

Public Policy Position
**Proposed Michigan Trust Company Act and Corresponding Amendments to
the Estates and Protected Individuals Code and the Qualified Dispositions in
Trust Act**

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,491 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Probate & Estate Planning Section has a public policy decision-making body with 23 members. On October 14, 2023, the Section adopted its position after a discussion and vote at a scheduled meeting. 14 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 9 members did not vote.

Support

Explanation:

The Council adopts a public policy position in favor of the proposed draft of the Michigan Trust Company Act attached as Exhibit 1A to the October 14, 2023 Committee on Special Projects Agenda and the corresponding amendments to the Estates and Protected Individuals Code (what will be the Estates and Protected Individuals Code when the Omnibus Act passes) and the Qualified Dispositions in Trust Act that are attached as Exhibit 1B of the October 14, 2023 Committee on Special Projects Agenda. The Council authorizes the Chair of the Nonbanking Entity Trust Powers Ad Hoc Committee to make non-substantive changes to the draft legislation during the legislative process and authorizes the Council Secretary to submit a public policy position in favor of any House or Senate bills implementing the proposed Michigan Trust Company Act and the corresponding amendments to the Estates and Protected Individuals Code and the Qualified Dispositions in Trust Act (without any additional vote by the Council).

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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.