As requested and as available, the Members of the Section will give testimony to the Legislature regarding legislation relating to probate, and estate and trust planning	Melisa M.W. Mysliwiec [as CSP Chair]	[Various Section Members]
Membership	Strengthen relations with Section members, encourage new membership, and promote awareness of, and participation in, Section activities	Angela Hentkowski	Kate L. Ringler Susan L. Chalgian Ernsacie Augustin
Nominating	Nominate candidates to stand for election as the officers of the Section and the members of the Council	David P. Lucas [as most senior immediate past Chair]	David L.J.M Skidmore Mark E. Kellogg [as 1st and 2nd most recent past Chairs]
Planning	Periodically review and update the Section’s Plan of Work	James P. Spica [as Chair]	Katie Lynwood Nathan Piwowarski Richard C. Mills Christine M. Savage Mark E. Kellogg [as Officers and immediate past Chair]

State Bar of Michigan
 Probate and Estate Planning Section
 2023–24 Standing Committees

Probate Institute	Work with ICLE to plan the ICLE Probate and Estate Planning Institute	Nathan Piwowski [as Vice Chair]	[Chair only]
Real Estate	Consider real estate matters relating to probate, and estates and trusts, and make recommendations to the Council regarding such matters	Kenneth F. Silver	Carlos Alvarado-Jorquera Jeffrey S. Ammon William J. Ard Leslie A. Butler J. David Kerr Angela Hentkowski Michael G. Lichterman Richard C. Mills James B. Steward
State Bar & Section Journals	Oversee the publication of the Section’s Journal, and assist in the preparation of periodic theme issues of the State Bar Journal that are dedicated to probate, and estates and trusts	Melisa M.W. Mysliwiec, Managing Editor	Nancy L. Little Neil J. Marchand Richard C. Mills Diane Kuhn Huff Molly P. Petitjean Rebecca K. Wrock Kurt A. Olson
Tax	Consider matters relating to taxation as taxation relates to probate, and estates and trusts, and make recommendations to the Council regarding such matters	JV Anderton	Daniel Borst Jonathan Beer Mark DeLuca Stephen Dunn John McFarland Richard C. Mills Neal Nusholtz Robert Labe Christine M. Savage

The Probate and Estate Planning Section Chair and Chair Elect are ex-officio Members of each Standing Committee.

State Bar of Michigan
Probate and Estate Planning Section

2023–24 Ad Hoc Committees

Ad Hoc Committee	Mission	Chairperson	Members
Assisted Reproductive Technology	Review the 2008 Uniform Probate Code Amendment for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction, and make recommendations to the Council regarding such matters	Nancy H. Welber	Christopher A. Ballard Edward Goldman James P. Spica Lawrence W. Waggoner Nazneen Hasan Christina Lejowski
Electronic Wills	Review proposals for electronic wills, including the Uniform Law Commission’s draft of a Uniform Law, and make recommendations to the Council regarding such matters	Kathleen Cieslik	Kimberly Browning Georgette David Sandra Glazier Douglas A. Mielock Neal Nusholtz Christine M. Savage James P. Spica
Fiduciary Exception to the Attorney-Client Privilege	Consider whether there should be some exception to the rule that beneficiaries of an estate or trust are entitled to production of documents regarding the advice given by an attorney to the fiduciary, and make recommendations to the Council regarding such matters	Warren H. Krueger, III	Aaron A. Bartell Ryan P. Bourjaily
Nonbanking Entity Trust Powers	Consider whether there should be legislation granting trust powers to nonbanking entities, and make recommendations to the Council regarding such matters	James P. Spica and Robert P. Tiplady	JV Anderton Laura L. Brownfield Kathleen Cieslik Elise J. McGee Richard C. Mills Mark K. Harder Carol A. Sewell Joe Viviano
Premarital Agreements	Consider whether there should be legislation regarding marital property agreements, and	Christine M. Savage	Daniel W. Borst Sandra Glazier Stephen Dunn David Sprague Angela Hentkowski Georgette David
Uniform Community Property Disposition at Death Act	Consider the Uniform Community Property Disposition at Death Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Kathleen Cieslik Richard C. Mills Christine M. Savage David Sprague

Undue Influence	Consider the definition of undue influence and attendant evidentiary presumptions, and make recommendations to the Council regarding such matters	Kenneth F. Silver	Sandra Glazier Hon. Michael L. Jaconette Warren H. Krueger, III John Mabley Andrew W. Mayoras Hon. David Murkowski Kurt A. Olson David L.J.M. Skidmore
Uniform Fiduciary Income & Principal Act	Consider the Uniform Fiduciary Income and Principal Act promulgated by the Uniform Law Commission, and make recommendations to the Council regarding such matters	James P. Spica	Anthony Belloli Kathleen Cieslik Marguerite Munson Lentz Richard C. Mills Robert P. Tiplady Joe Viviano
Uniform Partition of Heirs Property Act	Consider the Uniform Partition of Heirs Property Act promulgated by the Uniform Law Commission and make recommendations to the Council regarding the subject of that Act	James P. Spica	Marguerite Munson Lentz Alex Mallory Elizabeth McLachlan Christine Savage David Sprague
Uniform Power of Attorney Act	Consider the Uniform Power of Attorney Act promulgated by the Uniform Law Commission, and make recommendations to the Council regarding such matters	Christine M. Savage	Kathleen A. Cieslik David P. Lucas Alex Mallory Michael D. Shelton James P. Spica David Sprague
Various Issues Involving Death and Divorce	Should EPIC be changed so that a pending divorce affects priority to serve in a fiduciary position; Should Council explore whether EPIC should be changed so that a pending divorce affects intestacy, elective share, exemptions and allowances, etc. Should "affinity" be defined to prevent elimination of stepchildren's gifts by operation of law after divorce or, instead, should there be an exception allowing gifts to stepchildren on a showing of, Perhaps, clear and convincing evidence demonstrating that the Settlor would not have intended the omission of the stepchild?	Daniel Borst Sean Blume	Andy Mayoras Hon. Shauna Dunning Georgette David Katie Lynwood Elizabeth Siefker

The Probate and Estate Planning Section Chair and Chair Elect are ex-officio Members of each Ad Hoc Committee.

State Bar of Michigan
Probate and Estate Planning Section

2023–24 Liaisons

Association	Liaison
Alternative Dispute Resolution Section	John Hohman
Business Law Section	Mark E. Kellogg
Elder Law and Disability Right Section	Angela Hentkowski
Family Law Section	Anthea E. Papista
Institute of Continuing Legal Education	Lindsey DiCesare and Rachael Sedlacek
Law Schools	Savina Mucci
Michigan Bankers Association	David Sprague
Michigan Legal Help/Michigan Bar Foundation	Kathleen Goetsch
Michigan Probate Judges Association	Hon. Shauna Dunnings
Probate Registers	Ryan J. Buck
Real Property Law Section	Kenneth Silver
Supreme Court Administrative Office	Georgette E. David
State Bar	Jennifer Hatter
Taxation Section	Neal Nusholtz
Uniform Law Commission	James P. Spica

The mission of each Liaison is to develop and maintain bilateral communication between his or her association and the Probate and Estate Planning Section of the State Bar of Michigan on matters of mutual interest and concern.

CSP Materials

**MEETING OF THE COMMITTEE ON SPECIAL PROJECTS OF THE
COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN**

**The Committee on Special Projects, or CSP, is our Section’s
“committee of the whole.” The CSP flexibly studies, in depth, a
limited number of topics and makes recommendations to Council.
All Section members are welcome to participate and are able to vote.**

AGENDA

Saturday, October 14, 2023

9:00 – 10:00 AM

In person meeting at the Interlochen Center for the Arts
4000 J. Maddy Parkway, Interlochen, MI 49643

Remote participation by Zoom is available. Register in advance at:

<https://us02web.zoom.us/meeting/register/tZAscuCvqzwtHdbirRqZfT-5L6BsW-7oRGai>

After registering, you will receive a confirmation email containing information about joining the meeting. If you are calling in by phone, please email your name and phone number to Angela Hentkowski at ahentkowski@stewardsheridan.com. We will put your name in a Zoom user list that will identify you by name when you call in.

Jim Spica – Nonbanking Entity Trust Powers Ad Hoc Committee – 1 hour

Re: Review of Committee’s Legislative Proposal

The Committee has developed a draft Michigan Trust Company Act, which is attached as Ex 1A. Corresponding proposed amendments to EPIC and the Qualified Dispositions in Trust Act are attached as Ex 1B, and an Overview of the Michigan Trust Company Act is attached as Ex 1C. The Committee will present the overview to CSP, at the conclusion of which, CSP will be asked to recommend that Council adopt a public policy position in favor of the proposed Michigan Trust Company Act and the corresponding proposed amendments to EPIC and the Qualified Dispositions in Trust Act.

EXHIBIT 1A

Nonbanking Entity Trust Powers Ad Hoc Committee

Proposed Michigan Trust Company Act

AN ACT to authorize small commercial trust companies, family trust companies and foreign family trust companies to exercise trust powers and otherwise act as fiduciaries for or on behalf of clients in this state.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Part 1
General Provisions

[487.16101 Short title]

SECTION 101. SHORT TITLE. This act shall be known and may be cited as the “trust company act”.

SECTION 102. PURPOSES OF ACT. The purposes of this act include all of the following:

(a) To authorize and promote the organization of small commercial trust companies and family trust companies in this state.

(b) To authorize small commercial trust companies, family trust companies and foreign family trust companies to exercise trust powers and otherwise act as fiduciaries for or on behalf of clients in this state.

(c) To regulate licensed trust companies and foreign family trust companies that conduct business in this state.

(d) To safeguard the members of the public who deal with small commercial trust companies acting in a fiduciary capacity.

SECTION. 103. DEFINITIONS. As used in this act:

(a) “Associated person or relation” means, in relation to a family trust company, any of the following:

(i) An entity 25% of the equity interests in which are owned, directly or indirectly, by the company, a family client, a family member or an extended family member.

(ii) An entity that is under common control with the company or is directly or indirectly controlled by the company, a family client, a family member or an extended family member.

(iii) A trust or estate the assets of which are under common control with the company or are directly or indirectly controlled by the company, a family client, a family member or an extended family member.

(iv) The trustee or trust director referred to in subdivision (iii).

(v) The personal representative, executor, administrator, or special such fiduciary of an estate referred to in subdivision (iii).

(b) “Bank” means a bank, foreign bank or out-of-state bank as defined in sections 1201 and 1202 of the banking code of 1999, MCL 487.11201, 487.11202.

(c) “Banking code of 1999” means the banking code of 1999, 1999 PA 276, MCL 487.1110 to MCL 487.15105.

(d) “Branch office” means a trust’s company physical place of business other than its principal office where 1 or more of the company’s directors, managers, officers, committee members, employees or other personnel, in their capacity as such, conduct company business on a non-temporary basis. The physical place of business of an associated person or relation is not a branch office even if 1 or more of the following applies:

(i) The affiliate provides services to the affiliated family trust company.

(ii) An individual who is a director, manager, officer, committee member, agent or employee of the affiliate is also acting as a director, manager, officer, committee member, agent or employee of the affiliated company.

(e) “Client” means a person for or on behalf of whom a trust company or family trust company affiliate exercises fiduciary powers.

(f) “Client account” means a trust, estate, agency, partnership or other relationship in which a trust company is acting as a fiduciary that is distinguishable from all other relationships in which the company is acting as a fiduciary. A single client may have an interest in two or more client accounts and a trust company may hold multiple offices relating to the same client account. Two fiduciary relationships that are treated as separate for federal income tax purposes are distinct client accounts. All fiduciary relationships established solely for 1 client who is an individual or the client and his or her spouse shall be treated as 1 client account. In all other circumstances, whether 1 fiduciary relationship is distinguishable from another shall be determined based on all relevant factors, including the following:

(i) Terms of the governing instruments or governance documents, if any.

(ii) Attendant tax attributes.

(iii) The property that is subject to the relationship or relationships.

(iv) The legal form of the relationship or relationships.

(v) Identity of persons holding legal title to or beneficial interests in the property that is subject to the relationship or relationships and the extent and nature of those interests.

(g) “Client instrument” means a governing instrument or governance document to which a trust company becomes subject in connection with services the company performs for or on behalf of a client of the company.

(h) “Charitable organization” means a non-profit organization, charitable foundation, charitable trust for which 1 or more family clients, other charitable organizations, or non-profit organizations are the only current permissible distributees of trust income or principal, or any other

organization created for any purpose described in section 501(c)(3) of the internal revenue code, 26 USC 501.

(i) "Commissioner" means the director of the department.

(j) "Committee member" means a person acting as a member of a committee formed pursuant to section 407.

(k) "Confidential information" means 1 or more of the following:

(i) Any information required or permitted to be disclosed pursuant to the terms of a governing instrument or section 7814 of the estates and protected individuals code, MCL 700.7814.

(ii) The name and terms of any governing instrument, including any trust instrument, will, amendment of trust, or codicil.

(iii) State and federal tax returns.

(iv) Assignments of ownership and other transfer documents.

(v) Powers of attorney and beneficiary designation forms.

(vi) The name of any settlor, decedent, ward, protected individual or beneficiary of any family client.

(vii) Any information relating to the ownership, management, assets, income or business of a family trust company and any associated person or relation not generally known by the public, including financial statements, balance sheets, income statements, financial projections, contracts, governance documents, asset disclosures, ledgers, employee or officer information, committee or subcommittee information, internal market analyses and forecasts, sales and marketing research, commercial and strategic planning, pricing and customer information.

(viii) Any information required to be reported to or filed with the department.

(ix) Any findings of the department through any examination or investigation.

(l) “Control” means both of the following:

(i) In relation to an entity, the power to exercise a controlling influence over the management or policies of an entity, unless such power is solely the result of being an officer of such entity.

(ii) In relation to assets, the power to purchase, sell, encumber, transfer or otherwise exercise discretion over the asset.

(m) “Current client” means a client of a small commercial trust company who is 1 or more of the following:

(i) In relation to a trust for which the company is acting as a trustee or trust director, a trust beneficiary that is, as of the time in question, a distributee or permissible distributee of trust income or principal.

(ii) In relation to a decedent’s estate for which the company is acting as a personal representative, a person who has a right to receive more than five percent of the value of the estate as the company may determine from time to time.

(iii) A ward or protected individual for whom the trust company is acting as a guardian or conservator.

(iv) A principal for whom the company is acting as an agent.

(v) A partner of a partnership for which the company is acting as a general partner.

(vi) A shareholder of a corporation for which the company is acting as a director.

(vii) As to all other relationships in which the company is acting as a fiduciary, a person who is currently eligible to receive an economic benefit from the property subject to that relationship as a result of that relationship.

(viii) A person who would otherwise become a current client as a result of an interest in a decedent's estate or revocable trust following the death of someone is not a current client unless the person is a client two years after the death in question, and in that event, the person shall be counted as a current client beginning on the second anniversary of that death.

(n) "Degrees of affinity" means degrees of relation by marriage as measured in the civil law system of determining degrees of relation.

(o) "Degrees of consanguinity" means degrees of blood-relationship as measured in the civil law system of determining degrees of relation.

(p) "Department" means the department of insurance and financial services.

(q) "Descendant" means that term as defined in section 1103 of the estates and protected individuals code, MCL 700.1103.

(r) "Designated family member" means an individual designated as provided in section 207 of this act.

(s) "Domestic trust company" means a trust company other than a foreign trust company that is authorized to exercise fiduciary powers for or on behalf of clients under this act.

(t) "Employee" means an individual other than a key employee who is or was employed by a specified person, on a fulltime basis, for a continuous period of not less than twelve months.

(u) "Entity" means a corporation, including a nonprofit corporation, limited liability company, partnership, or other non-natural legal person.

(v) "Estates and protected individuals code" means the estates and protected individuals code, 1998 PA 386 and 2009 PA 46, MCL 700.1101 to MCL 700.8206.

(w) "Executive officer" means a non-subordinate officer of an entity who may act for and bind that entity.

(x) “Extended family member” means all individuals who are related to the designated family member within ten degrees of affinity, including all of his or her lineal descendants without regard to adoption.

(y) “Family client” means an existing, prospective or former client described in subdivision (i) or (ii):

(i) With respect to a family trust company or family trust company affiliate that is an investment adviser that is not registered under the uniform securities act, MCL 451.2105 to 451.2703, or the investment advisors act of 1940, 15 U.S.C. 80b-1 to 80b-21, and that is not licensed and not applying for a license under this act, a client who is any of the following:

(A) A family member, former family member or other person who is a family client as defined in CFR § 275.202(a)(11)(G)-1(d)(4).

(B) For 1 year after a transfer of legal title resulting from the death of a family member or key employee or other involuntary transfer from a family member or key employee, a person who becomes a client as a result of the death or other involuntary transfer.

(C) Any person who was a client of the family trust company or family trust company affiliate before January 1, 2010, and who is described in subsections (1) to (3) of CFR § 275.202(a)(11)(G)-1(c).

(ii) With respect to any family trust company or family trust company affiliate not described in subparagraph (i)(A) to (i)(C), a client who is any of the following:

(A) A person described in subparagraph (i).

(B) An extended family member.

(C) A former extended family member.

(D) A current or former employee, officer, director or manager of the family trust company or any family trust company affiliate, and his or her children, stepchildren and spouse.

(E) A trustee or trust director of a trust having a settlor or beneficiary who is a person described in subparagraphs (ii)(A) to (ii)(D).

(F) An individual who is a beneficiary of a trust having a settlor who is described in subparagraphs (ii)(A) to (ii)(D).

(G) An individual who is a devisee under the will of a decedent who is described in subparagraphs (ii)(A) to (ii)(D).

(H) A descendant within five degrees of consanguinity of a spouse or former spouse of an individual described in subparagraphs (ii)(F) or (ii)(G).

(I) The estate of an individual described in subparagraphs (ii)(A) to (ii)(D), the guardian or conservator of that estate, and the individual's children, stepchildren and spouse.

(J) A charitable organization created, controlled or funded by 1 or more of the persons described in subparagraphs (ii)(A) to (ii)(D), and each director, officer, trustee and manager of such charitable organization.

(K) An entity of which at least 10% of the equity interests (by vote, income or capital) are directly or indirectly owned by 1 or more of the persons described in subparagraphs (ii)(A) to (ii)(D).

(z) "Family member" means all of the following:

(i) The designated family member.

(ii) All lineal descendants of the designated family member who are within ten degrees of consanguinity.

(iii) Each stepchild and foster child of any individual described in subparagraph (i) or (ii) who, if adopted by that individual, would be a lineal descendant of the designated family member within ten degrees of consanguinity.

(iv) All individuals for whom a family member was appointed as guardian when that individual was a minor.

(v) The spouses of the individuals described in subparagraphs (i) to (iv).

(aa) “Family trust company” means a domestic trust company that does not exercise fiduciary powers for or on behalf of any person who is not a family client. A family trust company may be a licensed family trust company, an unlicensed family trust company or a multifamily trust company.

(bb) “Family trust company affiliate” means an entity to which all of the following apply in respect of a given family trust company:

(i) It is wholly owned by 1 or more clients of the company.

(ii) It is directly or indirectly controlled by either of the following:

(A) 1 or more individuals who are family members with respect to the company.

(B) 1 or more associated persons or relations who are family clients of the company that are described in CFR § 275.202(a)(11)(G)-1(d)(5).

(iii) It has no clients other than family clients of the company.

(iv) It does not hold itself out to the public as an investment adviser or small commercial trust company.

(cc) “Fiduciary” includes a bailee, custodian, escrow agent, receiver, personal representative, funeral representative, guardian, conservator, trustee, trust director, plenary

guardian, partial guardian, successor fiduciary, agent under a power of attorney, patient advocate, receiver, conservator, liquidating agent, and custodian under Michigan uniform transfers to minors act, 1998 PA 433.

(dd) “Fiduciary powers” means in addition to the power to conduct trust business as provided in section 4401 of the banking code of 1999, MCL 487.14401, all powers that are exercisable by a fiduciary in a fiduciary capacity.

(ee) “Foreign family trust company” means a foreign trust company that, under the law that authorizes it to exercise fiduciary powers for or on behalf of clients, cannot exercise fiduciary powers for clients who are not related to each other within the degrees of consanguinity and affinity specified by that law.

(ff) “Foreign trust company” means a trust company that has its principal office in a state other than this state and is authorized to exercise fiduciary powers for or on behalf of clients by the laws of the state in which the company has its principal office or the laws of another state other than this state.

(gg) “Former extended family member” means an individual who was an extended family member but is no longer an extended family member due to a divorce or other similar event.

(hh) “Former family member” means a spouse or stepchild that was a family member but is no longer a family member due to a divorce or other similar event.

(ii) “Governance document” includes the articles of incorporation, articles of organization, bylaws, operating agreement, partnership agreement, shareholders agreement, member agreement, buy-sell agreement and each other document governing the rights, duties, privileges and powers of an entity and its owners, directors, managers, officers or other personnel.

(jj) “Governing instrument” means that term as defined in section 1104 of the estates and protected individuals code, MCL 700.1104.

(kk) “Investment advice” means advisory services that may only be provided to members of the general public in this state by a person who is registered as an investment adviser in this state or by the Securities and Exchange Commission.

(ll) “Investment adviser” means any person described in subsection 102a(15) of the uniform securities Act, MCL 451.2102a(e), or subsection 202(a)(11) of the investment advisors act of 1940, 15 U.S.C. 80b-2(a)(11).

(mm) “Key employee” means an individual who is any of the following with respect to a family trust company or family trust company affiliate and a spouse of such individual if the spouse holds a joint, community property, or similar shared ownership interest with the individual:

(i) The president, any vice president in charge of a principal business unit, division or function (such as administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions.

(ii) A director, trustee, general partner, or person serving in a similar capacity.

(iii) Any employee other than an employee performing solely clerical, secretarial, or administrative functions with regard to the company or affiliate who in connection with his or her regular functions or duties, participates in the investment activities of the company or affiliate, provided that such employee has been performing such functions and duties for or on behalf of the company or affiliate, or substantially similar functions or duties for or on behalf of another person, for at least 12 months.

(nn) “Licensed family trust company” means a family trust company that has received a license pursuant to section 302.

(oo) “Licensed trust company” means a small commercial trust company or licensed family trust company.

(pp) “Manager” means, in relation to a limited liability company that is not managed by its member or members, a person or persons designated to manage the company pursuant to a provision in the controlling governance document stating that the business is to be managed by or under the authority of managers, and, in relation to all other limited liability companies, the member or members of the company or, if the authority to manage the business and affairs of the company is limited to a designated member or members pursuant to a provision in the controlling governance document, the designated member or members.

(qq) “Multifamily trust company” means a family trust company formed under this act that has more than 1 designated family member.

(rr) “Person” means an individual or an entity.

(ss) “Settlor” means that term as defined in section 7103 of the estates and protected individuals code, MCL 700.7103, except that if a trustee or trust director of a given trust creates a second trust by the exercise of either a fiduciary power of appointment or a fiduciary administrative power like that described in 7820a of the estates and protected individuals code, MCL 700.7820a, the settlor or settlors of the first trust are treated as the settlor(s) of the second trust.

(tt) “Small commercial trust company” means a domestic trust company other than a family trust company that satisfies all of the requirements in section 204(1) of this act.

(uu) “Trust company” means an entity that is not a bank and is authorized to exercise fiduciary powers under this act or the laws of another state, including a family trust company, small commercial trust company and foreign trust company.

(vv) “Unlicensed family trust company” means a family trust company other than a licensed family trust company.

SECTION 104. ENTITY ACTING AS TRUST COMPANY. With respect to any particular kind of trust company, for an entity to “act as” that kind of trust company is for the entity to exercise fiduciary powers for or on behalf of clients or otherwise exercise the rights, privileges and powers of that kind of trust company.

SECTION 105. SCOPE. This act applies to all domestic trust companies and all foreign family trust companies acting as fiduciaries in this state. This act does not apply to a bank.

SECTION 106. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW. General principles of common law and equity supplement this act only to the extent that they are not inconsistent with the provisions of this act.

SECTION 107. EFFECTIVE DATE. This act applies to all foreign trust companies acting in this state and to all domestic trust companies formed on or after _____.

Part 2
Formation of Trust Companies

SECTION 201. CHOICE OF FORM. A domestic trust company must be formed as either a domestic or foreign limited liability company or corporation.

SECTION 202. PRINCIPAL OFFICE. Each licensed trust company shall maintain its principal office in this state.

SECTION 203. GENERAL REQUIREMENTS APPLICABLE TO TRUST COMPANIES. An entity is eligible to act as a domestic trust company only if 1 of the following applies:

(a) The entity has a bank account with 1 or more of the following:

(i) A bank that is organized or reorganized under the laws of this state.

(ii) A bank having its principal office or a branch office in this state that is organized under the laws of another state, the District of Columbia, or a territory or protectorate of the United States whose principal office is located in a state other than this state, in the District of Columbia, or in a territory or protectorate of the United States, and whose deposits are insured by the Federal Deposit Insurance Corporation.

(iii) A national banking association chartered by the federal government under the national bank act, 12 USC 21 to 216d, that has its principal office, or a branch office located in this state.

(b) The entity maintains at its principal office original or true copies in physical or electronic form of all of its material business and financial records, including financial statements, bank statements, written consents and meeting minutes.

SECTION 204. SPECIAL REQUIREMENTS FOR ARTICLES OF INCORPORATION OR ARTICLES OF ORGANIZATION.

(1) An entity is eligible to act as small commercial trust company only if its articles of incorporation or articles of organization prohibit the entity from doing all of the following:

(a) Acting for more than 250 client accounts at any given time.

(b) Maintaining custody of intangible assets for any current client.

(2) An entity is eligible to act as a family trust company only if its articles of incorporation, articles of organization, bylaws or operating agreement prohibit the entity from exercising fiduciary powers for or on behalf of clients who are not family clients.

SECTION 205. SPECIAL REQUIREMENTS APPLICABLE TO UNLICENSED FAMILY TRUST COMPANIES.

(1) An entity is eligible to act as an unlicensed family trust company only if the entity has sent to the department by certified mail a notice of formation that complies with both of the following requirements:

(a) The notice must include the name of the entity, the address of the entity's principal office, the date of the notice and the name of each designated family member.

(b) The notice must be acknowledged by an executive officer of the entity before a notary public or other individual authorized to take acknowledgements.

(2) An unlicensed family trust company is eligible to provide investment advice only if it is permitted to act as an investment adviser in this state.

SECTION 206. CAPITAL RESERVES AND BOND; FAILURE TO MAINTAIN.

(1) Except as provided in subsection (5), a licensed family trust company shall maintain not less than \$250,000 of unencumbered capital reserves.

(2) Except as provided in subsection (5), a small commercial trust company shall maintain unencumbered capital reserves of not less than the amount specified in subsection 408(2)(a).

(3) An unlicensed family trust company is not required to maintain any capital reserves.

(4) The capital reserves described in subsections (1) and (2) must be held in the form of cash, marketable securities, or governmental obligations or insured deposits that mature within 3 years after acquisition.

(5) In lieu of maintaining the unencumbered capital reserves required by subsections (1) and (2), a licensed trust company may file with the department a corporate surety bond issued by

a surety licensed by the commissioner. A bond filed pursuant to this subsection must satisfy all of the following requirements:

(a) The bond must be in addition to any other bond that may be required by law.

(b) The bond must be signed and acknowledged before a notary public or other individual authorized to take acknowledgements by both the surety and an executive officer of the trust company and filed with the department.

(c) The bond must state all of the following:

(i) That the state of Michigan is the obligee for the benefit of the trust company's clients.

(ii) That the bond is conditioned upon the faithful discharge by the trust company of all fiduciary duties according to law.

(iii) That the company and surety shall be jointly and severally liable for any claim on the bond.

(iv) That the bond is not void after the first recovery but may be proceeded against from time to time until the entire amount of the bond is exhausted.

(v) The name and license number of the company.

(vi) The name and license number of the surety.

(vii) That the surety on the bond may cancel the bond 60 days after the surety notifies the company and the department of the cancellation and that the surety is not liable for a breach of a condition occurring after the effective date of the cancellation.

(6) The cost of a bond described in subsection (5) may be paid by the bonded licensed trust company, a family trust company affiliate, a family member or a family client.

(7) A licensed trust company that does not have the capital reserves required by subsections (1) or (2) or post bond in lieu thereof pursuant to subsection (5) may apply for and receive a license under part 3 of this act, and the failure to maintain such capital reserves or post bond in lieu thereof shall not constitute grounds for revocation of any license issued under part 3 of this act. However, each director, manager, executive officer, shareholder, member or other person that directly or indirectly owns or controls that company shall be jointly and severally personally liable for all judgments entered against the company as follows:

(a) In the case of a small commercial trust company, in an amount equal to the excess of the unencumbered capital reserves required by subsections (2) over the sum of the small commercial trust company's unencumbered capital reserves and the amount of the bond, if any, filed pursuant to subsection (5) as determined at the time the action that results in a judgment against the small commercial trust company is commenced.

(b) In the case of a licensed family trust company, in an amount equal to the excess of the unencumbered capital reserves required by subsection (1) over the sum of the licensed family trust company's unencumbered capital reserves and the amount of the bond, if any, filed pursuant to subsection (5) as determined at the time the action that results in a judgment against the licensed family trust company is commenced.

SECTION 207. DESIGNATED FAMILY MEMBER.

(1) The designated family member or members of a licensed family trust company are the living or deceased individual(s) designated as such in the licensed family trust company's

application for a license under part 3 of this act.

(2) The designated family member or members of an unlicensed family trust company are the living or deceased individual(s) designated as such in the unlicensed family trust company's notice of formation required by section 205.

(3) A family trust company other than a multifamily trust company may have no more than 1 designated family member at any given time. A multifamily trust company may have no more than 3 designated family members at any given time.

SECTION 208. WORDS AND PHRASES IN TRUST COMPANY NAME.

(1) A small commercial trust company may use the words and phrases "trust," "trust company" or other words or letters in its name to indicate that the company is licensed to exercise fiduciary powers. A small commercial trust company shall not include in its name "family," "private" or other words or letters that might signify that the company exercises fiduciary powers only for or on behalf of family clients.

(2) A family trust company may use in its name "family trust company," "private trust company," "FTC," "PTC" or other words or letters to indicate that the company is authorized to exercise fiduciary powers only for or on behalf of family clients.

Part 3 **Licensing of Trust Companies**

SECTION 301. LICENSING REQUIREMENTS.

(1) An entity may not act as a small commercial trust company unless it is licensed under this act.

(2) A family trust company may be, but is not required to be, licensed under this act. An unlicensed family trust company has all the rights, privileges and powers of a licensed family trust company.

(3) No person shall act as a director, manager, executive officer or committee member of a licensed trust company without receiving a license from the commissioner.

SECTION 302. APPLICATION FOR LICENSE.

(1) An application by an entity for a license to act as a licensed trust company must include all of the following:

(a) The name of the entity, including all assumed and trade names.

(b) The street address of the entity's principal office.

(c) A telephone number and email address for the entity's principal office.

(d) The name, email address, telephone number and mailing address of the person authorized by the entity to receive communications from and represent the entity before the department.

(e) The name, email address, telephone number and mailing address of each director, manager, executive officer and committee member of the entity as of the time of the application.

(f) The name, email address, telephone number and mailing address of each shareholder or member of the entity and a description of the interests in the entity owned by each shareholder or member.

(g) If the entity has issued more than 1 class of shares, units, or other form of ownership interests, a description of the rights of each class of shareholder or member.

(2) If the application is for a license to act as a family trust company, then in addition to the items required by subsection (1), the application must also include the name of each designated family member.

(3) The application must be signed under penalties of perjury by the person authorized by the entity to receive communications from and represent the entity before the department. While the application is pending, the person signing it shall have a duty to supplement or correct the application upon discovering that any information contained in the application is untrue or inaccurate.

(4) The application must be accompanied by all of the following:

(a) A nonrefundable fee payable to the department in the amount of \$5,000.

(b) The information required under section 303 for each of the managers, directors, executive officers and committee members of the trust company as of the time of the application.

(c) A copy of the deed, lease agreement or other instrument granting the trust company the right to occupancy of its principal office.

(d) A certified balance sheet of the entity as of a date within 30 days of the date of the application and proof satisfactory to the commissioner of the entity's unencumbered capital reserves.

(e) A copy of the instrument authorizing the person identified in subsection (1)(d) to receive communications from and represent the entity before the department.

(f) A copy of the entity's articles of incorporation or articles of organization.

(g) A copy of the entity's bylaws or operating agreement, if any.

(h) A copy of a certificate of good standing for the entity issued by the state in which the entity is organized or incorporated as of a date within 30 days of the date of the application.

(i) If the entity is formed as a foreign limited liability company or foreign corporation, a copy of a certificate of authority as provided in section 2015 of the business

corporation act, 1972 PA 284, MCL 450.5002, section 1015 of nonprofit corporation act, 1982 PA 162, MCL 450.3015, and section 1002 of the Michigan limited liability company act, 1993 PA 23, 450.5002.

(j) Any surety bond filed pursuant to section 206(5).

(5) If the application is for a license to act as a small commercial trust company, then in addition to the items required by subsection (4), the application must also be accompanied by all of the following:

(a) The entity's three-year business plan.

(b) The entity's capital plan.

(c) The entity's policies and procedures, which must include policies or procedures designed to do both of the following:

(i) Comply with federal laws designed to combat money laundering, income tax evasion, terrorist financing and other similar illegal activities to the extent such laws are applicable to non-federally regulated trust companies.

(ii) Ensure the security and confidentiality of client information and compliance with federal laws designed to protect data privacy to the extent such laws are applicable to non-federally regulated trust companies.

SECTION 303. APPLICATION FOR LICENSE TO MANAGE LICENSED TRUST COMPANY.

(1) An application for a license to act as a director, manager, executive officer or committee member of a licensed trust company shall include all of the following:

(a) The applicant's full legal name and all other names by which the applicant is known or that the applicant has used in the past.

- (b) The address of the applicant's residence.
- (c) The applicant's Social Security Number.
- (d) The applicant's driver's license number and the name of the state that issued the license.
- (e) Whether the applicant is a citizen of the United States.
- (f) The applicant's telephone number.

(2) Nothing in this section shall be construed as prohibiting an individual from acting as a director, manager, executive officer or committee member of an unlicensed trust company without a license.

(3) An application to act as a director, manager, executive officer or committee member of a licensed trust company shall be signed under penalties of perjury by the applicant.

(4) The commissioner shall issue a license under this section if, after reviewing the applicant's application, the commissioner determines that applicant possesses the moral character and fitness appropriate to the management of a licensed trust company.

(5) The department may share any information in an application for a license under this section, or information the department obtains from its investigation of the application, with federal and state law enforcement agencies, other governmental agencies, and credit reporting agencies.

SECTION 304. TRUST COMPANY BRANCH OFFICES.

(1) An unlicensed family trust company may maintain 1 or more branch offices within this state and, to the extent permitted by the laws of any other state in which a branch office is located, outside of this state.

(2) A licensed trust company may maintain 1 or more branch offices within and outside this state if an application described in this subsection is approved by the commissioner. An application to open a branch office under this subsection shall include all of the following:

(a) The name of the company, including all assumed and trade names.

(b) The street address of the company's proposed branch office and each branch office of the company.

(c) The telephone number and dedicated email address, if any, for the company's proposed branch office.

(d) A copy of the deed, lease agreement or other instrument granting the company the right of occupancy of the proposed branch office.

(e) A description of the services to be provided at the proposed branch office.

(3) A foreign family trust company may maintain 1 or more branch offices within this state only if the company is licensed or otherwise supervised by a foreign regulatory agency and an application described in this subsection is approved by the commissioner. An application to open a branch office under this subsection shall include all of the following:

(a) The information described in subsection (2).

(b) The information described in subsections 302(1) to (2).

(c) The documents described in subsections 302(4)(a) to (i).

(d) The name, mailing address and telephone number of the regulatory agency that is responsible for supervising the company.

(4) An application for a license to open a branch office must be accompanied by both of the following:

(a) A nonrefundable application fee in the amount of \$500.00 payable to the department.

(b) If the proposed branch office is located outside of this state, proof that the trust company is, or will be, if the commissioner's approval would be granted, permitted to open a branch office in the state in question under the laws of that state.

(5) An application for a license to open a branch office shall be signed under penalties of perjury by the person authorized to receive communications from and represent the trust company before the department. While the application is pending, the person signing the application shall have a duty to supplement or correct the application upon discovering that any information contained in the application is untrue or inaccurate.

(6) Any trust company may conduct any business at a branch office of the company that could be conducted at the company's principal office.

SECTION 305. EXPIRATION, REVOCATION AND RELINQUISHMENT OF TRUST COMPANY LICENSE.

(1) A license to act as a licensed trust company or to open a branch office shall expire on December 31 of the calendar year immediately following the calendar year in which the license was issued or last renewed.

(2) A trust company may voluntarily relinquish a license issued under this part at any time at which the trust company is not acting as a trust company. A license shall be relinquished pursuant to this subsection effective upon the department's receipt of a written statement that the trust company is not acting as a trust company signed under penalties of perjury by an authorized agent of the trust company.

SECTION 306. RENEWAL OF TRUST COMPANY LICENSE.

(1) A trust company may renew any license issued under this part by filing a renewal application with the department before the expiration of the license in question. The license being renewed shall remain effective unless and until the company receives notice from the department that its renewal application has been denied.

(2) An application for renewal of a license under this part shall include all of the following:

(a) The name of the company, including all assumed and trade names.

(b) The street address of the company's principal office and each branch office, if any.

(c) The telephone number and dedicated email address, if any, for the company's principal office and for each branch office, if any.

(d) The name, email address, telephone number and mailing address of the person currently authorized by the company to receive communications from and represent the company before the department.

(e) The name, email address, telephone number and mailing address of each current director, manager, executive officer and committee member of the company.

(f) The name, email address, telephone number and mailing address of each current shareholder or member of the company and description of the interests in the company owned by each current shareholder or member.

(g) A statement explaining whether the directors, managers, executive officers, committee members, shareholders and members of the company have changed and, if so, identifying the changes.

(h) A statement explaining whether the articles of incorporation, articles of organization, bylaws or operating agreement of the company have changed.

(i) In the case of an application to renew a license for a branch office of a foreign family company within this state, the name, mailing address and telephone number of the regulatory agency that is responsible for supervising the company.

(3) An application for renewal of a license under this section shall be signed under penalties of perjury by the person authorized by the company to receive communications from and represent the company before the department. While the application is pending, the person signing the application shall have a duty to supplement or correct the application upon discovering that any information contained in the application is untrue or inaccurate.

(4) An application for renewal of a license under this section must be accompanied by all of the following:

(a) A nonrefundable renewal fee in the amount of \$1,000.00 payable to the department.

(b) The information required under section 303 for each of the initial managers, directors, executive officers and committee members of the company.

(c) A copy of the deed, lease agreement or other instrument granting the company the right to occupancy of its principal office.

(d) A certified balance sheet as of a date within 30 days of the date of the application, a certified income statement similarly dated and proof satisfactory to the commissioner of any unencumbered capital reserves or bond described in section 206.

(e) A copy of the instrument authorizing the person identified in subsection (2)(d) to receive communications from and represent the company before the department.

(f) If the articles of incorporation, articles of organization, bylaws or operating agreement of the company have changed, a copy of the affected provision or provisions of the affected document or documents.

(g) A certificate of good standing for the company issued by the state in which the company is organized or incorporated as of a date within 30 days of the date of the application.

Part 4
Management and Powers of Trust Companies

SECTION 401. NUMBER OF DIRECTORS OR MANAGERS. A small commercial trust company shall have three or more directors or managers; a family trust company shall have 1 or more directors or managers. A domestic trust company may have more than 1 class of directors or managers.

SECTION 402. INDEPENDENT LEGAL PERSONALITY; NONIMPLICATION OF DERIVATIVE RESPONSIBILITY; NONATTRIBUTION OF DISABILITIES.

(1) All of the rights, duties, privileges and powers that this act authorizes a given trust company to exercise and perform for or on behalf of the company's clients constitute legal relations subsisting directly between the company itself, as an independent legal person, and other legal persons.

(a) Any such right, duty, privilege or power exercised or performed through the actions of the company's authorized personnel is the right, duty, privilege or power of the company itself and not that, even derivatively, of any of the company's directors, managers, officers, committee members or other personnel.

(b) A provision in a client instrument that specifies criteria for eligibility to accept office or exercise discretionary powers applies to the company as an independent legal person and

not to any of the company's directors, managers, officers, committee members or other personnel as such.

(2) If a trust company enters into a contract in the performance of fiduciary duties, the company is entitled to limit its exposure to liability on the contract by disclosing to contracting parties that it acts in a representative capacity to the same extent that any other fiduciary similarly situated would be according to the laws of this state.

SECTION 403. EXCLUSIVE SUBJECT MATTER JURISDICTION OVER MATTERS CONCERNING FIDUCIARY FUNCTIONS AND INTERNAL MATTERS, RESPECTIVELY; VENUE.

(1) Except as otherwise provided in subsection (2), the probate court has exclusive subject matter jurisdiction over any matter involving a trust company to the extent that the probate court would have exclusive subject matter jurisdiction, in the same circumstances, if a natural person were in the position or positions occupied by the company. In that case, venue in the probate court shall be determined under the provisions of the estates and protected individuals code.

(2) The circuit court has exclusive subject matter jurisdiction over the internal affairs of the company, including claims concerning the liability to the company or the company's owners of the company's directors, managers, officers, committee members and other personnel. In that case, venue in the circuit court shall be in the county in which the principal office of a trust company is located.

SECTION 404. RESTRICTIONS ON DIRECTORS, MANAGERS AND COMMITTEE MEMBERS OF FAMILY TRUST COMPANIES.

(1) No person shall vote on or consent to any decision of a family trust company to the extent that the company's governance documents prohibit that person from voting on or consenting

to that decision, and unless a decision on which a person so prohibited voted or to which such a person consented is subject to more restrictive treatment under the company's governance documents, any such decision shall be given effect only to the extent that it could have been taken if each prohibited director, manager, officer, committee member or agent of the company had not voted on or consented to the decision.

(2) A person who is a beneficiary of a trust for which a family trust company has discretion to make distributions may not enter into a reciprocal agreement, express or implied, regarding the exercise of such discretion with any other beneficiary of any other trust over which the company also has discretion to make distributions.

(3) No provision in a family trust company's governance documents shall override a more restrictive provision in any client instrument: in such a case, the more restrictive provision controls.

(4) This section or any particular subsection of it shall not apply to the extent that a family trust company's articles of incorporation, articles of organization, bylaws or operating agreement provide otherwise by specific reference to this section or any particular subsection of it.

SECTION 405. AUTHORIZATION TO ACT AS FIDUCIARY; MANAGEMENT OF TRUST COMPANIES; EXERCISE OF POWERS.

(1) Subject to the provisions of this act, a family trust company or small commercial trust company is authorized to exercise trust powers and otherwise act as a fiduciary for or on behalf of clients.

(2) The business and affairs of a trust company shall be managed by or under the direction of the persons designated as the company's directors or managers, who may exercise all of the powers of the company and do all such lawful acts and things as are not prohibited by the

company's governance documents or required by those documents or applicable law to be exercised or done exclusively by the company's shareholders, members or committee members.

(3) The directors or managers of a trust company shall oversee the company's activities and services, including the exercise of fiduciary powers by the company, the determination of policies, the types of investments to be made with funds held by the company in a fiduciary capacity and the supervision and review of the actions of all officers, employees, committees and other personnel engaged by or acting on behalf of the company in the exercise of its powers.

(4) The directors or managers of a trust company may from time to time delegate some or all of their authority to 1 or more committees as provided in section 407.

(5) The shareholders or members of a trust company, as such, shall have only such powers, responsibilities and authority to act on behalf of or bind the company as are expressly provided in the company's governance documents.

SECTION 406. OFFICERS OF TRUST COMPANIES ORGANIZED AS LIMITED LIABILITY COMPANIES. A trust company organized as a limited liability company shall have such officers as may be prescribed by the operating agreement or determined by the company's manager, and except as otherwise provided in the company's articles of organization or operating agreement, the election, appointment, removal, resignation, authority and duties of such officers shall be determined as if the company were organized as a corporation, treating the managers as the board of directors for such purpose.

SECTION 407. COMMITTEES OF TRUST COMPANIES.

(1) Except as otherwise provided in a trust company's articles of incorporation, articles of organization, bylaws or operating agreement, the directors or managers of the company may commission committees to exercise specific powers and authority of the directors or managers.

The power and authority to be exercised by such a committee shall be specified in writing. Committee members commissioned under this subsection shall serve at the pleasure of the directors or managers.

(2) To the extent a trust company's governance documents require or purport to control the commissioning or conduct of 1 or more committees, those committees shall be governed by any terms or conditions for the conduct of their commissions set out in the company's governance documents, including such committees' powers and provisions for the appointment and removal of committee members. Such terms and conditions may be supplemented by the company's directors or managers in any way that is consistent with the purposes of the commission in question and with the terms or conditions pertaining to that commission as set out in the company's governance documents.

(3) The directors or managers of a family trust company may only be liable for effecting any decision made by a committee described in this section to the extent that the committee's authority to make the decision in question was conferred by the directors or managers as opposed to the company's governance documents.

(4) A committee member need not be a director, manager, officer or employee of the trust company that the committee serves. A committee commissioned under this section need not have more than 1 member.

SECTION 408. POWERS OF TRUST COMPANIES.

(1) A trust company may invest funds held for its own account other than those required or permitted to be maintained by section 206 in any type of equity securities, debt securities or other asset without being subject to the prudent investor rule in section 1502 of the estates and protected individuals code, MCL 700.1502.

(2) Except as provided in subdivisions (a) and (b) of this subsection, a trust company may exercise fiduciary powers within this state and outside this state if permitted by the laws of the foreign jurisdiction in which the trust company is acting and may exercise any of the powers described in section 4401 of the banking code of 1999, MCL 487.14401.

(a) A small commercial trust company shall not exercise fiduciary powers over more than \$2,500,000 in net assets for any current client. Beginning on January 1, [2024], the amount specified by the preceding sentence shall be multiplied by the cost-of-living adjustment factor for the calendar year in which the company is acting, or if that adjustment factor is not then available, the adjustment factor for the preceding calendar year. The department of treasury shall publish the cost-of-living adjustment factor to be applied to the specific dollar amount referred to in this subsection for [2024] and each calendar year thereafter. A product resulting from application of the cost-of-living adjustment factor to a specific dollar amount shall be rounded to the nearest \$1,000.00.

(b) For the purposes of determining compliance with subdivision (a), a small commercial trust company shall determine the value of any asset that is not actively traded on an established exchange by reference to the most recent written public or private professional valuation of that asset prepared within the last five years. The company may average the value of each asset and liability for which the company was exercising fiduciary powers over for the current client during the preceding three calendar years determined as of December 31 in each year.

(c) A small commercial trust company that has ceased to comply with subdivision (a) shall have 120 days from the first date of the noncompliance in question to rectify the lapse.

(d) A family trust company shall not exercise fiduciary powers for or on behalf of any client other than a family client.

(3) Subject to limitations imposed by any other statute of this state or by the governance documents of the trust company in question, a trust company has all powers that are reasonably necessary or appropriate for the conduct of activities in which this act authorizes the company to engage.

(4) A trust company may not engage in the business of banking.

SECTION 409. AUTHORIZED ACTIONS AND TRANSACTIONS FOR FAMILY TRUST COMPANY PERSONNEL; DUTY OF LOYALTY.

(1) Subject to subsection (2) and any restrictions imposed by the articles of incorporation, articles of organization, bylaws or operating agreement of the family trust company or an applicable client instrument, all of the following apply in the case of a family trust company:

(a) A director, manager, officer or committee member of the company may act as a director, manager, officer or fiduciary of an associated person or relation, including 1 that is owned in whole or in part by a client, and may receive compensation from the associated person or relation.

(b) A director, manager, officer or committee member of the company may coinvest with an associated person or relation, a family member, a client or the company itself.

(c) The company acting for its own account or on behalf of a client may purchase stocks or other securities, bonds or other indebtedness, annuities, contracts of insurance, property or other assets from an associated person or relation or family member and may purchase any such asset issued by an entity that is an associated person or relation.

(d) A family member or associated person or relation, including 1 that is owned in whole or in part by a client, may indemnify the company or an officer, director, manager or committee member of the company to the extent permitted under section 412.

(e) The company may loan money to or borrow money from an associated person or relation or family member and may deposit money with an associated person or relation.

(f) The company may receive services from an associated person or relation or a family member and may pay reasonable compensation for such services.

(g) The company may deal with the fiduciary of any trust or estate, even if the company is acting as a fiduciary of that trust or estate.

(2) A transaction described in subsection (1) is voidable by an affected client or its beneficiaries to the extent the transaction directly results in a significant financial loss to the client provided the affected client commences or, if applicable, 1 or more beneficiaries under a governing instrument to which the company is subject in connection with services the company performs for or on behalf of the client commence a judicial proceeding within 1 year after the client or beneficiary or a representative of the client or beneficiary knows of the transaction or should have inquired into the transaction's occurrence.

(3) A director, manager, officer or committee member of a family trust company may engage in any transaction not described in subsection (1) with a family member or client if 1 or more of the following apply:

(a) The transaction is not inconsistent with the terms of the applicable governing instrument, if any, and the terms of the transaction are commercially reasonable.

(b) The transaction was authorized by the terms of an applicable governing instrument.

(c) The transaction was approved by the court after notice to each affected client or its beneficiaries.

(d) Each affected client consented to the transaction, ratified the transaction, or released each director, manager, officer or committee member of the company who is a party to the transaction provided the consent, release, or ratification was not induced by improper conduct on the part of any such party.

(e) The transaction occurred or involves a contract entered into or a claim acquired by the director, manager, officer or committee member of the company, before the director, manager, officer or committee member in question became an officer director, manager, officer or committee member of the company.

(4) Except as provided in subsection (5), a family trust company that owns, as a trustee, shares or other equity interests in the company itself is not required to vote such interests in the best interests of the trust beneficiaries when electing directors or managers of the company.

(5) Subsection (4) shall not apply if the implicated governing instrument or the company's articles of incorporation, articles of organization, bylaws or operating agreement does either of the following:

(a) Expressly declares that subsection (4) of this section 409 of the private trust company act does not apply.

(b) Expressly refers to the situation in which the company owns, as a trustee, shares or other equity interests in the company itself and indicates that, in that case, the company shall vote such interests in the best interests of the trust beneficiaries when electing directors or managers of the company.

(6) A transaction between a client or family member and a family trust company or a director, manager, officer or committee member of the company is not presumed to involve any conflict of interest.

SECTION 410. TRUST COMPANY FEES.

(1) A trust company may charge a fee for its services.

(2) In addition to any other method for establishing reasonableness, a fee charged by a family trust company for acting as a fiduciary is reasonable if either of the following applies:

(a) The company employs the same method for computing the fee charged to each client account of a similar type according to a fee schedule adopted by the company and the total annual fees charged by the company for fiduciary services do not exceed one hundred and ten percent of the company's total annual operating expenses, including reasonable expenses paid to 1 or more associated persons or relations, the cost of any surety or fidelity bond, and reasonable premiums paid on policies insuring the company's directors, managers, officers, committee members, employees, other personnel or property from loss or liability.

(b) The fee is approved by the affected client, or in the case of a client account that is a trust or estate of a deceased individual, the settlor of that trust or that decedent.

(3) A fee charged by a family trust company for acting as a fiduciary in excess of that described in subsection (2) shall not be presumed to be unreasonable.

(4) In any action or proceeding concerning fees, there is a rebuttable presumption that a fee charged by a small commercial trust company is reasonable if the fee or its method of computation is specified in a fee schedule or fee agreement of the company in effect at the time the service is provided and the agency or custody principal, the trust settlor, or any other person who is entitled to be kept reasonably informed of the client account and its administration under the estates and protected individuals code, received reasonable notice of that fee schedule or fee agreement before the fee is charged.

(5) In addition to or as part of the fee for its services, a small commercial trust company may charge a fee equal to the cost of any bond obtained under section 206. Any fee charged under this subsection shall be allocated pro rata to each of the company's client accounts and shall not exceed \$200 per client account.

SECTION 411. COMPENSATION OF DIRECTORS, MANAGERS, OFFICERS AND COMMITTEE MEMBERS.

(1) Except as otherwise provided in the governance documents of a trust company, the directors or managers of the company, or the person designated in the trust company's governance documents, may do both of the following:

(a) Pay compensation to each director, manager, officer or committee member of the company, which may consist of a fixed sum for attendance at meetings, an annual fee or other form of compensation.

(b) Reimburse each director, manager, officer or committee member of the company for reasonable expenses associated with the performance of that person's duties.

(2) This section does not preclude a director, manager, officer or committee member of a trust company, or an associated person or relation with respect to a family trust company, from acting in any other capacity and receiving compensation for the services the director, manager, officer or committee member renders in that other capacity.

SECTION 412. INDEMNIFICATION BY FAMILY MEMBERS, FAMILY CLIENTS AND ASSOCIATED PERSONS OR RELATIONS.

(1) In addition to all other rights of indemnification granted in accordance with the laws of this state, a family trust company, or a director, manager, officer or committee member of a family

trust company, may be indemnified by a family member, family client or an associated person or relation.

(2) A family client or associated person or relation owned or controlled by a family client for which a family trust company is acting as a fiduciary may grant indemnity under subsection (1) only to the extent that both of the following apply:

(a) The indemnity is consistent with the terms of any applicable client instrument or governance document and applicable law other than this act.

(b) The indemnity is not for conduct for which a person could not be exculpated under applicable law other than this act.

(3) In any action or proceeding involving a trust or estate of a decedent, ward or protected individual that was or is a client, each director, manager, officer or committee member of a family trust company shall be indemnified from the property of the estate or trust for and against any loss or liability suffered or expenses incurred to the same extent the director, manager, officer or committee member would be entitled to such indemnification if acting as the trustee, personal representative, conservator or guardian. The right to indemnification under this subsection includes those rights granted to fiduciaries under sections 3713(6)(e), 3715(1)(p), 3720, 7709 and 7904(1)–(2) of the estates and protected individuals code, MCL 700.3713(6)(e), MCL 700.3715(1)(p), MCL 700.3720, MCL 700.7709 and MCL 700.7904(1)–(2).

(4) The hypothetical, contrary-to-fact conditional in subsection (3) analogizing a director, manager, officer or committee member of a family trust company to a trustee, personal representative, conservator or guardian is merely for the purpose of specifying the director, manager, officer or committee member's right to be indemnified from the property of the estate or trust involved in the relevant proceeding: subsection (3) is without prejudice to the principle of

section 402(1), and the expenses for or against which a director, manager, officer or committee member is indemnified by subsection (3) include legal fees incurred in the attempt to vindicate, in the court of first instance or on appeal, the principle of section 402(1) by repudiating liability imposed by any court on the director, manager, officer or committee member in contravention of section 402(1).

Part 5
Foreign Family Trust Companies

SECTION 501. POWERS OF FOREIGN FAMILY TRUST COMPANIES.

(1) A foreign family trust company that is authorized by law other than this act to exercise fiduciary powers in this state has all of the rights, powers and privileges of a family trust company, except that a foreign family trust company that is not licensed or otherwise supervised by a regulatory agency of any state may not act as a fiduciary pursuant to an appointment by a court of this state.

(2) The directors, employees, managers, officers, committee members and other personnel of a foreign family trust company exercising fiduciary powers in this state have all of the rights, powers, privileges and immunities of the directors, employees, managers, officers, committee members and other personnel of a family trust company.

SECTION 502. REGISTERING TO DO BUSINESS. With respect to any requirement that a limited liability company or corporation register to do business in this state, a foreign family trust company is not considered to be transacting business in this state merely because it is carrying on in this state 1 or more of the following activities:

(a) Acting as a fiduciary pursuant to an appointment by a court of this state, by a resident of this state or by a person conducting business in this state.

(b) Acting as trustee of a trust having 1 or more beneficiaries who are residents of this state.

(c) Receiving services performed in this state, regardless of whether the foreign family trust company pays for such services.

(d) Performing services, for or on behalf of any family client who is a resident of this state, that are incidental to the company's acting in either of the capacities described in subsections (a) and (b).

(e) Owning an interest in an entity that transacts business in this state.

SECTION 503. DOMESTICATION OF FOREIGN FAMILY TRUST COMPANIES.

(1) A foreign family trust company may become a licensed family trust company by filing an application for a license under section 302 and complying with all other requirements under this act applicable to licensed family trust companies. Upon issuance of a license under section 302, the company shall, for purposes of this act, cease to be a foreign family trust company and shall become a licensed family trust company.

(2) A foreign family trust company may become an unlicensed family trust company by filing a notice of formation in conformance with section 205 and complying with all other requirements under this act applicable to unlicensed family trust companies. Upon filing a notice of formation under section 205, the company shall, for the purposes of this act, cease to be a foreign family trust company and shall become an unlicensed family trust company.

SECTION 504. PROHIBITION ON ADVERTISEMENTS AND SOLICITATION BY FOREIGN FAMILY TRUST COMPANIES. A foreign family trust company may not advertise its services to or solicit business from any prospective client who resides in this state for whom the company may not provide fiduciary services under the laws other than the laws of this state that authorized the company to exercise fiduciary powers for or on behalf of clients.

Part 6

Confidentiality

SECTION 601. PROHIBITION ON DISCLOSURE BY PERSONS INTERESTED IN CLIENT TRUSTS AND ESTATES.

(1) A person interested in a trust or estate of a decedent, ward or protected individual that was or is a client of a family trust company or foreign family trust company shall not disclose, publicize or otherwise disseminate to any person who has not entered into a nondisclosure agreement with the company confidential information received from a family trust company if such information is conspicuously marked as confidential.

(2) A family trust company may refuse to provide confidential information to a person interested in a trust or estate of a decedent, ward or protected individual that was or is a client if the person has not entered into a written nondisclosure agreement with the company that prohibits the person from disclosing that confidential information. The company may not refuse to share confidential information with an interested person's lawyer, accountant or tax preparer who has agreed with the company to be bound by a written nondisclosure agreement that prohibits the lawyer, accountant or tax preparer from disclosing that confidential information outside of his or her professional representation of the interested person.

(3) A person injured by the disclosure of confidential information in violation of this section, a person who is might be injured by a threatened such disclosure, or a family trust company having a person as a client who is thus injured or threatened may seek an injunction and shall be awarded attorney fees if the injunction is imposed.

(4) This section does not prohibit disclosure of confidential information by a person in response to legal process or as expressly required by law.

SECTION 602. PROHIBITION ON DISCLOSURES BY THE DEPARTMENT.

(1) Notwithstanding subsection 2109(2) of the banking code of 1999, MCL 487.12109(2), all current and former commissioners, deputies, agents, and employees of the department shall not disclose, publicize or otherwise disseminate confidential information of a trust company, or a director, manager, officer, committee member or client of a trust company, to any member of the general public.

(2) Before disclosing confidential information pursuant to subsection 2202(15) of the banking code of 1999, MCL 487.12202(15), the department shall give the affected trust company 7 days prior written notice. The affected trust company, and each affected director, manager, officer, committee member or client of that company, may commence or intervene in a judicial or administrative proceeding to prevent the disclosure of confidential information.

(3) As far as the department is concerned, any document, material, or information containing confidential information in the possession of the department is confidential by law and privileged, is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the department is authorized to use all documents, materials, or information

in its possession in the furtherance of any supervisory activity or legal action brought as part of the commissioner's duties.

(4) The commissioner, or any person that received documents, materials, or information while acting under the commissioner's authority, is not permitted and may not be required to testify in any private civil action concerning any confidential documents, materials, or information described in subsection (3).

SECTION 603. CONFIDENTIALITY OF ANNUAL REPORTS AND OTHER INFORMATION.

(1) A family trust company acting as a trustee does not have the duty under section 7814(2)(a) to (c) of the estates and protected individuals code, MCL 700.7814, to provide beneficiaries with the terms of the trust and information about the trust's property and to notify qualified trust beneficiaries of the existence of the trust and the identity of the trustee to the extent the terms of the trust direct the trustee to provide such information instead to a person who does not have authority to make distribution or investment decisions for the trust and to whom the terms of the trust grant a protection power.

(2) For purposes of this section, a "protection power" is a power that allows the power holder, acting in a fiduciary capacity, to remove the trustee of the trust, direct the trustee for the benefit of the trust beneficiaries, or represent the beneficiaries in the sense described in section 7301(1) to (2) of the estates and protected individuals code, MCL 700.7301(1) to (2). A protection power may authorize the power holder to represent the trust beneficiaries in the sense described in the preceding sentence of this section without regard to the application of sections 7302 to 7304 of the estates and protected individuals code, MCL 700.7302 to 7304.

SECTION 604. SEALING OF COURT RECORDS; LIMITS ON USE OF DISCOVERY; PRIVATE ADMINISTRATIVE HEARINGS.

(1) Upon the motion of any party or interested person, a court shall seal records in any action or proceeding involving one or more of the following:

(a) A family trust company or foreign family trust company acting in its own name.

(b) The actions of a person in the person's capacity as a director, an employee, a manager, an officer, a committee member or any agent of a family trust company or foreign family trust company.

(c) A trust, estate, conservatorship, guardianship or associated person or relation for which a family trust company or foreign family trust company is acting as a fiduciary.

(2) Upon the motion of any family trust company, foreign family trust company, or director, employee, manager, officer, committee member or agent of a family trust company or foreign family trust company who has filed confidential information with the court in connection with any action or proceeding, the court shall seal the filed confidential information.

(3) Upon motion filed by any party or interested person, a court shall enter a protective order prohibiting all parties or interested persons from publishing, disseminating or otherwise disseminating any confidential information contained in any record or obtained by discovery.

(4) In any civil action or proceeding involving a client and 1 or more third parties in which a family trust company is not named as a party or interested person, the company and its associated persons or relations, directors, employees, managers, officers, committee members and other personnel may refuse to produce or disclose confidential information in response to a subpoena issued in that action or proceeding to the extent that the company would not be legally required to provide the confidential information sought by the subpoena directly to the client involved in the

action or proceeding if that client were to demand or request the information in the client's personal capacity in the ordinary course of the company's business. A refusal pursuant to this subsection shall state generally why the company would not be legally required to provide the confidential information sought by the subpoena directly to the client involved in the action or proceeding if that client were to demand or request the information in the client's personal capacity in the ordinary course of the company's business. Such a refusal shall be in a writing delivered to the party seeking the information by subpoena before the deadline for responding to the subpoena. If such a refusal is met by a motion to compel, the court shall do all of the following:

(a) Upon the motion of a person opposing the subpoena, inspect in camera any documents that are alleged to include confidential information, including without limitation documents sought by the subpoena.

(b) Grant the motion to compel only if the court determines that the company would be required to provide the confidential information sought by the subpoena directly to the client involved in the action or proceeding if that client were to demand or request the information in the client's personal capacity in the ordinary course of the company's business.

(c) Award attorney fees incurred in opposing the motion to compel by the company, its associated persons or relations, directors, employees, managers, officers, committee members or other personnel if the motion to compel is denied for any reason. For purposes of this subdivision, attorney fees incurred in opposing the motion to compel include attorney fees incurred in preparing the written refusal delivered pursuant to this subsection, in determining that such a refusal is warranted, and in responding to communications concerning the refusal by or on behalf of the party seeking the information by subpoena.

(5) Subsection (4) shall not be construed as either expanding the scope of discovery that

would otherwise be permissible or narrowing the grounds for discovery sanctions in the action or proceeding to which subsection (4) applies.

(6) An order granting a motion to compel that is described in subsection (4) is appealable as of right to the court of appeals, and enforcement of the order must be stayed while an appeal is pending.

(7) For the purposes of this section, the term “records” means that term as defined by reference in Michigan Court Rule 8.119(A).

(8) All administrative hearings involving a family trust company, a branch office of a foreign family trust company, or the actions of a person in the person’s capacity as a director, an employee, a manager, an officer, a committee member or any agent of a family trust company, shall be private and not open to the public.

SECTION 605. ATTORNEY CLIENT PRIVILEGE. Any communication between an attorney and a trust company acting as a fiduciary is privileged and protected from disclosure to the same extent as if the company were not acting as a fiduciary, regardless of whether the attorney is compensated using the property of a client or a client account administered by the company.

Part 7

Regulation of Licensed Trust Companies and Branch Offices

SECTION 701. JURISDICTION OF THE DEPARTMENT. The department shall have jurisdiction over and administer the laws relating to licensed trust companies and foreign family trust company branch offices in this state. The commissioner may promulgate rules under the administrative procedures act of 1969 as he or she considers necessary to effectuate the purposes and to enforce this act. The commissioner may prescribe 1 or more forms to be used in communications with the department that are required or permitted under this act.

SECTION 702. AUDITS AND EXAMINATIONS.

(1) A licensed trust company is subject to examination under section 2202 of the banking code of 1999, MCL 487.12202, except that subsection 2202(3), MCL 487.12202(3), shall not apply.

(2) The commissioner may periodically examine a branch office of a foreign family trust company to the same extent that the commissioner would be permitted to examine the branch office if the company were a licensed trust company. Any such examination shall be limited to the activities of the branch office during the examination period, which shall not cover more than the 36 months immediately preceding the examination. In its examination, the commissioner shall, absent manifest error, accept and rely upon the most recent examination report or similar documentation concerning the branch office, if any, issued by the regulatory agency that is responsible for supervising the company in question.

SECTION 703. FEES.

(1) A licensed trust company shall pay an annual supervisory fee.

(a) In the case of a licensed small commercial trust company, the annual supervisory fee shall be \$1,500.00.

(b) In the case of a licensed family trust company, the annual supervisory fee shall be \$3,000.00.

(2) The commissioner shall provide an invoice of the supervisory fee on or before September 30 of each year. A licensed trust company must pay the annual supervisory fee on or before December 31 of that year.

(3) The commissioner shall periodically establish a schedule of fees to be paid for applications and examinations.

(4) The commissioner may charge reasonable fees for furnishing and certifying copies of documents or serving notices required under this act.

(5) The commissioner shall base the fees established under subsections (3) and (4) on the estimated cost to the department of conducting the activities for which the fees are imposed. No fee charged to a trust company shall be greater than the amount prescribed by this act or the amount charged to a bank for a similar activity or service.

(6) To the extent any fees, penalties, or fines assessed under this act are unpaid when due, the commissioner may, after providing proper notice, maintain an action for the recovery of the fees, penalties, or fines plus interest and costs.

(7) The fees, expenses, compensation, penalties, and fines collected under this act are not refundable.

(8) The state trust company regulatory fund is established in the department of treasury. All of the following apply to the state trust company regulatory fund:

(a) The fund shall consist of the following:

(i) Fees, expenses, compensation, penalties, and fines received or collected under this act.

(ii) Money appropriated to the fund.

(iii) Donations of money made to the fund from any source.

(iv) Interest and earnings from fund investments.

(b) Money in the fund at the close of a fiscal year shall remain in the fund and shall not revert to the general fund.

(c) Upon appropriation, the department shall use the money in the fund only for trust company regulatory purposes, as determined by the commissioner.

(d) The state treasurer shall direct the investment of the fund.

(e) The department is the administrator of the fund for auditing purposes.

SECTION 704. NOTICES OF LICENSE RENEWAL. On or before September 30 of each year, the department shall notify each licensed trust company and foreign family trust company having a branch office in this state that its license under section 302 or 304, as applicable, will expire on December 31 of that year. The notice shall include or provide access to a blank application for renewal of the license that is expiring.

SECTION 705. DECLARATORY RULINGS, ORDERS, OR DETERMINATIONS.

(1) The commissioner may issue declaratory rulings in accordance with the administrative procedures act of 1969, or issue orders requested by application authorizing 1 or more trust companies to exercise powers not specifically authorized by this act.

(2) In the exercise of its discretion under subsection (1), the commissioner shall consider the purposes of this act, the ability of the trust company to exercise any additional power in a safe and sound manner, and whether similar powers are exercisable by other trust companies.

SECTION 706. REGULATION OF FOREIGN FAMILY TRUST COMPANIES.

(1) If the commissioner determines that a branch office of a foreign family trust company in this state is acting in violation of the laws of this state or that the activities of the branch office are being conducted in an unsafe or unsound manner, the commissioner may undertake enforcement actions and proceedings as would be permitted if the branch office were that of a licensed family trust company.

(2) Any notice or order issued by the commissioner relating to a branch office of a foreign family trust company shall be served in accordance with section 2313 of the banking code of 1999,

MCL 487.12313, with a copy sent to the foreign regulatory agency that is responsible for supervising the company.

(3) If the commissioner determines that a foreign trust company is acting in this state in violation of the laws of this state, the commissioner shall notify the state in which the foreign trust company is licensed, if any, and the attorney general of this state.

SECTION 707. ENFORCEMENT POWERS. A licensed trust company shall be treated as an “institution” for the purposes of part 3 of chapter 2 of the banking code of 1999, 487.12301-.12203, provided, however, that for those purposes, in relation to a licensed trust company, both of the following apply:

(1) The term “director” or “board of directors” as used in sections 2036 and 2309 of the banking code of 1999, MCL 487.12306, 487.12309, shall include managers and committee members.

(2) The word “depositors” as used in section 2036 of the banking code of 1999, MCL 487.12306, shall denote “clients” within the meaning of this act.

SECTION 708. APPLICATION FILING AND PROCESSING. An application under this act must be filed and processed in accordance with subsections (2) to (10) of section 2302 of the banking code of 1999, MCL 487.12302(2)–(10).

Part 8 **Dissolution and Merger of Trust Companies**

SECTION 801. APPLICATION OF CORPORATE OR COMPANY LAW. Except as otherwise provided in this part, the laws of the state of a domestic trust company’s organization or incorporation govern all aspects of the company’s dissolution, winding-up and merger, including the transmission or publication of notice to any person that is not a client, in connection with the company’s dissolution or merger.

SECTION 802. DISSOLUTION OF LICENSED TRUST COMPANIES.

(1) Any person who files an action seeking to dissolve a licensed trust company must provide notice of the action to the department. The commissioner may intervene in any action seeking to dissolve a licensed trust company.

(2) A licensed trust company may not voluntarily dissolve until the commissioner has approved an application for dissolution filed by the company. An application for dissolution may not be filed with the department unless the persons whose consent is necessary to dissolve the company have, subject to the department's approval of the application, consented to the company's dissolution.

(3) A domestic trust company that has filed an application for dissolution shall not accept new client accounts but may continue to act as a fiduciary for any existing client for the purpose of winding up the company's affairs.

(4) An application for dissolution on a form approved by the commissioner shall be signed by the person authorized by the licensed trust company to receive communications from and represent the company before the department.

(5) The commissioner may examine any licensed trust company that has filed an application for dissolution to determine whether the rights of the company's clients, members or shareholders have been violated and may demand such information as the commissioner requires for that purpose.

(6) The commissioner shall not approve an application for dissolution filed by a licensed trust company unless the company has ceased to act as a fiduciary for all of the company's clients or the commissioner's approval is expressly conditioned on the company's ceasing to act as a fiduciary for any client.

(7) The commissioner shall approve an application for dissolution unless the commissioner finds that the company has not safely and soundly administered all of the company's client accounts following the company's last examination, the rights of the company's clients, members or shareholders have been materially violated or that the company's dissolution is otherwise not in conformity to law. In deciding whether to approve an application for dissolution, the commissioner shall consider a client's, member's or shareholder's prior ratification, release or consent, the applicable limitations period governing the company's conduct, including the limitations periods imposed by section 803, and the effect of any judicial order discharging the company or notice to claimants of the company required or permitted by law other than this act.

(8) The commissioner's decision to approve an application for dissolution does not discharge a licensed trust company from liability for its fiduciary conduct or any claims that may be asserted by its creditors.

SECTION 803. NOTICE OF DISSOLUTION TO FORMER CLIENTS.

(1) A domestic trust company shall notify its clients and former clients in writing of the company's pending dissolution. If the company is a licensed trust company, written notice under this section must not be given until the company has filed the application for dissolution required by section 802. If the company is an unlicensed family trust company, written notice under this section must not be given until the company has filed a certificate of dissolution or its equivalent with the state in which the company is organized or incorporated. The written notice must include all of the following:

(a) A mailing address where claims can be sent.

(b) A statement that the company in dissolution may demand sufficient information to permit it to make a reasonable judgment whether a claim should be accepted or rejected.

(c) The deadline by which any claim must be received, which must not be less than whichever of the following is applicable:

(i) Six months from the effective date of the written notice if the notice is given by an unlicensed trust company.

(ii) Three months from the effective date of the written notice if the notice is given by a small commercial trust company.

(iii) Forty-five days from the effective date of the written notice if the notice is given by a licensed family trust company.

(d) A statement that all claims will be barred if not received by the deadline.

(2) A domestic trust company in dissolution shall publish notice to any client or former client whose address or whereabouts could not be ascertained on diligent inquiry. The notice must be published once each week for 8 consecutive weeks and shall include the information specified in subsection (1), except that the deadline by which any claim must be received must not be less than whichever of the following is applicable:

(a) Twelve months from the first publication date if the company is an unlicensed trust company.

(b) Six months from the first publication date if the company is a small commercial trust company.

(c) Three months from the first publication date if the company is a licensed family trust company.

(3) Notices described in subsections (1) and (2) do not constitute an admission by the issuing domestic trust company in dissolution that a client or former client to whom notice is directed has a valid claim against the company.

(4) A claim against a domestic trust company in dissolution is barred if either of the following applies:

(a) A client or former client who was given notice under subsections (1) or (2) does not mail the claim to the mailing address provided in the notice by the stated deadline.

(b) A client or former client who was given notice under subsections (1) or (2) whose claim was rejected in writing by the company in dissolution does not commence an action or proceeding to enforce the claim within 90 days from the effective date of the rejection.

(5) The effective date of notice given under subsection (1) or (4)(b) is the earliest of the following:

(a) The date the notice is received.

(b) Five days after the notice is deposited in the United States mail as evidenced by the postmark if the notice is mailed postpaid and correctly addressed.

(c) The date shown on the return receipt if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) The effective date of notice published under subsection (2) is the date of the last publication of the 8 publications required by that subsection.

SECTION 804. MERGER OF TRUST COMPANIES.

(1) Subject to the other requirements in this section, two or more trust companies may merge if the surviving trust company will continue to qualify as a trust company immediately after the merger.

(2) A licensed trust company may not merge with another trust company unless the licensed trust company will be the surviving trust company, or the commissioner has approved an application for merger filed by the licensed trust company. The application for merger on a form

approved by the commissioner shall be signed by the person authorized by the licensed trust company to receive communications from and represent the company before the department.

(3) The commissioner shall approve an application for merger unless the commissioner finds that the surviving trust company would not continue to qualify as a trust company after the merger or would otherwise be unable to administer the client accounts of and act as a fiduciary for the clients of each constituent trust company in a safe and sound manner. In deciding whether to approve an application for merger, the commissioner may consider the results of any prior examination of the surviving trust company conducted during the previous 5 years and may demand such information as the commissioner requires for making the findings required by this subsection. The commissioner shall not deny an application for merger merely because the surviving trust company is not a licensed trust company.

(4) A domestic trust company may merge with a foreign trust company if the merger is permitted by the law under which each foreign constituent trust company is organized and each foreign constituent trust company complies the law to which it is subject in effecting the merger.

(5) Within 30 days following a merger involving an unlicensed family trust company, the surviving trust company shall file a notice of merger with the department. The notice of merger under this subsection must include the name of each constituent trust company, the name of the surviving trust company, the address of the surviving trust company's principal office, the date of the notice, the name of each designated family member, if any, and the effective date of the merger.

(6) A surviving trust company possesses all the rights, interests, privileges and is subject to all the restrictions, disabilities, liabilities, and duties of each of constituent trust company. Upon the merger of two or more companies under this section, title to all property, real, personal, and mixed, held by a constituent trust company is thereby automatically transferred to the surviving

trust company, and shall not revert or be in any way impaired by reason of this act.

(7) A surviving trust company and enjoys the same and all rights of property and interests, including appointments, designations, and nominations and all other rights and interests as a fiduciary, in the same manner and to the same extent as those rights and interests were held or enjoyed by each constituent trust company at the time of the merger. If a constituent trust company at the time of merger was acting under appointment of any court as a fiduciary, the surviving trust company is subject to removal by a court of competent jurisdiction.

(8) A surviving trust company shall file with each court or other public tribunal, agency, or officer in any state by which any of its constituent trust companies have been appointed as a fiduciary, and in the court file of each estate, suit, or any other proceeding in which any of them has been acting as a fiduciary, an affidavit setting forth the fact of merger, the name of each constituent trust company, the name of the surviving trust company, the location of its principal office, and the amount of its unencumbered capital reserves and any bond obtained under section 206.

(9) The liability of any constituent trust company and the rights or remedies of the creditors of, or other persons transacting business with the constituent trust company shall not be altered or impaired as the result of a consolidation.

(10) The liability of any shareholder, member, director, manager, officer or committee member of a constituent trust company and the rights or remedies of the creditors of, or other persons transacting business with the shareholder, member, director, manager, officer or committee member as such shall not be altered or impaired as the result of a consolidation.

EXHIBIT 1B

Nonbanking Entity Trust Powers Ad Hoc Committee

Proposed Amendments to EPIC and the Qualified Dispositions in Trust Act

A bill to amend 1998 PA 386, entitled “estates and protected individuals code,” by amending sections 7105, 7110, 7409 and 7703a as amended by 2009 PA 46, 2010 PA 325, 2018 PA 664, and 2023 PA ___.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

700. 2722[Reserved]

[Reserved]

700.7105 Duties and powers of trustee; provisions of law prevailing over terms of trust

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

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

(a) The requirements under section 7401 and 7402(1)(c) and (e) for creating a trust.

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

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

(d) The durational limits specified in section 7408 for trusts for the care of animals and in section 7409 for other noncharitable purpose trusts.

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

(f) The effect of a spendthrift provision, a support provision, and a discretionary trust provision on the rights of certain creditors and assignees to reach a trust as provided in part 5.

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

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

(i) Except as permitted under section 7809(2), the obligations imposed on a trust protector in section 7809(1).

(j) Except as provided in section 7409a and section [16]603 of the of the trust company act, MCL [487.16]603, The-the duty under section 7814(2)(a) to (c) to provide beneficiaries with the terms of the trust and information about the trust's property, and to notify qualified trust beneficiaries of an irrevocable trust of the existence of the trust and the identity of the trustee.

(k) The power of the court to order the trustee to provide statements of account and other information pursuant to section 7814(4).

(l) The effect of an exculpatory term under section 7809(8) or 7908.

(m) The rights under sections 7910 to 7913 of a person other than a trustee or beneficiary.

(n) Periods of limitation under this article for commencing a judicial proceeding.

(o) The power of the court to take action and exercise jurisdiction.

(p) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 7203 and 7204.

(q) The requirement under section 7113 that a provision in a trust that purports to penalize an interested person for contesting the trust or instituting another proceeding relating to the trust shall not be given effect if probable cause exists for instituting a proceeding contesting the trust or another proceeding relating to the trust.

700.7110 Others treated as qualified [trust] beneficiaries

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

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

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

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

(2) A person appointed to enforce a trust created for the care of an animal under section 7408 or another noncharitable purpose trust under section 7409 has the rights of a qualified trust beneficiary under this article.

(3) During the nondisclosure period of a trust described in section 7409a, a person granted a nondisclosure correlative right or protection power over the trust has the rights of a qualified trust beneficiary under this article.

(4) A person granted a protection power pursuant to section [16]603 of the of the trust company act, MCL [487.16]603, has the rights of a qualified trust beneficiary under this article.

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

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

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

700.7402 Creating trust; requirements

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:

(i) A charitable trust.

(ii) A trust for a noncharitable purpose under section 7409 or a trust for the care of an animal under section 7408.

(d) The trustee has duties to perform.

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

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

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

700.7408 Trust for care of pet

Sec. 7408. (1) A trust may be created to provide for the care of a designated domestic or pet animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than 1 domestic or pet animal alive during the settlor's lifetime, upon the death of the last surviving such animal.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal(s) for which the trust is created may request the court to appoint a person to enforce the trust or to remove a person appointed.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

700.7409 Noncharitable purpose trust

Sec. 7409. Except as otherwise provided in section 7408 or by another statute, the following rules apply:

(a) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. Except as provided in subsection (b), The ~~the~~ trust may be performed by the trustee according to the trust's terms for up to 25 years, but no longer, whether or not the terms of the trust contemplate a longer duration.

(b) To the extent that a trust created for a noncharitable purpose without a definite or definitely ascertainable beneficiary is a legacy organization holding trust, the durational limit specified in subsection (a) does not apply, and the trustee(s) of the trust may own the relevant voting interest and exercise the attendant voting rights and other privileges of ownership in accordance with the terms of the trust for as long as the legacy organization has a qualifying purpose.

~~(cb)~~ A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

~~(ed)~~ Except as provided in this subsection, property of a trust authorized by this section may be applied only to its intended use~~;~~.

(i) Subject to subdivision (ii), the court may determine that the value of the property of a trust authorized by this section exceeds the amount required for the intended use.

(ii) For purposes of this subsection, the intended use of a voting interest in a legacy organization is only the voting of the interest and exercise of any other attendant ownership privileges for the pursuit of the legacy organization's qualifying purpose or purposes. The court may not determine that the value of a legacy organization holding trust's voting interests in 1 or more legacy organizations exceeds the amount required for the intended use of those voting interests. Furthermore, the court may determine that the value of such a

trust’s property other than the trust’s voting interests in 1 or more legacy organizations exceeds the amount required for the intended use of the voting interests only if a petition seeking such a determination is filed by either the trustee of the legacy organization holding trust or a person appointed pursuant to subsection (c) to enforce the trust and only if the court finds that the petitioner has proved by clear and convincing evidence that property of the trust other than the trust’s voting interests in 1 or more legacy organizations is not required for either the intended use of the trust’s voting interests or any other purpose that the trustee is authorized by this section, as of the time of the petition, to pursue prospectively.

(iii) Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor’s successors in interest.

(e) As used in this section:

(i) A “legacy organization” is a family trust company or foreign family trust company described in sections [16]103(q) and 103(z) of the trust company act, MCL [487.16]103(q) and (z), or a nonprofit corporation as defined in section 108 of the nonprofit corporations act, 1982 PA 162, MCL 450.2108.

(ii) A trust without a definite or definitely ascertainable beneficiary is a “legacy organization holding trust” to the extent that the trustee(s) own(s) a voting interest in a legacy organization.

(iii) A legacy organization has a “qualifying purpose” while it is either of the following:

(A) Acting primarily as a fiduciary pursuant to the trust company act 20 PA ___, MCL [487.16]101 to [487. ___]___.

(B) Acting primarily to promote 1 or more charitable or social-welfare purposes described in sections 501(c)(3) to (c)(4) of the internal revenue code, 26 USC 501(c)(3)–(4).

700.7703a Rules of construction; nonfiduciary powers under a trust; power of direction to trust director; duties and limitations of trust director and trustee; liability; applicability of rules to trusteeship; definitions

Sec. 7703a. (1) Excepting the rules of construction in subsection (2), this section does not apply to:

(a) A power of appointment that is intended to be held by the donee in a nonfiduciary capacity.

* * * * *

(6) If a trust director is licensed, certified, or otherwise authorized or permitted by law other than this section to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this section. The immunity described in this subsection does not apply to an organization described in subsection (24)(f) that employs, contracts for services with, or is owned or managed by a person or persons who are licensed, certified, authorized, or permitted to provide health care to the extent the licensed, certified, authorized, or permitted person(s) act(s) in the capacity of health-care provider(s) pursuant to a power of direction granted to the organization or to another organization described in subsection (24)(f).

* * * * *

(24) As used in section:

(a) "Breach of trust" includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust or by this article.

(b) "Directed trustee" means a trustee that is subject to a power of direction.

(c) "Donee" means that term as defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

(d) "Power of appointment" means that term as defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

(e) "Power of direction" means a power over a trust granted by the terms of the trust to the extent the power is exercisable while the person to whom it is granted is not serving as a trustee. Power of direction includes a power over the investment, management, or distribution of trust property or other matters of trust administration. Power of direction does not include the powers described in subsection (1).

(f) "Trust director" means an organization permitted to exercise trust powers in this state as described in section 1105(2) of the banking code of 1999, 1999 PA 276, MCL 487.11105, a domestic trust company as defined in section [16]103 of the trust company act 20 PA , MCL [487.16]103, or an individual, if that person is granted a power of direction whether or not either of the following applies:

(i) The terms of the trust refer to the person as a trust director.

(ii) The person is a beneficiary or settlor of the trust.

700.7801 Administration of trust; duties of trustee

Sec. 7801. Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, expeditiously, in accordance with its terms and purposes, and except as provided in section [16]409(4) of the trust company act 20 PA , MCL [487.16]409(4), for the benefit of the trust beneficiaries, and in accordance with this article.

700.7802 Duty of loyalty

Sec. 7802. (1) Except as provided in section [16]409(4) of the trust company act 20 PA , MCL [487.16]409(4), ~~A~~a trustee shall administer the trust solely in the interests of the trust beneficiaries.

* * * * *

(6) Except as provided in section [16]409(4) of the trust company act 20 PA , MCL [487.16]409(4):

(a) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the trust beneficiaries.

(b) If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interests of the trust beneficiaries.

* * * * *

A bill to amend 2016 PA 330, entitled "qualified dispositions in trust act," by amending section 1042.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

700.1042 Definitions

Sec. 2. As used in this act:

(a) "Advisor" means a person who is given authority by the terms of a trust instrument to remove, appoint, or both, 1 or more trustees or to direct, consent to, approve, or veto a trustee's actual or proposed investment or distribution decisions. A person is considered an advisor even if the person is denominated by another title, such as trust protector. Any person may serve as an advisor.

* * * * *

(r) "Qualified trustee" means a person, other than the transferor, who meets all of the following conditions:

(i) For an individual, the individual is a resident of this state or, in all other cases, is an organization permitted to exercise trust powers in this state as described in section 1105(2) of the banking code of 1999, 1999 PA 276, MCL 487.11105, or a domestic trust company as defined in section [16]103 of the trust company act 20__ PA ___, MCL [487.16]103~~authorized by the law of this state to act as a trustee and whose activities are subject to supervision by the department of insurance and financial services, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision.~~

(ii) The person maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition and administers all or part of the trust in this state.

(iii) The person's usual place of business where some of the records pertaining to the trust are kept is located in this state or, if the person does not have such a place of business, the person's residence is in this state. For a corporate trustee, the usual place of business is the business location of the primary trust officer.

* * * * *

EXHIBIT 1C

Nonbanking Entity Trust Powers Ad Hoc Committee

Overview of the Michigan Trust Company Act



ENVISIONING THE FUTURE OF TRUST COMPANIES IN MICHIGAN

An Overview of the Draft Michigan Trust Company Act

Joseph J. Viviano

September 12, 2023

**McDermott
Will & Emery**

10-14-2023 CSP & Probate Council Meeting
Probate and Estate Planning Section
page 79 of 227

TOPICS

- The Drafting Committee
- Legislative Goals
- Key Concepts and Highlights
- Formation of Domestic Trust Companies
- Management and Powers of Trust Companies
- Special Provisions for Family Trust Companies
- Regulation of Licensed Trust Companies
- Dissolution and Merger



THE DRAFTING COMMITTEE

The Nonbanking Entity Trust Powers Committee

- Ad hoc committee created by the Probate and Estate Planning Section of the State Bar of Michigan
- Preliminary call with Michigan Office of Banking in June 2021
- Began work in August 2021
- Draft act substantially completed in May 2023
- Committee members:
 - James P. Spica (co-chair)
 - Robert P. Tiplady (co-chair)
 - JV Anderton
 - Laura L. Brownfield
 - Kathleen Cieslik



LEGISLATIVE GOALS

Authorizing and Facilitating the Operation of Certain Trust Companies

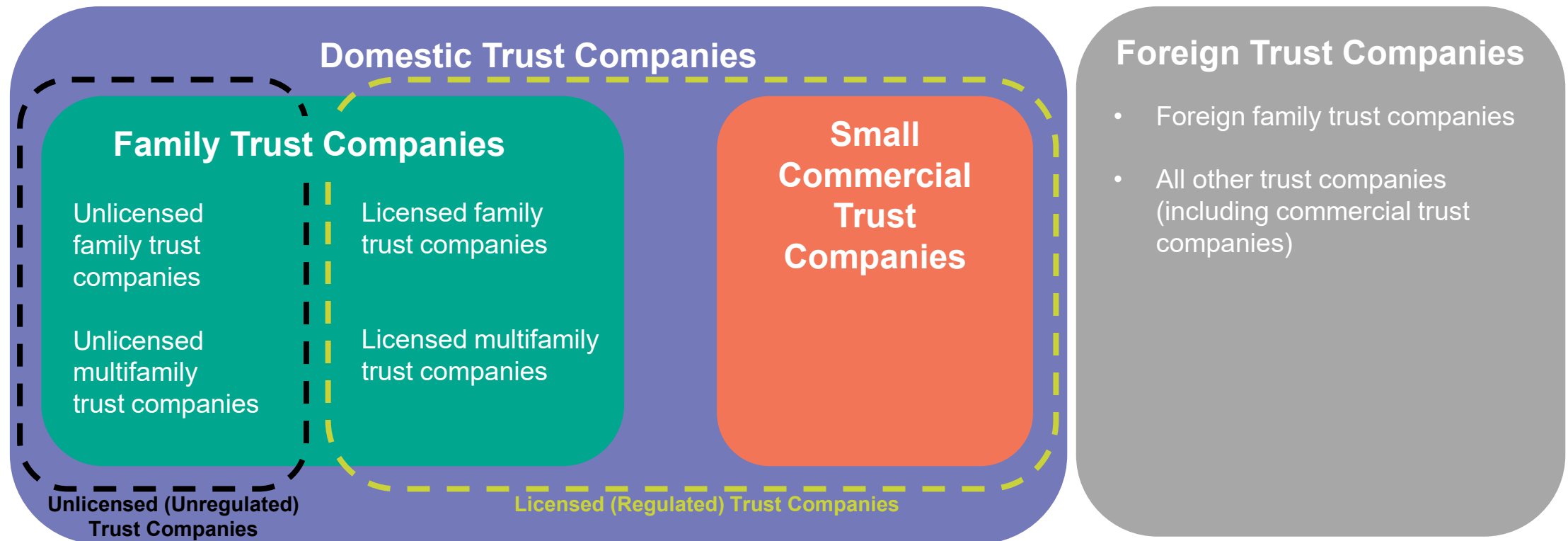
1. Facilitate the creation of “family trust companies” and “small commercial trust companies” in Michigan
2. Create best-in-class statutory framework for family trust companies
3. Permit “foreign family trust companies” to redomicile or operate in Michigan
4. Encourage professional individual trustees to organize small commercial trust companies
5. Safeguard members of the public who deal with small commercial trust companies



KEY CONCEPTS AND HIGHLIGHTS

Types of Trust Companies in the Draft Act

Trust Companies



KEY CONCEPTS AND HIGHLIGHTS

Terminology

- **Trust company** – an entity authorized to act as a fiduciary that is not a bank
 - No trust company can engage in the business of banking
- **Domestic trust company** – a trust company that is not a foreign trust company
 - **Family trust company** – a domestic trust company that may perform fiduciary services for a single family
 - **Multifamily Trust Company** – a trust company that may perform fiduciary services for up to three families
 - **Small commercial trust company** – a trust company that may perform fiduciary services for the public, subject to constraints on the type of clients it may serve
 - **Licensed trust company** – small commercial trust companies and regulated family trust companies
- **Foreign trust company** – a trust company that does not have its principal office in Michigan and is authorized to act as a fiduciary by the laws of another state



KEY CONCEPTS AND HIGHLIGHTS

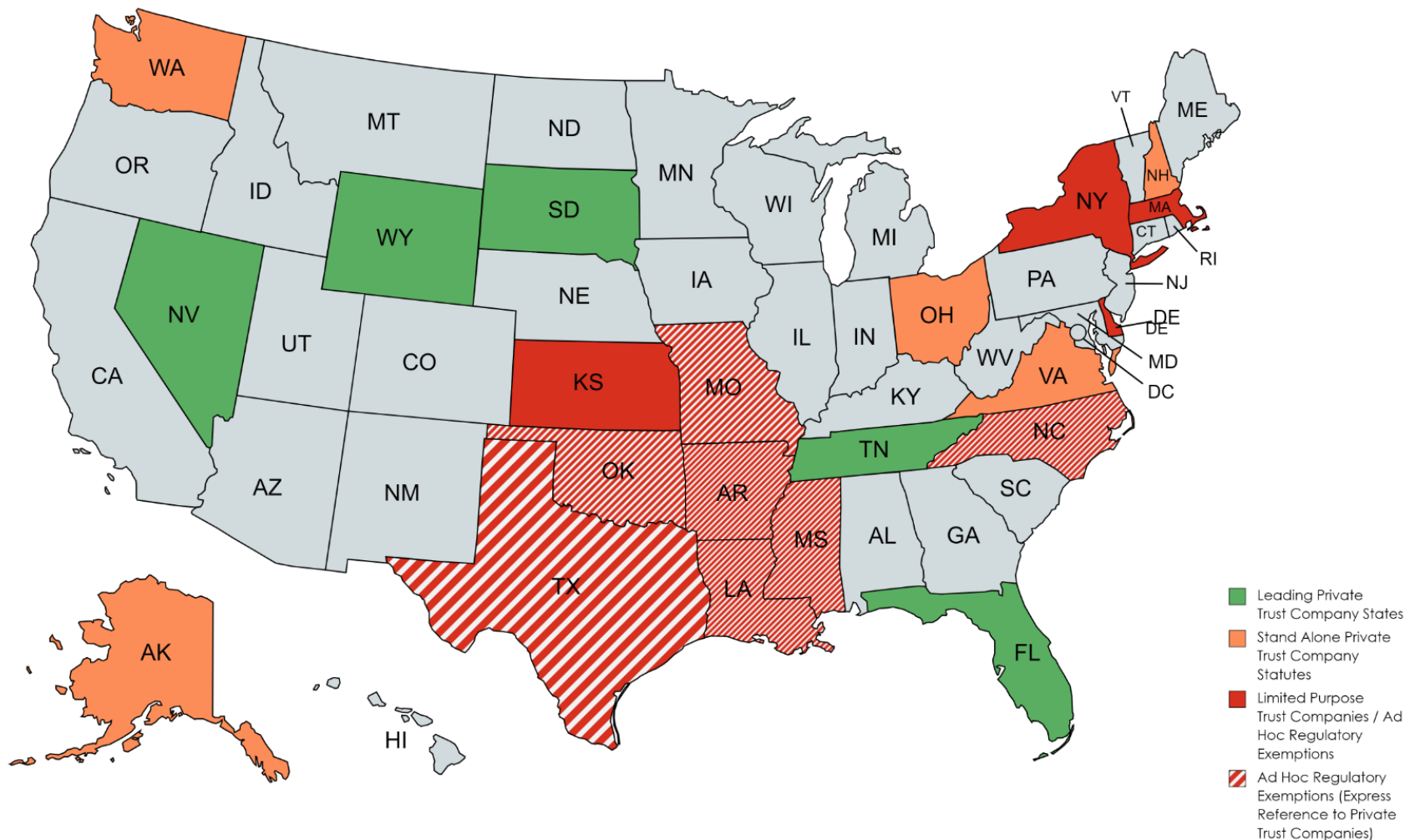
Overview of Family Trust Companies

- Typically formed by wealthy families
- Have existed for more than a century (*e.g.*, Bessemer Trust)
- Grew in popularity after the IRS and U.S. Treasury Department issued Notice 2008-63
 - The notice confirmed that appointing a family trust company to act as trustee would not cause adverse tax consequences
 - Since then, 10 states have enacted legislation authorizing the creation of family trust companies



KEY CONCEPTS AND HIGHLIGHTS

Statutory Landscape of Family Trust Companies in the United States



KEY CONCEPTS AND HIGHLIGHTS

Why Families Form Private Trust Companies

1. Reduced Cost – less expensive than hiring a professional fiduciary
 - *Example:* \$1 billion of assets at 50 bps would result in a \$5 million fiduciary fee
2. Control/Succession Planning – additional flexibility for exercising control within the trust company; particularly helpful for old trusts
3. Administer Complicated Assets – family trust companies are ideal for administering complicated assets, such as art, insurance and closely-held businesses; an alternative to directed trusts
4. Family Harmony – control of a family trust company can be allocated among multiple family members using committees and different ownership interests
5. Reduce Personal Liability – less risk than acting as an individual fiduciary
6. Expediency – family trust companies can act more quickly than professional fiduciaries



KEY CONCEPTS AND HIGHLIGHTS

Who May Receive Services from a Family Trust Company

- Eligibility to receive fiduciary services from a family trust company depends on whether the company is licensed or unlicensed
 - Licensed Family Trust Companies
 - Not tied to the Investment Adviser Act of 1940 (broader)
 - “Family members” (e.g., lineal blood descendants of a designated family member) and “extended family members” (e.g., lineal and ancestral relatives within 10 degrees of affinity) are eligible to receive fiduciary services
 - Unlicensed Family Trust Companies
 - Eligibility based on the family office exception to the Investment Adviser Act of 1940
 - “Family members”
- A multifamily trust company may serve up to three families



KEY CONCEPTS AND HIGHLIGHTS

Overview of Small Commercial Trust Companies

- Unique to Michigan (if draft act is enacted)
- Goals/intent
 - Provide fiduciary services for difficult to place accounts
 - guardianships, conservatorships, agencies and low value trusts
 - Encourage professional individual fiduciaries to become subject to DFIS regulation
- Limitations:
 - Cannot administer more than 250 clients accounts at any time
 - Cannot maintain custody of tangible property
 - No client account can hold more than \$2.5 million of assets (subject to COLA)



KEY CONCEPTS AND HIGHLIGHTS

Overview of Foreign Trust Companies

- Foreign family trust companies would be permitted to act in Michigan
 - May open branch offices in Michigan (subject to periodic exams)
 - May exercise the powers of and possess the rights of domestic family trust companies
 - May convert to a domestic family trust company
 - Cannot advertise to or solicit business from the public
- All other foreign trust companies (*i.e.*, commercial trust companies) will remain prohibited from acting in Michigan



FORMATION OF DOMESTIC TRUST COMPANIES

Formation Requirements

All Domestic Trust Companies

- Principal office in Michigan
- Maintain copies of governance and financial documents at principal office
- Deposits with Michigan bank or FDIC insured bank

Licensed Domestic Trust Companies

- Satisfy capitalization requirements
- Obtain and renew required DFIS licenses

Unlicensed Family Trust Companies

- Notify DFIS of formation



FORMATION OF DOMESTIC TRUST COMPANIES

Capitalization Requirements

- Required capitalization:
 - Licensed family trust company: \$250,000
 - Small commercial trust companies: \$2,500,000
- Alternative to maintaining capitalization:
 - Bond issued by licensed surety conditioned on lawful discharge of all fiduciary duties
- Penalty for failure to maintain adequate capitalization or bond:
 - Personal liability to the extent of deficiency
 - “[E]ach director, manager, executive officer, shareholder, member or other person that directly or indirectly owns or controls that company shall be jointly and severally personally liable for all judgments entered against the company” to the extent of the deficiency



FORMATION OF DOMESTIC TRUST COMPANIES

Licensing Requirements

- Required licenses:
 - Every small commercial trust company must be licensed
 - A family trust company may be licensed
 - All directors, officers, executive officers and committee members of a licensed trust company must be licensed
- Trust company licenses must be renewed annually
- Fees:
 - Initial application fee: \$5,000
 - Annual renewal fee: \$1,000
 - Annual supervision fee:
 - \$1,500 for small commercial trust companies
 - \$3,000 for licensed family trust companies



MANAGEMENT AND POWERS OF TRUST COMPANIES

Directors

- Minimum number of directors:
 - Small commercial trust companies: 3
 - Licensed family trust companies: 1
- All trust companies have separate legal personality (directors not personally liable unless company is inadequately capitalized)
- Restrictions applicable to family trust companies:
 - Tax saving provisions (cannot vote on prohibited decisions or enter reciprocal agreements)
 - Opt-out available
- The business and affairs of all domestic trust companies is managed by their directors or managers, but they can delegate authority to committees
 - Directors or managers who delegate are responsible for committee decisions; no liability for decision made by committees mandated by governance documents



MANAGEMENT AND POWERS OF TRUST COMPANIES

Fiduciary Fees

- Fees charged by small commercial trust companies are presumed reasonable if specified in a fee schedule (same standard as the Banking Code)
- A small commercial trust company may charge each client account a pro rata share of the cost of any surety bond, not exceeding \$200 per account
- Fees charged by family trust companies are presumed reasonable if:
 - The fee charged to each client account of the same type is computed using the same method and does not exceed 110% of the company's operating costs; or
 - The fee is approved by each affected client



SPECIAL PROVISIONS FOR FAMILY TRUST COMPANIES

Duty of Loyalty and Indemnity

- Narrowed duty of loyalty:
 - Subject to certain limitations, a family trust company may:
 - serve as an officeholder for a related person (e.g., a family office or family business)
 - coinvest with related persons
 - generally deal with related persons
- May enter into indemnity agreements with related persons
- Directors, managers, officers and committee members are entitled to indemnity under EPIC as if they were acting as the fiduciary in question



Confidentiality

- Confidentiality provisions:
 - A family trust company may refuse to provide information to a family client who does not sign a nondisclosure agreement
 - Family clients may not publicly disclose “confidential information”
 - Trusts administered by family trust companies may require trustee reports to be furnished to another person rather than a beneficiary
 - Judicial proceedings involving family trust companies must be sealed upon motion



REGULATION OF LICENSED TRUST COMPANIES

Audits and Examination; Enforcement Powers

- Licensed trust companies are subject to examination as if they were a bank
 - Service providers to family trust companies are not subject to examination
- Michigan branch offices of foreign family trust companies are subject to examination as if they were a bank
 - DFIS should rely on examinations conducted by out-of-state state regulator, if possible
- DFIS has all enforcement powers applicable to banks



DISSOLUTION AND MERGER OF TRUST COMPANIES

Dissolution

- Dissolution rules applicable to corporations or LLCs generally apply
- Other provisions:
 - Licensed trust companies must file application for dissolution with DFIS
 - DFIS may examine any company that has applied for dissolution
 - Company must cease to act as a fiduciary for all clients before dissolution
 - Company must notify all current and former clients (unless the former client ceased to be a client more than 5 years before application for dissolution is filed)
 - Claims are barred:
 - 6 months after notice from an unlicensed family trust company (12 months by publication)
 - 3 months after notice from a small commercial trust company (6 months by publication)
 - 45 days after notice from a family trust company (3 months by publication)



DISSOLUTION AND MERGER OF TRUST COMPANIES

Merger and Consolidation

- Subject to the following, a trust company may merge/consolidate if the surviving/new entity will continue to qualify as a trust company or bank
 - In a merger/consolidation involving a *licensed trust company*, the new/surviving entity must be a licensed trust company or DFIS must approve the merger
 - A domestic trust company may merge/consolidate with a foreign trust company or bank if merger/consolidation is permitted under foreign law
 - In a merger/consolidation involving an unlicensed family trust company, the surviving entity must file a notice of merger/consolidation with DFIS
- New/surviving entity has all powers and designations as predecessors
- New/surviving entity must notify applicable courts of merger/consolidation
- Liabilities of predecessor companies assumed by new/surviving entity
- Liabilities of shareholders, members, directors, etc. not affected



THANK YOU

Contact Information

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Council Materials

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN**

Saturday, October 14, 2023

Regular Meeting Agenda

- I. Commencement (Jim Spica)
 - A. Call to Order and Welcome
 - B. Zoom Roll Call
 - C. Confirmation of In-Person Attendees
 - D. Excused Absences
- II. Monthly Reports
 - A. Lobbyist's Report (Public Affairs Associates)
 - B. Minutes of Prior Council Meeting – June (Nathan Piwowarski, outgoing Secretary) – **Attachment 1**
 - C. Chair's Report (Jim Spica)
 - E. Treasurer's Report (Christine Savage)
 - D. Committee on Special Projects (Melisa Mysliwicz)
- III. Committee Reports
 - A. Amicus Curiae
 - B. Annual Meeting
 - C. Awards
 - D. Budget
 - E. Bylaws
 - F. Charitable and Exempt Organizations
 - G. Citizens Outreach
 - H. Court Rules, Forms, and Proceedings
 - I. Electronic Communications
 - J. Ethics and Unauthorized Practice of Law
 - K. Guardianship, Conservatorship, and End of Life – **Attachment 2**
 - L. Legislation Development and Drafting
 - M. Legislation Monitoring and Analysis
 - N. Legislative Testimony

- O. Membership
 - P. Nominating
 - Q. Planning
 - R. Probate Institute
 - S. Real Estate
 - T. State Bar and Section Journals
 - U. Tax – **Tax Nugget, Attachment 3**
 - V. Ad Hoc Committee on Assisted Reproductive Technology
 - W. Electronic Wills
 - X. Fiduciary Exception to the Attorney-Client Privilege
 - Y. Nonbanking Entity Trust Powers
 - Z. Premarital Agreements
 - AA. Uniform Community Property Disposition at Death Act
 - BB. Undue Influence
 - CC. Uniform Fiduciary Income and Principal Act
 - DD. Uniform Partition of Heirs Property Act
 - EE. Uniform Power of Attorney Act
 - FF. Various Issues Involving Death and Divorce
- IV. Good of the Order
 - V. Adjournment

Departments (Time Permitting)

- I. Ethics (Rick Mills)
- II. Legal Literature (James Spica) – **Attachment 4 (from Meg Lentz)**

Roundtable (Time Permitting)

Reminder: The next Probate & Estate Planning Council meeting will be **Friday, November 10, 2023**. The Council meeting will begin (almost) immediately after the Committee on Special Projects meeting, which begins at 9:00 AM.

ATTACHMENT 1

**MEETING OF THE COUNCIL OF THE
PROBATE & ESTATE PLANNING SECTION OF THE
STATE BAR OF MICHIGAN**

Friday, September 8, 2023

Minutes

I. Commencement (James P. Spica)

A. Call to Order and Welcome

Chairperson James P. Spica called the meeting to order at 10:42 AM noting that the meeting was being recorded and that the resulting recording is to be deleted once the minutes of the meeting have been submitted by the Secretary and accepted by the Council.

B. Zoom Roll Call

Alexander S. Mallory, Andrea Neighbors, Andrew Mayoras, Brad Douglas, Christine Savage, Daniel Borst, David Lentz, David Lucas, David Sprague, James F. Anderton, V, Jim Steward, Joe Viviano, John Mabley, John McFarland, Jonathan Beer, Kathleen Goetsch, Kenneth Silver, Lindsey DiCesare, Marguerite Munson Lentz, Nancy Welber, Neal Nusholtz, Brad D. Douglas, Robert Labe, Ryan Buck, Sandra Glazier, and Shenique Moss

C. Confirmation of In-Person Attendees

Nathan Piwowarski, Susan Chalgian, Hon. David Murkowski, Ernschie Augustin, Michael Shelton, Melisa M.W. Mysliwiec, Katie Lynwood, James P. Spica, Mark E. Kellogg, Warren H. Krueger, III, Richard C. Mills, Michael Lichterman, Patricia Davis, Angela Hentkowski, and Daniel Hilker

D. Excused Absences

Hon. Shauna Dunnings and Rebecca Wrock

II. Monthly Reports

A. Lobbyist's Report (Public Affairs Associates)

- i. In the Senate, the bills that did not get immediate effect are the pension tax proposal for seniors, the earned income tax credit, and changing the presidential primary for the Democrats from March to February 27th

- ii. Becky stated that EPIC omnibus is the priority and is sitting on the House floor. Rep. Green has asked the speaker to move the bill off the House floor. Becky sent an email follow-up to his legislator director making the same request. Senator Chang who chair the Senate Judiciary Committee has indicated that she will take the bills up in October if we can get those over to her.
 - iii. The uniform power of attorney bills are also in the Senate committee. Rep Haadsma indicated that he would send a letter requesting Senator Chang take those bills up as well. Beck will ask Senator Hope to do the same thing since she has a similar House committee.
 - iv. Jim Spica did an overview for the House Democratic Caucus's policy advisor on our power of appointment/rule against perpetuity legislation that was introduced in committee on 9/7/2023. House Judiciary Committee chair Rep Breen indicated items that she wanted to take up.
 - v. Representative Wozniak is working with Jim Spica on the unitrust bill.
 - vi. Becky has been working on the ART legislation. Rep. Steckloff indicated she wants to take care of this issue for us. She is also working on fertility-related legislation. She is working with the Senate Majority Leader hoping to attach that legislation to the bills that the governor wants to get done on reproductive rights.
- B. Minutes of Prior Council Meeting – June (Nathan Piwowski) – **Attachment 1**. Shelton/Lynwood moved to approve with amendment to item VI(C)(ii) to reflect that we offered condolence upon the death of John Bos's spouse's death.

C. Chair's Report (Mark Kellogg/Jim Spica) – **Attachment 2**. Mr. Spica shared that a donation has been made to High Fields in honor of Mark Kellogg for his service as chair. Mr. Spica drew attendees' attention to the published meeting agenda, and particularly that all meetings excepting the October meeting will be held on Fridays. The October Council meeting will be held on a Saturday at Interlochen Institute for the Arts. All meetings will continue to be offered on a hybrid (in-person and video) basis. Noted the special public thanks that Rep. Wozniak offered regarding the Council's work developing the new public power of attorney legislation (attached to these minutes). Mr. Spica indicated that there will be a committee roll/report as part of each meeting's agenda, and the addition of activities following conclusion of the Council's regular business, including these "departments": Ethics, Legal Literature, and Roundtable "departments" The first ethics topic will concern attorneys serving as trustees. The Legal Literature Department will concern Frederic Maitland. The Roundtable will concern probate avoidance through the use of joint trusts.

D. Treasurer's Report (Rick Mills) – **Attachment 3**

III Committee Reports

A. Committee on Special Projects

- i. The CSP received a presentation from the Guardianship, Conservatorship & End of Life Committee regarding HBs 4909, 4910, and 4912. The CSP, by majority vote, recommended that the Council adopt a public policy position opposing HBs 4909, 4910, and 4912 as drafted, and more particularly that "We support the principle of protecting vulnerable adults, but are concerned that these proposals, as drafted, will cause certain unintended consequences." Melisa moved to adopt the suggested position. 18 voted yes, 3 were absent, and 2 were present but did not vote.

- ii. The CSP received a presentation from the Nonbanking Entity Trust Powers Ad Hoc Committee. Jim Spica and Joe Viviano offered an overview of a proposed statute to authorize the formation and operation of family trust companies and small commercial trust companies in the State of Michigan. The Ad Hoc Committee solicited feedback as to the amount and depth of future presentations regarding the proposed statute. The CSP indicated that two or three additional in-depth reviews and discussions would be helpful.
 - iii. The CSP received a presentation from the Undue Influence Ad Hoc Committee. The Ad Hoc Committee solicited feedback as to whether it should continue its work in developing a statute. The CSP, without a vote, did encourage the Ad Hoc Committee to continue its work.
- B. Amicus Curiae (Mayoras): no new activity
 - C. Annual Meeting (Kellogg): no report
 - D. Awards (Kellogg): no report
 - E. Budget (Mills): Mr. Mills reviewed the year-to-date budget, noted that impact of increased membership and decreased travel expenses, and explained the close of books by the State Bar and formulation of the next fiscal year's budget.
 - F. Bylaws (Lucas): Mr. Spica asked Mr. Lucas's committee to advise Council as to whether formal action's needed to change the convention or rule under which the chair is an ex officio member of each standing and ad hoc committee, and whether a bylaw change is necessary to similarly include the vice-chair in that manner.
 - G. Charitable and Exempt Organizations (Wrock/Mills). Mr. Mills indicated that the committee's been active in evaluating potential changes to the charitable solicitation act, nonprofit corporation act, and charitable trust supervision act (in tandem with a committee in the Business Law Section). Mr. Mills expressed gratitude that Brien Heckman has participated.
 - H. Citizens Outreach (Goetsch): the committee anticipates a significant amount of work adapting published materials following the Omnibus's adoption. Ms. Goetsch invited others to join the committee.

- I. Court Rules, Forms, and Proceedings (David): Mr. Spica noted as follows: Judge Dunnings will become our liaison to the Michigan Probate Judges Association (MPJA). Ryan Buck (Ingham County Probate Register) will become our liaison to the Probate Registers. Ms. David will become our Section's liaison to the State Court Administrative Office.
- J. Electronic Communications (Hentkowski): no report.
- K. Ethics and Unauthorized Practice of Law (Olson): no report.
- L. Guardianship, Conservatorship, and End of Life (Glazier): The committee is actively engaged in connection with the Elder Abuse Task Force's latest legislative proposals as reflected elsewhere in these minutes.
- M. Legislation Development and Drafting (Mills/Tiplady): no report. Mr. Spica noted that we
- N. Legislation Monitoring and Analysis (Shelton). Mr. Spica shared with Mr. Shelton and Mr. Olson a link to HB 4654 (Rep. Fink), which concerns electronic execution of wills. Mr. Shelton understands that Electronic Wills Ad Hoc Committee is going to be responsible for that review.
- O. Legislative Testimony (Mysliwicz): no report
- P. Membership (Hentkowski): The committee may expand its activities, including presentations for new lawyers.
- Q. Nominating (Lucas): Mr. Spica indicated that, over time, the chairmanship rules will change so that the most recent past president will chair this committee. But this will not occur until the third year from now (with the likely line of succession being: Lucas, Skidmore, Kellogg, Piwowarski). No additional report.
- R. Planning (Spica). This committee will be comprised of the current officers and first past president. This year the committee will meet regularly, often on the Monday immediately following Council meetings.

- S. Probate Institute (Piwowarski): The 2024 institute will be held on Thursday – Saturday, May 16-18, 2024, at the Grand Traverse Resort and Spa, Acme and Thursday – Friday, June 20-21, 2024, at the Suburban Collection Showplace, Novi (a new location). Mr. Piwowarski has completed the planning meeting with representatives of ICLE. Please be prepared to say “yes” when you are asked to present.
- T. Real Estate (Silver): has periodically met to discuss potential changes to the uncapping provisions of the General Property Tax Act.
- U. State Bar and Section Journals (Mysliwicz): Ms. Mysliwicz thanked the committee for its active participation in soliciting and editing articles. The Summer issue will likely be published next week.
- V. Tax (Anderton): Mr. Anderton reviewed the Tax Nugget regarding availability of deduction for intrafamily loans on a Form 706.
- W. Assisted Reproductive Technology (Welber): Ms. Welber expressed optimism regarding the prospects for the proposal’s adoption during this legislative session.
- X. Electronic Wills (): No report.
- Y. Fiduciary Exception to the Attorney-Client Privilege (Krueger): The Michigan Bankers Association desires legislation. The committee is actively monitoring the issue and will keep Council apprised. Mr. Sprague confirmed that the MBA does have a copy of our proposal.
- Z. Nonbanking Entity Trust Powers (Spica): no report beyond as reflected in these minutes.
- AA. Premarital Agreements (Savage): While the committee is well populated it would welcome additional members. Reviewing the Uniform Premarital Agreement Act. Have reached out to Family Law Section and have not received a response.
- BB. Uniform Community Property Disposition at Death Act (Spica): no report.
- CC. Undue Influence (Silver): no report beyond as reflected in these minutes. We anticipate dedicating a significant amount of CSP time in October (for topics other than the presumption).

- DD. Uniform Fiduciary Income and Principal Act (Spica): Rep. Wozniak has agreed to sponsor our unitrust legislation. While the bill will probably be introduced this year, there will not be enough session days to pass it.
- EE. Uniform Partition of Heirs Property Act (Spica): the committee asked Council to adopt a public policy position in favor of HB 4924 (page 221 of Council materials). Committee motion. 19 voted yes, 3 were absent
- FF. Uniform Power of Attorney Act (Savage/Spica). Voted through the House. In Senate Judiciary Committee.
- GG. Various Issues Involving Death and Divorce (Borst/Blume): no report.
- III. Good of the Order (none)
- IV. Adjournment of Regular Meeting at 12:23 p.m.

Respectfully Submitted,

Nathan Piwowski, Secretary

Uniform Power of Attorney Act
Testimony by Representative Doug Wozniak

Madam Chair and Members of the Committee, I appreciate the opportunity to speak to the importance of replacing Michigan's Durable Power of Attorney Act with the Uniform Power of Attorney Act.

Having sponsored this same package of bills in 2020, 2022 and, again, earlier this year, you can imagine how pleased I am to have this similar package taken-up in our committee, today.

As a practicing attorney, who has specialized in the area of elder law for decades, I was very pleased, several years ago, to learn of the work being done by the Michigan Bar Association's Probate Section workgroup to align the Uniform Power of Attorney Act with other Michigan acts.

The concept of a "power of attorney" was first incorporated into the Uniform Probate Code in 1969 to offer an inexpensive method of surrogate decision making for those whose modest assets did not justify pre-incapacity planning with a trust or post-incapacity property management with a guardianship."

Fifty years after Michigan's adoption of the Durable Power of Attorney Act, the power-of-attorney is being used, by people of all economic means, for incapacity-planning, as well as convenience.

Adoption of the updated Uniform Power of Attorney Act is necessary because, over the years, Michigan, and other states, have adopted non-uniform provisions to deal with issues on which the Uniform Probate Code and the original Uniform Durable Power of Attorney Act are silent. The new act will provide uniformity on these issues and enhance the usefulness of the law.

The State Bar's Probate section workgroup spent countless hours working to ensure that the proposed legislation aligns with other state laws and is of significant benefit to the people of Michigan.