

**Public Policy Position****Proposed Bifurcation of the Proposed Michigan Trust Company Act into a Family Trust Company Act and a separate Small Commercial Trust Company Act**

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,455 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 18, 2025, 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 both of the newly separated family and small-commercial-trust company proposals that the Council endorsed in combined form on October 14, 2023. Specifically, Council supports what is now referred to as the Family Trust Company Act and the Small Commercial Trust Company Act, being in two parts, which was previously presented and approved as the Michigan Trust Company Act. Excerpts of the Small Commercial Trust Company Act are attached as Exhibit A to the October 18, 2025 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.

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AN ACT to authorize small commercial 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 “small commercial 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 in this state.
- (b) To authorize small commercial trust companies to exercise trust powers and otherwise act as fiduciaries for or on behalf of clients in this state.
- (c) To encourage nonbank commercial trustees and nonprofit entities acting as guardians or conservators in this state to submit to the regulation described in this act.
- (d) To improve access to fiduciary services.
- (e) To safeguard members of the public who deal with nonbank commercial trustees and nonprofit entities acting as guardians or conservators.

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

- (a) “Act as a small commercial trust company” means to exercise fiduciary powers for or on behalf of clients or otherwise exercise the rights, privileges and powers of a small commercial trust company as described in, and pursuant to this act.
- (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 487.11101 to MCL 487.15105.

(d) “Branch office” means a company’s 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 fiduciary business on a non-temporary basis.

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

(f) “Client account” means a trust, estate, agency, partnership or other relationship in which a company is acting as a fiduciary and 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 company may hold multiple offices relating to the same client account. Fiduciary relationships that are treated as separate relationships for federal income tax purposes are distinct client accounts. All fiduciary relationships established solely for, or revocable by 1 client who is an individual or the client and his or her spouse shall be treated as 1 client account. Otherwise, whether 1 fiduciary relationship is distinguishable from another shall be determined based on 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 company becomes subject in connection with services the company performs for or on behalf of a client of the company.

(h) “Commissioner” means the director of the department.

(i) “Committee member” means a person acting as a member of a committee formed pursuant to section 406.

(j) “Company” means either a limited liability company or a corporation unless the context requires otherwise.

(k) “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 the entity, unless such power is solely the result of being an officer of the entity.

(ii) In relation to an asset, the power to purchase, sell, encumber, transfer or otherwise exercise discretion over the use and enjoyment of the asset.

(l) “Current client” means a client 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 reasonably determine from time to time.

(iii) A ward or protected individual for whom the 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) A member of an limited liability company for which the company is acting as a manager.

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

(ix) 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.

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

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

(o) "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.

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

(q) "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.

(r) “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.

(s) “Governance document” includes 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.

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

(u) “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 of the company 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.

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

(w) “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.

(x) “Small commercial trust company” means a company that satisfies all of the requirements in section 204(1) of this act and is licensed under part 3 of this act.

**SECTION 104. SCOPE.** This act does not apply to a bank or to a company that is authorized to exercise fiduciary powers for or on behalf of clients in this state under the laws of this state without regard to this act.

**SECTION 105. 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 106. EFFECTIVE DATE.** This act takes effect on

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## **Part 2** **Formation**

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

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

**SECTION 203. GENERAL REQUIREMENTS.** A company is eligible to act as a small commercial trust company only if all of the following apply:

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

(c) All of the company's shareholders or members are individuals who do not own an interest in any other small commercial trust company.

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

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

(a) Having in any calendar year, more than the maximum number of client accounts permitted by this section for that year.

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

(2) Except as provided in subsection (3), the maximum number of client accounts permitted by this section for any given calendar year is determined by the value of the average client account that the company had for the immediately preceding calendar year in accordance with the following schedule:



(a) If the value of the average client account that the company had for the immediately preceding calendar year is strictly indeterminate, 250.

(b) If the value of the average client account that the company had for the immediately preceding calendar year is \$250,000.00 or less, 400.

(c) If the value of the average client account that the company had for the immediately preceding calendar year is between \$250,001.00 to \$400,000.00, 200.

(d) If the value of the average client account that the company had for the immediately preceding calendar year is between \$400,001.00 to \$700,000.00, 80.

(e) If the value of the average client account that the company had for the immediately preceding calendar year is between 700,001.00 to 1,000,000.00, 40.

(f) If the value of the average client account that the company had for the immediately preceding calendar year is between \$1,000,001.00 to \$1,700,000.00, 11.

(g) If the value of the average client account that the company had for the immediately preceding calendar year is between \$1,700,001.00 to \$2,500,000.00, 4.

(h) If the average client account that the company had for the immediately preceding calendar year is greater than \$2,500,000.00, zero.

(3) The commissioner may increase the maximum number of client accounts that a particular small commercial trust company is permitted by this section for any given calendar year or years pursuant to section 505. If in the opinion of the commissioner a company becomes unable safely and soundly to administer additional client accounts previously authorized pursuant to this subsection, the commissioner may prospectively countermand the increase so authorized by providing 6 months' notice to the company and an opportunity for a hearing in accordance with section 2310 of the banking code of 1999, MCL 487.14401.

(4) Beginning on January 1, [2025], the amounts specified in subsection (2) shall be adjusted for the cost-of-living as provided in section 407(2)(a).

(5) For purposes of satisfying the requirement of subsection (1)(a), the relevant prohibition in the company's articles of incorporation or articles of organization may simply refer to the maximum number of client accounts permitted by section 204 of the small commercial trust company act or to the annual client-account limitation under the small commercial trust company act.

(6) For purposes of this section:

(a) A calendar year is a twelve-month period between a given January and the immediately following December.

(b) The number of client accounts a small commercial trust company has for a given calendar month is the highest number of client accounts that the company has for any length of time during that month.

(c) The value of the average client account that a small commercial trust company has for a given calendar month is the aggregate value of the company's accounts as of the end of that month divided by the number of client accounts that the company had for the month determined as described in subparagraph (b).

(d) The value of the average client account that a small commercial trust company has for a given calendar year is the average of the company's monthly account values for the year determined as described in subparagraph (c).

(e) The value of account assets is market value or, for assets described in section 407(2)(b), value determined in accordance with section 407(2)(b).

(f) The value of the average client account that the company had for any calendar

year is “strictly indeterminate” if, but only if the company has been acting as a small commercial trust company for a less than a full calendar year.

(g) A reference to a range described as being between two stated numbers or calendar months includes the first and last number or month stated.

**SECTION 205. CAPITAL RESERVES AND BOND; FAILURE TO MAINTAIN.**

(1) Except as provided in subsection (3), a small commercial trust company shall maintain unencumbered capital reserves of not less than the amount specified in subsection 407(2)(a). On January 1, [2030] and at five-year intervals thereafter, the amount specified in this subsection shall be adjusted for the cost-of-living as provided in section 407(2)(a).

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

(3) In lieu of maintaining the unencumbered capital reserves required by subsection (1), a small commercial trust company may file with the commissioner 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 or manager of the company and filed with the commissioner.

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

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

(ii) That the bond is conditioned upon the faithful discharge by the 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 commissioner of the cancellation and that the surety is not liable for a breach of a condition occurring after the effective date of the cancellation.

### **Part 3** **Licensing**

#### **SECTION 301. LICENSING REQUIREMENTS.**

(1) A company may not act as a small commercial trust company unless it receives a license from the commissioner.

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

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### **Part 4** **Management and Powers**

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#### **SECTION 407. POWERS.**

(1) A small commercial trust company may invest funds held for its own account other than those required or permitted to be maintained by section 205 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 small commercial 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 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 discrete current client. Beginning on January 1, [2025], 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 [2025] 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 over which the company was exercising fiduciary powers 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.

(3) Subject to limitations imposed by any other statute of this state or by the governance documents of the small commercial trust company in question, a small commercial 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 small commercial trust company may not engage in the business of banking.

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