PROBATE & ESTATE PLANNING SECTION

Agendas and Attachments for

- Meeting of the Committee on Special Projects (CSP);
- Annual Meeting of the Probate and Estate Planning Section; and
- Meeting of the Council of the Probate and Estate Planning Section

Saturday, September 10, 2016

9:00 am

University Club

3435 Forest Road

Lansing, Michigan 48910

Probate and Estate Planning Section of the State Bar of Michigan

Notice of Meetings

Meeting of the Section's Committee on Special Projects (CSP);

Annual Meeting of the Probate and Estate Planning Section;

And

Meeting of the Council of the Probate and Estate Planning Section

September 10, 2016
9:00 a.m.
University Club
3435 Forest Road
Lansing, Michigan 48910

The above stated meetings of the Section will be held at the University Club, 3435 Forest Road, Lansing, Michigan 48910, on Saturday, September 10, 2016. The Section's **Committee on Special Projects (CSP)** meeting will begin at 9:00 am. The **Annual Meeting of the Section** will begin at 10:15 am, followed immediately by the meeting of the **Council of the Section.** If time allows and at the discretion of the Chair, we will work further on CSP materials after the Council of the Section meeting concludes.

Marguerite Munson Lentz, Secretary

Bodman PLC
1901 St. Antoine Street
6th Floor at Ford Field
Detroit, Michigan 48226
Phone: (313) 393-7589
Fax: (313) 393-7579
Email: mlentz@bodmanlaw.com

Schedule and Location of Future Meetings

Probate and Estate Planning Section

Of the

State Bar of Michigan

Unless otherwise noted, CSP meetings are held at 9:00 a.m., immediately followed by the Council meeting for the Section at approximately 10:15 a.m., at the University Club, 3435 Forest Road, Lansing, Michigan 48910.

Meeting Schedule for 2016-2017

October 10, 2016 (Grand Hotel, Mackinac Island)

November 19, 2016

December 17, 2016

January 14, 2017

February 18, 2017

March 18, 2017

April 22, 2017

June 24, 2017

September 16, 2017 (Annual Section Meeting)

CALL FOR MATERIALS

Council Meetings of the Probate and Estate Planning Section

Schedule of Dates for Materials for Committee on Special Projects

All materials are due on or before 5:00 p.m. of the Thursday falling 9 days before the next CSP meeting. CSP materials are to be sent to the Chair of CSP.

Schedule of Dates for Materials for Council Meeting

All materials are due on or before 11:00 p.m. of the Friday falling 8 days before the next Council meeting. Council materials are to be sent to Secretary.

STATE BAR OF MICHIGAN
PROBATE AND ESTATE PLANNING SECTION COUNCIL

Officers for 2015-2016 Term

Officer	Position
Chairperson	Shaheen I. Imami
Chairperson Elect	James B. Steward
Vice Chairperson	Marlaine C. Teahan
Secretary	Marguerite Munson Lentz
Treasurer	Christopher A. Ballard

Council Members for 2015-2016 Term

Council Member	Year Elected to Current Term (partial, first or second full term)	Current Term expires	Eligible after Current Term?
Allan, Susan M.	2010 (2nd term)	2016	No
Brigman, Constance L.	2010 (2nd term)	2016	No
Mills, Richard C.	2014 (1st partial term)	2016	Yes (2 terms)
Marquardt, Michele C.	2013 (1st term)	2016	Yes (1 term)
New, Lorraine F.	2013 (1st term)	2016	Yes (1 term)
Vernon, Geoffrey R.	2013 (1st term)	2016	Yes (1 term)
Bearup, George F.	2014 (2nd term)	2017	No
Welber, Nancy H.	2014 (2nd term)	2017	No
Jaconette, Hon Michael L.	2014 (1st term)	2017	Yes (1 term)
Kellogg, Mark E.	2014 (1st term)	2017	Yes (1 term)
Malviya, Raj A.	2014 (1st term)	2017	Yes (1 term)
Lichterman, Michael G.	2015 (1st partial term)	2017	Yes (2 terms)
Clark-Kreuer, Rhonda M.	2015 (2nd term)	2018	No
Lucas, David P.	2015 (2nd term)	2018	No
Skidmore, David L.J.M.	2015 (2nd term)	2018	No
Caldwell, Christopher J.	2015 (1st term)	2018	Yes (1 term)
Goetsch, Kathleen M.	2015 (1st term)	2018	Yes (1 term)
Lynwood, Katie	2015 (1st term)	2018	Yes (1 term)

Ex Officio Members

John E. Bos

Robert D. Brower, Jr.

Douglas G. Chalgian

George W. Gregory

Henry M. Grix

Mark K. Harder

Hon. Philip E. Harter

Dirk C. Hoffius

Brian V. Howe

Stephen W. Jones

Robert B. Joslyn

James A. Kendall

Kenneth E. Konop

Nancy L. Little

James H. LoPrete

Richard C. Lowe

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

Thomas F. Sweeney

Fredric A. Sytsma

Lauren M. Underwood

W. Michael Van Haren

Susan S. Westerman

Everett R. Zack

Michael W. Irish Award

Mission: To honor a practitioner (supported by recommendations from his or her peers) whose contributions to the Probate and Estate Planning Section of the State Bar of Michigan and whose service to his or her community reflect the high standards of professionalism and selflessness exemplified by Michael W. Irish.

Recipients

1995 Joe C. Foster, Jr.

1996 John H. Martin

1997 Harold A. Draper

1998 Douglas J. Rasmussen

1999 James A. Kendall

2000 NO AWARD PRESENTED

2001 John E. Bos

2002 Everett R. Zack

2003 NO AWARD PRESENTED

2004 Brian V. Howe

2005 NO AWARD PRESENTED

2006 Hon. Phillip E. Harter

2007 George Cooney (April 3, 2007)

2008 Susan A. Westerman

2009 Russell M. Paquette (posthumously)

2010 Fredric A. Sytsma

2011 John A. Scott

2012 NO AWARD PRESENTED

2013 Michael J. McClory

2014 Sebastian V. Grassi, Jr.

The Michael W. Irish Award was first presented in 1995 in honor of the late Michael W. Irish. The award reflects the professionalism and community leadership of its namesake.

The George A. Cooney Society

What: This award is presented by the Institute of Continuing Legal Education and the Probate & Estate Planning Section of the State Bar of Michigan to a Michigan estate planning attorney for outstanding contributions to continuing legal education in Michigan.

Who: As of November 2015, there have been five recipients:

John E. Bos (2007)
Everett R. Zack (2009)
John H. Martin (2011)
John A. Scott (2013)
Phillip E. Harter (2015)

When: This award is not necessarily given every year. So far we've given awards in 2007, 2009, 2011, 2013, and 2015.

Where: The award is presented at the Annual Probate & Estate Planning Institute. ICLE will invite the recipient to attend the Institute, and one of the Section officers will present the individual award at the start of the Institute.

Why: With George Cooney's passing, the State Bar of Michigan lost one of its premier estate planning and elder law attorneys. The Section and ICLE have chosen to jointly create the George A. Cooney Society to recognize a select group of lawyers who epitomize George's dedication to his fellow attorneys and in recognition of his long-term, significant contributions to continuing legal education in Michigan.

How: ICLE will nominate candidates based upon the specific criteria contained in the Guidelines for Selection and will send a nominating letter to the Section for approval by the Executive Board. The Section's leadership and at-large members may also recommend candidates to ICLE for consideration.

Guidelines for Selection:

- Significant CLE contributions to probate and estate planning over a substantial period of time.
- Outstanding quality of contributions.
- A wide range of contributions, e.g. multiple contributions for the following: speaker, author, editor, advisory board member, curriculum advisor, creating case study scenarios, preparing Top Tips, How-To Kits or other online resources, etc.
- Generous mentorship and assistance to colleagues with their probate and estate planning career development as well as activities and active involvement with the Probate & Estate Planning Section of the State Bar of Michigan.

Amicus Curiae Committee
Mission: To review requests made to the Section to file, and to identify cases in which the Section should file, amicus briefs in pending appeals and to engage and oversee the work of legal counsel retained by the Section to prepare and file its amicus briefs

David L.J.M. Skidmore, Chair
Andrew B. Mayoras
Kurt A. Olson
Patricia M. Ouellette
Nazneen H. Syed
Nancy H. Welber

Annual Meeting
Mission: To arrange the annual meeting at a time and place and with an agenda to accomplish all necessary and proper annual business of the Section

James B. Steward

Assisted Reproductive Technology Ad Hoc Committee
Mission: To review the 2008 Uniform Probate Code Amendments for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction

Nancy H. Welber, Chair
Christopher A. Ballard
Edward Goldman
Robert M. O'Reilly
James P. Spica
Lawrence W. Waggoner

Awards Committee
Mission: To periodically award the Michael Irish Award to a deserving recipient and to consult with ICLE concerning periodic induction of members in the George A. Cooney Society

Amy N. Morrissey, Chair
Robert D. Brower, Jr.
George W. Gregory
Phillip E. Harter
Nancy L. Little

Budget Committee
Mission: To develop the annual budget and to alert the Council to revenue and spending trends

Marguerite Munson Lentz, Chair
Marlaine C. Teahan
Christopher A. Ballard

Bylaws Committee
Mission: To review the Section Bylaws and recommend changes to ensure compliance with State Bar requirements, best practices for similar organizations and assure conformity of the Bylaws to current practices and procedures of the Section and the Council

Nancy H. Welber, Chair
Christopher A. Ballard
John Roy Castillo
David P. Lucas

Charitable and Exempt Organization Committee
Mission: To educate the Section about charitable giving and exempt organizations and to make recommendations to the Section concerning Federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations

Christopher J. Caldwell, Chair
Christopher A. Ballard
Michael W. Bartnik
William R. Bloomfield
Robin D. Ferriby
Richard C. Mills
Nazneen H. Syed

Citizens Outreach Committee
Mission: To provide for education of the public on matters related to probate, estate planning, and trust administration, including the publication of pamphlets and online guidance to the public, and coordinating the Section's efforts to educate the public with the efforts of other organizations affiliated with the State Bar of Michigan

Constance L. Brigman, Chair
Kathleen M. Goetsch (Liaison to Solutions on Self-help Task Force)
Katie Lynwood
Michael J. McClory
Melisa M. W. Mysliwiec
Neal Nusholtz
Jessica M. Schilling
Rebecca A. Schnelz
Nicholas Vontroba
Nancy H. Welber

Committee on Special Projects
Mission: The Committee on Special Projects is a working committee of the whole of the Section that considers and studies in depth a limited number of topics and makes recommendations to the Council of the Section with respect to those matters considered by the Committee. The duties of the Chair include setting the agenda for each Committee Meeting, and in conjunction with the Chair of the Section, to coordinate with substantive Committee chairs the efficient use of time by the Committee

David P. Lucas, Chair

Community Property Trusts Ad Hoc Committee *Mission: To review the statutes, case law, and legislative analysis of Michigan and other jurisdictions (including pending legislation) concerning community property trusts and, if advisable, to recommend changes to Michigan law in this area*

Neal Nusholtz, Chair
George W. Gregory
Lorraine F. New
Patricia M. Ouellette
Nicholas A. Reister

Electronic Communications Committee
Mission: To oversee all forms of electronic communication with and among members of the Section, including communication via the Section's web site, the Section listserv, and the ICLE Online Community site, to identify emerging technological trends of importance to the Section and its members, and to recommend to the council best practices to take advantage of technology in carrying out the section's and Council's mission and work

Michael G. Lichterman, Chair
William J. Ard
Nancy L. Little
Amy N. Morrissey
Jeanne Murphy (Liaison to ICLE)
Neal Nusholtz
Michael L. Rutkowski
Serene K. Zeni

Ethics & Unauthorized Practice of Law Committee
Mission: To consider and recommend to the Council action with respect to the Michigan Rules of Professional Conduct and their interpretation, application, and amendment, including identifying the unauthorized practices of law, reporting of such practices to the appropriate authorities, and educating the public regarding the inherent problems relying on non-lawyers

Katie Lynwood, Chair
William J. Ard
Raymond A. Harris
J. David Kerr
Robert M. Taylor
Amy Rombyer Tripp

Guardianship, Conservatorship, and End of Life Committee
Mission: To monitor the need for and make recommendations with respect to statutory and court rule changes in Michigan related to the areas of legally incapacitated individuals, guardianships, and conservatorships

Rhonda M. Clark-Kreuer, Chair
Katie Lynwood, Vice Chair
William J. Ard
Michael W. Bartnik
Raymond A. Harris
Phillip E. Harter
Michael J. McClory
Kurt A. Olson
James B. Steward
Paul Vaidya

Insurance Legislation Ad Hoc Committee
Mission: To recommend new legislation related to insurability and the administration of irrevocable life insurance trusts

Geoffrey R. Vernon, Chair
Stephen L. Elkins
James P. Spica
Joseph D. Weiler, Jr.

Legislation Analysis & Monitoring Committee
Mission: In cooperation with the Section's lobbyist, to bring to the attention of the Council recent developments in the Michigan legislature and to further achievement of the Section's legislative priorities, as well as to study legislation and recommend a course of action on legislation not otherwise assigned to a substantive committee of the Section

Michele C. Marquardt, Chair
Christopher A. Ballard
Ryan Bourjaily
Georgette E. David
Mark E. Kellogg
Jonathon Nahhat
Harold G. Schuitmaker

Legislation Development & Drafting Committee
Mission: To review, revise, communicate and recommend Michigan's trusts and estates law with the goal of achieving and maintaining leadership in promulgating probate laws in changing times. May work alone or in conjunction with other substantive standing or ad hoc committees.

Geoffrey R. Vernon, Chair
Susan M. Allan
Howard H. Collens
Georgette David
Henry P. Lee
Marguerite Munson Lentz
Michael G. Lichterman
Sueann Mitchell
Kurt A. Olson
Nathan Piwowarski
James P. Spica
Robert P. Tiplady, II

Additional volunteers to help with EPIC/MTC changes:

George F. Bearup
Susan Chalgian
Kathleen M. Goetsch
Raymond A. Harris
Kenneth E. Konop
Katie Lynwood
Raj A. Malviya
Richard C. Mills
David L.J.M. Skidmore

Litigation, Proceedings, and Forms Committee
Mission: To consider and recommend to the Council action with respect to contested and uncontested proceedings, the Michigan Court Rules, and published court forms, including the interpretation, use, and amendment of them

David L.J.M. Skidmore, Chair
James F. ("JV") Anderton
Constance L. Brigman (Liaison to SCAO for Guardianship, Conservatorship, and Protective Proceedings Workgroup)
Rhonda M. Clark-Kreuer
Phillip E. Harter
Michael D. Holmes
Shaheen I. Imami
Hon. Michael L. Jaconette
Hon. David M. Murkowski
Rebecca A. Schnelz (Liaison to SCAO for Mental Health/Commitment Workgroup and to Guardianship, Conservatorship, and Protective Proceedings Workgroup)

Membership Committee
Mission: To strengthen relations with Section members, encourage new membership, and promote awareness of and participation in Section activities

Raj A. Malviya, Chair
David Borst
Ryan Bourjaily
Christopher J. Caldwell
Nicholas R. Dekker
Daniel A. Kosmowski
Robert O'Reilly
Nicholas A. Reister
Theresa Rose
Joseph J. Viviano

Nominating Committee
Mission: To annually nominate candidates to stand for election as the officers of the Section and members of the Council

Mark K. Harder, Chair
Thomas F. Sweeney
Amy N. Morrissey

Planning Committee
Mission: To periodically review and update the Section's Strategic Plan and to annually prepare and update the Council's Biennial Plan of Work

James B. Steward, Chair

Probate Institute
Mission: To consult with ICLE in the planning and execution of the Annual Probate and Estate Planning Institute

Marlaine C. Teahan

Real Estate Committee
Mission: To recommend new legislation related to real estate matters of interest and concern to the Section and its members

Mark E. Kellogg, Chair
Jeffrey S. Ammon
William J. Ard
George F. Bearup
John Roy Castillo
David S. Fry
J. David Kerr
Michael G. Lichterman
David P. Lucas
Melisa M. W. Mysliwiec
James T. Ramer
James B. Steward

State Bar and Section Journals Committee
Mission: To oversee the publication of the Section's Journal and periodic theme issues of the State Bar Journal that are dedicated to probate, estate planning, and trust administration

Richard C. Mills, Chair
Nancy L. Little, Managing Editor
Melisa M. W. Mysliwiec, Assoc. Editor

Transfer Tax Committee
Mission: To monitor developments concerning Federal and State transfer taxes and to recommend appropriate actions by the Section in response to developments or needs

Lorraine F. New, Chair
Robert B. Labe
Marguerite Munson Lentz
Geoffrey R. Vernon
Nancy H. Welber

Ad Hoc Drafting Committee
Mission: Draft proposal for forfeiture of gifts to lawyer who drafted the instrument

Sueann Mitchell, Chair
George W. Gregory
David P. Lucas
Kurt A. Olsen

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Alternative Dispute Resolution Section Liaison

Milton L. Mack, Jr.

Business Law Section Liaison *Mission: The liaison to the Business Law Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Business Law Section on matters of mutual interest and concern*

John R. Dresser

Elder Law and Disability Rights Section Liaison
Mission: The liaison to the Elder Law and Disability Rights Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Elder Law Section on matters of mutual interest and concern

Amy Rombyer Tripp

Family Law Section Liaison
Mission: The liaison to the Family Law Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Family law Section on matters of mutual interest and concern

Patricia M. Ouellette

ICLE Liaison
Mission: The liaison to ICLE is responsible for developing and maintaining bilateral communication between the Section and the Institute for Continuing Legal Education

Jeanne Murphy

Law Schools Liaison
Mission: The Law Schools Liaison is responsible for developing and maintaining bilateral communication between the Section and the law schools located in the State of Michigan in matters of mutual interest and concern

William J. Ard

Michigan Bankers Association Liaison
Mission: The liaison to the Michigan Bankers Association is responsible for developing and maintaining bilateral communication between the Section and the Michigan Bankers Association in matters of mutual interest and concern

Susan M. Allan

Probate Judges Association Liaisons *Mission: The liaisons to the MPJA are responsible for developing and maintaining bilateral communication between the Section and the MPJA on matters of mutual interest and concern*

Hon. David M. Murkowski
Hon. Michael L. Jaconette

Probate Registers Liaison
Mission: The liaison to the Michigan Probate and Juvenile Registers Association is responsible for developing and maintaining bilateral communication between the Section and the Probate and Juvenile Registers Association on matters of mutual interest and concern

Rebecca A. Schnelz

SCAO Liaisons
Mission: The liaisons to SCAO are responsible for developing and maintaining communications between the Section and SCAO on matters of mutual interest and concern

Constance L. Brigman
(Guardianship, Conservatorship, and Protective Proceedings Workgroup)
Michele C. Marquardt
(Estates & Trusts Workgroup)
Rebecca A. Schnelz
(Mental Health/Commitment Workgroup and Guardianship, Conservatorship, and Protective Proceedings Workgroup)

Solutions on Self-help Task Force Liaison
Mission: The liaison to the Solutions on Self-help (SOS) Task force is responsible for maintaining bilateral communications between the Section and the Task Force

Kathleen M. Goetsch

State Bar Commissioner Liaison
Mission: The liaison to the State Bar is responsible for maintaining bilateral communication between the Section and the larger State Bar of Michigan, including the Board of Commissioners and staff of the State Bar

Richard J. Siriani

Taxation Section Liaison
Mission: The liaison to the Taxation Section of the State Bar of Michigan is responsible for developing and maintaining bilateral communication between the Section and the Taxation Section on matters of mutual interest and concern

George W. Gregory

Probate & Estate Planning Section
Biennial Plan of Work
10/1/2014 - 9/30/2016

	Statutory/Legislative	**Court Rules, Procedures and Forms**	**Council Organization & Internal Procedures**	**Professional Responsibility**	**Education & Service to the Public & Members**
Action Pending	-Prop tax uncapping exempt. (HB5552) -Fiduciary Access to Digital Assets (HB5366-5370) -PR access to online accts (SB 293) -Hearings minors < 18 (SB 144 & 177) -Funeral Representative (HB 5162/SB 731)		-Supreme Court Task Force Report -Bylaw Update		-"Who Should I Trust?" Program -55th Annual P&EP Institute
Priority Items	-Domestic Asset Protection Trusts -ILIT Trustee Liability Protection -Artificial Reproductive Technology -Charitable Trust -Probate Appeals	-SCAO Meetings*			-Communications with members* -Social media & website* -Brochures* -Annual Institute/ICLE seminars* -Section Journal*
Secondary Priority	-EPIC/MTC Updates -Directed Investment Trusts -TBE Trusts -ADR Revision -Property tax on trust property -Uniform Real Property TOD Act			-Inventory Lawyer	-Opportunities with ICLE -Digital Journal
Priority To Be Determined	-Dignified Death (Family Consent) Act -Pooled income trust exclusion -Neglect Legislation -Foreign Guardians -Inheritance Tax -Estate Recovery -PRE after death & nursing home		-Budget Reporting -Action on SC recommendations		-Probate Court Opinion Bank -Mentor program

*ongoing

CSP MATERIALS

Probate and Estate Planning Council
Committee on Special Projects
Meeting Agenda
September 10, 2016
9:00 a.m.

1 Legislation Development and Drafting Committee - Geoffrey R. Vernon

1.1 Exhibit 1.1 - email from Nathan Piwowarski (dated July 22, 2016) regarding HB 5638 (*Jajuga*).

1.2 Exhibit 1.2 - HB 5638

1.3 Exhibit 1.3 - Recommended changes to HB 5638; Draft 1

1.4 Exhibit 1.4 - HB 5704

1.5 Exhibit 1.5 - Recommended changes to HB 5704; Draft 3

2 Assisted Reproductive Technology Ad Hoc Committee - Nancy Welber

2.1 Exhibit 2.1 - Proposed Amendments to EPIC, Based on Uniform Probate Code 2008 & Later Revisions

Probate and Estate Planning Council
Committee on Special Projects
Meeting Agenda
September 10, 2016
9:00 a.m.

Exhibit 1.1

email from Nathan Piwowarski (dated July 22, 2016) regarding HB 5638 (*Jajuga*)

Geoffrey R. Vernon

From: Nathan Piwowarski <nathan@mwplegal.com>
Sent: Friday, July 22, 2016 11:57 AM
To: Geoffrey R. Vernon; Georgette David; Henry Lee; Howard Collens; James P. Spica; Kurt A. Olson; Marguerite Lentz; Michael Lichterman; Robert Tiplady; Sueann Mitchell; Susan M. Allan; Susan M. Allan
Cc: dlucas@vcflaw.com
Subject: Legislation Development and Drafting Committee: exemptions & allowances - markups of HB 5638 & 5704
Attachments: 2016-HIB-5638.pdf; 2016-HIB-5704.pdf; 160722-v01 HB 5638 revisions.docx; 160722-v03 HB 5704 revisions.docx

All,

Thank you for your feedback this morning. Based on that work, I've drafted revisions to both bills. For ease of reference, I've also attached the original bills. Our reasoning for the recommendation changes is as follows:

- We agree that it is good public policy to allow a testator to eliminate these exemptions in at least limited circumstances. The exemption may seem small, but it could be highly disruptive to force out a gift to children, including when:
    - (1) the gift could frustrate a child's need to qualify for means-tested benefits,
    - (2) the child, especially one who suffers from substance abuse, may use even a small inheritance to actively harm themselves, and
    - (3) this mandatory exemption eliminates gifts earmarked for others from a smaller estate.
- We see two likely scenarios where a testator would want to exempt a child from this statutory exemption: (1) the child's being disinherited completely, and (2) the child is receiving a particular gift or is to have their gift managed in trust. In scenario #1, we are concerned that HB 5638's requirement that the testator specifically refer to the exemption is something of a trap for the unwary. It'd be easy to envision a holographic will prepared by someone of modest means, in which the testator attempts to disinherit a child, but fails to do so on account of the "explicit reference" requirement.
- We discussed whether the testator should, as a matter of public policy, be able to exclude minor children through the will. We concluded that, if a testator goes to the trouble of disinheriting a minor child, it's probably for good reasons, including special needs planning, or concern that the minor's likely guardian or conservator was going to mismanage the gift. We considered these "good use" scenarios to be far more likely than a "bad use" scenario of a person disinheriting a minor child out of spite.
- HB 5638 allows a decedent to exclude a child "by will *or other signed writing*." Our committee is of the opinion that the testamentary formalities (or evidence sufficient to satisfy the dispensing power or holographic will requirements) should apply to an exclusion of the exempt property allowance.
- We used the term "exclude" rather than "disinherit." Exclude is a more precise term, here, because an individual could exclude a child from receiving the exempt property allowance, but still devise gifts to the child, perhaps in a testamentary trust. Disinheritance, by contrast, connotes exclusion from any gift.

I look forward to your further feedback.

Best,

Nathan

Probate and Estate Planning Council
Committee on Special Projects
Meeting Agenda
September 10, 2016
9:00 a.m.

Exhibit 1.2

HB 5638

HOUSE BILL No. 5638

May 11, 2016, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled

"Estates and protected individuals code,"

by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2404. (1) The decedent's surviving spouse is also entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed $10,000.00 more than the amount of any security interests to which the property is subject. ~~If~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), IF** there is no surviving spouse, the decedent's children are entitled jointly to the same value.

(2) ~~If~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), IF** encumbered assets are selected and the value in excess of security

HOUSE BILL No. 5638

interests, plus that of other exempt property, is less than $10,000.00, or if there is not $10,000.00 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

(a) Administration costs and expenses.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The $10,000.00 amount ~~expressed~~ **DESCRIBED** in this section ~~shall~~ **MUST** be adjusted as provided in section 1210.

(4) A DECEDENT BY WILL OR OTHER SIGNED WRITING MAY EXPRESSLY EXCLUDE OR LIMIT THE RIGHT OF A CHILD WHO IS NOT A MINOR OR DEPENDENT CHILD TO MAKE A CLAIM THAT THE CHILD IS OTHERWISE ENTITLED TO UNDER THIS SECTION. THE EXCLUSION OR LIMITATION DESCRIBED IN THIS SUBSECTION MUST BE EXPRESSLY STATED BY THE DECEDENT, AND MUST SPECIFICALLY REFERENCE THE ALLOWANCE DESCRIBED IN THIS SECTION IN A MANNER SUFFICIENT TO EXPRESS THE DECEDENT'S INTENT. AN EXCLUSION OR LIMITATION STATED BY A DECEDENT BY WILL

UNDER SECTION 2101, WITHOUT ADDITIONAL LANGUAGE SPECIFICALLY STATING AN INTENT TO EXCLUDE OR LIMIT A RIGHT PROVIDED UNDER THIS SECTION, IS NOT CONSIDERED SUFFICIENT LANGUAGE TO EXCLUDE OR LIMIT A RIGHT PROVIDED IN THIS SECTION.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Probate and Estate Planning Council
Committee on Special Projects
Meeting Agenda
September 10, 2016
9:00 a.m.

Exhibit 1.3

Recommended changes to HB 5638; Draft 1

[Recommended changes to HB 5638; Draft 1.]

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177.
THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2404. (1) The decedent's 1 surviving spouse is also entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed $10,000.00 more than the amount of any security interests to which the property is subject. If ~~EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), IF~~ there is no surviving spouse, the decedent's children **WHO ARE NOT EXCLUDED UNDER SUBSECTION 4** are entitled jointly to the same value.

(2) If ~~EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), IF~~

encumbered assets are selected and the value in excess of security interests, plus that of 1 other exempt property, is less than $10,000.00, or if there is not $10,000.00 worth of exempt property in the estate, the spouse or children **WHO ARE NOT EXCLUDED UNDER SUBSECTION 4** are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

(a) Administration costs and expenses.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The $10,000.00 amount expressed DESCRIBED in this section ~~shall~~ MUST be adjusted as provided in section 1210.

~~(4) A DECEDENT BY WILL OR OTHER SIGNED WRITING MAY EXPRESSLY EXCLUDE OR LIMIT THE RIGHT OF A CHILD WHO IS NOT A MINOR OR DEPENDENT CHILD TO MAKE A CLAIM THAT THE CHILD IS OTHERWISE ENTITLED TO UNDER THIS SECTION. THE EXCLUSION OR LIMITATION DESCRIBED IN THIS SUBSECTION MUST BE EXPRESSLY STATED BY THE DECEDENT, AND MUST SPECIFICALLY REFERENCE THE ALLOWANCE DESCRIBED IN THIS SECTION IN A MANNER SUFFICIENT TO EXPRESS THE DECEDENT'S INTENT. AN EXCLUSION OR LIMITATION STATED BY A DECEDENT BY WILL UNDER SECTION 2101, WITHOUT 1 ADDITIONAL LANGUAGE SPECIFICALLY~~

~~STATING AN INTENT TO EXCLUDE OR LIMIT A RIGHT PROVIDED UNDER THIS SECTION, IS NOT CONSIDERED SUFFICIENT LANGUAGE TO EXCLUDE OR LIMIT A RIGHT PROVIDED IN THIS SECTION.~~

(4) THE DECEDENT MAY EXCLUDE 1 OR MORE CHILDREN FROM RECEIVING THIS ALLOWANCE BY EITHER OF THE FOLLOWING MEANS:

(a) DECEDENT BY WILL EXPRESSLY STATES THAT THE CHILD TAKES NOTHING OR AN AMOUNT LESS THAN $10.00 FROM THE ESTATE.

(b) DECEDENT BY WILL EXPRESSLY STATES THAT THE CHILD IS NOT TO RECEIVE AN ALLOWANCE UNDER THIS SECTION.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Probate and Estate Planning Council
Committee on Special Projects
Meeting Agenda
September 10, 2016
9:00 a.m.

Exhibit 1.4

HB 5704

HOUSE BILL No. 5704

May 26, 2016, Introduced by Rep. Hughes and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled

"Estates and protected individuals code,"

by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2404. (1) The decedent's surviving spouse is also entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed $10,000.00 more than the amount of any security interests to which the property is subject. If there is no surviving spouse, the decedent's children are entitled jointly to the same value **UNLESS THE DECEDENT DISINHERITS 1 OR MORE CHILDREN IN HIS OR HER WILL, IN WHICH CASE ONLY THOSE CHILDREN NOT DISINHERITED ARE ENTITLED. AS USED IN THIS SUBSECTION, "DISINHERIT" MEANS A DECEDENT BY WILL EXPRESSLY STATING THAT A CHILD TAKES NOTHING OR AN AMOUNT LESS THAN $10.00 FROM THE ESTATE.**

HOUSE BILL No. 5704

(2) If encumbered assets are selected and the value in excess of security interests, plus that of other exempt property, is less than $10,000.00, or if there is not $10,000.00 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

(a) Administration costs and expenses.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The $10,000.00 amount expressed in this section ~~shall~~ **MUST** be adjusted as provided in section 1210.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Probate and Estate Planning Council
Committee on Special Projects
Meeting Agenda
September 10, 2016
9:00 a.m.

Exhibit 1.5

Recommended changes to HB 5704; Draft 3

[Recommended changes to HB 5704; Draft 3.]

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code,"
by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177
THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2404. (1) The decedent's surviving spouse is also entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed $10,000.00 more than the amount of any security interests to which the property is subject. If there is no surviving spouse, the decedent's children **WHO ARE NOT EXCLUDED UNDER SUBSECTION 4** are entitled jointly to the same value.

(2) If encumbered assets are selected and the value in excess of security interests, plus that of other exempt property, is less than $10,000.00, or if there is not $10,000.00 worth of exempt property in the estate, the spouse or children **WHO ARE NOT EXCLUDED UNDER SUBSECTION 4** are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

(a) Administration costs and expenses.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The $10,000.00 amount ~~expressed~~ **DESCRIBED** in this section ~~shall~~ MUST be adjusted as provided in section 1210.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

(4) ~~UNLESS~~ THE DECEDENT ~~DISINHERITS~~ **MAY EXCLUDE** 1 OR MORE CHILDREN **FROM RECEIVING THIS ALLOWANCE BY EITHER OF THE FOLLOWING MEANS:** ~~IN HIS OR HER WILL, IN WHICH CASE ONLY THOSE CHILDREN NOT DISINHERITED ARE ENTITLED. AS USED IN THIS SUBSECTION, "DISINHERIT" MEANS A~~

(a) DECEDENT BY WILL EXPRESSLY **STATES** THAT **THE** CHILD TAKES NOTHING OR AN AMOUNT LESS THAN $10.00 FROM THE ESTATE.

(b) DECEDENT BY WILL EXPRESSLY STATES THAT THE CHILD IS NOT TO RECEIVE AN ALLOWANCE UNDER THIS SECTION.

Probate and Estate Planning Council
Committee on Special Projects
Meeting Agenda
September 10, 2016
9:00 a.m.

Exhibit 2.1

Proposed Amendments to EPIC, Based on Uniform Probate Code 2008 & Later Revisions

PROPOSED AMENDMENTS TO EPIC
BASED ON
UNIFORM PROBATE CODE 2008 & LATER REVISIONS

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Add new section MCL 700.1110 regarding notice and subsection to MCL 700.3715 and to 700.7821 regarding posthumous conception.

UNIFORM PROBATE CODE

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ARTICLE I

GENERAL PROVISIONS, DEFINITIONS AND PROBATE JURISDICTION OF COURT

PART 2. DEFINITIONS

[AMEND MCL 700.1107 TO ADD DEFINITIONS OF "RECORD" AND "SIGN":] GENERAL DEFINITIONS—RECORD THROUGH TRUSTEE. AS USED IN THIS ACT:

(a) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(f) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

EPIC Committee Comment

The Uniform Law Commission National Office confirmed to the EPIC Committee that the above definitions of "record" and "sign" are the definitions to be used in all relevant ULC statutes. Also, the definition of "sign" is based on both federal and uniform law.

The Federal Electronic Signatures in Global and National Commerce Act (2000), 15 U.S.C. ch. 96, states: "The term 'electronic signature' means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record."

The Unif. Electronic Transactions Act (1999) states: "'Electronic signature' means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

[Move MCL § 700.7104 to MCL 700.1109 so that the definition of "notice or knowledge of fact" applies to the entire EPIC and modify subsection (2) so the section is not limited to trusts.]

700.1109 Notice or knowledge of fact

Sec. 7109.

(1) Subject to subsection (2), a person has knowledge of a fact if 1 or more of the following apply:

(a) The person has actual knowledge of it.

(b) The person has received a notice or notification of it.

(c) From all the facts and circumstances known to the person at the time in question, the person has reason to know it.

(2) An organization that conducts activities through employees has notice or knowledge of a fact ~~involving a trust~~ only from the time the information was received by an employee having responsibility to act ~~for the trust~~ or from the time the information would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act ~~for the trust~~ and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter ~~involving the trust~~ that would be materially affected by the information.

COMMENT

Section 700.7104 is moved to MCL § 700.1109 and is modified so that subsection (2) is not limited to trusts. By moving this section, the definition of "notice or knowledge of fact" applies to the entire Estates and Protected Individuals Code and not just to the Michigan Trust Code.

[MCL 700.1110 is added]

700.1110. Notice of Availability of Genetic Material for Use in Posthumous Conception.

Sec. 1110. (1) Certain Sections of [EPIC] provide that a posthumously conceived child of a decedent will be treated as living or in gestation at a given time only if the requirements of this Section are satisfied. For purposes of each such Section:

(a) If a notice to creditors is published as required in Section 3801 or Section 7608, the requirements of this Section are satisfied only if:

(i) Notice that genetic material of the decedent is available for possible use in posthumous conception is given to a person whose contact information is included in the notice to creditors;

(ii) The notice is mailed or delivered to, or otherwise comes into to the possession of, the person whose contact information is included in the notice to creditors within 9 months of the publication of the notice to creditors; and

(iii) The form of the notice is either a writing including the informant's name and address that is signed by the informant or a valid will, regardless whether the will is admitted to probate.

(b) If no notice to creditors is published as required in Section 3801 or Section 7608 within 9 months of the decedent's death, no notice that genetic material of the decedent is available for use in posthumous conception is required by this Section, and the requirements of this Section are deemed to be satisfied without any such notice.

(2) If a personal representative or trustee whose contact information is included in a notice to creditors published pursuant to Section 3801 or Section 7608 receives or otherwise comes into possession of notice that genetic material of the decedent is available for use in posthumous conception, and the notice satisfies the requirements of subsection (1)(a) of this Section, the personal representative or trustee shall promptly provide a copy or partial copy of the notice or a statement describing the notice to each other fiduciary known to the personal representative or trustee who may have the power to control the distribution of the decedent's property

or property distributable by reason of the decedent's death. A partial copy of a notice provided pursuant to this subsection shall reproduce as much of the copied notice as is necessary to show that the informant asserts that genetic material of the decedent is available for possible use in posthumous conception and that the copied notice meets the other requirements of subsection (1)(a) of this Section. A statement provided pursuant to this subsection in lieu of a copy or partial copy of a notice shall be a signed writing indicating that a notice satisfying the requirements of subsection (1)(a) of this Section has been duly given.

(3) Knowledge that genetic material of the decedent is available for possible use in posthumous conception is not knowledge of an intention to use genetic material to create a child after the decedent's death.

ARTICLE II

UPC PREFATORY NOTE

The Uniform Probate Code was originally promulgated in 1969.

1990 Revisions. In 1990, Article II underwent significant revision. The 1990 revisions were the culmination of a systematic study of the Code conducted by the Joint Editorial Board for the Uniform Probate Code (now named the Joint Editorial Board for Uniform Trust and Estate Acts) and a special Drafting Committee to Revise Article II. The 1990 revisions concentrated on Article II, which is the article that covers the substantive law of intestate succession; spouse's elective share; omitted spouse and children; probate exemptions and allowances; execution and revocation of wills; will contracts; rules of construction; disclaimers; the effect of homicide and divorce on succession rights; and the rule against perpetuities and honorary trusts.

Themes of the 1990 Revisions. In the twenty or so years between the original promulgation of the Code and 1990, several developments occurred that prompted the systematic round of review. Four themes were sounded: (1) the decline of formalism in favor of intent-serving policies; (2) the recognition that will substitutes and other inter-vivos transfers have so proliferated that they now constitute a major, if not the major, form of wealth transmission; (3) the advent of the multiple-marriage society, resulting in a significant fraction of the population being married more than once and having stepchildren and children by previous marriages and (4) the acceptance of a partnership or marital-sharing theory of marriage.

The 1990 revisions responded to these themes. The multiple-marriage society and the partnership/marital-sharing theory were reflected in the revised elective-share provisions of Part 2. As the General Comment to Part 2 explained, the revised elective share granted the surviving spouse a right of election that implemented the partnership/marital-sharing theory of marriage.

The children-of-previous-marriages and stepchildren phenomena were reflected most prominently in the revised rules on the spouse's share in intestacy.

The proliferation of will substitutes and other inter-vivos transfers was recognized, mainly, in measures tending to bring the law of probate and nonprobate transfers into greater unison. One aspect of this tendency was reflected in the restructuring of the rules of construction. Rules of construction are rules that supply presumptive meaning to dispositive and similar provisions of governing instruments. See Restatement (Third) of Property: Wills and Other Donative Transfers § 11.3 (2003). Part 6 of the pre-1990 Code contained several rules of construction that applied only to wills. Some of those rules of construction appropriately applied only to wills; provisions relating to lapse, testamentary exercise of a power of appointment, and ademption of a devise by satisfaction exemplify such rules of construction. Other rules of construction, however, properly apply to all governing instruments, not just wills; the provision relating to inclusion of adopted persons in class gift language exemplifies this type of rule of construction. The 1990 revisions divided pre-1990 Part 6 into two parts – Part 6, containing rules of construction for wills only; and Part 7, containing rules of construction for wills and other governing instruments. A few new rules of construction were also added.

In addition to separating the rules of construction into two parts, and adding new rules of construction, the revocation-upon-divorce provision (Section 2-804) was substantially revised so that divorce not only revokes testamentary devises, but also nonprobate beneficiary designations, in favor of the former spouse. Another feature of the 1990 revisions was a new section (Section 2-503) that brought the execution formalities for wills more into line with those for nonprobate transfers.

2008 Revisions. In 2008, another round of revisions was adopted. The principal features of the 2008 revisions are summarized as follows:

Inflation Adjustments. Between 1990 and 2008, the Consumer Price Index rose by somewhat more than 50 percent. The 2008 revisions raised the dollar amounts by 50 percent in Article II Sections 2-102, 2-102A, 2-201, 2-402, 2-403, and 2-405, and added a new cost of living adjustment section — Section 1-109.

Intestacy. Part 1 on intestacy was divided into two subparts: Subpart 1 on general rules of intestacy and subpart 2 on parent-child relationships. For details, see the General Comment to Part 1.

Execution of Wills. Section 2-502 was amended to allow notarized wills as an alternative to wills that are attested by two witnesses. That amendment necessitated minor revisions to Section 2-504 on self-proved wills and to Section 3-406 on the effect of notarized wills in contested cases.

Class Gifts. Section 2-705 on class gifts was revised in a variety of ways, as explained in the revised Comment to that section.

Reformation and Modification. New Sections 2-805 and 2-806 brought the reformation and modification sections now contained in the Uniform Trust Code into the Uniform Probate Code.

Historical Note. This Prefatory Note was revised in 2008.

UPC Legislative Note: *References to spouse or marriage appear throughout Article II. States that recognize civil unions, domestic partnerships, or similar relationships between unmarried individuals should add appropriate language wherever such references or similar references appear.*

States that do not recognize such relationships between unmarried individuals, or marriages between same-sex partners, are urged to consider whether to recognize the spousal-type rights that partners acquired under the law of another jurisdiction in which the relationship was formed but who die domiciled in this state. Doing so would not be the equivalent of recognizing such relationships in this state but simply allowing those who move to and die in this state to retain the rights they previously acquired elsewhere. See Christine A. Hammerle, Note, Free Will to Will? A Case for the Recognition of Intestacy Rights for Survivors to a Same-Sex Marriage or Civil Union, 104 Mich. L. Rev. 1763 (2006).

PART 1. INTESTATE SUCCESSION

UPC GENERAL COMMENT

The pre-1990 Code's basic pattern of intestate succession, contained in Part 1, was designed to provide suitable rules for the person of modest means who relies on the estate plan provided by law. The 1990 and 2008 revisions were intended to further that purpose, by fine tuning the various sections and bringing them into line with developing public policy and family relationships.

1990 Revisions. The principal features of the 1990 revisions were:

1. So-called negative wills were authorized, under which the decedent who dies intestate, in whole or in part, can by will disinherit a particular heir.

2. A surviving spouse was granted the whole of the intestate estate, if the decedent left no surviving descendants and no parents or if the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has no descendants who are not descendants of the decedent. The surviving spouse receives the first $200,000 plus three-fourths of the balance if the decedent left no surviving descendants but a surviving parent. The surviving spouse receives the first $150,000 plus one-half of the balance of the intestate estate, if the decedent's surviving descendants are also descendants of the surviving spouse but the surviving spouse has one or more other descendants. The surviving spouse receives the first $100,000 plus one-half of the balance of the intestate estate, if the decedent has one or more surviving descendants who are not descendants of the surviving spouse. (To adjust for inflation, these dollar figures and other dollar figures in Article II were increased by fifty percent in 2008.)

3. A system of representation called per capita at each generation was adopted as a means of more faithfully carrying out the underlying premise of the pre-1990 UPC system of representation. Under the per-capita-at-each-generation system, all grandchildren (whose parent has predeceased the intestate) receive equal shares.

4. Although only a modest revision of the section dealing with the status of adopted children and children born of unmarried parents was then made, the question was under continuing review and it was anticipated that further revisions would be forthcoming in the future.

5. The section on advancements was revised so that it applies to partially intestate estates as well as to wholly intestate estates.

2008 Revisions. As noted in Item 4 above, it was recognized in 1990 that further revisions on matters of status were needed. The 2008 revisions fulfilled that need. Specifically, the 2008 revisions contained the following principal features:

Part 1 Divided into Two Subparts. Part 1 was divided into two subparts: Subpart 1 on general rules of intestacy and Subpart 2 on parent-child relationships.

Subpart 1: General Rules of Intestacy. Subpart 1 contains Sections 2-101 (unchanged), 2-102 (dollar figures adjusted for inflation), 2-103 (restyled and amended to grant intestacy rights to certain stepchildren as a last resort before the intestate estate escheats to the state), 2-104 (amended to clarify the requirement of survival by 120 hours as it applies to heirs who are born before the intestate's death and those who are in gestation at the intestate's death), 2-105 (unchanged), 2-106 (unchanged), 2-107 (unchanged), 2-108 (deleted and matter dealing with heirs in gestation at the intestate's death relocated to 2-104), 2-109 (unchanged), 2-110 (unchanged), 2-111 (unchanged), 2-112 (unchanged), 2-113 (unchanged), and 2-114 (deleted and

replaced with a new section addressing situations in which a parent is barred from inheriting).

Subpart 2: Parent-Child Relationships. New Subpart 2 contains several new or substantially revised sections. New Section 2-115 contains definitions of terms that are used in Subpart 2. New Section 2-116 is an umbrella section declaring that, except as otherwise provided in Section 2-119(b) through (e), if a parent-child relationship exists or is established under this subpart 2, the parent is a parent of the child and the child is a child of the parent for purposes of intestate succession. Section 2-117 continues the rule that, except as otherwise provided in Sections 2-120 and 2-121, a parent-child relationship exists between a child and the child's genetic parents, regardless of their marital status. Regarding adopted children, Section 2-118 continues the rule that adoption establishes a parent-child relationship between the adoptive parents and the adoptee for purposes of intestacy. Section 2-119 addresses the extent to which an adoption severs the parent-child relationship with the adoptee's genetic parents. New Sections 2-120 and 2-121 turn to various parent-child relationships resulting from assisted reproductive technologies in forming families. As one researcher reported: "Roughly 10 to 15 percent of all adults experience some form of infertility." Debora L. Spar, The Baby Business 31 (2006). Infertility, coupled with the desire of unmarried individuals to have children, have led to increased questions concerning children of assisted reproduction. Sections 2-120 and 2-121 address inheritance rights in cases of children of assisted reproduction, whether the birth mother is the one who parents the child or is a gestational carrier who bears the child for an intended parent or intended parents. As two authors have noted: "Parents, whether they are in a married or unmarried union with another, whether they are a single parent, whether they procreate by sexual intercourse or by assisted reproductive technology, are entitled to the respect the law gives to family choice." Charles P. Kindregan, Jr. & Maureen McBrien, Assisted Reproductive Technology: A Lawyer's Guide to Emerging Law and Science 6-7 (2006). The final section, new Section 2-122, provides that nothing contained in Subpart 2 should be construed as affecting application of the judicial doctrine of equitable adoption.

Historical Note. This General Comment was revised in 2008.

Add Subpart 1. General Rules

[AMEND MCL 700.2103 TO READ.] SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.

(a) Any part of the intestate estate not passing to a decedent's surviving spouse under Section 2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:

(1) to the decedent's descendants by representation;

(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;

(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:

(A) half to the decedent's paternal grandparents equally if both survive, to the surviving paternal grandparent if only one survives, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

(B) half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives, or to the

descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking by representation;

(5) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the manner described in paragraph (4).

(b) If there is no taker under subsection (a), but the decedent has:

(1) one deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse's descendants by representation; or

(2) more than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part thereof passes to each set of descendants by representation.

UPC Comment

This section provides for inheritance by descendants of the decedent, parents and their descendants, and grandparents and collateral relatives descended from grandparents; in line with modern policy, it eliminates more remote relatives tracing through great-grandparents.

1990 Revisions. The 1990 revisions were stylistic and clarifying, not substantive. The pre-1990 version of this section contained the phrase "if they are all of the same degree of kinship to the decedent they take equally (etc.)." That language was removed. It was unnecessary and confusing because the system of representation in Section 2-106 gives equal shares if the decedent's descendants are all of the same degree of kinship to the decedent.

The word "descendants" replaced the word "issue" in this section and throughout the 1990 revisions of Article II. The term issue is a term of art having a biological connotation. Now that inheritance rights, in certain cases, are extended to adopted children, the term descendants is a more appropriate term.

2008 Revisions. In addition to making a few stylistic changes, which were not intended to change meaning, the 2008 revisions divided this section into two subsections. New subsection (b) grants inheritance rights to descendants of the intestate's deceased spouse(s) who are not also descendants of the intestate. The term deceased spouse refers to an individual to whom the intestate was married at the individual's death.

Historical Note. This Comment was revised in 2008.

AMEND MCL 700.2104 TO READ AND REPEAL MCL 700.2108.

REQUIREMENT OF SURVIVAL BY 120 HOURS; INDIVIDUAL IN GESTATION.

(a) [Requirement of Survival by 120 Hours; Individual in Gestation.] For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in subsection (b), the following rules apply:

(1) An individual born before a decedent's death who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before a decedent's death survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period.

(2) An individual in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives 120 hours after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived 120 hours after birth, it is deemed that the individual failed to survive for the required period.

(b) [Section Inapplicable If Estate Would Pass to State.] This section does not apply if its application would cause the estate to pass to the state under Section 2-105.

UPC Comment

This section avoids multiple administrations and in some instances prevents the property

from passing to persons not desired by the decedent. See Halbach &Waggoner, The UPC's New Survivorship and Antilapse Provisions, 55 Alb. L. Rev. 1091, 1094-1099 (1992). The 120 hour period will not delay the administration of a decedent's estate because Sections 3-302 and 3-307 prevent informal issuance of letters for a period of five days from death. Subsection (b) prevents the survivorship requirement from defeating inheritance by the last eligible relative of the intestate who survives for any period.

In the case of a surviving spouse who survives the 120-hour period, the 120-hour requirement of survivorship does not disqualify the spouse's intestate share for the federal estate-tax marital deduction. See Int. Rev. Code § 2056(b)(3).

2008 Revisions. In 2008, this section was reorganized, revised, and combined with former Section 2-108. What was contained in former Section 2-104 now appears as subsections (a)(1) and (b). What was contained in former Section 2-108 now appears as subsection (a)(2). Subsections (a)(1) and (a)(2) now distinguish between an individual who was born before the decedent's death and an individual who was in gestation at the decedent's death. With respect to an individual who was born before the decedent's death, it must be established by clear and convincing evidence that the individual survived the decedent by 120 hours. For a comparable provision applicable to wills and other governing instruments, see Section 2-702 [MCL § 700.2702(1)]. With respect to an individual who was in gestation at the decedent's death, it must be established by clear and convincing evidence that the individual lived for 120 hours after birth. For a comparable provision applicable to wills and other governing instruments, see Sections 2-705(g) [and 2-702(a)].

Historical Note. This Comment was revised in 2008.

AMEND MCL 700.2108 TO READ. [RESERVED.]

Legislative Note: *Section 2-108 is reserved for possible future use. The 2008 amendments moved the content of this section to Section 2-104(a)(2).*

[AMEND MCL 700.2114 TO READ.] PARENT BARRED FROM INHERITING IN CERTAIN CIRCUMSTANCES.

MOVED FROM MCL 700. 2114(4) AND (3)

(1) Inheritance from or through a child by either genetic parent or his or her kindred is precluded unless that genetic parent has openly treated the child as his or hers, and has not refused to support the child.

(2) The permanent termination of parental rights of a minor child by an order of a court of competent jurisdiction; by a release for purposes of adoption given by the parent, but not a guardian, to the family independence agency or a licensed child placement agency, or before a probate or juvenile court; or by any other process recognized by the law governing the parent-child status at the time of termination, excepting termination by emancipation or death, ends kinship between the parent whose rights are so terminated and the child for purposes of intestate succession by that parent from or through that child.

ADD SUBPART 2. PARENT-CHILD RELATIONSHIP

[ADD AS MCL 700.2115. DEFINITIONS.] In this [subpart]:

(1) "Adoptee" means an individual who is adopted.

(2) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

(3) "Divorce" includes an annulment, dissolution, and declaration of invalidity of a marriage.

(4) "Functioned as a parent of the child" means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household.

(5) "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under MCL 700.2117 the term means only the man for whom that relationship is established.

(6) "Genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father.

(7) "Genetic parent" means a child's genetic father or genetic mother.

(8) “Incapacity” means the inability of an individual to function as a parent of a child because of the individual’s physical or mental condition.

(9) “Relative” means a grandparent or a descendant of a grandparent.

UPC Comment

Scope. This section sets forth definitions that apply for purposes of the intestacy rules contained in Subpart 2 (Parent-Child Relationship).

Definition of “Adoptee”. The term “adoptee” is not limited to an individual who is adopted as a minor but includes an individual who is adopted as an adult.

Definition of “Assisted Reproduction”. The definition of “assisted reproduction” is copied from the Uniform Parentage Act § 102. Current methods of assisted reproduction include intrauterine insemination (previously and sometimes currently called artificial insemination), donation of eggs, donation of embryos, in-vitro fertilization and transfer of embryos, and intracytoplasmic sperm injection.

Definition of “Functioned as a Parent of the Child”. The term “functioned as a parent of the child” is derived from the Restatement (Third) of Property: Wills and Other Donative Transfers. The Reporter’s Note No. 4 to § 14.5 of the Restatement lists the following parental functions:

Custodial responsibility refers to physical custodianship and supervision of a child. It usually includes, but does not necessarily require, residential or overnight responsibility.

Decisionmaking responsibility refers to authority for making significant life decisions on behalf of the child, including decisions about the child’s education, spiritual guidance, and health care.

Caretaking functions are tasks that involve interaction with the child or that direct, arrange, and supervise the interaction and care provided by others. Caretaking functions include but are not limited to all of the following:

(a) satisfying the nutritional needs of the child, managing the child’s bedtime and wake-up routines, caring for the child when sick or injured, being attentive to the child’s personal hygiene needs including washing, grooming, and dressing, playing with the child and arranging for recreation, protecting the child’s physical safety, and providing transportation;

(b) directing the child’s various developmental needs, including the acquisition of motor and language skills, toilet training, self-confidence, and maturation;

(c) providing discipline, giving instruction in manners, assigning and supervising chores, and performing other tasks that attend to the child’s needs for behavioral control and self-restraint;

(d) arranging for the child’s education, including remedial or special services appropriate to the child’s needs and interests, communicating with teachers and counselors, and supervising homework;

(e) helping the child to develop and maintain appropriate interpersonal relationships with peers, siblings, and other family members;

(f) arranging for health-care providers, medical follow-up, and home health care;

(g) providing moral and ethical guidance;

(h) arranging alternative care by a family member, babysitter, or other child-care provider or facility, including investigation of alternatives, communication with providers, and supervision of care.

Parenting functions are tasks that serve the needs of the child or the child's residential family. Parenting functions include caretaking functions, as defined [above], and all of the following additional functions:

(a) providing economic support;

(b) participating in decision making regarding the child's welfare;

(c) maintaining or improving the family residence, including yard work, and house cleaning;

(d) doing and arranging for financial planning and organization, car repair and maintenance, food and clothing purchases, laundry and dry cleaning, and other tasks supporting the consumption and savings needs of the household;

(e) performing any other functions that are customarily performed by a parent or guardian and that are important to a child's welfare and development.

Ideally, a parent would perform all of the above functions throughout the child's minority. In cases falling short of the ideal, the trier of fact must balance both time and conduct. The question is, did the individual perform sufficient parenting functions over a sufficient period of time to justify concluding that the individual functioned as a parent of the child. Clearly, insubstantial conduct, such as an occasional gift or social contact, would be insufficient. Moreover, merely obeying a child support order would not, by itself, satisfy the requirement. Involuntarily providing support is inconsistent with functioning as a parent of the child.

The context in which the question arises is also relevant. If the question is whether the individual claiming to have functioned as a parent of the child inherits from the child, the court might require more substantial conduct over a more substantial period of time than if the question is whether a child inherits from an individual whom the child claims functioned as his or her parent.

Definition of "Genetic Father". The term "genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity recognized by the law of this state, the term means only the man for whom that relationship is established. As stated in the Legislative Note, a state that has enacted the Uniform Parentage Act (2000/2002) should insert a reference to Section 201(b)(1), (2), or (3) of that Act.

Definition of "Relative". The term "relative" does not include any relative no matter how remote but is limited to a grandparent or a descendant of a grandparent, as determined under this Subpart 2.

-ADD AS MCL 700.2116.] EFFECT OF PARENT-CHILD RELATIONSHIP. Except as otherwise provided in Section 2-119(b) through (e), if a parent-child relationship exists or is established under this [subpart], the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.

UPC Comment

Scope. This section provides that if a parent-child relationship exists or is established under any section in Subpart 2, the consequence is that the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession by, from, or through the parent and the child. The exceptions in Section 2-119(b) through (e) refer to cases in which a parent-child relationship exists but only for the purpose of the right of an adoptee or a descendant of an adoptee to inherit from or through one or both genetic parents.

[AMEND MCL 700.2114 TO READ AS FOLLOWS AND RENUMBER IT AS MCL 700.2117.] NO DISTINCTION BASED ON MARITAL STATUS; CHILD BORN OR CONCEIVED DURING MARRIAGE.

Except as otherwise provided in Sections 2-114, 2-119, 2-120, or 2-121:

(1) ~~Except as provided in subsections (2), (3), and (4), for~~ For purposes of intestate succession by, through, or from an individual, an individual is the child of his or her genetic parents, regardless of their marital status. The parent and child relationship may be established in any of the following manners:

(a) If a child is born or conceived during a marriage, both spouses are presumed to be the genetic parents of the child for purposes of intestate succession. The presumption is rebuttable only by clear and convincing evidence. If two individuals participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their genetic child for purposes of intestate succession.

(b) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the child's genetic father for purposes of intestate succession if any of the following occur:

(i) The man joins with the child's mother and acknowledges that child as his child by completing an acknowledgment of parentage as prescribed in the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

(ii) The man joins the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the child's birth.

(iii) The man and child have established a mutually acknowledged relationship of parent and child that begins before the

child becomes age 18 and continues until terminated by the death of either.

(iv) The man is determined to be the child's father and an order of filiation establishing that paternity is entered as provided in the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(v) Regardless of the child's age or whether or not the alleged father has died, the court with jurisdiction over probate proceedings relating to the decedent's estate determines that the man is the child's father, using the standards and procedures established under the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vi) The man is determined to be the father in an action under the revocation of paternity act.

(c) A child who is not conceived or born during a marriage is an individual born in wedlock if the child's parents marry after the conception or birth of the child.

(~~5~~ 2) Only the individual presumed to be the genetic parent of a child under subsection (1)(a) may disprove a presumption that is relevant to that parent and child relationship, and this exclusive right to disprove the presumption terminates on the death of the presumed parent.

[ADD AS MCL 700.2118.] ADOPTEE AND ADOPTEE'S ADOPTIVE PARENT OR PARENTS.

(a) [Parent-Child Relationship Between Adoptee and Adoptive Parent or Parents.] A parent-child relationship exists between an adoptee and the adoptee's adoptive parent or parents.

(b) [Individual in Process of Being Adopted by Married Couple; Stepchild in Process of Being Adopted by Stepparent.] For purposes of subsection (a):

(1) an individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse; and

(2) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by 120 hours.

(c) [Child of Assisted Reproduction or Gestational Child in Process of Being Adopted.] If, after a parent-child relationship is established between a child of assisted reproduction and a parent under Section 2-120 or between a gestational child and a parent under Section 2-121, the child is in the process of being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the

deceased spouse for the purpose of subsection (b)(2).

UPC Comment

2008 Revisions. In 2008, this section and Section 2-119 replaced former Section 2-114(b), which provided: "(b) An adopted individual is the child of his [or her] adopting parent or parents and not of his [or her] natural parents, but adoption of a child by the spouse of either natural parent has no effect on (i) the relationship between the child and that natural parent or (ii) the right of the child or a descendant of the child to inherit from or through the other natural parent". The 2008 revisions divided the coverage of former Section 2-114(b) into two sections. Subsection (a) of this section covered that part of former Section 2-114(b) that provided that an adopted individual is the child of his or her adopting parent or parents. Section 2-119(a) and (b)(1) covered that part of former Section 2-114(b) that provided that an adopted individual is not the child of his natural parents, but adoption of a child by the spouse of either natural parent has no effect on the relationship between the child and that natural parent or (ii) the right of the child or a descendant of the child to inherit from or through the other natural parent.

The 2008 revisions also added subsections (b)(2) and (c), which are explained below.

Data on Adoptions. Official data on adoptions are not regularly collected. Partial data are sometimes available from the Children's Bureau of the U.S. Department of Health and Human Services, the U.S. Census Bureau, and the Evan B. Donaldson Adoption Institute.

For an historical treatment of adoption, from ancient Greece, through the Middle Ages, 19th- and 20th-century America, to open adoption and international adoption, see Debora L. Spar, The Baby Business ch. 6 (2006) and sources cited therein.

Defined Term. *Adoptee* is defined in Section 2-115 as an individual who is adopted. The term is not limited to an individual who is adopted as a minor but includes an individual who is adopted as an adult.

Subsection (a): Parent-Child Relationship Between Adoptee and Adoptive Parent or Parents. Subsection (a) states the general rule that adoption creates a parent-child relationship between the adoptee and the adoptee's adoptive parent or parents.

Subsection (b)(1): Individual in Process of Being Adopted by Married Couple. If the spouse who subsequently died had filed a legal proceeding to adopt the individual before the spouse died, the individual is "in the process of being adopted" by the deceased spouse when the spouse died. However, the phrase "in the process of being adopted" is not intended to be limited to that situation, but is intended to grant flexibility to find on a case by case basis that the process commenced earlier.

Subsection (b)(2): Stepchild in Process of Being Adopted by Stepparent. If the stepparent who subsequently died had filed a legal proceeding to adopt the stepchild before the stepparent died, the stepchild is "in the process of being adopted" by the deceased stepparent when the stepparent died. However, the phrase "in the process of being adopted" is not intended

to be limited to that situation, but is intended to grant flexibility to find on a case by case basis that the process commenced earlier.

Subsection (c): Child of Assisted Reproduction or Gestational Child in Process of Being Adopted. Subsection (c) provides that if, after a parent-child relationship is established between a child of assisted reproduction and a parent under Section 2-120 or between a gestational child and a parent under Section 2-121, the child is in the process of being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased spouse for the purpose of subsection (b)(2). An example would be a situation in which an unmarried mother or father is the parent of a child of assisted reproduction or a gestational child, and subsequently marries an individual who then begins the process of adopting the child but who dies before the adoption becomes final. In such a case, subsection (c) provides that the child is treated as adopted by the deceased spouse for the purpose of subsection (b)(2). The phrase "in the process of being adopted" carries the same meaning under subsection (c) as it does under subsection (b)(2).

[ADD AS MCL 700.2119.] ADOPTEE AND ADOPTEE'S GENETIC PARENTS.

(a) [Parent-Child Relationship Between Adoptee and Genetic Parents.] Except as otherwise provided in subsections (b) through (e), a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.

(b) [Stepchild Adopted by Stepparent.] A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:

(1) the genetic parent whose spouse adopted the individual; and

(2) the other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.

(c) [Individual Adopted by Relative of Genetic Parent.] A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.

(d) [Individual Adopted after Death of Both Genetic Parents.] A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit through either genetic

parent.

(e) [Child of Assisted Reproduction or Gestational Child Who Is Subsequently Adopted.] If, after a parent-child relationship is established between a child of assisted reproduction and a parent or parents under Section 2-120 or between a gestational child and a parent or parents under Section 2-121, the child is adopted by another or others, the child's parent or parents under Section 2-120 or 2-121 are treated as the child's genetic parent or parents for the purpose of this section.

UPC Comment

2008 Revisions. In 2008, this section and Section 2-118 replaced former Section 2-114(b), which provided: "(b) An adopted individual is the child of his [or her] adopting parent or parents and not of his [or her] natural parents, but adoption of a child by the spouse of either natural parent has no effect on (i) the relationship between the child and that natural parent or (ii) the right of the child or a descendant of the child to inherit from or through the other natural parent". The 2008 revisions divided the coverage of former Section 2-114(b) into two sections. Section 2-118(a) covered that part of former Section 2-114(b) that provided that an adopted individual is the child of his or her adopting parent or parents. Subsections (a) and (b) of this section covered that part of former Section 2-114(b) that provided that an adopted individual is not the child of his natural parents, but adoption of a child by the spouse of either natural parent has no effect on the relationship between the child and that natural parent or (ii) the right of the child or a descendant of the child to inherit from or through the other natural parent.

The 2008 revisions also added subsections (c), (d), and (e), which are explained below.

Defined Terms. Section 2-119 uses terms that are defined in Section 2-115.

Adoptee is defined in Section 2-115 as an individual who is adopted. The term is not limited to an individual who is adopted as a minor, but includes an individual who is adopted as an adult.

Genetic parent is defined in Section 2-115 as the child's genetic father or genetic mother. *Genetic mother* is defined as the woman whose egg was fertilized by the sperm of a child's genetic father. *Genetic father* is defined as the man whose sperm fertilized the egg of a child's genetic mother.

Relative is defined in Section 2-115 as a grandparent or a descendant of a grandparent.

Subsection (a): Parent-Child Relationship Between Adoptee and Adoptee's Genetic Parents. Subsection (a) states the general rule that a parent-child relationship does not exist between an adopted child and the child's genetic parents. This rule recognizes that an adoption severs the parent-child relationship between the adopted child and the child's genetic parents. The adoption gives the adopted child a replacement family, sometimes referred to in the case law as "a fresh start". For further elaboration of this theory, see Restatement (Third) of Property: Wills and Other Donative Transfers § 2.5(2)(A) & cmts. d & e (1999). Subsection (a) also states, however, that there are exceptions to this general rule in subsections (b) through (d).

Subsection (b): Stepchild Adopted by Stepparent. Subsection (b) continues the so-called "stepparent exception" contained in the Code since its original promulgation in 1969. When a stepparent adopts his or her stepchild, Section 2-118 provides that the adoption creates a parent-child relationship between the child and his or her adoptive stepparent. Section 2-119(b)(1) provides that a parent-child relationship continues to exist between the child and the child's genetic parent whose spouse adopted the child. Section 2-119(b)(2) provides that a parent-child relationship also continues to exist between an adopted stepchild and his or her other genetic parent (the noncustodial genetic parent) for purposes of inheritance from and through that genetic parent, but not for purposes of inheritance by the other genetic parent and his or her relatives from or through the adopted stepchild.

Example 1 — Post-Widowhood Remarriage. A and B were married and had two children, X and Y. A died, and B married C. C adopted X and Y. Under subsection (b)(1), X and Y are treated as B's children and under Section 2-118(a) as C's children for all purposes of inheritance. Under subsection (b)(2), X and Y are treated as A's children for purposes of inheritance from and through A but not for purposes of inheritance from or through X or Y. Thus, if A's father, G, died intestate, survived by X and Y and by G's daughter (A's sister), S, G's heirs would be S, X, and Y. S would take half and X and Y would take one-fourth each.

Example 2 — Post-Divorce Remarriage. A and B were married and had two children, X and Y. A and B got divorced, and B married C. C adopted X and Y. Under subsection (b)(1), X and Y are treated as B's children and under Section 2-118(a) as C's children for all purposes of inheritance. Under subsection (b)(2), X and Y are treated as A's children for purposes of inheritance from and through A. On the other hand, neither A nor any of A's relatives can inherit from or through X or Y.

Subsection (c): Individual Adopted by Relative of a Genetic Parent. Under subsection (c), a child who is adopted by a maternal or a paternal relative of either genetic parent, or by the spouse or surviving spouse of such a relative, remains a child of both genetic parents.

Example 3. F and M, a married couple with a four-year old child, X, were badly injured in an automobile accident. F subsequently died. M, who was in a vegetative state and on life support, was unable to care for X. Thereafter, M's sister, A, and A's husband, B, adopted X. F's father, PGF, a widower, then died intestate. Under subsection (c), X is treated as PGF's grandchild (F's child).

Subsection (d): Individual Adopted After Death of Both Genetic Parents. Usually, a post-death adoption does not remove a child from contact with the genetic families. When someone with ties to the genetic family or families adopts a child after the deaths of the child's genetic parents, even if the adoptive parent is not a relative of either genetic parent or a spouse or surviving spouse of such a relative, the child continues to be in a parent-child relationship with both genetic parents. Once a child has taken root in a family, an adoption after the death of both genetic parents is likely to be by someone chosen or approved of by the genetic family, such as a person named as guardian of the child in a deceased parent's will. In such a case, the child does not become estranged from the genetic family. Such an adoption does not "remove" the child from the families of both genetic parents. Such a child continues to be a child of both genetic parents, as well as a child of the adoptive parents.

Example 4. F and M, a married couple with a four-year-old child, X, were involved in an automobile accident that killed F and M. Neither M's parents nor F's father (F's mother had died before the accident) nor any other relative was in a position to take custody of X. X was adopted by F and M's close friends, A and B, a married couple approximately of the same ages as F and M. F's father, PGF, a widower, then died intestate. Under subsection (d), X is treated as PGF's grandchild (F's child). The result would be the same if F's or M's will appointed A and B as the guardians of the person of X, and A and B subsequently successfully petitioned to adopt X.

Subsection (e): Child of Assisted Reproduction or Gestational Child Who Is Subsequently Adopted. Subsection (e) puts a child of assisted reproduction and a gestational child on the same footing as a genetic child for purposes of this section. The results in Examples 1 through 4 would have been the same had the child in question been a child of assisted reproduction or a gestational child.

[ADD AS MCL 700.2120.] CHILD CONCEIVED BY ASSISTED REPRODUCTION OTHER THAN CHILD BORN TO GESTATIONAL CARRIER.

(a) [Definitions.] In this section:

(1) "Birth mother" means a woman, other than a gestational carrier under Section 2-121, who gives birth to a child of assisted reproduction. The term is not limited to a woman who is the child's genetic mother.

(2) "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a woman other than a gestational carrier under Section 2-121.

(3) "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

(A) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction by the wife;

(B) the birth mother of a child of assisted reproduction; or

(C) an individual who has been determined under subsection (e) or (f) to have a parent-child relationship with a child of assisted reproduction.

(b) [Third-Party Donor.] A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.

(c) [Parent-Child Relationship with Birth Mother.] A parent-child relationship exists between a child of assisted reproduction and the child's birth mother.

(d) [Parent-Child Relationship with Husband Whose Sperm Were Used During His Lifetime by His Wife for Assisted Reproduction.] Except as otherwise provided in subsections (i) and (j), a parent-child relationship exists between a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction.

(e) [Reserved.]

(f) [Parent-Child Relationship with Another.] Except as otherwise provided in subsections (g), (i), and (j), and unless a parent-child relationship is established under subsection (d) or (e), a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:

(1) before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or

(2) in the absence of a signed record under paragraph (1):

(A) functioned as a parent of the child no later than two years after the child's birth;

(B) intended to function as a parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or

(C) intended to be treated as a parent of a posthumously conceived child, if that intent is established by clear and convincing evidence.

(g) [Record Signed More than Two Years after the Birth of the Child: Effect.] For the purpose of subsection (f)(1), neither an individual who signed a record more than two years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached [18] years of age.

(h) [Presumption: Birth Mother Is Married or Surviving Spouse.] For the purpose of subsection (f)(2), the following rules apply:

(1) If the birth mother is married and no divorce proceeding is pending, in the absence of clear and convincing evidence to the contrary, her spouse satisfies subsection (f)(2)(A) or (B).

(2) If the birth mother is a surviving spouse and at her deceased

spouse's death no divorce proceeding was pending, and, if before death or incapacity, the deceased spouse deposited the sperm or eggs that were used to conceive the child, in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies subsection (f)(2)(B) or (C).

(i) [Divorce Before Placement of Eggs, Sperm, or Embryos.] If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.

(j) [Withdrawal of Consent Before Placement of Eggs, Sperm, or Embryos.] If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies subsection (f).

(k) [When Posthumously Conceived Child Treated as in Gestation.] If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, then if the requirements of Section 1110 are satisfied, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is:

(1) in utero not later than 36 months after the individual's death; or

(2) born not later than 45 months after the individual's death.

UPC Legislative Note: *States are encouraged to enact a provision requiring genetic depositories to provide a consent form that would satisfy subsection (f)(1). See Cal. Health & Safety Code § 1644.7 and .8 for a possible model for such a consent form.*

UPC Comment

Data on Children of Assisted Reproduction. The Center for Disease Control (CDC) of the U.S. Department of Health and Human Services collects data on children of assisted reproduction (ART). See Center for Disease Control, 2004 Assisted Reproductive Technology Success Rates (Dec. 2006) (2004 CDC Report), available at http://www.cdc.gov/ART/ART2004. The data, however, is of limited use because the definition of ART used in the CDC Report excludes intrauterine (artificial) insemination (2004 CDC Report at 3), which is probably the most common form of assisted reproductive procedures. The CDC estimates that in 2004 ART procedures (excluding intrauterine insemination) accounted for slightly more than one percent of total U.S. births. 2004 CDC Report at 13. According to the Report: "The number of infants born who were conceived using ART increased steadily between 1996 and 2004. In 2004, 49,458 infants were born, which was more than double the 20,840 born in 1996." 2004 CDC Report at 57. "The average age of women using ART services in 2004 was 36. The largest group of women using ART services were women younger than 35, representing 41% of all ART cycles carried out in 2004. Twenty-one percent of ART cycles were carried out among women aged 35-37, 19% among women aged 38-40, 9% among women aged 41-42, and 9% among women older than 42." 2004 CDC Report at 15. Updates of the 2004 CDC Report are to be posted at http://www.cdc.gov/ART/ART2004.

AMA Ethics Policy on Posthumous Conception. The ethics policies of the American Medical Association concerning artificial insemination by a known donor state that "[i]f semen is frozen and the donor dies before it is used, the frozen semen should not be used or donated for purposes other than those originally intended by the donor. If the donor left no instructions, it is reasonable to allow the remaining partner to use the semen for intrauterine insemination but not to donate it to someone else. However, the donor should be advised of such a policy at the time of donation and be given an opportunity to override it." Am. Med. Assn. Council on Ethical & Judicial Affairs, Code of Medical Ethics: Current Opinions E-2.04 (Issued June 1993; updated December 2004).

Subsection (a): Definitions. Subsection (a) defines the following terms:

Birth mother is defined as the woman (other than a gestational carrier under Section 2-121) who gave birth to a child of assisted reproduction.

Child of assisted reproduction is defined as a child conceived by means of assisted reproduction by a woman other than a gestational carrier under Section 2-121.

Third-party donor. The definition of third-party donor is based on the definition of "donor" in the Uniform Parentage Act § 102.

Other Defined Terms. In addition to the terms defined in subsection (a), this section uses terms that are defined in Section 2-115.

Assisted reproduction is defined in Section 2-115 as a method of causing pregnancy other than sexual intercourse.

Divorce is defined in Section 2-115 as including an annulment, dissolution, and declaration of invalidity of a marriage.

Functioned as a parent of the child is defined in Section 2-115 as behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household. See also the Comment to Section 2-115 for additional explanation of the term.

Genetic father is defined in Section 2-115 as the man whose sperm fertilized the egg of a child's genetic mother.

Genetic mother is defined as the woman whose egg was fertilized by the sperm of the child's genetic father.

Incapacity is defined in Section 2-115 as the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.

Subsection (b): Third-Party Donor. Subsection (b) is consistent with the Uniform Parentage Act § 702. Under subsection (b), a third-party donor does not have a parent-child relationship with a child of assisted reproduction, despite the donor's genetic relationship with the child.

Subsection (c): Parent-Child Relationship With Birth Mother. Subsection (c) is in accord with Uniform Parentage Act Section 201 in providing that a parent-child relationship exists between a child of assisted reproduction and the child's birth mother. The child's birth mother, defined in subsection (a) as the woman (other than a gestational carrier) who gave birth to the child, made the decision to undergo the procedure with intent to become pregnant and give birth to the child. Therefore, in order for a parent-child relationship to exist between her and the child, no proof that she consented to the procedure with intent to be treated as the parent of the child is necessary.

Subsection (d): Parent-Child Relationship with Husband Whose Sperm Were Used During His Lifetime By His Wife for Assisted Reproduction. The principal application of subsection (d) is in the case of the assisted reproduction procedure known as intrauterine insemination husband (IIH), or, in older terminology, artificial insemination husband (AIH). Subsection (d) provides that, except as otherwise provided in subsection (i), a parent-child relationship exists between a child of assisted reproduction and the husband of the child's birth

mother if the husband provided the sperm that were used during his lifetime by her for assisted reproduction and the husband is the genetic father of the child. The exception contained in subsection (i) relates to the withdrawal of consent in a record before the placement of eggs, sperm, or embryos. Note that subsection (d) only applies if the husband's sperm were used during his lifetime by his wife to cause a pregnancy by assisted reproduction. Subsection (d) does not apply to posthumous conception.

Subsection (e): Reserved.

Subsection (f): Parent-Child Relationship with Another. In order for someone other than the birth mother to have a parent-child relationship with the child, there needs to be proof that the individual consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. The other individual's genetic material might or might not have been used to create the pregnancy. Except as otherwise provided in this section, merely depositing genetic material is not, by itself, sufficient to establish a parent-child relationship with the child.

Subsection (f)(1): Signed Record Evidencing Consent, Considering All the Facts and Circumstances, to Assisted Reproduction with Intent to Be Treated as the Other Parent of the Child. Subsection (f)(1) provides that a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction with intent to be treated as the other parent of the child is established if the individual signed a record, before or after the child's birth, that considering all the facts and circumstances evidences the individual's consent. Recognizing consent in a record not only signed before the child's birth but also at any time after the child's birth is consistent with the Uniform Parentage Act §§ 703 and 704.

As noted, the signed record need not explicitly express consent to the procedure with intent to be treated as the other parent of child, but only needs to evidence such consent considering all the facts and circumstances. An example of a signed record that would satisfy this requirement comes from In re Martin B., 841 N.Y.S.2d 207 (Sur. Ct. 2007). In that case, the New York Surrogate's Court held that a child of posthumous conception was included in a class gift in a case in which the deceased father had signed a form that stated: "In the event of my death I agree that my spouse shall have the sole right to make decisions regarding the disposition of my semen samples. I authorize repro lab to release my specimens to my legal spouse [naming her]." Another form he signed stated: "I, [naming him], hereby certify that I am married or intimately involved with [naming her] and the cryopreserved specimens stored at repro lab will be used for future inseminations of my wife/intimate partner." Although these forms do not explicitly say that the decedent consented to the procedure with intent to be treated as the other parent of the child, they do evidence such consent in light of all of the facts and circumstances and would therefore satisfy subsection (f)(1).

Subsection (f)(2): Absence of Signed Record Evidencing Consent. Ideally an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child will have signed a record that satisfies subsection (f)(1). If not, subsection (f)(2) recognizes that actions speak as loud as words. Under

subsection (f)(2), consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual functioned as a parent of the child no later than two years after the child's birth. Under subsection (f)(2)(B), the same result applies if the evidence establishes that the individual had that intent but death, incapacity, or other circumstances prevented the individual from carrying out that intent. Finally, under subsection (f)(2)(C), the same result applies if it can be established by clear and convincing evidence that the individual intended to be treated as a parent of a posthumously conceived child.

Subsection (g): Record Signed More than Two Years after the Birth of the Child: Effect. Subsection (g) is designed to prevent an individual who has never functioned as a parent of the child from signing a record in order to inherit from or through the child or in order to make it possible for a relative of the individual to inherit from or through the child. Thus, subsection (g) provides that, for purposes of subsection (f)(1), an individual who signed a record more than two years after the birth of the child, or a relative of that individual, does not inherit from or through the child unless the individual functioned as a parent of the child before the child reached the age of [18].

Subsection (h): Presumption: Birth Mother is Married or Surviving Spouse. Under subsection (h), if the birth mother is married and no divorce proceeding is pending, then in the absence of clear and convincing evidence to the contrary, her spouse satisfies subsection (f)(2)(A) or (B) or if the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceeding was pending, then in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies subsection (f)(2)(B) or (C).

Subsection (i): Divorce Before Placement of Eggs, Sperm, or Embryos. Subsection (i) is derived from the Uniform Parentage Act § 706(b).

Subsection (j): Withdrawal of Consent Before Placement of Eggs, Sperm, or Embryos. Subsection (j) is derived from Uniform Parentage Act Section 706(a). Subsection (j) provides that if, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies the requirements of subsection (f).

Subsection (k): When Posthumously Conceived Gestational Child Treated as in Gestation. Subsection (k) provides that if, under this section, an individual is a parent of a gestational child who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is either (1) in utero no later than 36 months after the individual's death or (2) born no later than 45 months after the individual's death. Note also that Section 3-703 gives the decedent's personal representative authority to take account of the possibility of posthumous conception in the timing of all or part of the distribution of the estate.

The 36-month period in subsection (k) is designed to allow a surviving spouse or partner a period of grieving, time to make up his or her mind about whether to go forward with assisted reproduction, and a reasonable allowance for unsuccessful attempts to achieve a pregnancy. The 36-month period also coincides with Section 3-1006, under which an heir is allowed to recover

property improperly distributed or its value from any distributee during the later of three years after the decedent's death or one year after distribution. If the assisted-reproduction procedure is performed in a medical facility, the date when the child is in utero will ordinarily be evidenced by medical records. In some cases, however, the procedure is not performed in a medical facility, and so such evidence may be lacking. Providing an alternative of birth within 45 months is designed to provide certainty in such cases. The 45-month period is based on the 36-month period with an additional nine months tacked on to allow for a typical period of pregnancy.

[ADD AS MCL 700.2121.] CHILD BORN TO GESTATIONAL CARRIER.

(a) [Definitions.] In this section:

(1) "Gestational agreement" means an enforceable or unenforceable agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual described in subsection (e).

(2) "Gestational carrier" means a woman who is not an intended parent who gives birth to a child under a gestational agreement. The term is not limited to a woman who is the child's genetic mother.

(3) "Gestational child" means a child born to a gestational carrier under a gestational agreement.

(4) "Intended parent" means an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.

(b) [Court Order Adjudicating Parentage: Effect.] A parent-child relationship is conclusively established by a court order designating the parent or parents of a gestational child.

(c) [Gestational Carrier.] A parent-child relationship between a gestational

child and the child's gestational carrier does not exist unless the gestational carrier is:

(1) designated as a parent of the child in a court order described in subsection (b); or

(2) the child's genetic mother and a parent-child relationship does not exist under this section with an individual other than the gestational carrier.

(d) [Parent-Child Relationship with Intended Parent or Parents.] In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an intended parent who:

(1) functioned as a parent of the child no later than two years after the child's birth; or

(2) died while the gestational carrier was pregnant if:

(A) there were two intended parents and the other intended parent functioned as a parent of the child no later than two years after the child's birth;

(B) there were two intended parents, the other intended parent also died while the gestational carrier was pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child's birth; or

(C) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child's birth.

(e) [Gestational Agreement after Death or Incapacity.] In the absence of a court order under subsection (b), a parent-child relationship exists between a gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to conceive a child under a gestational agreement entered into after the individual's death or incapacity if the individual intended to be treated as the parent of the child. The individual's intent may be shown by:

(1) a record signed by the individual which considering all the facts and circumstances evidences the individual's intent; or

(2) other facts and circumstances establishing the individual's intent by clear and convincing evidence.

(f) [Presumption: Gestational Agreement after Spouse's Death or Incapacity.] Except as otherwise provided in subsection (g), and unless there is clear and convincing evidence of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of subsection (e)(2) if:

(1) the individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child;

(2) when the individual deposited the sperm or eggs, the individual was married and no divorce proceeding was pending; and

(3) the individual's spouse or surviving spouse functioned as a parent of the child no later than two years after the child's birth.

(g) [Subsection (f) Presumption Inapplicable.] The presumption under subsection (f) does not apply if there is:

(1) a court order under subsection (b); or

(2) a signed record that satisfies subsection (e)(1).

(h) [When Posthumously Conceived Gestational Child Treated as in Gestation.] If, under this section, an individual is a parent of a gestational child who is conceived after the individual's death, then if the requirements of Section 1110 are satisfied, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is:

(1) in utero not later than 36 months after the individual's death; or

(2) born not later than 45 months after the individual's death.

(i) [No Effect on Other Law.] This section does not affect law of this state other than this [code] regarding the enforceability or validity of a gestational agreement.

UPC Comment

Subsection (a): Definitions. Subsection (a) defines the following terms:

*Gestational agreement***.** The definition of gestational agreement is based on the Comment to Article 8 of the Uniform Parentage Act, which states that the term "gestational carrier" "applies to both a woman who, through assisted reproduction, performs the gestational function without being genetically related to a child, and a woman who is both the gestational and genetic mother. The key is that an agreement has been made that the child is to be raised by the intended parents." The Comment also points out that "The [practice in which the woman is both the gestational and genetic mother] has elicited disfavor in the ART community, which has concluded that the gestational carrier's genetic link to the child too often creates additional emotional and psychological problems in enforcing a gestational agreement."

Gestational carrier is defined as a woman who is not an intended parent and who gives birth to a child under a gestational agreement. The term is not limited to a woman who is the child's genetic mother.

Gestational child is defined as a child born to a gestational carrier under a gestational agreement.

Intended parent is defined as an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.

Other Defined Terms. In addition to the terms defined in subsection (a), this section uses terms that are defined in Section 2-115.

Child of assisted reproduction is defined in Section 2-115 as a method of causing pregnancy other than sexual intercourse.

Divorce is defined in Section 2-115 as including an annulment, dissolution, and declaration of invalidity of a marriage.

Functioned as a parent of the child is defined in Section 2-115 as behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household. See also the Comment to Section 2-115 for additional explanation of the term.

Genetic mother is defined as the woman whose egg was fertilized by the sperm of the child's genetic father.

Incapacity is defined in Section 2-115 as the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.

Relative is defined in Section 2-115 as a grandparent or a descendant of a grandparent.

Subsection (b): Court Order Adjudicating Parentage: Effect. A court order issued

under Section 807 of the Uniform Parentage Act (UPA) would qualify as a court order adjudicating parentage for purposes of subsection (b). UPA Section 807 provides:

UPA Section 807. Parentage under Validated Gestational Agreement.

(a) Upon birth of a child to a gestational carrier, the intended parents shall file notice with the court that a child has been born to the gestational carrier within 300 days after assisted reproduction. Thereupon, the court shall issue an order:

(1) confirming that the intended parents are the parents of the child;

(2) if necessary, ordering that the child be surrendered to the intended parents; and

(3) directing the [agency maintaining birth records] to issue a birth certificate naming the intended parents as parents of the child.

(b) If the parentage of a child born to a gestational carrier is alleged not to be the result of assisted reproduction, the court shall order genetic testing to determine the parentage of the child.

(c) If the intended parents fail to file notice required under subsection (a), the gestational carrier or the appropriate state agency may file notice with the court that a child has been born to the gestational carrier within 300 days after assisted reproduction. Upon proof of a court order issued pursuant to Section 803 validating the gestational agreement, the court shall order the intended parents are the parents of the child and are financially responsible for the child.

Subsection (c): Gestational Carrier. Under subsection (c), the only way that a parent-child relationship exists between a gestational child and the child's gestational carrier is if she is (1) designated as a parent of the child in a court order described in subsection (b) or (2) the child's genetic mother and a parent-child relationship does not exist under this section with an individual other than the gestational carrier.

Subsection (d): Parent-Child Relationship With Intended Parent or Parents. Subsection (d) only applies in the absence of a court order under subsection (b). If there is no such court order, subsection (b) provides that a parent-child relationship exists between a gestational child and an intended parent who functioned as a parent of the child no later than two years after the child's birth. A parent-child also exists between a gestational child and an intended parent if the intended parent died while the gestational carrier was pregnant, but only if (A) there were two intended parents and the other intended parent functioned as a parent of the child no later than two years after the child's birth; (B) there were two intended parents, the other intended parent also died while the gestational carrier was pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child's birth; or (C) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child's birth.

Subsection (e): Gestational Agreement After Death or Incapacity. Subsection (e) only applies in the absence of a court order under subsection (b). If there is no such court order, a parent-child relationship exists between a gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to conceive a child under a gestational agreement entered into after the individual's death or incapacity if the individual intended to be treated as the parent of the child. The individual's intent may be shown by a record signed by the individual which considering all the facts and circumstances evidences the individual's intent or by other facts and circumstances establishing the individual's intent by clear and convincing evidence.

Subsections (f) and (g): Presumption: Gestational Agreement After Spouse's Death or Incapacity. Subsection (f) and (g) are connected. Subsection (f) provides that unless there is clear and convincing evidence of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of subsection (e)(2) if (1) the individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child, (2) when the individual deposited the sperm or eggs, the individual was married and no divorce proceeding was pending; and (3) the individual's spouse or surviving spouse functioned as a parent of the child no later than two years after the child's birth.

Subsection (g) provides, however, that the presumption under subsection (f) does not apply if there is a court order under subsection (b) or a signed record that satisfies subsection (e)(1).

Subsection (h): When Posthumously Conceived Gestational Child is Treated as in Gestation. Subsection (h) provides that if, under this section, an individual is a parent of a gestational child who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Section 2-104(a)(2) if the child is either (1) in utero not later than 36 months after the individual's death or (2) born not later than 45 months after the individual's death. Note also that Section 3-703 gives the decedent's personal representative authority to take account of the possibility of posthumous conception in the timing of the distribution of part or all of the estate.

The 36-month period in subsection (g) is designed to allow a surviving spouse or partner a period of grieving, time to make up his or her mind about whether to go forward with assisted reproduction, and a reasonable allowance for unsuccessful attempts to achieve a pregnancy. The three-year period also coincides with Section 3-1006, under which an heir is allowed to recover property improperly distributed or its value from any distributee during the later of three years after the decedent's death or one year after distribution. If the assisted-reproduction procedure is performed in a medical facility, the date when the child is in utero will ordinarily be evidenced by medical records. In some cases, however, the procedure is not performed in a medical facility, and so such evidence may be lacking. Providing an alternative of birth within 45 months is designed to provide certainty in such cases. The 45-month period is based on the 36-month period with an additional nine months tacked on to allow for a typical period of pregnancy.

[ADD AS MCL 700.2122.] EQUITABLE ADOPTION. This [subpart] does not affect the doctrine of equitable adoption.

UPC Comment

On the doctrine of equitable adoption, see Restatement (Third) of Property: Wills and Other Donative Transfers § 2.5, cmt. k & Reporter's Note No. 7 (1999).

PART 5. WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS

UPC GENERAL COMMENT

Part 5 of Article II was retitled in 1990 to reflect the fact that it now includes the provisions on will contracts (pre-1990 Section 2-701) and on custody and deposit of wills (pre-1990 Sections 2-901 and 2-902).

Part 5 deals with capacity and formalities for execution and revocation of wills. The basic intent of the pre-1990 sections was to validate wills whenever possible. To that end, the minimum age for making wills was lowered to eighteen, formalities for a written and attested will were reduced, holographic wills written and signed by the testator were authorized, choice of law as to validity of execution was broadened, and revocation by operation of law was limited to divorce or annulment. In addition, the statute also provided for an optional method of execution with acknowledgment before a public officer (the self-proved will).

These measures have been retained, and the purpose of validating wills whenever possible has been strengthened by the addition of a new section, Section 2-503, which allows a will to be upheld despite a harmless error in its execution.

[AMEND MCL 700.2502 TO READ.] SECTION 2-502. EXECUTION; WITNESSED OR NOTARIZED WILLS; HOLOGRAPHIC WILLS.

(a) [Witnessed or Notarized Wills.] Except as otherwise provided in subsection (b) and in Sections 2-503, 2-506, and 2-513, a will must be:

(1) in writing;

(2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(3) either:

(A) signed by at least two individuals, each of whom signed within a reasonable time after the individual witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgement of the will; or

(B) acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgements.

(b) [Holographic Wills.] A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the testator's signature and the document's material portions are in the testator's handwriting.

(c) [Extrinsic Evidence.] Intent that a document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

UPC Comment

Subsection (a): Witnessed or Notarized Wills. Three formalities for execution of a witnessed or notarized will are imposed. Subsection (a)(1) requires the will to be in writing. Any reasonably permanent record is sufficient. See Restatement (Third) of Property: Wills and Other Donative Transfers § 3.1 cmt. i (1999).

Under subsection (a)(2), the testator must sign the will or some other individual must sign the testator's name in the testator's presence and by the testator's direction. If the latter procedure is followed, and someone else signs the testator's name, the so-called "conscious presence" test is codified, under which a signing is sufficient if it was done in the testator's conscious presence, i.e., within the range of the testator's senses such as hearing; the signing need not have occurred within the testator's line of sight. For application of the "conscious-presence" test, see Restatement (Third) of Property: Wills and Other Donative Transfers § 3.1 cmt. n (1999); *Cunningham v. Cunningham,* 80 Minn. 180, 83 N.W. 58 (1900) (conscious-presence requirement held satisfied where "the signing was within the sound of the testator's voice; he knew what was being done...."); *Healy v. Bartless,* 73 N.H. 110, 59 A. 617 (1904) (individuals are in the decedent's conscious presence "whenever they are so near at hand that he is conscious of where they are and of what they are doing, through any of his senses, and where he can readily see them if he is so disposed."); *Demaris' Estate,* 166 Or. 36, 110 P.2d 571 (1941) ("[W]e do not believe that sight is the only test of presence. We are convinced that any of the senses that a testator possesses, which enable him to know whether another is near at hand and what he is doing, may be employed by him in determining whether [an individual is] in his [conscious] presence....").

Signing may be by mark, nickname, or initials, subject to the general rules relating to that which constitutes a "signature". See Restatement (Third) of Property: Wills and Other Donative Transfers § 3.1 cmt. j (1999). There is no requirement that the testator "publish" the document as his or her will, or that he or she request the witnesses to sign, or that the witnesses sign in the presence of the testator or of each other. The testator may sign the will outside the presence of the witnesses, if he or she later acknowledges to the witnesses that the signature is his or hers (or that his or her name was signed by another) or that the document is his or her will. An acknowledgment need not be expressly stated, but can be inferred from the testator's conduct. *Norton v. Georgia Railroad Bank & Tr. Co.,* 248 Ga. 847, 285 S.E.2d 910 (1982).

There is no requirement that the testator's signature be at the end of the will; thus, if the testator writes his or her name in the body of the will and intends it to be his or her signature, the statute is satisfied. See Restatement (Third) of Property: Wills and Other Donative Transfers § 3.1 cmts. j & k (1999).

Subsection (a)(3) requires that the will either be (A) signed by at least two individuals, each of whom witnessed at least one of the following: (i) the signing of the will; (ii) the testator's acknowledgment of the signature; or (iii) the testator's acknowledgment of the will; or (B) acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments. Subparagraph (B) was added in 2008 in order to recognize the validity of notarized wills.

Under subsection (a)(3)(A), the witnesses must sign as witnesses (see, e.g., Mossler v. Johnson, 565 S.W.2d 952 (Tex. Civ. App. 1978)), and must sign within a reasonable time after having witnessed the testator's act of signing or acknowledgment. There is, however, no requirement that the witnesses sign before the testator's death. In a particular case, the reasonable-time requirement could be satisfied even if the witnesses sign after the testator's death.

Under subsection (a)(3)(B), a will, whether or not it is properly witnessed under subsection (a)(3)(A), can be acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments. Note that a signature guarantee is not an acknowledgment before a notary public or other person authorized by law to take acknowledgments. The signature guarantee program, which is regulated by federal law, is designed to facilitate transactions relating to securities. See 17 C.F.R. § 240.17Ad-15.

Allowing notarized wills as an optional method of execution addresses cases that have begun to emerge in which the supervising attorney, with the client and all witnesses present, circulates one or more estate-planning documents for signature, and fails to notice that the client or one of the witnesses has unintentionally neglected to sign one of the documents. See, e.g., Dalk v. Allen, 774 So.2d 787 (Fla. Dist. Ct. App. 2000); Sisson v. Park Street Baptist Church, 24 E.T.R.2d 18 (Ont. Gen. Div. 1998). This often, but not always, arises when the attorney prepares multiple estate-planning documents – a will, a durable power of attorney, a health-care power of attorney, and perhaps a revocable trust. It is common practice, and sometimes required by state law, that the documents other than the will be notarized. It would reduce confusion and chance for error if all of these documents could be executed with the same formality.

In addition, lay people (and, sad to say, some lawyers) think that a will is valid if notarized, which is not true under non-UPC law. See, e.g., Estate of Saueressig, 136 P.3d 201 (Cal. 2006). In re Estate of Hall, 51 P.3d 1134 (Mont. 2002), a notarized but otherwise unwitnessed will was upheld, but not under the pre-2008 version of Section 2-502, which did not authorize notarized wills. The will was upheld under the harmless-error rule of Section 2-503. There are also cases in which a testator went to his or her bank to get the will executed, and the bank's notary notarized the document, mistakenly thinking that notarization made the will valid. Cf., e.g., Orrell v. Cochran, 695 S.W.2d 552 (Tex. 1985). Under non-UPC law, the will is usually held invalid in such cases, despite the lack of evidence raising any doubt that the will truly represented the decedent's wishes.

Other uniform acts affecting property or person do not require either attesting witnesses or notarization. See, e.g., Uniform Trust Code Section 402(a)(2); Uniform Power of Attorney Act Section 105; Uniform Health-Care Decisions Act Section 2(f).

A will that does not meet the requirements of subsection (a) may be valid under subsection (b) as a holograph or under the harmless error rule of Section 2-503.

Subsection (b): Holographic Wills. This subsection authorizes holographic wills. On holographic wills, see Restatement (Third) of Property: Wills and Other Donative Transfers § 3.2 (1999). Subsection (b) enables a testator to write his or her own will in handwriting. There need be no witnesses. The only requirement is that the signature and the material portions of the

document be in the testator's handwriting.

By requiring only the "material portions of the document" to be in the testator's handwriting (rather than requiring, as some existing statutes do, that the will be "entirely" in the decedent's handwriting), a holograph may be valid even though immaterial parts such as date or introductory wording are printed, typed, or stamped.

A valid holograph can also be executed on a printed will form if the material portions of the document are handwritten. The fact, for example, that the will form contains printed language such as "I give, devise, and bequeath to _____" does not disqualify the document as a holographic will, as long as the testator fills out the remaining portion of the dispositive provision in his or her own hand.

Subsection (c): Extrinsic Evidence. Under subsection (c), testamentary intent can be shown by extrinsic evidence, including for holographic wills the printed, typed, or stamped portions of the form or document. Handwritten alterations, if signed, of a validly executed nonhandwritten will can operate as a holographic codicil to the will. If necessary, the handwritten codicil can derive meaning, and hence validity as a holographic codicil, from nonhandwritten portions of the document. See Restatement (Third) of Property: Wills and Other Donative Transfers § 3.2 cmt. g (1999). This position intentionally contradicts Estate of Foxley, 575 N.W.2d 150 (Neb. 1998), a decision condemned in Reporter's Note No. 4 to the Restatement as a decision that "reached a manifestly unjust result".

2008 Revisions. In 2008, this section was amended by adding subsection (a)(3)(B). Subsection (a)(3)(B) and its rationale are discussed in Waggoner, The UPC Authorizes Notarized Wills, 34 ACTEC J. 58 (2008).

Historical Note. This Comment was revised in 2008.

[AMEND MCL 700.2504 TO READ.] SELF-PROVED WILL.

700.2504 Self-proved will.

(1) A will that is executed with attesting witnesses may be simultaneously executed, attested, and made self-proved by acknowledgment of the will by the testator and 2 witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, , in substantially the following form:

I, _____, the testator, sign my name to this document on _____, _____. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this will; that I am 18 years of age or older and under no constraint or undue influence; and that I have sufficient mental capacity to make this will.

_____

(Signature) Testator

We, _____ and _____, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as his or her will, signs it willingly or willingly directs another to sign for him or her, and executes it as his or her voluntary act for the purposes expressed in this will; each of us, in the testator's presence, signs this will as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, is under no constraint or undue influence, and has

sufficient mental capacity to make this will.

_____

(Signature) Witness

_____

(Signature) Witness

The State of _____

County of _____

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on _____, _____.

month/day year

_____

(SEAL) Signed

_____

(official capacity of officer)

(2) An attested will may be made self-proved at any time after its execution by the acknowledgment of the will by the testator and the sworn statements of the witnesses to the will, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

The State of _____

County of _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached will, sign this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the will's testator executed the will as his or her will, signed it willingly or willingly directed another to sign for him or her, and executed

it as his or her voluntary act for the purposes expressed in the will; each witness, in the testator's presence, signed the will as witness to the testator's signing; and, to the best of the witnesses' knowledge, the testator, at the time of the will's execution, was 18 years of age or older, was under no constraint or undue influence, and had sufficient mental capacity to make this will.

_____
(Signature) Testator

_____
(Signature) Witness

_____
(Signature) Witness

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on _____, _____.
month/day year

_____
(SEAL) Signed

_____
(official capacity of officer)

(3) A codicil to a will that is executed with attesting witnesses may be simultaneously executed and attested, and both the codicil and the original will made self-proved, by acknowledgment of the codicil by the testator and by witnesses' sworn statements, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, in substantially the following form:

I, _____, the testator, sign my name to this document on _____, _____. I have taken an oath, administered by the officer whose signature and seal appear on this document, swearing that the statements in this document are true. I declare to that officer that this document is a

codicil to my will; that I sign it willingly or willingly direct another to sign for me; that I execute it as my voluntary act for the purposes expressed in this codicil; and that I am 18 years of age or older, and under no constraint or undue influence; and that I have sufficient mental capacity to make this codicil.

_____

(Signature) Testator

We, _____ and _____, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature and seal appear on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as a codicil to his or her will, signs it willingly or willingly directs another to sign for him or her, and executes it as his or her voluntary act for the purposes expressed in this codicil; each of us, in the testator's presence, signs this codicil as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, is under no constraint or undue influence, and has sufficient mental capacity to make this codicil.

_____

(Signature) Witness

_____

(Signature) Witness

The State of _____

County of _____

Sworn to and signed in my presence by _____, the testator, and sworn to and signed in my presence by _____ and _____, witnesses, on _____, _____.

month/day year

_____

(SEAL) Signed

_____

(official capacity of officer)

(4) If necessary to prove the will's due execution, a signature affixed to a self-proving sworn statement attached to a will is considered a signature affixed to the will.

(5) Instead of the testator and witnesses each making a sworn statement before an officer authorized to administer oaths as prescribed in subsections (1) to (3), a will or codicil may be made self-proved by a written statement that is not a sworn statement. This statement shall state, or incorporate by reference to an attestation clause, the facts regarding the testator and the formalities observed at the signing of the will or codicil as prescribed in subsections (1) to (3). The testator and witnesses shall sign the statement, which must include its execution date and must begin with substantially the following language: "I certify (or declare) under penalty for perjury under the law of the state of Michigan that...".

UPC Comment

A self-proved will may be admitted to probate as provided in Sections 3-303, 3-405, and 3-406 without the testimony of any attesting witness, but otherwise it is treated no differently from a will not self-proved. Thus, a self-proved will may be contested (except in regard to questions of proper execution), revoked, or amended by a codicil in exactly the same fashion as a will not self-proved. The procedural advantage of a self-proved will is limited to formal testacy proceedings because Section 3-303, which deals with informal probate, dispenses with the necessity of testimony of witnesses even though the instrument is not self-proved under this section.

Subsection (c) was added in 1990 to counteract an unfortunate judicial interpretation of similar self-proving will provisions in a few states, under which a signature on the self-proving affidavit was held not to constitute a signature on the will, resulting in invalidity of the will in cases in which the testator or witnesses got confused and only signed on the self-proving affidavit. See Mann, Self-proving Affidavits and Formalism in Wills Adjudication, 63 Wash. U. L.Q. 39 (1985); Estate of Ricketts, 773 P.2d 93 (Wash. Ct. App. 1989).

2008 Revision. Section 2-502(a) was amended in 2008 to add an optional method of execution by having a will notarized rather than witnessed by two attesting witnesses. The amendment to Section 2-502 necessitated amending this section so that it only applies to a will that is executed with attesting witnesses.

Historical Note. This Comment was revised in 2008.

PART 7. RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

UPC GENERAL COMMENT

Part 7 contains rules of construction applicable to wills and other governing instruments, such as deeds, trusts, appointments, beneficiary designations, and so on. Like the rules of construction in Part 6 (which apply only to wills), the rules of construction in this part yield to a finding of a contrary intention.

Some of the sections in Part 7 are revisions of sections contained in Part 6 of the pre-1990 Code. Although these sections originally applied only to wills, their restricted scope was inappropriate.

Some of the sections in Part 7 are new, having been added to the Code as desirable means of carrying out common intention.

Application to Pre-Existing Governing Instruments. Under Section 8-101(b), for decedents dying after the effective date of enactment, the provisions of this Code apply to governing instruments executed prior to as well as on or after the effective date of enactment. The Joint Editorial Board for the Uniform Probate Code has issued a statement concerning the constitutionality under the Contracts Clause of this feature of the Code. The statement, titled "Joint Editorial Board Statement Regarding the Constitutionality of Changes in Default Rules as Applied to Pre-Existing Documents," can be found at 17 Am. C. Tr. & Est. Couns. Notes 184 (1991) or can be obtained from the Uniform Law Commission, www.uniformlaws.org.

Historical Note. This General Comment was revised in 1993. For the prior version, see 8 U.L.A. 137 (Supp. 1992).

[AMEND MCL 700.2707 TO READ.] CLASS GIFTS CONSTRUED TO ACCORD WITH INTESTATE SUCCESSION; EXCEPTIONS.

(a) [Definitions.] In this section:

(1) "Adoptee" has the meaning set forth in Section 2-115.

(2) "Child of assisted reproduction" has the meaning set forth in Section 2-120.

(3) "Distribution date" means the date when an immediate or postponed class gift takes effect in possession or enjoyment.

(4) "Functioned as a parent of the adoptee" has the meaning set forth in Section 2-115, substituting "adoptee" for "child" in that definition.

(5) "Functioned as a parent of the child" has the meaning set forth in Section 2-115.

(6) "Genetic parent" has the meaning set forth in Section 2-115.

(7) "Gestational child" has the meaning set forth in Section 2-121.

(8) "Relative" has the meaning set forth in Section 2-115.

(b) [Terms of Relationship.] A class gift that uses a term of relationship to identify the class members includes a child of assisted reproduction, a gestational child, and, except as otherwise provided in subsections (e) and (f), an adoptee and a child born to parents who are not married to each other, and their respective descendants if appropriate to the class, in accordance with the rules for intestate

succession regarding parent-child relationships. For the purpose of determining whether a contrary intention exists under Section 2-701, a provision in a governing instrument that relates to the inclusion or exclusion in a class gift of a child born to parents who are not married to each other but does not specifically refer to a child of assisted reproduction or a gestational child does not apply to a child of assisted reproduction or a gestational child.

(c) [Relatives by Marriage.] Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by marriage, such as uncles, aunts, nieces, or nephews, are construed to exclude relatives by marriage, unless:

(1) when the governing instrument was executed, the class was then and foreseeably would be empty; or

(2) the language or circumstances otherwise establish that relatives by marriage were intended to be included.

(d) [Half-Blood Relatives.] Terms of relationship in a governing instrument that do not differentiate relationships by the half blood from those by the whole blood, such as brothers, sisters, nieces, or nephews, are construed to include both types of relationships.

(e) [Transferor Not Genetic Parent.] In construing a dispositive provision of a transferor who is not the genetic parent, a child of a genetic parent is not

considered the child of that genetic parent unless the genetic parent, a relative of the genetic parent, or the spouse or surviving spouse of the genetic parent or of a relative of the genetic parent functioned as a parent of the child before the child reached [18] years of age.

(f) [Transferor Not Adoptive Parent.] In construing a dispositive provision of a transferor who is not the adoptive parent, an adoptee is not considered the child of the adoptive parent unless:

(1) the adoption took place before the adoptee reached 18 years of age;

(2) the adoptive parent was the adoptee's stepparent or foster parent; or

(3) the adoptive parent functioned as a parent of the adoptee before the adoptee reached 18 years of age.

(g) [Class-Closing Rules.] The following rules apply for purposes of the class-closing rules:

(1) A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.

(2) If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent's death, then if the requirements of Section 1110 are satisfied, the child is treated as living

on the distribution date if the child lives 120 hours after birth and was in utero not later than 36 months after the deceased parent's death or born not later than 45 months after the deceased parent's death.

(3) An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

UPC Comment

This section facilitates a modern construction of gifts that identify the recipient by reference to a relationship to someone; usually these gifts will be class gifts. The rules of construction contained in this section are substantially consistent with the rules of construction contained in the Restatement (Third) of Property: Wills and Other Donative Transfers §§ 14.5 through 14.9. These sections of the Restatement apply to the treatment for class-gift purposes of an adoptee, a nonmarital child, a child of assisted reproduction, a gestational child, and a relative by marriage.

The rules set forth in this section are rules of construction, which under Section 2-701 are controlling in the absence of a finding of a contrary intention. With two exceptions, Section 2-705 invokes the rules pertaining to intestate succession as rules of construction for interpreting terms of relationship in private instruments.

Subsection (a): Definitions. With one exception, the definitions in subsection (a) rely on definitions contained in intestacy sections. The one exception is the definition of "distribution date," which is relevant to the class-closing rules contained in subsection (g). *Distribution date* is defined as the date when an immediate or postponed class gift takes effect in possession or enjoyment.

Subsection (b): Terms of Relationship. Subsection (b) provides that a class gift that uses a term of relationship to identify the takers includes a child of assisted reproduction and a gestational child, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships. As provided in subsection (g), inclusion of a child of assisted reproduction or a gestational child in a class is subject to the class-closing rules. See *Examples 11* through *15*.

The last sentence of subsection (b) was added by technical amendment in 2010. That sentence is necessary to prevent a provision in a governing instrument that relates to the inclusion or exclusion of a child born to parents who are not married to each other from applying to a child of assisted reproduction or a gestational child, unless the provision specifically refers

to such a child. Technically, for example, a posthumously conceived child born to a decedent's surviving widow could be considered a nonmarital child. See, e.g., Woodward v. Commissioner of Social Security, 760 N.E.2d 257, 266-67 (Mass. 2002) ("Because death ends a marriage,... posthumously conceived children are always nonmarital children."). A provision in a will, trust, or other governing instrument that relates to the inclusion or exclusion of a nonmarital child, or to the inclusion or exclusion of a nonmarital child under specified circumstances, was not likely inserted with a child of assisted reproduction or a gestational child in mind. The last sentence of subsection (b) provides that, unless that type of provision specifically refers to a child of assisted reproduction or a gestational child, such a provision does not state a contrary intention under Section 2-701 to the rule of construction contained in subsection (b).

Subsection (b) also provides that, except as otherwise provided in subsections (e) and (f), an adoptee and a child born to parents who are not married to each other, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession regarding parent-child relationships. The subsection (e) exception relates to situations in which the transferor is not the genetic parent of the child. The subsection (f) exception relates to situations in which the transferor is not the adoptive parent of the adoptee. Consequently, if the transferor *is* the genetic or adoptive parent of the child, neither exception applies, and the class gift or other term of relationship is construed in accordance with the rules for intestate succession regarding parent-child relationships. As provided in subsection (g), inclusion of an adoptee or a child born to parents who are not married to each other in a class is subject to the class-closing rules. See *Examples 9* and *10*.

Subsection (c): Relatives by Marriage. Subsection (c) provides that terms of relationship that do not differentiate relationships by blood from those by marriage, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by marriage, unless (1) when the governing instrument was executed, the class was then and foreseeably would be empty or (2) the language or circumstances otherwise establish that relatives by marriage were intended to be included. The Restatement (Third) of Property: Wills and Other Donative Transfers § 14.9 adopts a similar rule of construction. As recognized in both subsection (c) and the Restatement, there are situations in which the circumstances would tend to include a relative by marriage. As provided in subsection (g), inclusion of a relative by marriage in a class is subject to the class-closing rules.

One situation in which the circumstances would tend to establish an intent to include a relative by marriage is the situation in which, looking at the facts existing when the governing instrument was executed, the class was then and foreseeably would be empty unless the transferor intended to include relatives by marriage.

Example 1. G's will devised property in trust, directing the trustee to pay the income in equal shares "to G's children who are living on each income payment date and on the death of G's last surviving child, to distribute the trust property to G's issue then living, such issue to take per stirpes, and if no issue of G is then living, to distribute the trust property to the X Charity." When G executed her will, she was past the usual childbearing age, had no children of her own, and was married to a man who had four children by a previous marriage. These children had lived with G and her husband for many years, but G had never adopted them. Under these

circumstances, it is reasonable to conclude that when G referred to her "children" in her will she was referring to her stepchildren. Thus her stepchildren should be included in the presumptive meaning of the gift "to G's children" and the issue of her stepchildren should be included in the presumptive meaning of the gift "to G's issue." If G, at the time she executed her will, had children of her own, in the absence of additional facts, G's stepchildren should not be included in the presumptive meaning of the gift to "G's children" or in the gift to "G's issue."

Example 2. G's will devised property in trust, directing the trustee to pay the income to G's wife W for life, and on her death, to distribute the trust property to "my grandchildren." W had children by a prior marriage who were G's stepchildren. G never had any children of his own and he never adopted his stepchildren. It is reasonable to conclude that under these circumstances G meant the children of his stepchildren when his will gave the future interest under the trust to G's "grandchildren."

Example 3. G's will devised property in trust, directing the trustee to pay the income "to my daughter for life and on her death, to distribute the trust property to her children." When G executed his will, his son had died, leaving surviving the son's wife, G's daughter-in-law, and two children. G had no daughter of his own. Under these circumstances, the conclusion is justified that G's daughter-in-law is the "daughter" referred to in G's will.

Another situation in which the circumstances would tend to establish an intent to include a relative by marriage is the case of reciprocal wills, as illustrated in *Example 4,* which is based on Martin v. Palmer, 1 S.W.3d 875 (Tex. Ct. App. 1999).

Example 4. G's will devised her entire estate "to my husband if he survives me, but if not, to my nieces and nephews." G's husband H predeceased her. H's will devised his entire estate "to my wife if she survives me, but if not, to my nieces and nephews." Both G and H had nieces and nephews. In these circumstances, "my nieces and nephews" is construed to include G's nieces and nephews by marriage. Were it otherwise, the combined estates of G and H would pass only to the nieces and nephews of the spouse who happened to survive.

Still another situation in which the circumstances would tend to establish an intent to include a relative by marriage is a case in which an ancestor participated in raising a relative by marriage other than a stepchild.

Example 5. G's will devised property in trust, directing the trustee to pay the income in equal shares "to my nieces and nephews living on each income payment date until the death of the last survivor of my nieces and nephews, at which time the trust shall terminate and the trust property shall be distributed to the X Charity." G's wife W was deceased when G executed his will. W had one brother who predeceased her. G and W took the brother's children, the wife's nieces and nephews, into their home and raised them. G had one sister who predeceased him, and G and W were close to her children, G's nieces and nephews. Under these circumstances, the conclusion is justified that the disposition "to my nieces and nephews" includes the children of W's brother as well as the children of G's sister.

The language of the disposition may also establish an intent to include relatives by marriage, as illustrated in *Examples 6, 7,* and *8*.

Example 6. G's will devised half of his estate to his wife W and half to "my children." G had one child by a prior marriage, and W had two children by a prior marriage. G did not adopt his stepchildren. G's relationship with his stepchildren was close, and he participated in raising them. The use of the plural "children" is a factor indicating that G intended to include his stepchildren in the class gift to his children.

Example 7. G's will devised the residue of his estate to "my nieces and nephews named herein before." G's niece by marriage was referred to in two earlier provisions as "my niece." The previous reference to her as "my niece" indicates that G intended to include her in the residuary devise.

Example 8. G's will devised the residue of her estate "in twenty-five (25) separate equal shares, so that there shall be one (1) such share for each of my nieces and nephews who shall survive me, and one (1) such share for each of my nieces and nephews who shall not survive me but who shall have left a child or children surviving me." G had 22 nieces and nephews by blood or adoption and three nieces and nephews by marriage. The reference to twenty-five nieces and nephews indicates that G intended to include her three nieces and nephews by marriage in the residuary devise.

Subsection (d): Half Blood Relatives. In providing that terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships, subsection (d) is consistent with the rules for intestate succession regarding parent-child relationships. See Section 2-107 and the phrase "or either of them" in Section 2-103(a)(3) and (4). As provided in subsection (g), inclusion of a half blood relative in a class is subject to the class-closing rules.

Subsection (e): Transferor Not Genetic Parent. The general theory of subsection (e) is that a transferor who is not the genetic parent of a child would want the child to be included in a class gift as a child of the genetic parent only if the genetic parent (or one or more of the specified relatives of the child's genetic parent functioned as a parent of the child before the child reached the age of [18]. As provided in subsection (g), inclusion of a genetic child in a class is subject to the class-closing rules.

Example 9. G's will created a trust, income to G's son, A, for life, remainder in corpus to A's descendants who survive A, by representation. A fathered a child, X; A and X's mother, D, never married each other, and A never functioned as a parent of the child, nor did any of A's relatives or spouses or surviving spouses of any of A's relatives. D later married E; D and E raised X as a member of their household. Because neither A nor any of A's specified relatives ever functioned as a parent of X, X would not be included as a member of the class of A's descendants who take the corpus of G's trust on A's death.

If, however, A executed a will containing a devise to his children or designated his children as beneficiary of his life insurance policy, X would be included in the class. Under Section 2-117, X would be A's child for purposes of intestate succession. Subsection (c) is

inapplicable because the transferor, A, is the genetic parent.

Subsection (f): Transferor Not Adoptive Parent. The general theory of subsection (f) is that a transferor who is not the adoptive parent of an adoptee would want the child to be included in a class gift as a child of the adoptive parent only if (1) the adoption took place before the adoptee reached the age of [18]; (2) the adoptive parent was the adoptee's stepparent or foster parent; or (3) the adoptive parent functioned as a parent of the adoptee before the adoptee reached the age of [18]. As provided in subsection (g), inclusion of an adoptee in a class is subject to the class-closing rules.

Example 10. G's will created a trust, income to G's daughter, A, for life, remainder in corpus to A's descendants who survive A, by representation. A and A's husband adopted a 47-year old man, X. Because the adoption did not take place before X reached the age of [18], A was not X's stepparent or foster parent, and A did not function as a parent of X before X reached the age of [18]. X would not be included as a member of the class of A's descendants who take the corpus of G's trust on A's death.

If, however, A executed a will containing a devise to her children or designated her children as beneficiary of her life insurance policy, X would be included in the class. Under Section 2-118, X would be A's child for purposes of intestate succession. Subsection (d) is inapplicable because the transferor, A, is an adoptive parent.

Subsection (g): Class-Closing Rules. In order for an individual to be a taker under a class gift that uses a term of relationship to identify the class members, the individual must (1) qualify as a class member under subsection (b), (c), (d), (e), or (f) and (2) not be excluded by the class-closing rules. For an exposition of the class-closing rules, see Restatement (Third) of Property: Wills and Other Donative Transfers § 15.1. Section 15.1 provides that, "unless the language or circumstances establish that the transferor had a different intention, a class gift that has not yet closed physiologically closes to future entrants on the distribution date if a beneficiary of the class gift is then entitled to distribution."

Subsection (g)(1): Child in Utero. Subsection (g)(1) codifies the well-accepted rule that a child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.

Subsection (g)(2): Children of Assisted Reproduction and Gestational Children; Class Gift in Which Distribution Date Arises At Deceased Parent's Death. Subsection (g)(2) changes the class-closing rules in one respect. If a child of assisted reproduction (as defined in Section 2-120) or a gestational child (as defined in Section 2-121) is conceived posthumously, and if the distribution date arises at the deceased parent's death, then the child is treated as living on the distribution date if the child lives 120 hours after birth and was either (1) in utero no later than 36 months after the deceased parent's death or (2) born no later than 45 months after the deceased parent's death.

The 36-month period in subsection (g)(2) is designed to allow a surviving spouse or partner a period of grieving, time to make up his or her mind about whether to go forward with

assisted reproduction, and a reasonable allowance for unsuccessful attempts to achieve a pregnancy. The 36-month period also coincides with Section 3-1006, under which an heir is allowed to recover property improperly distributed or its value from any distributee during the later of three years after the decedent's death or one year after distribution. If the assisted-reproduction procedure is performed in a medical facility, the date when the child is in utero will ordinarily be evidenced by medical records. In some cases, however, the procedure is not performed in a medical facility, and so such evidence may be lacking. Providing an alternative of birth within 45 months is designed to provide certainty in such cases. The 45-month period is based on the 36-month period with an additional nine months tacked on to allow for a normal period of pregnancy.

Example 11. G, a member of the armed forces, executed a military will under 10 U.S.C. § 1044d shortly before being deployed to a war zone. G's will devised "90 percent of my estate to my wife W and 10 percent of my estate to my children." G also left frozen sperm at a sperm bank in case he should be killed in action. G consented to be treated as the parent of the child within the meaning of Section 2-120(f). G was killed in action. After G's death, W decided to become inseminated with his frozen sperm so she could have his child. If the child so produced was either (1) in utero within 36 months after G's death or (2) born within 45 months after G's death, and if the child lived 120 hours after birth, the child is treated as living at G's death and is included in the class.

Example 12. G, a member of the armed forces, executed a military will under 10 U.S.C. § 1044d shortly before being deployed to a war zone. G's will devised "90 percent of my estate to my husband H and 10 percent of my estate to my issue by representation." G also left frozen embryos in case she should be killed in action. G consented to be the parent of the child within the meaning of Section 2-120(f). G was killed in action. After G's death, H arranged for the embryos to be implanted in the uterus of a gestational carrier. If the child so produced was either (1) in utero within 36 months after G's death or (2) born within 45 months after the G's death, and if the child lived 120 hours after birth, the child is treated as living at G's death and is included in the class.

Example 13. The will of G's mother created a testamentary trust, directing the trustee to pay the income to G for life, then to distribute the trust principal to G's children. When G's mother died, G was married but had no children. Shortly after being diagnosed with leukemia, G feared that he would be rendered infertile by the disease or by the treatment for the disease, so he left frozen sperm at a sperm bank. G consented to be the parent of the child within the meaning of Section 2-120(f). After G's death, G's widow decided to become inseminated with his frozen sperm so she could have his child. If the child so produced was either (1) in utero within 36 months after G's death or (2) born within 45 months after the G's death, and if the child lived 120 hours after birth, the child is treated as living at G's death and is included in the class under the rule of convenience.

Subsection (g)(2) Inapplicable Unless Child of Assisted Reproduction or Gestational Child is Conceived Posthumously and Distribution Date Arises At Deceased Parent's Death. Subsection (g)(2) only applies if a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date arises at the deceased parent's death.

Subsection (g)(2) does not apply if a child of assisted reproduction or a gestational child is not conceived posthumously. It also does not apply if the distribution date arises before or after the deceased parent's death. In cases to which subsection (g)(2) does not apply, the ordinary class-closing rules apply. For purposes of the ordinary class-closing rules, subsection (g)(1) provides that a child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.

This means, for example, that, with respect to a child of assisted reproduction or a gestational child, a class gift in which the distribution date arises after the deceased parent's death is not limited to a child who is born before or in utero at the deceased parent's death or, in the case of posthumous conception, either (1) in utero within 36 months after the deceased parent's death or (2) born within 45 months after the deceased parent's death. The ordinary class-closing rules would only exclude a child of assisted reproduction or a gestational child if the child was not yet born or in utero on the distribution date (or who was then in utero but who failed to live 120 hours after birth).

A case that reached the same result that would be reached under this section is In re Martin B., 841 N.Y.S.2d 207 (Sur. Ct. 2007). In that case, two children (who were conceived posthumously and were born to a deceased father's widow around three and five years after his death) were included in class gifts to the deceased father's "issue" or "descendants". The children would be included under this section because (1) the deceased father signed a record that would satisfy Section 2-120(f)(1), (2) the distribution dates arose after the deceased father's death, and (3) the children were living on the distribution dates, thus satisfying subsection (g)(1).

Example 14. G created a revocable inter vivos trust shortly before his death. The trustee was directed to pay the income to G for life, then "to pay the income to my wife, W, for life, then to distribute the trust principal by representation to my descendants who survive W." When G died, G and W had no children. Shortly before G's death and after being diagnosed with leukemia, G feared that he would be rendered infertile by the disease or by the treatment for the disease, so he left frozen sperm at a sperm bank. G consented to be the parent of the child within the meaning of Section 2-120(f). After G's death, W decided to become inseminated with G's frozen sperm so that she could have his child. The child, X, was born five years after G's death. W raised X. Upon W's death many years later, X was a grown adult. X is entitled to receive the trust principal, because a parent-child relationship between G and X existed under Section 2-120(f) and X was living on the distribution date.

Example 15. The will of G's mother created a testamentary trust, directing the trustee to pay the income to G for life, then "to pay the income by representation to G's issue from time to time living, and at the death of G's last surviving child, to distribute the trust principal by representation to G descendants who survive G's last surviving child." When G's mother died, G was married but had no children. Shortly after being diagnosed with leukemia, G feared that he would be rendered infertile by the disease or by the treatment for the disease, so he left frozen sperm at a sperm bank. G consented to be the parent of the child within the meaning of Section 2-120(f). After G's death, G's widow decided to become inseminated with his frozen sperm so she could have his child. If the child so produced was either (1) in utero within 36 months after G's death or (2) born within 45 months after the G's death, and if the child lived 120 hours after birth, the child is treated as living at G's death and is included in the class-gift of income under the rule of convenience. If G's widow later decides to use his frozen sperm to have another child or children, those children would be included in the class-gift of income (assuming they live 120

hours after birth) even if they were not in utero within 36 months after G's death or born within 45 months after the G's death. The reason is that an income interest in class-gift form is treated as creating separate class gifts in which the distribution date is the time of payment of each subsequent income payment. See Restatement (Third) of Property: Wills and Other Donative Transfers § 15.1 cmt. p. Regarding the remainder interest in principal that takes effect in possession on the death of G's last living child, the issue of the posthumously conceived children who are then living would take the trust principal.

Subsection (g)(3). For purposes of the class-closing rules, an individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted. An individual is "in the process of being adopted" if a legal proceeding to adopt the individual had been filed before the class closed. However, the phrase "in the process of being adopted" is not intended to be limited to the filing of a legal proceeding, but is intended to grant flexibility to find on a case by case basis that the process commenced earlier.

Reference. For the application of this section to children of assisted reproduction and gestational children, see Sheldon F. Kurtz & Lawrence W. Waggoner, The UPC Addresses the Class-Gift and Intestacy Rights of Children of Assisted Reproduction Technologies, 35 ACTEC J. 30 (2009).

Historical Note. This Comment was revised in 1993, 2008, and 2010.

PART 8. GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

UPC GENERAL COMMENT

Part 8 contains five general provisions that cut across probate and nonprobate transfers. Part 8 previously contained a sixth provision, Section 2-801, which dealt with disclaimers. Section 2-801 was replaced in 2002 by the Uniform Disclaimer of Property Interests Act, which is incorporated into the Code as Part 11 of Article 2 (Sections 2-1101 to 2-1117). To avoid renumbering the other sections in this part, Section 2-801 is reserved for possible future use.

Section 2-802 deals with the effect of divorce and separation on the right to elect against a will, exempt property and allowances, and an intestate share.

Section 2-803 spells out the legal consequence of intentional and felonious killing on the right of the killer to take as heir under wills and revocable inter-vivos transfers, such as revocable trusts and life-insurance beneficiary designations.

Section 2-804 deals with the consequences of a divorce on the right of the former spouse (and relatives of the former spouse) to take under wills and revocable inter-vivos transfers, such as revocable trusts and life-insurance beneficiary designations.

Sections 2-805 and 2-806, added in 2008, bring the reformation provisions in the Uniform Trust Code into the UPC.

Application to Pre-Existing Governing Instruments. Under Section 8-101(b), for decedents dying after the effective date of enactment, the provisions of this Code apply to governing instruments executed prior to as well as on or after the effective date of enactment. The Joint Editorial Board for the Uniform Probate Code has issued a statement concerning the constitutionality under the Contracts Clause of this feature of the Code. The statement, titled "Joint Editorial Board Statement Regarding the Constitutionality of Changes in Default Rules as Applied to Pre-Existing Documents", can be found at 17 ACTEC Notes 184 (1991) or can be obtained from the Uniform Law Commission, www.uniformlaws.org.

Historical Note. This General Comment was revised in 1993, 2002, and 2008.

2002 Amendment Relating to Disclaimers. In 2002, the Code's former disclaimer provision (Section 2-801) was replaced by the Uniform Disclaimer of Property Interests Act, which is incorporated into the Code as Part 11 of Article 2 (Sections 2-1101 to 2-1117). The statutory references in this Comment to former Section 2-801 have been replaced by appropriate references to Part 11. Updating these statutory references has not changed the substance of this Comment.

[ADD AS MCL 700.2810.] REFORMATION TO CORRECT MISTAKES. The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

UPC Comment

Added in 2008, Section 2-805 is based on Section 415 of the Uniform Trust Code, which in turn was based on Section 12.1 of the Restatement (Third) of Property: Wills and Other Donative Transfers (2003).

Section 2-805 is broader in scope than Section 415 of the Uniform Trust Code because Section 2-805 applies but is not limited to trusts.

Section 12.1, and hence Section 2-805, is explained and illustrated in the Comments to Section 12.1 of the Restatement and also, in the case of a trust, in the Comment to Section 415 of the Uniform Trust Code.

2010 Amendment. This section was revised by technical amendment in 2010. The amendment better conforms the language of the section to the language of the Restatement (Third) of Property provision on which the section is based.

[ADD AS MCL 700.2811.] MODIFICATION TO ACHIEVE TRANSFEROR'S TAX OBJECTIVES. To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

UPC Comment

Added in 2008, Section 2-806 is based on Section 416 of the Uniform Trust Code, which in turn was based on Section 12.2 of the Restatement (Third) of Property: Wills and Other Donative Transfers (2003).

Section 2-806 is broader in scope than Section 416 of the Uniform Trust Code because Section 2-806 applies but is not limited to trusts.

Section 12.2, and hence Section 2-806, is explained and illustrated in the Comments to Section 12.2 of the Restatement and also, in the case of a trust, in the Comment to Section 416 of the Uniform Trust Code.

ARTICLE III

PROBATE OF WILLS AND ADMINISTRATION

PART 4. FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

[AMEND MCL 700.3406 TO READ.] FORMAL TESTACY PROCEEDINGS; CONTESTED CASES. In a contested case in which the proper execution of a will is at issue, the following rules apply:

(1) If the will is self-proved pursuant to Section 2-504, the will satisfies the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.

(2) If the will is notarized pursuant to Section 2-502(a)(3)(B), but not self-proved, there is a rebuttable presumption that the will satisfies the requirements for execution upon filing the will.

(3) If the will is witnessed pursuant to Section 2-502(a)(3)(A), but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

UPC Comment

2008 Revisions. This section, which applies in a contested case in which the proper execution of a will is at issue, was substantially revised and clarified in 2008.

Self-Proved Wills: Paragraph (1) provides that a will that is self-proved pursuant to Section 2-504 satisfies the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.

Paragraph (1) does not preclude evidence of undue influence, lack of testamentary capacity, revocation or any relevant evidence that the testator was unaware of the contents of the document.

Notarized Wills: Paragraph (2) provides that if the will is notarized pursuant to Section 2-502(a)(3)(B), but not self-proved, there is a rebuttable presumption that the will satisfies the requirements for execution upon filing the will.

Witnessed Wills: Paragraph (3) provides that if the will is witnessed pursuant to Section 2-502(a)(3)(A), but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred. For further explanation of the effect of an attestation clause, see Restatement (Third) of Property: Wills and Other Donative Transfers § 3.1 cmt. q (1999).

Historical Note. This Comment was revised in 2008.

[Add new subsection (gg) to MCL § 700.3715.]

700.3715 Transactions authorized for personal representatives
Sec. 3715 Except as restricted or otherwise provided by the will or by an order in a formal proceeding, and subject to the priorities stated in section 3902, a personal representative, acting reasonably for the benefit of interested persons, may properly do any of the following:

(a) Retain property . . .

(gg) If the personal representative has received notice or has knowledge of an intention to use genetic material to create a child after the decedent's death, take into account whether the posthumous birth of a child of assisted reproduction or gestational child may have an effect on the distribution of the decedent's estate.

COMMENT

Subsection (gg) is based on Cal. Prob. Code §§ 249.5 and 249.6. In most cases when an intestate decedent is survived by a surviving spouse, the surviving spouse will inherit all or almost all of the decedent's estate. Consequently, even when there is a posthumous conception by the surviving spouse, the child will not inherit any portion of the decedent's estate even if the child is treated under MCL §§ 700.2120 or 700.2121 as the child of the deceased spouse.

[Add new title and add subsection (2) to MCL § 700.3908 and redesignate current § 700.3908 as § 700.3908(1).]

700.3908 Proposed distribution; Distribution affecting interests of posthumously conceived child

Sec. 3908

(1) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of a distributee to object to the proposed distribution on the basis of the kind or value of property the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in a writing received by the personal representative within 28 days after mailing or delivery of the proposal.

(2) The personal representative shall not be liable for making a distribution of all or part of a decedent's estate that affects the interests of a posthumously conceived child of assisted reproduction or gestational child if the personal representative made the distribution before receiving notice or acquiring knowledge of an intention to use genetic material to create a child after the decedent's death.

[Amend MCL § 700.3957 by adding a 4-year limitations period for a posthumously conceived child of the decedent:]

700.3957 Limitations on actions and proceedings against distributees

Sec. 3957. **(1) Except as provided in subsections (2) and (3), and** unless previously adjudicated in a formal testacy proceeding or in a proceeding settling a personal representative's accounts, or otherwise barred, a claimant's claim to recover from a distributee who is liable to pay the claim and the right of an heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or its value from a distributee are forever barred at the later of 3 years after the decedent's death or 1 year after the time of the property's distribution. However, all claims of the decedent's creditors are barred in accordance with the time periods specified in section 3803.

(2) Except as provided in subsection (3), in the case of a posthumously conceived child of assisted reproduction or gestational child**, the child's right (if any) as an heir or devisee, or that of a successor personal representative acting in the child's behalf, to recover property improperly distributed or its value from a distributee is forever barred at the later of 4 years after the decedent's death or 1 year after the time of the property's distribution.**

(3) This section does not bar an action to recover property or value received as a result of fraud.

[MOVE MCL § 700.7104 to MCL § 700.1109, and EXPAND ITS SCOPE so that subsection (2) is not limited to trusts.]

700.7104 Notice or knowledge of fact [Reserved]

~~Sec. 71104.~~

~~(1) Subject to subsection (2), a person has knowledge of a fact if 1 or more of the following apply:~~

~~(a) The person has actual knowledge of it.~~

~~(b) The person has received a notice or notification of it.~~

~~(c) From all the facts and circumstances known to the person at the time in question, the person has reason to know it.~~

~~(2) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust or from the time the information would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.~~

COMMENT

This section has been moved to MCL § 700.1109 and has been modified so that subsection (2) is not limited to trusts. By moving this section, the definition of "notice or knowledge of fact" applies to the entire Estates and Protected Individuals Code and not just to the Michigan Trust Code.

[Add new subsection (oo) to MCL § 700.7817.]

700.7817 Specific powers of trustee

Sec. 7817. Without limiting the authority conferred by section 7816, a trustee has all of the following powers:

(a) To take possession . . .

(oo) After the trustee receives notice or has knowledge of an intention to use genetic material to create a child, to take into account whether the posthumous birth of a child of assisted reproduction or gestational child may have an effect on the distribution of the trust estate.

COMMENT

Subsection (oo) is a companion provision to MCL § 700. 3715(gg).

[**Add new subsection (4) to MCL § 700.7821.]**

700.7821 Distribution upon termination; any distribution affecting posthumously conceived child

Sec. 7821 (1) Upon termination or partial termination of a trust, the trustee may send to the trust beneficiaries a proposal for distribution. The right of any trust beneficiary to object to the proposed distribution terminates if the trust beneficiary does not notify the trustee of an objection within 28 days after the proposal was sent, but only if the proposal informed the trust beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, taxes, and expenses, including attorney fees and other expenses incidental to the allowance of the trustee's accounts.

(3) A release by a trust beneficiary of a trustee from liability for breach of trust is invalid to the extent either of the following applies:

(a) The release was induced by improper conduct of the trustee.

(b) The trust beneficiary, at the time of the release, did not know of the material facts relating to the breach.

(4) The trustee shall not be liable for making a distribution of all or part of the trust estate that affects the interests of a posthumously conceived child of assisted reproduction or gestational child if the trustee made the distribution before receiving notice or acquiring knowledge of an intention to use genetic material to create a child.

COMMENT

Subsection (4) is a companion provision to MCL § 700.3908(2).

[UPC Legislative Note: *States that have previously enacted the Uniform Probate Code and are enacting an amendment or amendments to the Code are encouraged to include the following effective date provision in their enacting legislation. The purpose of this effective date provision, which is patterned after Section 8-101 of the original UPC, is to assure that the amendment or amendments will apply to instruments executed prior to the effective date, to court proceedings pending on the effective date, and to acts occurring prior to the effective date, to the same limited extent and in the same situations as the effective date provision of the original UPC.]*

[Include the following in the Act adopting the above EPIC amendments AND CHECK TO SEE IF MCL § 700.8101 NEEDS TO BE AMENDED:]

TIME OF TAKING EFFECT; PROVISIONS FOR TRANSITION.

(a) This [act] takes effect on January 1, 20__.

(b) On the effective date of this [act]:

(1) the [act] applies to governing instruments executed by decedents dying thereafter;

(2) the [act] applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(3) an act done before the effective date of this [act] in any proceeding and any accrued right is not impaired by this [act]. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date of this [act], the provisions shall remain in force with respect to that right; and

(4) any rule of construction or presumption provided in this

[act] applies to governing instruments executed before the effective date unless there is a clear indication of a contrary intent.

Proposed Addition to Michigan Health Code

MICHIGAN HEALTH CODE

§ ____._____ Assisted reproduction; Form required to be provided to individual to establish parental intent for purposes of the Estates and Protected Individuals Code § 700.2120; contents of form.

(1) Section 2120 of the Estates and Protected Individuals Code, MCL § 700.2120, provides that a birth mother is the mother of the child born to her. The form required by this section is intended to assist in determining whether, in the case of posthumous conception, any other individual is the other parent of the child. An individual need not be the donor of genetic material to be the other parent of the child.

(2) This section and the form required by this section only apply to cases of assisted reproduction in which the prospective mother will be a birth mother as defined in MCL § 700.2120; it does not apply to cases of assisted reproduction in which the prospective mother will be a gestational carrier as defined in MCL § 700.2121.

(3) Any entity that, on or after the effective date of this section, receives human genetic material that may be used for conception must make available a declaration of intent form that can be used by an individual other than the prospective birth mother to signify the individual's consent to assisted reproduction by the prospective birth mother with intent to be treated as the other parent of the child for purposes of MCL § 700.2120. The execution of the form is not mandatory, and the form is not the exclusive means of establishing an individual's intent. Although the form is not protected health information, the entity shall incorporate the form into the individual's medical records and should provide a copy of the signed form to the individual and the prospective birth mother. The entity shall also incorporate any signed revocation of the form into the individual's medical records, if the revocation document is delivered to the entity. The form shall include advisements in substantially the following form:

DECLARATION OF INTENT TO BE PARENT OF CHILD

You may wish to consult with a lawyer before signing this form. This form is designed to declare your intent. Signing this form is not mandatory.

IF THE TRANSFER OF EGGS, SPERM, OR EMBRYOS FOR PURPOSES OF ASSISTED REPRODUCTION BY (*INSERT NAME OF PROSPECTIVE BIRTH MOTHER*) OCCURS AFTER YOUR DEATH, AND SHE GIVES BIRTH TO A CHILD, SHE IS THE CHILD'S PARENT. DO YOU INTEND TO BE TREATED AS THE CHILD'S OTHER PARENT?

PLEASE CHECK "YES" OR "NO" AND THEN SIGN AND DATE BELOW:

_____ Yes _____No

Signed: _____ Date:_____

If you check "Yes" above:

- In case of multiple births, this form applies to all children born alive from the transfer or transfers that resulted in the births.
- This form is a legal document. Although it will become part of your medical records, it is not protected health information.
- The possibility of a child of yours being born after your death might d**e**lay the distribution of your estate or of a trust benefitting your children.
- If a child of yours is conceived after your death, his or her ability to inherit your property may depend (under the local law of decedents' estates) on your executor's having notice by, at, or near the time of your death that genetic material is then available for use in conception.
- You can change your mind by revoking this form. Any revocation must

be in a written document that you sign and date. An oral revocation will not be effective. If you decide to revoke the form, you should deliver the document revoking the form to the entity so that it will become part of your medical records. You should also notify the prospective birth mother of your decision to revoke.

APPENDIX

The Committee recommends repeal of the Michigan Surrogate Parenting Act., as provided in SB 811, GESTATIONAL SURROGATE PARENTAGE ACT.

MICHIGAN SURROGATE PARENTING ACT
Act 199 of 1988

MCL 722.851 Short title.

This act shall be known and may be cited as the "surrogate parenting act".

MCL 722.853 Definitions.
As used in this act:

(a) "Compensation" means a payment of money, objects, services, or anything else having monetary value except payment of expenses incurred as a result of the pregnancy and the actual medical expenses of a surrogate mother or surrogate carrier.

(b) "Developmental disability" means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974, being sections 330.1001 to 330.2106 of the Michigan Compiled Laws.

(c) "Mental illness" means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974.

(d) "Mentally retarded" means that term as defined in the mental health code, Act No. 258 of the Public Acts of 1974.

(e) "Participating party" means a biological mother, biological father, surrogate carrier, or the spouse of a biological mother, biological father, or surrogate carrier, if any.

(f) "Surrogate carrier" means the female in whom an embryo is implanted in a surrogate gestation procedure.

(g) "Surrogate gestation" means the implantation in a female of an embryo not genetically related to that female and subsequent gestation of a child by that female.

(h) "Surrogate mother" means a female who is naturally or artificially inseminated and who subsequently gestates a child conceived through the insemination pursuant to a surrogate parentage contract.

(i) "Surrogate parentage contract" means a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination, or in which a female agrees to surrogate gestation, and to voluntarily relinquish her parental or custodial rights to the child. It is presumed that a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination by a person other than her husband, or in which a female agrees to surrogate gestation, includes a provision, whether or not express, that the female will relinquish her parental or custodial rights to the child.

MCL 722.855 Surrogate parentage contract as void and unenforceable.
A surrogate parentage contract is void and unenforceable as contrary to public policy.

MCL 722.857 Surrogate parentage contract prohibited; surrogate parentage contract as felony; penalty.

(1) A person shall not enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract under which an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability is the surrogate mother or surrogate carrier.

(2) A person other than an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability who enters into, induces, arranges, procures, or otherwise assists in the formation of a contract described in subsection (1) is guilty of a felony punishable by a fine of not more than $50,000.00 or imprisonment for not more than 5 years, or both.

MCL 722.859 Surrogate parentage contract for compensation prohibited; surrogate parentage contract for compensation as misdemeanor or felony; penalty.

(1) A person shall not enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract for compensation.

(2) A participating party other than an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability who knowingly enters into a surrogate parentage contract for compensation is guilty of a misdemeanor punishable by a fine of not more than $10,000.00 or imprisonment for not more than 1 year, or both.

(3) A person other than a participating party who induces, arranges, procures, or otherwise assists in the formation of a surrogate parentage contract for compensation is guilty of a felony punishable by a fine of not more than $50,000.00 or imprisonment for not more than 5 years, or both.

MCL 722.861 Custody of child.

If a child is born to a surrogate mother or surrogate carrier pursuant to a surrogate parentage contract, and there is a dispute between the parties concerning custody of the child, the party having physical custody of the child may retain physical custody of the child until the circuit court orders otherwise. The circuit court shall award legal custody of the child based on a determination of the best interests of the child. As used in this section, “best interests of the child” means that term as defined in section 3 of the child custody act of 1970, Act No. 91 of the Public Acts of 1970, being section 722.23 of the Michigan Compiled Laws.

END OF
CSP MATERIALS

ANNUAL MEETING OF
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

September 10, 2016
Lansing, Michigan

Agenda

I. **Call to Order**

II. **Minutes of September 12, 2015, Annual Meeting of the Section**

See Attachment 1

III. **Chairperson's Report – Shaheen I. Imami**

See Attachment 2

- Annual report to the State Bar

IV. **Treasurer's Report – Christopher Ballard**

See Attachment 3

V. **Election of Council Officers and Members**

See Attachment 4 – Nominating Committee Report

VI. **Other Business**

VII. **Adjournment of Annual Meeting of Section Membership**

MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

September 10, 2016
Lansing, Michigan

Agenda

VIII. **Call to Order**

IX. **Excused Absences**

X. **Introduction of Guests**

XI. **Minutes of June 4, 2016, Meeting of the Council**

See Attachment 5

XII. **Treasurer's Report – Christopher Ballard**

See Attachment 3

XIII. **Chairperson's Report – James B. Steward**

See Attachment 6 – Revised biennial plan of work; list of EPIC/MTC updates

- Report of Lobbying Activities
- Public policy positions taken at the June meeting

XIV. **Report of the Committee on Special Projects – David P. Lucas**

XV. **Report of Standing Committees**

A. **Internal Governance**

1. Budget – Marguerite Munson Lentz
2. Bylaws – Nancy H. Welber
3. Awards – Amy N. Morrissey
4. Planning – James B. Steward
5. Nominating – Mark K. Harder
6. Annual Meeting – James B. Steward

B. **Legislation and Lobbying**

1. Legislative Analysis and Monitoring Committee – Michele C. Marquardt

2. Legislation Development & Drafting Committee – Geoffrey R. Vernon

See Attachment 7

3. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon

4. Assisted Reproductive Technology Ad Hoc Committee – Nancy H. Welber

C. **Education and Advocacy Services for Section Members**

1. Amicus Curiae – David L. Skidmore

2. Probate Institute – Marlaine C. Teahan

3. State Bar and Section Journals – Richard C. Mills

4. Citizens Outreach – Constance L. Brigman

5. Electronic Communications – Michael G. Lichterman

6. Membership – Raj A. Malviya See Attachment 9

D. **Ethics and Professional Standards**

1. Ethics & Unauthorized Practice of Law– Katie Lynwood

E. **Administration of Justice**

1. Litigation, Proceedings, and Forms – David L. Skidmore

F. **Areas of Practice**

1. Real Estate – Mark E. Kellogg

2. Transfer Tax Committee – Lorraine F. New

See Attachment 8

3. Charitable and Exempt Organization – Christopher J. Caldwell

4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer

XVI. **Other Reports**

A. **Liaisons**

1. Alternative Dispute Resolution Section Liaison –Milton J. Mack, Jr.

2. Business Law Section Liaison – John R. Dresser

3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp

4. Family Law Section Liaison – Patricia M. Ouellette

5. ICLE Liaison – Jeanne Murphy

6. Law Schools Liaison – William J. Ard

7. Michigan Bankers Association Liaison – Susan M. Allan

8. Michigan Probate Judges Association Liaisons – Hon. Judge David M. Murkowski, Hon. Michael L. Jaconette

9. Probate Registers Liaison – Rebecca A. Schnelz

10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz

11. Solutions on Self-Help Task Force Liaison – Kathleen M. Goetsch

12. State Bar Liaison – Richard J. Siriani

13. Taxation Section Liaison – George W. Gregory

XVII. **Other Business**

XVIII. **Hot Topics**

XIX. **Adjournment**

ATTACHMENT 1

ANNUAL MEETING OF THE MEMBERS
OF THE PROBATE AND ESTATE PLANNING SECTION
OF THE STATE BAR OF MICHIGAN

September 12, 2015
Lansing, Michigan
10:15 a.m.

Minutes

I. **Call to Order** – The meeting was called to order by the Chair at 10:15.

II. **Attendance.** A sign-in sheet was handed around for attendance at the Annual Meeting of the Section. The following Section Members were in attendance:

Amy N. Morrissey, Chair
Shaheen I. Imami, Chair Elect
James B. Steward, Vice-Chair
Marlaine C. Teahan, Secretary
Marguerite Munson Lentz, Treasurer
Susan M. Allan
W. Josh Ard
Christopher A. Ballard
Ryan Bourjaily
John E. Bos
Constance L. Brigman
Christopher J. Caldwell
Kathleen M. Goetsch
George W. Gregory
Raymond A. Harris
Phillip E. Harter
Mark E. Kellogg
Michael G. Lichterman
Nancy L. Little
David P. Lucas
Katie Lynwood
Raj A. Malviya
Douglas A. Mielock
Richard C. Mills
Jeanne Murphy
Lorraine F. New
Neal Nusholtz
Robert O'Reilly
Nicholas A. Reister
Richard J. Siriani
David L.J.M. Skidmore
James P. Spica
Nazneen H. Syed
Paul Vaidya
Geoffrey R. Vernon
Nancy H. Welber
Susan S. Westerman

III. **Approval of Minutes of September 6, 2014, Annual Meeting of the Section.** Upon a motion made by Marguerite Munson Lentz, seconded by Richard C. Mills, the minutes of the September 6, 2014 Annual Meeting of the Section were approved unanimously, with no votes against, and no abstentions.

IV. **Chairperson's Report – Amy N. Morrissey.** Amy Morrissey thanked everyone for a great year. She noted the tremendous efforts by committee members to push our proposed legislation along. Ms. Morrissey expressed her confidence that many of our efforts will be rewarded with passage of our bills. She also expressed her thanks to all committee chairpersons, committee members, council members, and officers. Ms. Morrissey gave special thanks to Ex-officio Susan Westerman for inviting her to participate in the Probate and Estate Planning Section many years ago. She also thanked the outgoing council members: Josh Ard for his great input on the listserv and the electronic communications committee; Jim Spica for his great

contributions on the legislative front; and Pat Ouellette for being a tremendous liaison with the Family Law Section and a for being a great sounding board over the years. Ms. Morrissey told the section that they are in good hands moving forward with Shaheen Imami at the helm of the Section. Finally, she encouraged everyone to look at her annual report as Chair, effective through May 31, 2015, that is online at the State Bar of Michigan's website.

V. **Treasurer's Report – Marguerite Munson Lentz.** Ms. Lentz reported that our receipts are over budget and our expenses are under budget with two months to go in our fiscal year left to be reported. Ms. Lentz will report on those additional months once she has received the data from the State Bar. Becky Weaver at the State Bar has informed us that it is very important that our expenses are reported in the month in which they are incurred; therefore, all council members are encouraged to promptly report all expenses. The final date for this fiscal year for expense reports, including mileage, is September 21, 2015.

VI. **Elections of Council Members and Officers.** Two votes were taken; one for the election of officers and one for the election of council members. Since our bylaws indicate that the chair elect takes over automatically, without further vote of the section, at the end of this meeting, there was no vote relative to the new Chair of the Council, Shaheen Imami.

On a motion made by David L.J.M. Skidmore, seconded by Shaheen I. Imami, with a unanimous vote in favor, no votes against and no abstentions, the following officers were elected:

Chair Elect:	James B. Steward
Vice Chair:	Marlaine C. Teahan
Secretary:	Marguerite Munson Lentz
Treasurer:	Christopher A. Ballard

On a motion made by Ex-officio Nancy L. Little, seconded by Marguerite Munson Lentz, with a unanimous vote in favor, no votes against and no abstentions, the following council members were re-elected for their second three-year term:

Rhonda M. Clark-Kreuer
David P. Lucas
David L.J.M. Skidmore

The following individuals were elected for an initial three-year term as council member:

Kathleen Goetsch
Katie Lynwood
Christopher J. Caldwell

And, with a vacancy created by Christopher A. Ballard's election as Treasurer, the following individual was elected to serve as a council member, taking over the remainder of Mr. Ballard's term, ending in 2017, with an eligibility of serving two three-year terms of his own:

Michael A. Lichterman

VII. **Other Business.** None.

VIII. **Adjournment of Annual Meeting of Section Membership.** On a motion made by John E. Bos, seconded by Marlaine C. Teahan, the Annual Meeting of the Section Membership was adjourned at 10:26 a.m.

Respectfully submitted,

Marlaine C. Teahan, Secretary
Probate and Estate Planning Section
State Bar of Michigan

ATTACHMENT 2

State Bar of Michigan | 2015-2016 SECTION ANNUAL REPORT

Article VIII §1, Bylaws of the State Bar of Michigan

Every Section and State Bar entity so directed by the Board of Commissioners or Representative Assembly shall annually make a written report containing a summary of its activities during the association year which shall be submitted to the Secretary on or before May 31. Annual reports may not exceed five 8 1/2" x 11" pages unless a waiver of this limitation is approved by the Executive Director.

Probate and Estate Planning Section

Chair

P54128 Shaheen I. Imami
Prince Law Firm
800 W Long Lake Rd Ste 200
Bloomfield Hills MI 48302-2058
Phone: (248) 865-8810
Fax: (248) 865-0640
e-mail: sii@probateprince.com

Vice Chair

P56603 Marlaine C. Teahan, Lansing

Chair-Elect

P23098 James B. Steward, Ishpeming

Secretary

P30583 Marguerite Munson Lentz, Detroit

Treasurer

P47015 Christopher A. Ballard, Ann Arbor

Council Member

Term Ending: 2016

P31301 Susan M. Allan, Bloomfield Hills
P60070 Constance L. Brigman, Wyoming
P39165 Michele C. Marquardt, Kalamazoo
P68618 Richard Charles Mills, Jackson
P32058 Lorraine F. New, Troy
P64989 Geoffrey R. Vernon, Saint Clair Shores

Term Ending: 2017

P24647 George F. Bearup, Traverse City
P47209 Hon. Michael L. Jaconette, Battle Creek
P38306 Mark E. Kellogg, Lansing
P71256 Michael G. Lichterman, Grandville
P68762 Raj Anand Malviya, Grand Rapids
P34533 Nancy H. Welber, Farmington Hills

Term Ending: 2018

P64928 Christopher J. Caldwell, Grand Rapids
P49818 Rhonda M. Clark-Kreuer, Saint Louis
P30574 Kathleen M. Goetsch, Howell
P34466 David P. Lucas, Battle Creek
P72027 Katie Lynwood, East Lansing
P58794 David L.J.M. Skidmore, Grand Rapids

Commissioner Liaison

P53594 Dana M. Warnez, Center Line

Ex Officio

P48271 Amy N. Morrissey, Ann Arbor

STATE BAR OF MICHIGAN
SECTION ANNUAL REPORT

Reset Form

Council Meeting Schedule:

Please attach any additional information needed regarding Council meetings as an addendum.

Meeting Type	Date	Location
Committee on Special Projects, followed by a Council meeting	6/13/15	Lansing, MI
Annual meeting, followed by a Council meeting	9/12/15	Lansing, MI
Committee on Special Projects, followed by a Council meeting	10/10/15	Bloomfield Hills, MI
Committee on Special Projects, followed by a Council meeting	11/07/15	Lansing, MI
Committee on Special Projects, followed by a Council meeting	12/19/15	Lansing, MI
Committee on Special Projects, followed by a Council meeting	01/16/16	Lansing, MI
Committee on Special Projects, followed by a Council meeting	02/13/16	Lansing, MI
Committee on Special Projects, followed by a Council meeting	03/12/16	Lansing, MI
Committee on Special Projects, followed by a Council meeting	04/16/16	Lansing, MI
Committee on Special Projects, followed by a Council meeting	06/04/16	Lansing, MI

General Budget Information: Please refer to p. 49 of the SBM Final Audited Financial Statement FY 2015

See Addendum.

Events and/or Seminars:

Please attach any additional information needed regarding events and/or seminars as an addendum.

Event or Seminar Title	Date	Location
See Addendum		

Reset Form

STATE BAR OF MICHIGAN
SECTION ANNUAL REPORT

Legislative issues:

See Addendum

Recommendations for next Council:

See Addendum

Other Information:

See Addendum

Reports must be submitted before May 31, 2016 to:

Jennifer Williams
Administrative Assistant
306 Townsend Street, Lansing MI 48933
Email: jwilliams@mail.michbar.org
Phone 517-367-6421 Fax: 517-482-6248

Reset Form

e-mail form

ADDENDUM TO 2015-2016 ANNUAL REPORT FOR THE PROBATE & ESTATE PLANNING SECTION FOR THE STATE BAR OF MICHIGAN

Mission Statement:

The purpose of this Section is to enhance and improve the practice and administration of law pertaining to probate; trust and estate planning, and administration; guardianships and conservatorships (including planning alternatives); and tax planning.

General Budget Information:

The Section's expenses generally continue to be in line with revenues. As a result, there is no immediate plan to raise dues.

Over the past several years, the Section increased the balance of a dedicated "amicus" fund for expected increases in appeals involving the Michigan Trust Code and other legislative initiatives. The largest categories of expense are: (1) Council meetings; (2) lobbying on behalf of the Section; and (3) support for education initiatives (primarily in conjunction with ICLE). In the 2015-2016 fiscal year, the Section also advanced funds for an initial printing of updated brochures that purchasing Section members can use to give general information to clients and potential clients.

Events and/or Seminars:

The Section continues to maintain a strong partnership with ICLE by co-sponsoring, supporting, or otherwise contributing to numerous seminars on various probate, estate planning, and related administration topics each year. The Section also continues to co-sponsor the Probate Certificate Program with ICLE in an effort to assist practitioners, including those who do not belong to the Section, in developing proficiency in the areas of probate and estate planning. The Section does not offer any seminars independent of ICLE, but such seminars are offered live and via webcast. During the 2015-2016 fiscal year, the Section continued to enhance its outreach to Section members and also recruit new members through social and networking events developed by the Section's Membership Committee. Below is a partial list of the events and seminars (does not include webcast-only sessions):

Event/Seminar Title	Date	Location
55th Annual Probate & Estate Planning Institute	June 19-20, 2015	Plymouth, MI
Drafting an Estate Plan for an Estate Under $5 Million	June 24, 2015	Plymouth, MI
Drafting an Estate Plan for an Estate Under $5 Million	September 29, 2015	Plymouth, MI

Experts in Estate Planning: Leaving and Education Legacy	November 17, 2015	Plymouth, MI
Administration of Trusts Under the Michigan Trust Code	December 3, 2015	Plymouth, MI
25th Annual Drafting Estate Planning Documents	January 21, 2016 February 18, 2016	Grand Rapids, MI Plymouth, MI
Drafting an Estate Plan Under $5 Million	February 3, 2016	Plymouth, MI
Experts in Estate Planning: The Estate Planner's Definitive Guide to Business Entities and Income Tax	May 11, 2016	Acme, MI
56th Annual Probate & Estate Planning Institute	May 12-14, 2016 June 17-18, 2016	Acme, MI Plymouth, MI
Mixer for Section Members and Non-Members (for attendees of the 56th Annual Probate & Estate Planning Institute)	May 13, 2016	Acme, MI
Speakers' Dinner for the 56th Annual Probate & Estate Planning Institute	May 13, 2016	Traverse City, MI
Probate & Estate Planning Certificate Program	Ongoing	Various

Legislative Issues:

The Section continues to keep as a priority legislative and regulatory initiatives, as well as common law developments, that affect Section members. The Section is both proactive and responsive by drafting proposed legislation and providing comments on legislation drafted by others. The Section employs Public Affairs Associates, in Lansing, as its lobbyist.

The Section submitted public policy positions concerning the following:

- The Section filed an amicus brief in *In re Cliffman Estate*. The Section believes that the holding in *In re Combs*, 257 Mich App 622 (2003), *cert den* 469 Mich 1021 (2004), was too restrictive a reading of the Wrongful Death Act (MCL 600.2922) relative to the treatment of step-children.

- The Section drafted a proposal and is pursuing the passage of legislation to modernize the provisions concerning tenants by the entireties property.

- The Section drafted a proposal and is pursuing the passage of legislation to amend the Michigan Trust Code to permit community property trusts.

- The Section supported with proposed amendments Department of Treasury, Revenue Administrative Bulletin 2015-XX, regarding the taxability of income to estates, trusts, and beneficiaries.

The Section sought to influence and support the following:

- The Section was substantially involved in the drafting, negotiation, and passage of the Fiduciary Access to Digital Assets Act, PA 59 of 2016 (Eff. June 27, 2016).

- The Section was involved in the negotiation and passage of the Funeral Representative Act, PA 57 of 2016 (Eff. June 27, 2016).

- The Section drafted and proposed to the Michigan Legislature amendments to MCL 211.27a concerning relief from property tax uncapping in common estate planning transactions, which ultimately was passed as PA 243 of 2015 (Retroactive to December 31, 2014).

- The Section is involved in legislation proposed by Sen. Jones proposing the abolition of dower, SB 558-560.

- The Section drafted and proposed to the Michigan Legislature a Qualified Disposition in Trust Act (also known as domestic asset protection trusts), which would allow an individual grantor to protect from creditors certain transfers to qualified trusts. The bills originally were introduced in and passed by the Senate (SB 597-598), but eventually split with the House.

- The Section drafted and proposed to the Michigan Legislature legislation to restructure appeals from the Probate Court by removing review by the Circuit Court and moving appeals to the Court of Appeals and also modifying the automatic stay provisions contained in the Revised Judicature Act (MCL 600.308, MCL 600.861, MCL 600.863, MCL 600.867, and MCL 700.1303). The bills originally were introduced in and passed by the Senate (SB 632), but eventually split with the House. The bills have been passed out of the House Judiciary Committee.

The Section has an interest in, continued to engage in discussion on, or otherwise pursued the following:

- Legislation intended to update the Estates and Protected Individuals Code and the Michigan Trust Code.

- Legislation that, under certain circumstances, would provide exculpation of trustees of life insurance trusts from liability related to the administration of life insurance policies held in the trust, which would be a proposed amendment of MCL 700.1513.

- Legislation to address issues of succession in matters involving assisted reproductive technology.

- The concept of pre-death probate of wills and trusts.

Recommendations for next Council:

For fiscal year 2016-2107, the Section's Council should continue to pursue and update the Council's Biennial Plan of Work. More particularly, the Council should continue its support, monitoring, and pursuit of legislative initiatives that remain pending as of the date of the 2015-2016 Annual Report (i.e., qualified dispositions in trust, probate appeals, life insurance trusts, tenants by the entirety property, community property trusts, assisted reproductive technology, and updates to EPIC and the MTC).

The Council also should continue: (1) reviewing proposed updates and changes to EPIC and the MTC to reflect developments in the practice and the law (both legislative and common law); (2) its outreach to existing Section members to become active in the Section and on the Council; (3) seeking new members for the Section through recruitment and interaction with other sections and bar associations; (4) supporting continuing education of the legal profession in the areas of probate, estate planning, and related administration; (5) efforts to educate the public of the benefits provided by trained attorneys and the often false promises offered by commoditization; and (6) assisting in the prevention of "trust mills" from operating in Michigan.

Finally, the Council might consider revisiting and reviving the work done on specialization in light of certain work done by the SBM's 21st Century Task Force.

Other Information:

- The Section completed the update of several of the Section's pamphlets and advanced the cost of high-quality printing to provide hard copies to purchasing members. The Section also continues to work with the SBM to provide similar, web-based information to the public while maintaining the integrity of the information and the Section's proprietary rights in the product.

- The Section continues to review and draft proposed changes and improvements to SCAO forms.

- The Section continues to publish a Journal three times per year with articles of interest to Section members. The Journal is now electronic only, as a cost-saving measure and to reflect changes in the way information is conveyed and used.

- The Section continues to use the "Join a Committee" link on the Section SBM webpage to encourage involvement by Section members.

- The Section sent its Chair Elect and Vice Chair to the State Bar Leadership Forum in June 2015, and will do so again in June 2015.

- The Section regularly sends Council and other Section members to work with and testify before members of the Legislature on various initiatives.

- The Section regularly discusses practice developments that are occurring in other parts of the United States and how such developments might or should impact practice in Michigan.

Respectfully Submitted,

Shaheen I. Imami, Chair of the Probate & Estate Planning Section

Probate & Estate Planning Section Committees 2015-2016

Amicus Curiae Committee
Mission: To review requests made to the Section to file, and to identify cases in which the Section should file, amicus briefs in pending appeals and to engage and oversee the work of legal counsel retained by the Section to prepare and file its amicus briefs

David L.J.M. Skidmore, Chair
Kurt A. Olson
Patricia M. Ouellette
Nazneen H. Syed
Nancy H. Welber

Annual Meeting
Mission: To arrange the annual meeting at a time and place and with an agenda to accomplish all necessary and proper annual business of the Section

James B. Steward

Assisted Reproductive Technology Ad Hoc Committee
Mission: To review the 2008 Uniform Probate Code Amendments for possible incorporation into EPIC with emphasis on protecting the rights of children conceived through assisted reproduction

Nancy H. Welber, Chair
Christopher A. Ballard
Robert M. O'Reilly
Lawrence W. Waggoner
Edward Goldman
James P. Spica

Awards Committee
Mission: To periodically award the Michael Irish Award to a deserving recipient and to consult with ICLE concerning periodic induction of members in the George A. Cooney Society

Amy N. Morrissey, Chair
Robert D. Brower, Jr.
George W. Gregory
Phillip E. Harter
Nancy L. Little

Budget Committee
Mission: To develop the annual budget and to alert the Council to revenue and spending trends

Marguerite Munson Lentz, Chair
Marlaine C. Teahan
Christopher A. Ballard

Bylaws Committee
Mission: To review the Section Bylaws and recommend changes to ensure compliance with State Bar requirements, best practices for similar organizations and assure conformity of the Bylaws to current practices and procedures of the Section and the Council

Nancy H. Welber, Chair
Christopher A. Ballard
David P. Lucas
John Castillo

Charitable and Exempt Organization Committee
Mission: To educate the Section about charitable giving and exempt organizations and to make recommendations to the Section concerning Federal and State legislative developments and initiatives in the fields of charitable giving and exempt organizations

Christopher J. Caldwell, Chair
Christopher A. Ballard
Michael W. Bartnik
William R. Bloomfield
Robin D. Ferriby Richard C. Mills

Citizens Outreach Committee
Mission: To provide for education of the public on matters related to probate, estate planning, and trust administration, including the publication of pamphlets and online guidance to the public, and coordinating the Section's efforts to educate the public with the efforts of other organizations affiliated with the State Bar of Michigan

Constance L. Brigman, Chair
Kathleen M. Goetsch
Katie Lynwood
Michael J. McClory
Neal Nusholtz
Jessica M. Schilling
Rebecca A. Schnelz, (Liaison to Solutions on Self-help Task Force)
Nancy H. Welber
Melisa M. W. Mysliwiec
Nicholas Vontroba

Committee on Special Projects
Mission: The Committee on Special Projects is a working committee of the whole of the Section that considers and studies in depth a limited number of topics and makes recommendations to the Council of the Section with respect to those matters considered by the Committee. The duties of the Chair include setting the agenda for each Committee Meeting, and in conjunction with the Chair of the Section, to coordinate with substantive Committee chairs the efficient use of time by the Committee

David P. Lucas, Chair

Community Property Trusts Ad Hoc Committee *Mission: To review the statutes, case law, and legislative analysis of Michigan and other jurisdictions (including pending legislation) concerning community property trusts and, if advisable, to recommend changes to Michigan law in this area*

Neal Nusholtz, Chair
George W. Gregory
Lorraine F. New
Nicholas A. Reister
Patricia M. Ouellette

Electronic Communications Committee
Mission: To oversee all forms of electronic communication with and among members of the Section, including communication via the Section's web site, the Section listserv, and the ICLE Online Community site, to identify emerging technological trends of importance to the Section and its members, and to recommend to the council best practices to take advantage of technology in carrying out the section's and Council's mission and work

Michael G. Lichterman, Chair
William J. Ard
Nancy L. Little
Amy N. Morrissey
Jeanne Murphy (Liaison to ICLE)
Neal Nusholtz
Michael L. Rutkowski
Serene K. Zeni

Ethics & Unauthorized Practice of Law Committee
Mission: To consider and recommend to the Council action with respect to the Michigan Rules of Professional Conduct and their interpretation, application, and amendment, including identifying the unauthorized practices of law, reporting of such practices to the appropriate authorities, and educating the public regarding the inherent problems relying on non-lawyers

Katie Lynwood, Chair
William J. Ard
Raymond A. Harris
J. David Kerr Robert M. Taylor
Amy Rombyer Tripp

Guardianship, Conservatorship, and End of Life Committee
Mission: To monitor the need for and make recommendations with respect to statutory and court rule changes in Michigan related to the areas of legally incapacitated individuals, guardianships, and conservatorships

Rhonda M. Clark-Kreuer, Chair
Katie Lynwood, Vice Chair
William J. Ard
Michael W. Bartnik
Raymond A. Harris
Phillip E. Harter
Michael J. McClory
Richard C. Mills
Kurt A. Olson
James B. Steward

Insurance Legislation Ad Hoc Committee
Mission: To recommend new legislation related to insurability and the administration of irrevocable life insurance trusts

Geoffrey R. Vernon, Chair
Stephen L. Elkins
James P. Spica
Joseph D. Weiler, Jr.

Legislation Analysis & Monitoring Committee
Mission: In cooperation with the Section's lobbyist, to bring to the attention of the Council recent developments in the Michigan legislature and to further achievement of the Section's legislative priorities, as well as to study legislation and recommend a course of action on legislation not otherwise assigned to a substantive committee of the Section

Michele C. Marquardt, Chair
Christopher A. Ballard
Georgette E. David
Mark E. Kellogg
Sharri L. Rolland Phillips
Harold G. Schuitmaker

Legislation Development & Drafting Committee
Mission: To review, revise, communicate and recommend Michigan's trusts and estates law with the goal of achieving and maintaining leadership in promulgating probate laws in changing times. May work alone or in conjunction with other substantive standing or ad hoc committees.

Geoffrey R. Vernon, Chair
Susan M. Allan
Howard H. Collens
Georgette David
Henry P. Lee
Marguerite Munson Lentz
Michael G. Lichterman
Sueann Mitchell
Kurt Olson
Nathan Piwowarski
James P. Spica
Robert P. Tiplady, II

Litigation, Proceedings, and Forms Committee
Mission: To consider and recommend to the Council action with respect to contested and uncontested proceedings, the Michigan Court Rules, and published court forms, including the interpretation, use, and amendment of them

David L.J.M. Skidmore, Chair
James F. ("JV") Anderton
Constance L. Brigman (Liaison to SCAO for Guardianship, Conservatorship, and Protective Proceedings Workgroup)
Rhonda M. Clark-Kreuer
Phillip E. Harter
Michael D. Holmes
Shaheen I. Imami
Hon. Michael L. Jaconette
Hon. David M. Murkowski
Rebecca A. Schnelz (Liaison to SCAO for Mental Health/Commitment Workgroup)

Membership Committee
Mission: To strengthen relations with Section members, encourage new membership, and promote awareness of and participation in Section activities

Raj A. Malviya, Chair
Christopher J. Caldwell
Nicholas R. Dekker
Daniel A. Kosmowski
Julie A. Paquette
Nicholas A. Reister
Marlaine C. Teahan
Joseph J. Viviano

Probate & Estate Planning Section Committees 2015-2016

Nominating Committee
Mission: To annually nominate candidates to stand for election as the officers of the Section and members of the Council

Mark K. Harder, Chair
Thomas F. Sweeney
Amy N. Morrissey

Planning Committee
Mission: To periodically review and update the Section's Strategic Plan and to annually prepare and update the Council's Biennial Plan of Work

James B. Steward, Chair

Probate Institute
Mission: To consult with ICLE in the planning and execution of the Annual Probate and Estate Planning Institute

Marlaine C. Teahan

Real Estate Committee
Mission: To recommend new legislation related to real estate matters of interest and concern to the Section and its members

Mark E. Kellogg, Chair
George F. Bearup
Jeffrey S. Ammon
William J. Ard
Stephen J. Dunn
David S. Fry
J. David Kerr
Michael G. Lichterman
David P. Lucas
Katie Lynwood
Douglas A. Mielock
Melisa M. W. Mysliwiec
James T. Ramer
James B. Steward

State Bar and Section Journals Committee
Mission: To oversee the publication of the Section's Journal and periodic theme issues of the State Bar Journal that are dedicated to probate, estate planning, and trust administration

Richard C. Mills, Chair
Nancy L. Little, Managing Editor
Melisa M. W. Mysliwiec, Assoc. Editor

Transfer Tax Committee
Mission: To monitor developments concerning Federal and State transfer taxes and to recommend appropriate actions by the Section in response to developments or needs

Lorraine F. New, Chair
Robert B. Labe
Marguerite Munson Lentz
Geoffrey R. Vernon
Nancy H. Welber

ATTACHMENT 3

PROBATE AND ESTATE PLANNING COUNCIL
Treasurer's Report
September 10, 2016

Income/Expense Reports

A financial report is attached showing receipts and expenditures from October 1, 2015 through August 31, 2016. The August numbers are not final yet. The section's fund balances are as follows:

	October 1, 2015	August 31, 2016 (est.)
General Fund	$193,454.27	$160,365.52
Amicus Fund	$35,248.50	$75,248.50
Total	$228,702.77	$235,614.02

Reminder to Turn in Section Expense Reimbursements Quickly

The State Bar policy is to reject any expense reimbursement requests for expenses more than 45 days old. Please try to submit expense reimbursements promptly.

Mileage Reimbursement Rate Effective 1/1/2016

The IRS business mileage reimbursement rate for 2016 is $0.54 per mile. If you are eligible for reimbursement of your mileage for Probate Council business, please use this rate on your SBM expense reimbursement forms. The SBM forms and instructions are attached. Please note that the forms were revised to reflect the new mileage rate.

Expense Reimbursement Requests

- For instructions or forms, use www.michbar.org/sections/home and scroll down to Section Leadership, and then Section Treasurer Information and click on Expense Reimbursement Form | Instructions or use the attached.
- Email forms to cballard@honigman.com or provide paper copies in person or by mail.

Chris Ballard, Treasurer
Probate and Estate Planning Section

Treasurer Contact Information:
Christopher A. Ballard
Honigman Miller Schwartz & Cohn LLP
315 E. Eisenhower Pkwy Ste 100
Ann Arbor, Michigan 48108
office: 734-418-4248
fax: 734-418-4249
email: cballard@honigman.com

		May-16	Jun-16	Jul-16	Aug-16	Sep-16	FY to Date Actual	Budget 2015-2016	Variance	Year to Date Percentage
Revenue	**Subcategories**									
Membership Dues		35.00	140.00				$ 115,570.00	$ 115,000.00	570.00	100.50%
Publishing Agreements		325.00					$ 650.00	$ 650.00	-	100.00%
Sale of Pamphlets		1,231.65			1,735.33		$ 2,966.98			
Other							$ -	$ -	-	
Total Receipts							**$ 119,186.98**	**$ 115,650.00**	3,536.98	103.06%
Disbursements										
Journal (1)								$ 12,225.00	(4,150.00)	66.05%
	E-blast						$ 75.00			
	ICLE (formatting)	4,000.00					$ 8,000.00			
Chairperson's Dinner(2)								$ 7,000.00	1,349.88	119.28%
	Plaques						$ -			
	Gavel						$ -			
	Chair's Dinner--food						$ 8,349.88			
	Chair's Dinner-venue						$ -			
Travel		$ 810.29	$ 878.69	$ 1,470.45	$ -	$ -	$ 14,845.83	$ 18,500.00	(3,654.17)	80.25%
Lobbying		2,500.00	2,500.00	2,500.00	2,500.00		$ 30,000.00	$ 30,000.00	-	100.00%
Meetings(3)								$ 12,000.00	(1,609.76)	86.59%
	Mtg with Chair's Dinner						$ 1,672.79			
	Monthly		1,357.12				$ 8,717.45			
	Officers conference (including travel)						$ -			
Long-range Planning										
Support for Annual Institute								$ 14,000.00	-	100.00%
	Contribution to institute	14,000.00					$ 14,000.00			
	Speaker's Dinner						$ -			
Amicus Briefs							$ 10,000.00	$ 10,000.00	-	100.00%
Seminars		2,997.33	(2,997.33)				$ 4,000.00	$ 4,000.00	-	100.00%
ICLE (Small Firm and Solo Institute) -- scholarships (7)							$ 2,000.00	$ 1,000.00	1,000.00	
ICLE (Small Firm and Solo Institute) -- general support (7)							$ 3,000.00	$ 1,500.00	1,500.00	
Electronics communications (4)								$ 1,200.00	124.84	110.40%
	List serve	150.00	75.00				$ 675.00			
	E-blast	150.00					$ 450.00			
	Telephone	64.69	36.06	31.63			$ 199.84			
Membership Activities (6)								$ 7,000.00	(5,916.55)	15.48%
	Postage	1.36	0.45	0.45			$ 2.26			
	Reception			761.20			$ 761.20			
	Printing			69.99			$ 69.99			
	Young Lawyers Summit						$ 250.00			
	Probate banner						$ -			
	E-blasts						$ -			
	Table Throw						$ -			
Publishing and Copyright (8)								$ 5,000.00	143.74	102.9%
	Printing									
	Pamphlets	5,143.74					$ 5,143.74			
	Copyright									
Other(5)								$ 400.00	(337.25)	15.7%
	Copying						$ 62.75			
	Postage						$ -			
	Young Lawyer's Conference						$ -		-	
Total Disbursements		**$ 29,817.41**	**$ 1,849.99**	**$ 4,833.72**	**$ 2,500.00**	**$ -**	**$ 112,275.73**	**$ 123,825.00**	(11,549.27)	**90.67%**
Net Increase (Decrease)							$ 6,911.25	$ (8,175.00)		

Payee Name	
Street	
City	
State	Zip Code
E-Mail	
Phone	
Section	Probate & Estate Planning Section

SBM
State Bar of Michigan

306 Townsend St., Lansing MI 48933-2012, (800) 968-1442

Section Expense Reimbursement Form

Staple receipts to back of form as required. For electronic transmittal, scan and PDF receipts and send with form by e-mail. Policies and procedures on reverse side.

Please provide account no.	Amount
Amount Total	$ 0.00

Date	Description & Purpose (Note start and end point for mileage)	Mileage Rate	Mileage	Reimbursement	Lodging/Other Travel	Meals (Self + attach list of guests)	Miscellaneous (i.e. copying, phone, etc.)	Total
		0.54		0				$ 0.00
		0.54		0				$ 0.00
		0.54		0				$ 0.00
		0.54		0				$ 0.00
		0.54		0				$ 0.00
		0.54		0				$ 0.00
		0.54		0				$ 0.00

I certify that the reported expense was actually incurred while performing my duties for the State Bar of Michigan as

Date	Title	Signature

Date	Title	Approved by (Signature)

Grand Total

Reset Form

Print

State Bar of Michigan
Section Expense Reimbursement Policies and Procedures

General Policies

1. Requests for reimbursement of individual expenses should be submitted as soon as practical after being incurred, but not to exceed 45 days. However, at the end of the fiscal year, any remaining expense reimbursement requests for the fiscal year just ended must be submitted by the 3rd workday in October. The State Bar reserves the right to deny a reimbursement request that is untimely or where the State Bar's ability to verify an expense has been compromised due to any delay. Expense reimbursement forms, along with instructions for completing and transmitting expense reimbursement forms, are found on the State Bar of Michigan website at: http://michbar.org/programs/forms

2. All out of pocket expenses must be itemized. Each reimbursed expense must be clearly described and the business purpose indicated.

3. Reimbursement in all instances is limited to reasonable and necessary expenses.

4. Detailed receipts are recommended for all expenses but required for expenses over $25.

5. An itemized receipt is required before reimbursement will be made for any meal. The reimbursement request must identify whether the meal is a breakfast, lunch or dinner. If the receipt covers more than one person, the reimbursement request must identify the names of all those in attendance for whom reimbursement is claimed, and the business purpose of the meal. If the receipt includes charges for guests for whom reimbursement is not claimed, the guests need not be identified by name, but their presence and number should be noted. Reimbursed meals while traveling (except group meals) are taxable if no overnight stay is required.

   For subsidized sections (Young Lawyers Section, Master Lawyers Section, and Judicial Section) the presumptive limits on meal reimbursement are the per diem amounts published on the State of Michigan Department of Technology, Management and Budget's website at http://www.michigan.gov/dtmb/0,5552,7-150-9141_13132---,00.html referencing Travel Rates and Select Cities for the current fiscal year. This policy applies to each individual meal - breakfast, lunch and/or dinner. Meal reimbursements exceeding the per diem amounts due to special circumstances must be approved by the section treasurer or section chair, whenever possible in advance of the expenditure. Reimbursement for meals exceeding the presumptive limits without an acceptable explanation of special circumstances will be limited to the published per diem amount. The presumptive limit on meal reimbursement applies to any meal expense (individual or group) reimbursed under this policy, but does not apply to meals for group meetings and seminars invoiced directly to the SBM. For all other sections, the amount of the meal reimbursement shall be deemed what is reasonable and necessary.

6. Spouse expenses are not reimbursable.

7. Mileage is reimbursed at the current IRS approved rate for business mileage. Reimbursed mileage for traveling on State Bar business is limited to actual distance traveled for business purposes.

8. Receipts for lodging expenses must be supported by a copy of the itemized bill showing per night charge, meal expenses and all other charges, not simply a credit card receipt, for the total paid. Barring special circumstances such as the need for handicap accessibility accommodations, for conference attendance, the reimbursement will be limited to the least expensive available standard room conference hotel rate.

9. Airline tickets should be purchased as far in advance as possible to take advantage of any cost saving plans available.

   A. Tickets should be at the best rate available for as direct a path as possible. The use of travel websites such as Travelocity, Priceline and Hotwire are recommended to identify the most economical airfare alternatives.

   B. Reimbursement of airfare will be limited to the cost of coach class tickets available for the trip at the time the tickets are purchased. The additional cost of business class or first class airfare will not be reimbursed.

   C. Increased costs incurred due to side trips for the private benefit of the individual will be deducted.

   D. A copy of the ticket receipt showing the itinerary must be attached to the reimbursement request.

10. Reimbursement for car, bus, or train will be limited to the maximum reimbursable air fare if airline service to the location is available.

11. Outside speakers must be advised in advance of the need for receipts and the above requirements.

12. Bills for copying done by a firm should be approved in advance and include the numbers of copies made, the cost per page and general purpose (committee or section meeting notice, seminar materials, etc.).

13. Bills for reimbursement of phone expenses should be supported by copies of the actual phone bills. If that is not possible, the party called and the purpose of the call should be provided.

14. The State Bar of Michigan is exempt from sales tax. Suppliers of goods and services should be advised that the State Bar of Michigan is the purchaser and that tax should not be charged.

15. Refunds from professional organizations (Example: ABA/NABE) for registration fees and travel must be made payable to the State Bar of Michigan and sent to the attention of the Finance Department. The State Bar of Michigan is paying your expenses or reimbursing you for a conference and you are aware you will receive a refund, please notify the finance department staff at the time you submit your request for payment.

16. Gift cards (Visa, AMEX) that are reimbursed are taxable for any amount, and tangible gifts (other than recognition items such as plaques, gavels, etc.) and gift certificates (for restaurants, department stores, etc.) purchased and reimbursed are considered taxable if greater than $100.

Specific Policies

1. Sections may not exceed their fund balance in any year without express authorization of the Board of Commissioners.

2. Individuals seeking reimbursement for expenditures of funds must have their request approved by the chairperson or treasurer. Chairpersons must have their expenses approved by the treasurer and vice versa.

3. Requests for reimbursement of expenses which require council approval must be accompanied by a copy of the minutes of the meeting showing approval granted.

ATTACHMENT 4

Report of the Nominating Committee
To the Probate & Estate Planning Council of the State Bar of Michigan
June 4, 2016

The Nominating Committee of the Probate and Estate Planning Section of the State Bar of Michigan consists of Mark K. Harder, Thomas F. Sweeney, and Amy Morrissey.

The Committee reminds the Council and Section that under the Section 5.2 of the Section's By-Laws the incumbent Chairperson Elect assumes the office of Chairperson upon the conclusion of the Section's annual meeting. The Committee therefore does not nominate a candidate for Chairperson of the Section, and the incumbent Chairperson Elect, James B. Steward, will succeed to the office of Chairperson without action by the Committee, Council or Section.

The Committee met and pursuant to Section 4.1 of the Section By-Laws, the Committee nominates the following individuals for the positions shown opposite their name

Chairperson Elect	Marlaine C. Teahan
Vice Chairperson	Marguerite Munson Lentz
Secretary	Christopher A. Ballard
Treasurer	David P. Lucas

For the Council for a second three year term:

Richard C. Mills
Lorraine F. New
Geoffrey E. Vernon

For the Council for an initial three year term:

Robert C. Labe
Nathan R. Piwowarski
Nazneen H. Syed

If David P. Lucas is elected as Treasurer, the Committee nominates Melisa M.W. Mysliwiec to serve the balance of Mr. Lucas's term as a member of the Council, which ends with the annual meeting in 2017. Mr. Mysliwiec will thereafter be eligible for election to two three-year terms as a member of the Council.

Respectfully submitted on behalf of the Nominating Committee,

Mark K. Harder, Chair

097777.900451 #14401365

ATTACHMENT 5

MEETING OF THE COUNCIL OF THE PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN

June 4, 2016
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Section, Shaheen I. Imami, called the meeting to order at 10:25 a.m.

II. Attendance

A. The following officers and members of Council were in attendance:

Shaheen I. Imami
James B. Steward
Marlaine C. Teahan
Marguerite Munson Lentz
Christopher A. Ballard
Susan M. Allan
George F. Bearup
Constance L. Brigman
Christopher J. Caldwell
Kathleen M. Goetsch
Mark E. Kellogg
Michael G. Lichterman
David P. Lucas
Katie Lynwood
Michele C. Marquardt
Richard C. Mills
Lorraine F. New
David L.J.M. Skidmore
Geoffrey R. Vernon
Nancy H. Welber

A total of 20 council members and officers were present, representing a quorum.

B. The following officers and members of Council were absent with excuse:

Rhonda M. Clark-Kreuer
Hon. Michael L. Jaconette
Raj A. Malviya

C. **The following officers and members of Council were absent without excuse:**

None.

D. **The following ex-officio members of the Council were in attendance:**

George W. Gregory
Amy N. Morrissey

E. **Others in attendance:**

Jeanne Murphy
Kalman G. Goren
Sueann T. Mitchell
Jessica Schilling
Nathan Piwowarski
Susan Chalgian
Mike Shelton
Bradley Martin
Robert O'Reilly
Carol Sewell
Joann Kline
Joe Viviano
Nazneen Syed
Scott Robbins
Neal Nusholtz
Robert Labe
John Roy Castillo
Laurie Murphy
Cynthia Andrew

III. Minutes of the April 16, 2016 Meeting of the Council

The minutes of the April 16, 2016, Meeting of the Council were attached to the Agenda for this meeting which was posted on the Section's web page prior to the meeting. Ms. Lentz moved that the minutes be approved. The motion was seconded. The motion was approved on a voice-vote with no nays and no abstentions.

IV. Treasurer's Report – Christopher Ballard

Mr. Ballard reported that the Treasurer's Report was attached to the Agenda. Mr. Ballard reminded council members to turn in expense reports within 45 days.

V. Chairperson's Report – Shaheen I. Imami

Mr. Imami reported as follows:

- Attached to the Agenda were two recently published cases for information.
- The Section's lobbyist, Becky Bechler, reported that the American College of Life Insurers and Prudential have raised objections to SB 1010 (the proposed legislation to exonerate Trustees of ILITs).
- Mr. Imami received from Peter Cunningham a draft of the Michigan Law Revision Commission titled, "Same Sex Marriage: A Review of Michigan's Constitutional Provisions and Statutes." See Attachment A.
- Mr. Imami filed the annual report for the Section with the State Bar on May 31, 2016, which will be posted on the Section's web page.
- Ms. Lori Buiteweg (State Bar President) would like to pursue specialization for Michigan lawyers. Mr. Imami informed her about the work on specialization that Mr. Steward and his committee had done. Mr. Steward will send Mr. Imami the most current versions of his materials for forwarding to Ms. Buiteweg.
- When the probate appeals and DAPT bills were introduced in the Senate, the Probate Council voted to support those bills. The original Senate bills have now been introduced in the House, but with new bill numbers. Mr. Imami requested a public policy vote on each of the House Bill numbers.
- Mr. Steward moved that the Section support HB 5503 (same language as SB 0633; deals with probate appeals). Ms. Lentz supported the motion. By a show of hands, the Probate Council voted unanimously to support the bill, with 20 votes in favor, 0 opposed, and 0 abstained.
- Mr. Steward moved that the Section support HB 5504 and 5505 (same language as SB 598 and 597; deals with domestic asset protection trusts). Ms. Goetsch supported. By a show of hands, the Probate Council voted unanimously to support the bills, with 20 votes in favor, 0 opposed, and 0 abstained.

At Mr. Imami's invitation, Mr. Kal Goren, from the Debtor/Creditor Committee of the Business Law Section of the State Bar gave a report on changes his subcommittee is working on. They would like to propose legislation that would expand exemptions from creditors in MCL 600.6023 from one IRA to all IRAs and to all 529 plans (but annual contributions to a 529 plan that are exempted from creditors would be limited to the annual exclusion amount, currently $14,000). In additional, they would like to make other changes to modernize this statute. Mr. Goren is not asking for any action from the Probate Council at this time.

VI. Report of the Committee on Special Projects – David P. Lucas

Mr. Lucas reported that Ms. Welber of the ART Committee presented to CSP a proposal (included in the supplemental materials to the Agenda) to add a notice provision to the artificial reproductive technology draft legislation. CSP recommended to the Probate Council that the notice provision be added, subject to the Committee further drafting the language. Ms. Welber asked for a straw vote on whether Probate Council approves the legislative proposal presented so far (including language presented at prior meetings), including the notice provision, but with the understanding that the Committee would be working further on the notice provision. The straw vote was in favor of the legislation, including the notice provision. Ms. Welber hopes to present the entire proposed legislation for a vote in September.

Mr. Lucas reported that CSP recommended that the Probate Council authorize the Legislation Development and Drafting Committee to move forward with the tenancy by entireties bill, as revised with changes presented by Ms. Lentz at CSP (which changes were included in the supplemental materials attached to the Agenda), and negotiate further changes. A motion was made to accept CSP's recommendation and grant such authority to the Committee. Based on a voice vote, the motion was approved. If the Committee is able to negotiate an agreement with other stakeholders, then the Committee will present the agreement to the Probate Council for a public policy position.

VII. **Standing Committee Reports**

A. **Internal Governance**

1. Budget – Marguerite Munson Lentz—No report.

2. Bylaws – Nancy H. Welber—No report.

3. Awards – Amy N. Morrissey—No report.

4. Planning – James B. Steward—No report.

5. Nominating – Mark K. Harder

Ms. Morrissey gave the report for the Committee. The members of the Committee include Mr. Harder, Ms. Morrissey, and Mr. Sweeney. Ms. Morrissey thanked all who helped with the Committee's work. The Committee has put together a slate of qualified candidates. A copy of the Committee's report is attached as Attachment B.

Ms. Morrissey reminded all that the Chairperson-Elect, Mr. Steward, will become the Chair without a further vote.

The following are nominated to be officers for 2016-2017 is as follows:

Chairperson-Elect:	Marlaine C. Teahan
Vice Chairperson:	Marguerite Munson Lentz
Secretary:	Christopher A. Ballard
Treasurer:	David P. Lucas

The following are nominated to the Council for a second three-year term:

Lorraine F. New
Geoffrey E. Vernon

The following are nominated to the Council for an initial three-year term:

Richard C. Mills
Robert C. Labe
Nathan R. Piwowarski
Nazneen H. Syed

Mr. Mills had previously been elected to fill the unexpired term for Ms. Lentz when Ms. Lentz was elected to be Treasurer. That term expired in 2016. Under the Section's bylaws, Mr. Mills is eligible to serve for two three-year terms.

If David P. Lucas is elected as Treasurer, the Committee nominates Melisa M.W. Mysliwiec to serve the balance of Mr. Lucas' term as a member of the Council, which ends with the annual meeting in 2017. Ms. Mysliwiec will thereafter be eligible for election to two three-year terms as a member of the Council.

Mr. Imami asked if there were any nominations from the floor. There were none, and Mr. Imami declared that the nominations were closed. The Section will vote on the nominees proposed by the Committee at the annual meeting of the Section in September.

6. Annual Meeting – James B. Steward

Mr. Steward reminded all to attend the annual meeting in September.

B. **Legislation and Lobbying**

1. Legislative Analysis and Monitoring Committee – Michele C. Marquardt

Ms. Marquardt gave the report. She handed out materials (see Attachment C) which included proposed changes to MCL 600.6023(1)(j) (discussed by Mr. Goren above); *In re Estate of Jajuga,* HB 5638 and HB 5704, as well as Ms. Marquardt's proposed substitution for HB 5638. HB 5638 and HB 5704 are two different legislative proposals to overturn the result in *Jajuga*. The Committee will be reviewing these proposals. Ms. Marquardt requested that comments be forwarded to her. Mr. Vernon stated that a change to deal with *Jajuga* is already on the list of EPIC updates. The two Committees will coordinate efforts on this matter.

Ms. Marquardt also reported that HB 5629 was introduced to modify MCL 700.5103 (which permits a parent to temporarily delegate parental authority over a child up to six months). HB 5629 is tied barred with HB 5628. HB 5628 amends MCL 750.136C to make it a crime to transfer a child with the intent of permanently divesting the parent of parental responsibility except as provided in the statute. HB 5629 modifies MCL 700.5103 to change "six months" to "180 days," and to provide that MCL 700.5103 cannot be used to delegate parental authority for longer than 180 days in violation of 750.136C. Ms. Marquardt will ask Ms. Bechler to follow up on this.

2. Legislation Development & Drafting Committee – Geoffrey R. Vernon

Mr. Vernon will discuss with Mr. Imami the priorities and timelines for completion of various aspects of the updating EPIC/MTC project.

3. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon

Mr. Vernon reported that SB 1010 (the ILIT exoneration bill) was introduced by Senator Schuitmaker and the bill was assigned to the Judiciary Committee. Objections have been raised

regarding stranger-owned life insurance. These objections should have been satisfied by the previously passed legislation on trusts having an insurable interest in policies owned by the trusts.

4. Assisted Reproductive Technology Ad Hoc Committee – Nancy H. Welber

At Ms. Welber's request, the name of the committee was changed from the "Artificial Reproductive Technology Ad Hoc Committee" to the "Assisted Reproductive Technology Ad Hoc Committee."

Ms. Welber reported that pursuant to the straw vote taken earlier during the meeting, the Committee will refine the notice provision over the summer and add it to their proposal. Before September, the entire legislative proposal will be sent to Council members for a vote in September.

C. **Education and Advocacy Services for Section Members**

1. Amicus Curiae – David L. Skidmore

Mr. Skidmore reported on further activity in *In re Cliffman.* The case involved whether step-children could be potential beneficiaries of wrongful death proceeds. The Section previously filed an amicus brief. The trial court and appellate courts ruled that step-children could not be potential beneficiaries, and the Michigan Supreme Court accepted the case for review. Mr. Skidmore did not recommend that the Section file an additional amicus brief.

2. Probate Institute – Marlaine C. Teahan

Ms. Teahan reported that the attendance in Traverse City at the Annual Probate Institute was the largest ever: 406 registrants. This exceeded the 395 that attended when EPIC was enacted. So far, there are 288 registrants for the Plymouth Institute.

When Ms. Teahan and Jeff Kirkey were planning the Institute, they thought that registrants would want to know about basis and income tax planning. The audience poll in Traverse City confirmed that the registrants were very interested in this topic.

3. State Bar and Section Journals – Richard C. Mills—No report.

4. Citizens Outreach – Constance L. Brigman

Ms. Brigman reported that the web-based brochures should be available soon, hopefully next week.

The sales of the brochures at the Annual Probate Institute in Traverse City went well and many positive comments were received. All the brochures that were brought to the Institute were sold. (Because of a communication glitch, some of the brochures that could have been brought to the Institute were left behind. These will be added to the brochures for sale at the Plymouth Institute.)

5. Electronic Communications – Michael G. Lichterman

Mr. Lichterman reported that while resolving an issue with a member not receiving the Journal, the committee noticed that the emails for subscribers to the list serve do not match the emails for the members of the Section. A discussion followed about whether the list serve should be for members only and how to police the list serve. The consensus was that the list serve should be for members only and that Mr. Lichterman's committee should explore options for weeding out non-members on a cost-effective basis.

6. Membership – Raj A. Malviya

Mr. Viviano gave the report. The Membership Committee had a table in Traverse City at the Annual Probate Institute, as it had last year. People visited the table, even though there was no drawing for a prize. (Last year, the committee gave away an Apple iWatch in a drawing.) The social event was held at the hotel, and was well attended. The change of venue seemed to help. This year, for the first time, there will be social event during the Plymouth Institute.

D. **Ethics and Professional Standards**

1. Ethics & Unauthorized Practice of Law– Katie Lynwood—No report.

E. **Administration of Justice**

1. Litigation, Proceedings, and Forms – David L. Skidmore—No report.

F. **Areas of Practice**

1. Real Estate – Mark E. Kellogg

Mr. Kellogg reported that the Committee is still working on exempting transfers to LLC's from uncapping (HB 5141). Because of opposition, HB 5141 may be a weaker bill than we want. He will keep the Council posted.

2. Transfer Tax Committee – Lorraine F. New—No report.

3. Charitable and Exempt Organization – Christopher J. Caldwell—No report.

4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer—No report.

VIII. **Other Reports**

G. **Liaisons**

1. Alternative Dispute Resolution Section Liaison – Milton J. Mack, Jr. —No report.

2. Business Law Section Liaison – John R. Dresser—No report.

3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp

Mr. Steward gave an update on the *Roush* case. Oral arguments were held on the application for leave to appeal. The Michigan Supreme Court has denied leave to appeal.

4. Family Law Section Liaison – Patricia M. Ouellette—No report.

5. ICLE Liaison – Jeanne Murphy—No report.

6. Law Schools Liaison – William J. Ard—No report.

7. Michigan Bankers Association Liaison – Susan M. Allan—No report.

8. Michigan Probate Judges Association Liaisons – Hon. Judge David M. Murkowski, Hon. Michael L. Jaconette—No report.

9. Probate Registers Liaison – Rebecca A. Schnelz—No report.

10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz—No report.

11. Solutions on Self-Help Task Force Liaison – Kathleen M. Goetsch—No report.

12. State Bar Liaison – Richard J. Siriani—No report.

13. Taxation Section Liaison – George W. Gregory

Mr. Gregory reported that the Taxation Section held its annual conference in April with Carl Levin as the luncheon speaker and several interesting speakers.

IX. **Other Business**

X. **Hot Topics**

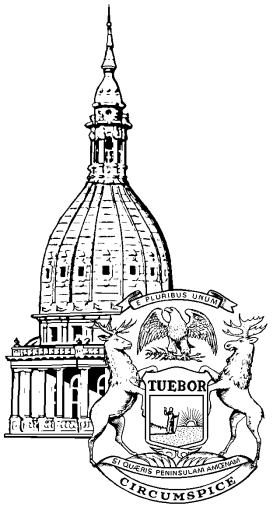
XI. **Adjournment**

The meeting was adjourned by Chairperson Shaheen I. Imami at 11:46.

ATTACHMENT A

Same Sex Marriage: A Review of Michigan's Constitutional Provisions and Statutes

A Special Report by the Michigan Law Revision Commission



Michigan
Law Revision Commission

2016

MICHIGAN
LAW REVISION COMMISSION

Term Members:
RICHARD D. McLELLAN, *Chairperson*
ANTHONY DEREZINSKI, *Vice-Chairperson*
GEORGE WARD
THE HONORABLE WILLIAM C. WHITBECK

Legislative Members:

SENATOR BERT JOHNSON
SENATOR TONYA SCHUITMAKER

REPRESENTATIVE PETER LUCIDO
REPRESENTATIVE ROSE MARY ROBINSON

Ex Officio Member:
JOHN STRAND
Legislative Council Administrator
Boji Tower – 3rd Floor
124 W. Allegan
P.O. Box 30036
Lansing, Michigan 48909-7536

Executive Secretary:
JANE O. WILENSKY
Boji Tower – 3rd Floor
124 W. Allegan
P.O. Box 30036
Lansing, Michigan 48909-7536

Analysis of the Michigan Constitution and Statutes Affected by Obergefell v Hodges

INTRODUCTION

In June 2015, the United States Supreme Court ruled that under the 14th Amendment to the U.S. Constitution, same sex couples have a constitutionally protected right to marry. Obergefell v Hodges, 135 S.Ct. 2584 (2015). Accordingly, states must issue marriage licenses to same sex couples and also must recognize marriages of same sex couples performed in other states.

The Michigan Law Revision Commission has the statutory duty to "Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms". MCL 4.1403(1)(a). In keeping with this duty, the Commission initiated a review of Michigan laws to identify constitutional provisions and statutes that are implicated by the Obergerfell decision. This Report contains the results of that review.

The following keywords were used to identify affected constitutional and statutory provisions:

1. Husband(s)
2. Wife
3. Wives
4. Father
5. Mother
6. Marriage
7. Married

The Report contains three sections:

Section 1, Constitutional Law Provisions and Statutes, identifies provisions in the Constitution and statutes that because of gender-specific terms should be changed to gender-neutral terms to conform to the new constitutional standard. Provisions are identified numerically by section and include both the text of the constitutional and statutory provision and the solution to revise the specific text to conform to Obergefell.

Section 2, Policy Issues, identifies statutes affected by the decision that require more than simple language changes to conform to Obergefell. Rather, the subject matter of these statutes calls for specific review by the Legislature because the particular issue implicates policy considerations beyond just a simple textual solution.

Section 3 contains the Michigan Law Revision Commission's recommendation to use a single statute to amend multiple provisions of state laws to efficiently bring state statutes into

conformity with Obergefell, and the authority and rationale relied on by the Commission to support this approach.

As an advisory body to the Legislature, the Commission has traditionally avoided taking a position on matters that are highly divisive, partisan, or adequately addressed by others. This Report adheres to those principles.

SECTION 1. CONSTITUTIONAL LAW PROVISIONS AND STATUTES

CONSTITUTION

Michigan Constitution of 1963

1. Article I Section 25

- Text:
  - To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.

- Solution
  - Remove entirely or, at a minimum, annotate to say: This section was held invalid as in conflict with U.S. Const. Am. XIV and Obergefell v. Hodges, 135 S. Ct. 1039 (2015).

2. Article X Section 1

- Text:
  - The disabilities of coverture as to property are abolished. The real and personal estate of every woman acquired before marriage and all real and personal property to which she may afterwards become entitled shall be and remain the estate and property of such woman, and shall not be liable for the debts, obligations or engagements of her husband, and may be dealt with and disposed of by her as if she were unmarried. Dower may be relinquished or conveyed as provided by law.

- Solution:
  - Annotate section to recognize the conflict with U.S. Const. Am. XIV and Obergefell v. Hodges, 135 S. Ct. 1039 (2015).

STATUTES

TABLE OF STATUTES IDENTIFIED

MCL	Keyword Used	Topic
28.632j	"husband"	Benefits
28.722p	"husband"	Criminal
35.21	“wives”	Veterans
35.802	"husband"	Veterans
35.803	"wife"	Veterans
35.83	"wife"	Veterans
35.924a	"father"	Veterans
36.11	"wife"	Veterans
141.641	"husband"	Tax
169.261	"husband"	Campaign
205.221	"father"	Property
206.3	"husband"	Tax
206.311	"husband"	Tax
206.504	"husband"	Tax
206.522	"husband"	Tax
207.505	"husband"	Tax
207.526	"husband"	Property
211.27a	"husband"	Tax
211.7cc	"husband"	Tax
211.762	"husband"	Tax
211.764	"husband"	Property
280.381	"wife"	Misc.
280.74	"wife"	Misc.
290.428	"husband"	Misc.
290.662	"husband"	Misc.
319.104	“wives”	Misc.
324.36109	"husband"	Tax
330.1800h	"father"	Parental
333.1073	"father"	Parental
333.2822	"father"	Parental
333.2824	"husband"	Parental
333.2824	"father"	Parental
400.32	"husband"	Benefits
418.118	"wife"	Benefits

418.335	"wife"	Marriage
419.102	"father"	Benefits
419.203	"father"	Benefits
436.1801	"husband"	Licenses
436.1801	"father"	Licenses
449.6	"husband"	Business
450.4504	"husband"	Property
455.208	“husband”	Misc.
493.17	"husband"	Property
500.2207	"husband"	Insurance
500.2209	"husband"	Insurance
500.311	"husband"	Insurance
500.3402	"husband"	Insurance
551.1	“marriage”	Marriage
551.101	“marriage”	Marriage
551.2	“marriage”	Marriage
551.201	“marriage”	Marriage
551.271	“marriage”	Marriage
551.272	“marriage”	Marriage
551.3	"wife"	Marriage
551.4	"husband"	Marriage
551.9	"husband"	Marriage
552.101	"husband"	Divorce
552.102	"husband"	Divorce
552.122	“alimony”	Divorce
552.1328	"husband"	Parental
552.23	"husband"	Divorce
552.27	"husband"	Divorce
552.34	"husband"	Divorce
552.36	"husband"	Divorce
552.37	"husband"	Divorce
552.391	"husband"	Divorce
552.9f	"husband"	Divorce
554.45	"husband"	Property
557.101	"husband"	Property
557.151	"husband"	Property
557.21	"husband"	Property
557.24	"husband"	Contracts
557.25	"husband"	Contracts
557.253	"husband"	Property
557.254	"husband"	Property
557.26	"husband"	Contracts
557.71	"husband"	Property

557.81	"husband"	Property
558.1	"husband"	Dower
558.12	"husband"	Dower
558.13	"husband"	Dower
558.14	"husband"	Dower
558.16	"husband"	Dower
558.2	"husband"	Dower
558.21	"husband"	Dower
558.24	"husband"	Dower
558.26	"husband"	Dower
558.27	"husband"	Dower
558.28	"husband"	Dower
558.29	"husband"	Dower
558.4	"husband"	Dower
558.5	"husband"	Dower
558.52	"husband"	Dower
558.6	"husband"	Dower
558.7	"husband"	Dower
558.81	"husband"	Dower
558.91	"husband"	Dower
565.602	"husband"	Property
600.141	"husband"	Marriage
600.2005	"husband"	Court
600.2162	"husband"	Court
600.2807	"husband"	Property
600.2931	"husband"	Dower
600.2933	"husband"	Dower
600.332	"husband"	Parental
600.3344	"husband"	Property
600.5451	"husband"	Property
600.6023a	"husband"	Property
600.6131	"wife"	Court
700.1303	"wife"	Property
700.2114	"husband"	Parental
700.2801	"husband"	Divorce
700.2806	"husband"	Divorce
710.24	"husband"	Probate
710.36	"husband"	Parental
711.1	"married"	Probate
722.1003	"father"	Parental
722.1006	"father"	Parental
722.101	"father"	Court

722.1309	"husband"	Court
722.853	"husband"	Parental
722.954a	"father"	Parental
750.162	"wife"	Criminal
750.163	"wife"	Criminal
750.166	"husband"	Court
750.30	"married"	Criminal
750.335	"married"	Criminal
750.9	"husband"	Criminal
780.159a	"husband"	Parental
780.169	"husband"	Court
780.401	"husband"	Court

STATUTES

Public Safety Officers Benefit Act (Act 46 of 2004)

MCL 28.632 (j) (Definitions)

- Text:
  - "Surviving spouse" means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

- Solution:
  - "means the husband or wife" to "means the spouse"

Sex Offenders Registration Act (Act 295 of 1994)

MCL 28.722 (p) (Definitions)

- Text:
  - "Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. If a person is homeless or otherwise lacks a fixed or temporary residence, residence means the village, city, or township where the person spends a majority of his or her time. This section shall not be construed to

affect existing judicial interpretation of the term residence for purposes other than the purposes of this act.

- Solution:
  - "or if a wife has a residence separate from that of the husband" to "or if a person has a residence separate from that of their spouse"

MCL 32.924a (Payment to parents of deceased veteran; maximum appropriation)

- Text:
  - (4a) There shall be paid on application of the mother and father, or the surviving parent, of each veteran heretofore or hereafter deceased from service connected causes arising during the period of service a sum equal to the difference between any payments received by the veteran or his beneficiary under section 3 and the sum of $500.00. In the event the veteran or his beneficiary has not received payment under section 3, the entire sum of $500.00 shall be paid to the mother and father, or the surviving parent. Any person or persons claiming payment under this section shall not be required to prove dependency. There is hereby appropriated from the general fund of the state the sum of $200,000.00, to be credited to the veterans' military pay fund, to pay benefits under the provisions of this section.

- Solution:
  - "application of the mother and father" to "application of the parents"
  - "paid to the mother and father" to "paid to the parents"

Veteran's Relief Fund
Act 214 of 1899

MCL 35.21 (Veteran's relief fund; levy and collection of annual tax; emergency appropriations; disposition)

- Text:
  - The county board of commissioners of each county shall annually levy, a tax not exceeding 1/10 of a mill on each dollar, to be levied and collected as provided by law, upon the taxable property of each township and city, for their respective counties, for the purpose of creating a fund for the relief of honorably discharged indigent members of the army, navy, air force, marine corps, coast guard, and women's auxiliaries of all wars or military expeditions in which the United States of America has been, is, or may hereafter be, a participant as prescribed in section 1 of Act No. 190 of the Public Acts of 1965, being section 35.61 of the Michigan Compiled Laws, and the indigent spouses, minor children, and parents of each such indigent or deceased member. Funds raised in accordance with the provisions of this section may be expended for the relief of indigent wives and

children of active duty soldiers, sailors, marines, airmen, coast guardsmen, nurses, and members of the women's auxiliaries during the continuance of present hostilities and prior to their discharge. However, in any year which, in the opinion of the board, an emergency justifying the same exists, the board may appropriate a sum not to exceed 2/10 of a mill on each dollar for said purpose. The sums, when collected, shall be paid to the county treasurer of the county where such tax is levied in each of the counties in this state, to be paid out by the treasurer upon the order of the soldiers' relief commission duly signed by the chairperson and secretary of the commission. If any money in the fund is not necessary for the purpose for which it was raised, the money shall remain in the treasury of the county as a soldiers' relief fund, and shall be considered in raising future sums therefor.

- Solution:
  - "relief of indigent wives" to "relief of indigent spouses"

Funeral Expenses of Veterans (Act 235 of 1911)

MCL 35.802 (Soldier's Relief commission; investigation of application for reimbursement, compensation)

- Text:
  - It shall be the duty of the members of the soldiers' relief commission of each county, whenever application is made for reimbursement by the county for such funeral expenses paid or advanced, or incurred for the burial of such deceased person, to make an investigation of such claim and report their action to the clerk of the board of supervisors of the county, or to the clerk of the board of county auditors as the case may be, in all cases setting forth all the facts, together with the name, rank and command to which such soldier, sailor, marine, nurse or member of the women's auxiliary belonged, and in case of such wife or widow, the rank and command to which her husband or deceased husband belonged, the name and service rendered as such army nurse, the date of his or her death, place where buried, and his or her residence and occupation while living. They shall require such person or persons who paid, advanced or incurred such burial expenses for such deceased person to furnish the board of supervisors, or board of county auditors in counties having a board of county auditors, with a sworn itemized statement of the expense incurred in the burial of the deceased person mentioned in the application. The members of the commission, except where they are paid a salary, shall receive from the county the sum of $2.00 per day for the time actually and necessarily employed by them in the performance of their duties.

- Solution:
  - "In case of such wife or widow, the rank and command to which her husband or deceased husband belonged" to "in case of such spouse the rank and command to which their spouse or deceased spouse belonged"

MCL 35.803 (Duties of county clerk; record of application and reimbursement; headstones)

- Text:
  - It shall be the duty of the clerk of the board of supervisors or board of county auditors as the case may be upon receiving the report and statement of expenses provided for in the preceding section, to transcribe in a book kept for that purpose all the facts contained in said report respecting such deceased soldier, sailor or marine, or the deceased wife or widow of the same, or such deceased army nurse, and to report such application and statement to the board of supervisors or the board of county auditors, as the case may be, at the next meeting thereof. It shall be the further duty of said clerk upon the death and burial of any such soldier, sailor or marine, and upon request therefor, to make application to the proper authorities under the government of the United States for a suitable headstone as is now or may hereafter be provided by act of congress, and to cause the same to be placed at the head of the grave of such deceased soldier, sailor or marine. And also, to cause a suitable headstone to be placed at the head of the grave of the deceased wife or widow of such soldier, sailor or marine or army nurse if the same shall now or hereafter be provided by act of congress.

- Solution:
  - Change both references of "wife" to "spouse"

Uniform Veterans' Guardianship Act
Act 321 of 1937

MCL 35.83 (Maintenance and support of ward)

- Text:
  - Maintenance and support. A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than said ward, his minor children and his wife (if she and the ward be living together) except upon petition to and order of the court after a hearing, notice of which has been given the proper office of the veterans administration in the manner and within the time provided in section 9 of this act.

- Solution:
  - "His ward" should be "their ward"
    - Note: not strictly required but seemingly appropriate.
  - "His minor children" should be "their minor children"
    - Note: not strictly required but seemingly appropriate
  - "wife" should be "spouse"

Michigan Veterans' Facility
Act 152 of 1885

MCL 36.11 (Veterans' Facility; eligibility for admission; maintenance charges; dismissal; creation of veteran's facilities operation fund; credit of money to fund; expenditures; assignment of money to board of managers as condition of admission; expenditure of assigned money; creation of posthumous funds; expenditures)

- Text:
  - (3) The board of managers of the facilities may make a condition for admission to a facility that all applicants shall assign to the board of managers any balance of money accumulated while a member of the facility, or due to the applicant or on deposit with any bank, trust company, corporation, or with any individual, at the time of the death of the applicant. All such sums shall first be expended to pay for all residual maintenance costs attributable to the deceased individual and shall then be paid to the wife, minor children, or dependent mother or father, in the order named. If no such relative shall be found within a period of 2 years, or if no claim for the sums has been made within a period of 2 years, the balance of the money shall be paid into the posthumous fund, which is hereby created by this subsection. The posthumous fund shall be expended as prescribed by 1905 PA 313, MCL 36.61.

- Solution:
  - "paid to the wife" should "paid to the surviving spouse".

Act 284 of 1964 (City Income Tax Act)

MCL 141.641 (annual return; joint return)

- Text:
  - (2) A husband and wife may file a joint return and, in such case, the tax liability is joint and several.

- Solution:
  - "A husband and wife may file" to "Spouses may file"

Act 388 of 1976 (Michigan Campaign Finance Act)

MCL 169.261 (State campaign fund; creation; administration; tax designation; appropriation; distribution of money; transfer to general fund)

- Text:
  - (2)"An individual whose tax liability under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, for a taxable year is $3.00 or more may designate

that $3.00 be credited to the state campaign fund. In the case of a joint return of husband and wife having an income tax liability of $6.00 or more, each spouse may designate that 3.00 be credited to the state campaign fund."

- Solution:
  - "joint return of husband and wife" to "joint return of spouses"

Michigan Estate Tax Act
Act 188 of 1899

MCL 205.221 (Definitions)

- Text:
  - (g)"Qualified heir" means an individual entitled to any beneficial interest in property who is the grandfather, grandmother, father, mother, husband, wife, child, legally adopted child, stepchild, brother, sister, wife or widow of a son, or husband or widower of a daughter of the decedent grantor, donor, or vendor, or for the use of a person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a parent, if the relationship began at or before the child's seventeenth birthday and continued until the death of the decedent grantor, donor, or vendor, or to or for the use of a lineal descendant of or a lineal descendant of a stepchild of the decedent grantor, donor, or vendor, or farm business partner, or to or for the use of any person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a farm business partner.

Solution:
- "wife or widow of a son" to "spouse or deceased spouse of a son"
- "husband or widower of a daughter" to "spouse of a daughter"

Act 281 of 1967 (Income Tax of 1967)

MCL 206.30 ("Taxable income" defined; personal exemption; single additional exemption; deduction not considered allowable federal exemption for purposes of subsection (2); allowable exemption or deduction for non-resident or part-year resident; subtraction of prizes under MCL 432.1 to 432.47 from adjusted gross income prohibited; adjusted personal exemption; adjustment on and after January 1, 2013; "retirement or pension benefits" defined; limitations and restrictions; "oil and gas" defined.)

- Text:
  - (C)"Beginning January 1, 2013, for a person born in 1946 through 1952 who receives retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 531, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is

limited to $35,000.00 for a single return and, except as otherwise provided under this subdivision, $55,000.00 for a joint return. If both the husband and wife filing a joint return receive retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 531, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is limited to $70,000.00 for a joint return. After that person reaches the age of 67, the deductions under subsection (1)(f)(i), (ii), and (iv) do not apply and that person is eligible for a deduction of $35,000.00 for a single return and $55,000.00 for a joint return, or $70,000.00 for a joint return if applicable, which deduction is available against all types of income and is not restricted to income from retirement or pension benefits. A person who takes the deduction under subsection (1)(e) is not eligible for the unrestricted deduction of $35,000.00 for a single return and $55,000.00 for a joint return, or $70,000.00 for a joint return if applicable, under this subdivision."

- Solution:
  - "If both the husband and wife filing a joint return" to "If both spouses filing a joint return"

- Text:
  - (D) "For a person born after 1952 who has reached the age of 62 through 66 years of age and who receives retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 532, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is limited to $15,000.00 for a single return and, except as otherwise provided under this subdivision, $15,000.00 for a joint return. If both the husband and the wife filing a joint return receive retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 532, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is limited to $30,000.00 for a joint return."

- Solution:
  - "If both the husband and the wife filing a joint return" to "If both spouses filing a joint return"

MCL 206.311 (Tax return; form; content; verification; transmittal; remittance; extension, computation, and remittance of estimated tax due; interest; penalties; tentative return; payment of estimated tax; joint return; effect of filing copy of federal extension; automatic extension based on service in combat zone.)

- Text:
  - (3)Taxpayers who are husband and wife and who file a joint federal income tax return pursuant to the internal revenue code shall file a joint return.

- Solution:
  - "Taxpayers who are husband and wife" to "Taxpayers who are married"

MCL 206.504 ("Blind" and "claimant" defined)

- Text:
  - (2)"Claimant" means an individual natural person who filed a claim under this chapter and who was domiciled in this state during at least 6 months of the calendar year immediately preceding the year in which the claim is filed under this chapter and includes a husband and wife if they are required to file a joint state income tax return. The 6-month residency requirement does not apply to a claimant who files for the home heating credit under section 527a.

- Solution:
  - "and includes a husband and wife" to "and includes spouses"

MCL 206.522 (Determination of amount of claim; election of classification in which to make claims; single claimant per household entitled to credit; "totally and permanently disabled" defined; computation of credit by senior citizen; reduction of claim; tables; maximum credit; total credit allowable.)

- Text:
  - (3)Only 1 claimant per household for a tax year is entitled to the credit, unless both the husband and wife filing a joint return are blind, then each shall be considered a claimant.

- Solution:
  - "unless both the husband and wife filing a joint return are blind" to "unless both spouses filing a joint return are blind"

Act 134 of 1966 (Real Estate Transfer Tax)

MCL 207.505 (Exemptions to the Real Estate Transfer Tax)

- Text:
  - (i)"Conveyances from a husband or wife or husband and wife creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse."

- Solution:
  - "or husband and wife" to "or both spouses"

MCL 207.526 (Written instruments and transfers of property exempt from tax)

- Text:
  - (i)"A conveyance from a husband or wife or husband and wife creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse."

- Solution:
  - "husband and wife" to "both spouses"

MCL 211.27a (Property tax assessment; determining taxable value; adjustment; exception; "transfer of ownership" defined; qualified agricultural property; notice of transfer of property; applicability of subsection (10); definitions.)

- Text:
  - (7b) "Transfer of ownership does not include the following: a transfer from a husband, a wife, or a husband and wife creating or disjoining a tenancy by the entireties in grantors or the grantor and his or her spouse."

- Solution:
  - "or a husband and wife" to "or both spouses"

MCL 211.7cc (principal residence; exemption from tax levied by local school district for school operating purposes; procedures; definitions)

- Text:
  - (3) Except as otherwise provided in subsection (5), a husband and wife who are required to file or who do file a joint Michigan income tax return are entitled to not more than 1 exemption under this section. For taxes levied after December 31, 2002, a person is not entitled to an exemption under this section if any of the following conditions occur.

- Solution:
  - "a husband and wife who are required to file" to "spouses who are required to file"

MCL 211.762 (Deferment of special assessments on homesteads; conveyance or transfer of or contract to sell homestead; termination of deferment; interest charge; notice.)

- Text:
  - (1)The payment of special assessments assessed and due and payable on a homestead in any year in which the owner meets all of the terms and conditions of this act shall be deferred until 1 year after the owner's death, subject to further order by the probate court or until the homestead or any part of the homestead is

conveyed or transferred to another or a contract to sell is entered into. The death of a spouse shall not terminate the deferment of special assessments for a homestead owned by husband and wife under tenancy by the entireties as long as the surviving spouse does not remarry. Special assessments deferred under this act may be paid in full at any time."

- Solution:
  - "owned by husband and wife under tenancy by the entireties" to "owned by spouses under tenancy by the entireties" (note: the change presupposes that tenancy by the entireties has already been extended to same sex couples.)

MCL 211.764 (Application for deferment; affidavit form; signature; contents; consent of mortgagee or land contract vendor; filing.)

- Text:
  - An owner may apply to the local assessing officer for deferment of the payment of special assessments on the owner's homestead. The application shall be made upon an affidavit form to be furnished and made available by the department at convenient locations throughout the state. The affidavit form shall contain the following statement in 10-point boldface type located immediately above the affiant's signature: "If this deferment is authorized the state will place a lien on your property." A person making a false affidavit for the purpose of obtaining deferment of special assessments under this act is guilty of perjury. If the homestead is owned jointly by husband and wife, each spouse shall sign and file the affidavit. If the homestead is encumbered by a mortgage or an unpaid balance on a land contract, a deferment of special assessments shall not be made without the written consent of the mortgagee or the land contract vendor, which shall be filed with the affidavit. The affidavit shall be filed with the local assessing officer at least 30 days after the due date of a special assessment or installment of a special assessment for which deferment is requested.

- Solution:
  - "If the homestead is owned jointly by husband and wife" to "If the homestead is owned jointly by both spouses"

The Drain Code of 1956
Act 40 of 1956

MCL 280.381 (Disqualification of commissioner; petition filed with probate judge)

- Text:
  - Whenever the commissioner of any county shall receive a petition asking for the laying out, construction, cleaning out, deepening or widening of any drain, or a petition asking proceedings by virtue of which any assessment upon lands for benefits received would result, wherein such commissioner shall be interested by

reason of himself, wife or child, owning lands that would be liable to an assessment for benefits upon the work or proceeding proposed to be done or had, and in cases where such commissioner may be otherwise disqualified to act in the making of apportionment of benefits, such commissioner shall file a copy of such petition with the judge of probate of the county, together with a statement signed by him, showing that he is disqualified to act in making such apportionment of benefits.

- Solution:
  - "himself" should be "themselves"
    - Note: not strictly required but seemingly appropriate
  - "wife" should be "spouse"

MCL 280.74 (Release of right of way; acknowledgements; oaths, form, area, signature of wife, resolution covering street or public place; open drain)

- Text:
  - Commissioners may take acknowledgments of releases of right of way and administer oaths in all proceedings in any way pertaining to drains under this act. A simple form of release of right of way and damages that shall set forth by reference to the survey of the drain, or by other convenient description, the particular land to be conveyed and signed and acknowledged by the person having the right to convey, shall be deemed a sufficient conveyance under the provisions of this act. All releases for rights of way shall be deemed to include sufficient ground on each side of the center line of such drain for the deposit of the excavations therefrom. It shall not be necessary for the wife to sign the release of right of way unless she has an interest in the land other than her inchoate right of dower. Whenever a portion of a drain shall be located within any street, highway or public place, then a resolution adopted by a majority vote of the governing body having jurisdiction over such street, highway or public place granting leave to construct such drain therein, designating the place to be traversed by said drain, shall be a sufficient release of the right of way, and shall be deemed a sufficient conveyance under this act, and said governing body may permit the construction of an open drain if such consent be set forth in such resolution.

- Solution:
  - "wife" should be "spouse"
  - "she has an interest" should be "they have an interest"

Act 29 of 1970 (state potato industry commission)

MCL 290.428 (Referendum; votes; rules; petition to terminate shipper assessments; referendum by mail; conditions for termination of shipper assessments; adoption of assessment increase; public hearing; findings and recommendations; assent to proposal.)

- Text:
  - (6)For the purpose of referenda under this act, a grower is entitled to 1 vote representing a single firm, individual proprietorship, corporation, company, association, partnership, or husband-wife or family ownership."

- Solution:
  - "or husband-wife" to "or spousal ownership"

Act 232 of 1965 (Agricultural Commodities Marketing Act)

MCL 290.662 (referendum; director to establish procedures for determination of volume)

- Text:
  - **"**The director shall establish procedures for determination of volume for the conduct of referendums and other necessary procedures. For the purpose of referendums under this act, a producer is entitled to 1 vote representing a single firm, individual proprietorship, corporation, company, association, partnership, husband-wife or family ownership."

- Solution:
  - "husband-wife" to "spousal ownership"

Oil and gas Mining
Act 178 of 1941

MCL 319.104 (Fiduciaries; right to prosecute and defend suits; parties)

- Text:
  - Executors, administrators and administrators with will annexed, receivers and trustees, may institute or defend such suits on behalf of their respective estates and trusts and the heirs, devisees, legatees, successors and assigns thereof. Infants and persons under legal disability may institute or defend suits by guardian or next of friend. Every person, including wives of owners, having any interest in such lands, whether in possession or otherwise, who is not a party plaintiff, shall be made a party defendant to such suit. In case of persons interested in such lands whose names are unknown, the bill of complaint shall so state, and such persons may be made parties to such suits by the name and description of "unknown owners."

- Solution:
  - Technically there is no issue, "every person" is an inclusive phrase which would include same-sex couples.

- If a change was still desired: “including wives of owners” to “including spouses of owners”

Act 451 of 1994
(Natural resources and environmental protection act)

MCL 324.36109 (Credit against state income tax or state single business tax.)

- Text:
  - (3)If the farmland and related buildings covered by a development rights agreement under section 36104 or an agricultural conservation easement or purchase of development rights under section 36111b or 36206 are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which agreement apportions the property taxes in the same manner as all other items of revenue and expense. If the property taxes are considered equally apportioned, a husband and wife shall be considered 1 owner, and a person with respect to whom a deduction under section 151 of the internal revenue code of 1986, 26 USC 151, is allowable to another owner of the property shall not be considered an owner.

- Solution:
  - “a husband and wife shall be considered 1 owner” to “spouses shall be considered 1 owner”

Mental Health Code
Act 258 of 1974

MCL 330.1800 (Definitions)

- Text:
  - (h) “Parents” means the legal father and mother of an unmarried individual who is less than 18 years of age.

- Solution:
  - “the legal father and mother” to “the legal parents”

Act 280 of 1939
Social welfare act

MCL 400.32 (Continuation of assistance if person moves or is taken to another county; transfer of records; "resident of state" defined; continued absence from state as abandonment of residence; inapplicability of certain rules; requirements applicable to medical assistance eligibility; residence of husband and wife living separate and apart.)

- Text:
  - (4)The residence of a husband shall not be considered to be the residence of the wife if they are living separate and apart. If a husband and wife are living separate and apart, each may have a separate residence dependent upon proof of the fact and not upon legal presumption. This subsection shall not be construed to prohibit a person from acquiring or retaining a legal residence.

- Solution:
  - "The residence of a husband shall not be considered to be the residence of the wife" to "The residence of one spouse shall not be considered to be the residence of the wife"
  - "If a husband and wife are living separate and apart" to "If spouses are living separate and apart"

Worker's Disability Compensation Act of 1969
Act 317 of 1969

MCL 418.118 (Domestic Servants)

- Sec. 1 Text:
  - No household domestic servant shall be considered an employee if the person is a wife, child or other member of the employer's family residing in the home, and no householder shall be deemed a statutory principal within the meaning of section 171 for the purposes of this section.

- Solution:
  - "wife" should be "spouse"
    - Note: because of the clause: "other member of the employer's family" this change is not strictly necessary but semantic in nature.

MCL 418.335 (Cessation of payments upon remarriage of dependent wife or upon dependent person reaching certain age; reinstatement of dependency; persons to whom section is applicable)

- Text:
  - Upon the remarriage of a dependent wife receiving compensation, such payments shall cease upon the payment to her of the balance of the compensation to which she would otherwise have been entitled but not to exceed the sum of $500.00, and further compensation, if any, shall be payable to the person either wholly or partially dependent upon deceased for support at his death as provided in section 331(b). A worker's compensation magistrate shall determine the amount of compensation or portion thereof that shall be payable weekly to such wholly or partially dependent person for the remaining weeks of compensation. Where, at the expiration of the 500-week period, any such wholly or partially dependent person is less than 18 years of age, a worker's compensation magistrate may order the employer to continue to pay the weekly compensation, or some portion thereof, until such wholly or partially dependent person reaches the age of 18. The payment of compensation to any dependent child shall cease when the child reaches the age of 18 years, if at the age of 18 years he or she is neither physically nor mentally incapacitated from earning, or when the child reaches the age of 16 years and thereafter is self-supporting for 6 months. If the child ceases to be self-supporting thereafter, the dependency shall be reinstated. Such remaining compensation, if any, shall be payable to the person either wholly or partially dependent upon the deceased employee for support at the time of the employee's death, as provided in the case of the remarriage of a dependent wife.

- Solution:
  - "dependent wife" to "dependent spouse"
  - "Payment to her" to "payment to them"
  - "to which she would" to "to which they would"
  - "of a dependent wife" to "of a dependent spouse"

Compensation of Injured Peace Officers Act 329 of 1937

MCL 419.102 (Peace officers; surviving spouse or dependents; compensation; last sickness and burial expenses.)

- Text:
  - The surviving spouse or dependents of a peace officer of this state or of a political subdivision of this state who is killed as the result of active duty in enforcing the laws of this state or the laws of an adjoining state shall receive the sum of $1,000.00 for defraying the expense of last sickness and burial and $18.00 a week until a total sum of $5,000.00 is paid. As used in this section, (a) "surviving spouse" means the spouse of the peace officer, if living, and until remarriage (b) "dependent" means the children of the peace officer, if dependent; the mother, father, or both, of the peace officer, if dependent; and the brothers and sisters of the peace officer, if dependent; in the order named. If the peace officer does not leave a surviving spouse or any dependents as defined in this section, the

estate of the peace officer shall receive the sum of $1,000.00 for the expense of the peace officer's last sickness and burial.

- Solution:
  - "the mother, father, or both" to "the mother, father, or both parents"

Compensation of injured firefighters
Act 9 of 1942

MCL 419.203 (Death benefits equivalent to amount provided under worker's disability compensation act; compensation of dependents.)

- Text:
  - The surviving spouse and dependents of a fire fighter who is killed in safeguarding life or property outside his or her jurisdiction from damage due to an explosion, fire, or other disaster, however caused, or in transportation to or from a fire, explosion, or other disaster, however caused, outside his or her jurisdiction, shall receive the sum of $500.00 for defraying the expense of burial, and compensation equivalent to the amount provided at the time of death of the fire fighter under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws. Compensation shall be payable to the spouse of the fire fighter, if living, and until remarriage; the children of the fire fighter, while dependent; the mother, father, or both, of the fire fighter, while dependent; and the brothers and sisters of the fire fighter, while dependent; in the order named. If the fire fighter does not leave a surviving spouse or any dependents as defined in this section, the estate of the fire fighter shall receive the sum of $500.00 for the expense of the fire fighter's burial.

- Solution:
  - "The mother, father, or both" to "the mother, father, or both parents"

Act 58 of 1998
Michigan Liquor Control Code of 1998

MCL 436.1801 (Granting or renewing license; surety; selling, furnishing, or giving alcoholic liquor to minor or to person visibly intoxicated; right of action for damage or personal injury; actual damages; institution of action; notice; survival of action; general reputation as evidence of relation; separate actions by parents; commencement of action against retail licensee; indemnification; defenses available to licensee; rebuttable presumption; prohibited causes of action; section as exclusive remedy for money damages against licensee; civil action subject to revised judicature act.)

- Text:
  - (4)An action under this section shall be instituted within 2 years after the injury or death. A plaintiff seeking damages under this section shall give written notice to all defendants within 120 days after entering an attorney-client relationship for the purpose of pursuing a claim under this section. Failure to give written notice within the time specified shall be grounds for dismissal of a claim as to any defendants that did not receive that notice unless sufficient information for determining that a retail licensee might be liable under this section was not known and could not reasonably have been known within the 120 days. In the event of the death of either party, the right of action under this section shall survive to or against his or her personal representative. In each action by a husband, wife, child, or parent, the general reputation of the relation of husband and wife or parent and child shall be prima facie evidence of the relation, and the amount recovered by either the husband, wife, parent, or child shall be his or her sole and separate property. The damages, together with the costs of the action, shall be recovered in an action under this section. If the parents of the individual who suffered damage or who was personally injured are entitled to damages under this section, the father and mother may sue separately, but recovery by 1 is a bar to action by the other.

- Solution:
  - "the general reputation of the relation of husband and wife" to "the general reputation of spouses"

Act 72 of 1917
Uniform Partnership Act

MCL 449.6 (partnership; definition; effect of act as to prior and limited partnerships)

- Text:
  - (1) A partnership is an association of 2 or more persons, which may consist of husband and wife, to carry on as co-owners a business for profit; any partnership heretofore established consisting of husband and wife only, formed since January 10, 1942 shall constitute a valid partnership.

- Solution:
  - "which may consist of husband and wife" to "which may consist of spouses"
    - Note: This change is primarily semantic, "may consist" is not exclusive so a change is not technically required.
  - "consisting of husband and wife only" to "consisting of spouses only"

Act 23 of 1993
Michigan Limited Liability Company Act

MCL 450.4504 (membership interest as personal property)

- Text:
  - (1) A membership interest is personal property and may be held in any manner in which personal property may be held. A husband and wife may hold a membership interest in joint tenancy in the same manner and subject to the same restrictions, consequences, and conditions that apply to the ownership of real estate held jointly by a husband and wife under the laws of this state, with full right of ownership by survivorship in case of the death of either."

- Solutions:
  - "A husband and wife may hold a membership interest in joint tenancy" to "Spouses may hold a membership interest in joint tenancy"
  - "ownership of real estate held jointly by a husband and wife under the laws of this state" to "ownership of real estate held jointly by spouses under the laws of this state"

Incorporation of Summer Resort Owners
Act 137 of 1929

455.208 (Annual meeting; trustees, election, report)

- Text:
  - The annual meeting of such association shall be held in its own county between June first and August thirty-first of each year, at such time and place as may be fixed by the board of trustees and such meeting may adjourn from day to day as may be necessary for the transaction of its business. At each annual meeting there shall be elected such number of trustees as shall be necessary to fill the places of trustees whose terms of office then expire, and all vacancies on such board. Such election shall be by ballot and choice of trustees shall be by a majority of all votes cast. Members may vote in person or by proxy filed with the secretary. Each member shall be entitled to 1 vote. Husbands and wives, owning property by entireties, shall each be entitled to 1 vote. Membership shall terminate upon the alienation of the property of a member. At each annual meeting the trustees shall make a report, in writing, of the management of the business of the corporation, the condition of its property, its assets and liabilities, and upon such other matters as may be proper and of general interest to the members.

- Solution:
  - "Husbands and wives" to "Spouses"
    - Note: this change presupposes that same-sex couples can own property by the entireties which is likely the case.

Act 21 of 1939
Regulatory Loan Act

MCL 493.17 (Assignment or order for payment of compensation to secure loan invalid; validity of chattel mortgage or lien in household goods' married borrower; signatures; written assent of spouse)

- Text:
  - (2) "If the borrower is married, a chattel mortgage or other lien on household goods shall not be valid unless it is signed in person by both husband and wife. The written assent of a spouse under this section shall not be required when husband and wife have been living separate and apart for a period of not less than 5 months before the making of the chattel mortgage or other lien."

- Solution:
  - "signed in person by both husband and wife" to "signed in person by both spouses"
  - "section shall not be required when husband and wife have been living separate" to "section shall not be required when spouses have been living separate"

Act 218 of 1956
The Insurance code of 1956

MCL 500.2207 (Insurable interest; personal insurance; rights of beneficiaries, creditors)

- Text:
  - (1)"It shall be lawful for any husband to insure his life for the benefit of his wife, and for any father to insure his life for the benefit of his children, or of any one or more of them; and in case that any money shall become payable under the insurance, the same shall be payable to the person or persons for whose benefit the insurance was procured, his, her or their representatives or assigns, for his, her or their own use and benefit, free from all claims of the representatives of such husband or father, or of any of his creditors; and any married woman, either in her own name or in the name of any third person as her trustee, may cause to be insured the life of her husband, or of any other person, for any definite period, or for the term of life, and the moneys that may become payable on the contract of insurance, shall be payable to her, her representatives or assigns, free from the claims of the representatives of the husband, or of such other person insured, or of any of his creditors; and in any contract of insurance, it shall be lawful to provide that on the decease of the person or persons for whose benefit it is obtained, before the sum insured shall become payable, the benefit thereof shall accrue to any other person or persons designated; and such other person or persons shall, on the happening of such contingency, succeed to all the rights and benefits of the deceased beneficiary or beneficiaries of the policy of insurance, notwithstanding he, she or they may not at the time have any such insurable interest as would have

enabled him, her or them to obtain a new insurance; and the proceeds of any policy of life or endowment insurance, which is payable to the wife, husband or children of the insured or to a trustee for the benefit of the wife, husband or children of the insured, including the cash value thereof, shall be exempt from execution or liability to any creditor of the insured; and said exemption shall apply to insurance heretofore or hereafter issued; and shall apply to insurance payable to the above enumerated persons or classes of persons, whether they shall have become entitled thereto as originally designated beneficiaries, by beneficiary designation subsequent to the issuance of the policy, or by assignment (except in case of transfer with intent to defraud creditors)."

- Solutions:
  - "benefit of his wife" to "benefit of his spouse"
  - "life of her husband" to "life of her spouse"
    - Note: While a change to the statute may not necessarily be required, language that authorizes benefits regardless of gender is preferable.

MCL 500.2209 (Insurable interest; married woman; right to proceeds, devise.)

- Text:
  - (1)"It shall be lawful for any married woman, by herself, and in her name or in the name of any third person, with his assent, as her trustee, to cause to be insured for her sole use, the life of her husband or the life of any other person, in any life insurance company of any nature whatever, located in either of the states of the United States of America or in Great Britain, for any definite period, or for the term of his natural life; and in case of her surviving her husband, or such other person insured in her behalf, the sum or net amount of the policy of insurance due and payable by the terms of the insurance, shall be payable to her, to and for her own use, free from the claims of the representatives of her husband, or of such other person insured, or of any of his creditors, but such exemption shall not apply where the amount of premium annually paid shall exceed the sum of $300.00."

- Solution:
  - "the life of her husband" to "the life of her spouse"
    - Note: this is not strictly required given the inclusive clause: "or the life of any other person".
  - "in case of her surviving her husband" to "in case of her surviving her spouse"
    - Note: this is not strictly required given the inclusive clause: "or such other person"

- Text:
  - (2) "In case of the death of the wife before the decease of her husband, or of such other person insured, the amount of the insurance may be made payable after her death to her children, for their use, and to their guardian, if under age, or the amount of the policy may be disposed of by such married woman by a last will and testament."

- Solution:
  - "decease of her husband" to "decease of her spouse"
    - Note: not strictly required given the inclusive clause: "of such other person insured"

MCL 500.3110 (dependents of deceased person; termination of dependency; accrual of personal protection benefits)

- Text:
  - (1a) "a wife is dependent on a husband with whom she lives at the time of his death."

- Solution:
  - "a wife is dependent on a husband" to "a wife is dependent on a spouse"

- Text:
  - (1b) "A husband is dependent on a wife with whom he lives at the time of her death."

- Solution:
  - "a husband is dependent on a wife" to "a husband is dependent on a spouse"

MCL 500.3402 (Disability insurance policy; provisions required.)

- Text:
  - (3) It purports to insure only 1 person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any 2 or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed 19 years and any other person dependent upon the policyholder;

- Solution:
  - "including husband, wife, dependent children" to "including spouses, dependent children"

Revised Statutes of 1846
Of marriage and the solemnization thereof

551.1 (marriage between individuals of same sex an invalid contract)

- Text:
  - Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting that unique relationship in order to promote, among other goals,

the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.

- Solution:
  - Repeal entire section
  - At a minimum annotate section to say: "this section was held invalid as in conflict with U.S. Const. Am. XIV."

Foreign Marriages
Act 168 of 1939

551.271 (Marriages solemnized in another state validated)

- Text:
  - (1) Except as otherwise provided in this act, a marriage contracted between a man and a woman who are residents of this state and who were, at the time of the marriage, legally competent to contract marriage according to the laws of this state, which marriage is solemnized in another state within the United States by a clergyman, magistrate, or other person legally authorized to solemnize marriages within that state, is a valid and binding marriage under the laws of this state to the same effect and extent as if solemnized within this state and according to its laws.

- Solution:
  - "between a man and a woman" to "between two parties"

- Text:
  - (2) This section does not apply to a marriage contracted between individuals of the same sex, which marriage is invalid in this state under section 1 of chapter 83 of the revised statutes of 1846, being section 551.1 of the Michigan Compiled Laws.

- Solution:
  - Section 2 needs to be removed entirely
  - At a minimum annotate section to say: "this section was held invalid as in conflict with U.S. Const. Am. XIV."

Revised Statutes of 1846
Chapter 83. Of marriage and the solemnization thereof

MCL 551.3 (Incapacity; persons man prohibited from marrying)

- Text:
  - A man shall not marry his mother, sister, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's

daughter, father's sister, mother's sister, or cousin of the first degree, or another man.

- Solution:
  - "another man"- remove entirely
  - The following reflect changes that are not technically required by Obergefell but are necessary to maintain the intent of the statute in light of Obergefell.
    - "Grandfather's wife" to "grandfather's spouse"
    - "son's wife" to "son's spouse"
    - "Grandson's wife" to "grandson's spouse"
    - "wife's mother" to "spouse's mother"
    - "wife's grandmother" to "spouse's grandmother"
    - "wife's daughter" to "spouse's daughter"
    - "wife's granddaughter" to "spouse's granddaughter"

Revised Statutes of 1846, Ch. 83
Of Marriage and the solemnization thereof

MCL 551.4 (Incapacity; persons woman prohibited from marrying.)

- Text:
  - "A woman shall not marry her father, brother, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, mother's brother, or cousin of the first degree, or another woman."

- Solution:
  - Change to "a woman shall not marry her father, brother, grandfather, son, grandson, stepfather, grandmother's spouse, daughter's spouse, granddaughter's spouse, spouse's father, spouse's grandfather, spouse's son, spouse's grandson, brother's son, sister's son, father's brother, mother's brother, or cousin of the first degree."

MCL 551.9 (Solemnization of marriage; form; declaration by parties; witnesses).

- Text:
  - In the solemnization of marriage, no particular form shall be required, except that the parties shall solemnly declare, in the presence of the person solemnizing the marriage and the attending witnesses, that they take each other as husband and wife; and in every case, there shall be at least 2 witnesses, besides the person solemnizing the marriage, present at the ceremony.

- Solution:
  - "that they take each other as husband and wife" to "that they take each other as spouses"

Act 259 of 1909

MCL 552.101 (Judgment of divorce or separate maintenance; provision in lieu of dower; determining rights of wife or husband in and to policy of life insurance, endowment, or annuity; discharge of liability on policy; determination of rights; assignment of rights.)

- Text:
  - (2)"Each judgment of divorce or judgment of separate maintenance shall determine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the husband in which the wife was named or designated as beneficiary, or to which the wife became entitled by assignment or change of beneficiary during the marriage or in anticipation of marriage. If the judgment of divorce or judgment of separate maintenance does not determine the rights of the wife in and to a policy of life insurance, endowment, or annuity, the policy shall be payable to the estate of the husband or to the named beneficiary if the husband so designates. However, the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice, by or on behalf of the insured or the estate of the insured, 1 of the heirs of the insured, or any other person having an interest in the policy, of a claim under the policy and the divorce."

- Solutions:
  - "all rights of the wife" to "all rights of the spouse"
  - "upon the life of the husband in which the wife" to "upon the life of their spouse in which the spouse"
  - "or to which the wife became entitled" to "or to which the spouse became entitled"
  - "determine the rights of the wife" to "determine the rights of the spouse"
  - "the policy shall be payable to the estate of the husband or to the named beneficiary if the husband so designates" to "the policy shall be payable to the estate of their husband or to the named beneficiary if their spouse so designates"

- Text:
  - (3) "Each judgment of divorce or judgment of separate maintenance shall determine all rights of the husband in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the wife in which the husband was named or designated as beneficiary, or to which he became entitled by assignment or change of beneficiary during the marriage or in anticipation of marriage. If the judgment of divorce or judgment of separate maintenance does not determine the rights of the husband in and to the policy of

life insurance, endowment, or annuity, the policy shall be payable to the estate of the wife, or to the named beneficiary if the wife so designates. However, the company issuing the policy shall be discharged of all liability on the policy by payment of the proceeds in accordance with the terms of the policy unless before the payment the company receives written notice, by or on behalf of the insured or the estate of the insured, 1 of the heirs of the insured, or any other person having an interest in the policy, of a claim under the policy and the divorce."

- Solution:
  - In light of the changes to the preceding section, this section should likely be removed entirely.

- Text:
  - (4)"Each judgment of divorce or judgment of separate maintenance shall determine all rights, including any contingent rights, of the husband and wife in and to all of the following:"

- Solution:
  - "including any contingent rights, of the husband and wife" to "including any contingent rights, of the spouses"

MCL 552.102 (Realty owned jointly or by entireties; effect of divorce without determination of ownership in decree.)

- Text:
  - Every husband and wife owning real estate as joint tenants or as tenants by entireties shall, upon being divorced, become tenants in common of such real estate, unless the ownership thereof is otherwise determined by the decree of divorce.

- Solution:
  - "Every husband and wife" to "Spouses"

Act 310 of 1996
Uniform interstate family support act

MCL 552.1328 (physical presence of petitioner not required; documents admissible as evidence; testimony)

- Text:
  - (8)The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this act.

- Solution:
    - "based on the relationship of husband and wife" to "based on the relationship as spouses"

MCL 552.23 (judgment of divorce or separate maintenance; further award of real and personal estate; transmittal of payments to department of human services; service fee; failure or refusal to pay service fee; contempt; "state disbursement unit or "SDU" defined.)

- Text:
    - (3) If the court appoints the friend of the court custodian, receiver, trustee, or escrow agent of assets owned by a husband and wife, or either of them, the court may fix the amount of the fee for such service, to be turned over to the county treasurer and credited to the general fund of the county. The court may hold in contempt a person who fails or refuses to pay a fee ordered under this subsection.

- Solution:
    - "assets owned by a husband and wife" to "assets owned by spouses"

MCL 552.27 (Alimony or allowance for support and education of children as lien; default; powers of court.)

- Text:
    - (D) Award a division between the husband and wife of the real and personal estate of either party or of the husband and wife by joint ownership or right as the court considers equitable and just.

- Solution:
    - "division between the husband and wife" to "division between the spouses"
    - "of the husband and wife by joint ownership" to "of the spouses by joint ownership"

MCL 552.34 (action to annul marriage of a minor)

- Text:
    - "An action to annul a marriage on the ground that 1 of the parties was under the age of legal consent, as provided in section 3 of Act No. 128 of the Public Acts of 1887, being section 551.103 of the Michigan Compiled Laws, may be brought by the parent or guardian entitled to the custody of the minor or by the next friend of the minor, but the marriage shall not be annulled on the application of a party who was of the age of legal consent at the time of the marriage, or when it appears that the parties, after they had attained the age of consent, had freely cohabited as husband and wife."

- Solution:
  - "had freely cohabitated as husband and wife" to "had freely cohabitated as spouses"

MCL 552.36 (Marriage annulment; action by party to marriage)

- Text:
  - A party to a marriage who, at the time of the marriage, was not capable in law of contracting and who later becomes capable in law of contracting may bring an action to annul the marriage. The court shall not, however, annul the marriage if the court finds that the parties cohabited as husband and wife after the party became capable in law of contracting.

- Solution:
  - "parties cohabitated as husband and wife" to "parties cohabitated as spouses"

MCL 552.37 (Marriage annulment; ground of force or fraud; effect of voluntary cohabitation)

- Text:
  - No marriage shall be annulled on the ground of force or fraud, if it shall appear that, at any time before the commencement of the suit, there was a voluntary cohabitation of the parties as husband and wife.

- Solution:
  - "of the parties as husband and wife" to "of the parties as spouses"

Act 299 of 1905
Change of name of divorced woman

MCL 552.391 (divorced woman; change of name)

- Text:
  - "The circuit courts of this state, whenever a decree of divorce is granted, may, at the instance of the woman, whether complainant or defendant, decree to restore to her her [sic] birth name, or the surname she legally bore prior to her marriage to the husband in the divorce action, or allow her to adopt another surname if the change is not sought with any fraudulent or evil intent."

- Solution:
  - "or the surname she legally bore prior to her marriage to the husband in the divorce action" to "or the surname she legally bore prior to her marriage to their spouse in the divorce action"

MCL 552.9f (Divorce; taking of testimony; minor children; perpetuating testimony; nonresident defendant, residence of plaintiff.)

- Text:
  - No proofs or testimony shall be taken in any case for divorce until the expiration of 60 days from the time of filing the bill of complaint, except where the cause for divorce is desertion, or when the testimony is taken conditionally for the purpose of perpetuating such testimony. In every case where there are dependent minor children under the age of 18 years, no proofs or testimony shall be taken in such cases for divorce until the expiration of 6 months from the day the bill of complaint is filed. In cases of unusual hardship or such compelling necessity as shall appeal to the conscience of the court, upon petition and proper showing, it may take testimony at any time after the expiration of 60 days from the time of filing the bill of complaint. Testimony may be taken conditionally at any time for the purpose of perpetuating such testimony. When the defendant in any case for divorce is not domiciled in this state at the time of commencing the suit or shall not have been domiciled herein at the time the cause for divorce arose, before any decree of divorce shall be granted the complainant must prove that the parties have actually lived and cohabited together as husband and wife within this state, or that the complainant has in good faith resided in this state for 1 year immediately preceding the filing of the bill of complaint for divorce.

- Solution:
  - "actually lived and cohabitated together as husband and wife within this state" to "actually lived and cohabitated together as spouses within this state"

Revised Statute of 1846 Ch. 62
Of the nature and qualities of estates in real and personal property, and the alienation thereof.

MCL 554.45 (Land conveyance; exceptions to preceding section.)

- Text:
  - The preceding section shall not apply to mortgages, nor to devises or grants made in trust, or made to executors, or to husband and wife.

- Solution:
  - "or to husband and wife" to "or to spouses"

Marriage License
Act 128 of 1887

551.101 (marriage license; requirements; place to obtain, delivery to person officiating)

- Text:
  - It shall be necessary for all parties intending to be married to obtain a marriage license from the county clerk of the county in which either the man or woman resides, and to deliver the said license to the clergyman or magistrate who is to officiate, before the marriage can be performed. If both parties to be married are non-residents of the state it shall be necessary to obtain such license from the county clerk of the county in which the marriage is to be performed.

- Solution:
  - "which either the man or woman resides" to "which either party desiring to be married resides"

Revised Statutes of 1846
Chapter 83. Of Marriage and the solemnization thereof

MCL 551.2 (Marriage as civil contract; consent; license; solemnization)

- Text:
  - So far as its validity in law is concerned, marriage is a civil contract between a man and a woman, to which the consent of parties capable in law of contracting is essential. Consent alone is not enough to effectuate a legal marriage on and after January 1, 1957. Consent shall be followed by obtaining a license as required by section 1 of Act No. 128 of the Public Acts of 1887, being section 551.101 of the Michigan Compiled Laws, or as provided for by section 1 of Act No. 180 of the Public Acts of 1897, being section 551.201 of the Michigan Compiled Laws, and solemnization as authorized by sections 7 to 18 of this chapter.

- Solution:
  - "between a man and a woman" to "between two parties"

Issuance of Marriage license without publicity
Act 180 of 1897

MCL 551.201 (issuance of marriage license without publicity; conditions; application; notice; consent; exceptions; order)

- Text:
  - (1) When a person desires to keep the exact date of his or her marriage to a person of the opposite sex a secret, the judge of probate may issue, without publicity, a marriage license to any person making application, under oath, if there is good reason expressed in the application and determined to be sufficient by the judge of probate.

- Solution:
  - Remove words "to a person of the opposite sex"

Foreign marriages
Act 168 of 1939

MCL 551.272 (Marriage not between man and woman invalidated)

- Text:
  - This state recognizes marriage as inherently a unique relationship between a man and a woman, as prescribed by section 1 of chapter 83 of the Revised Statutes of 1846, being section 551.1 of the Michigan Compiled Laws, and therefore a marriage that is not between a man and a woman is invalid in this state regardless of whether the marriage is contracted according to the laws of another jurisdiction.

- Solution:
  - This section should be repealed.
    - At a minimum annotate section to say: "This section was held invalid as in conflict with U.S. Const. Am. XIV. Obergefell v Hodges, 135 S. Ct. 1039 (2015)."

Alimony Awarded by Court of Another State
Act 52 of 1911

MCL 552.122 (Stay of proceedings)

- Text:
  - If the defendant in this state shows that he has made proper application in the court of the other state for a reduction or any further order in relation to the alimony in the courts of the other state, the court in this state may stay the proceedings in this state on such terms as it desires to impose.

- Solution:
  - "that he has" to "that they have"

Act 210 of 1927

MCL 557.101 (terminating tenancy by entirety)

- Text:
  - In all cases where husband and wife own any interest in land as tenants by the entirety, such tenancy by the entirety may be terminated by a conveyance from either one to the other of his or her interest in the land so held.

- Solution:
  - "where husband and wife" to "where spouses"

Act 212 of 1927

MCL 557.151 (Evidence of indebtedness payable to husband and wife; ownership in joint tenancy)

- Text:
  - All bonds, certificates of stock, mortgages, promissory notes, debentures, or other evidences of indebtedness hereafter made payable to persons who are husband and wife, or made payable to them as endorsees or assignees, or otherwise, shall be held by such husband and wife in joint tenancy unless otherwise therein expressly provided, in the same manner and subject to the same restrictions, consequences and conditions as are incident to the ownership of real estate held jointly by husband and wife under the laws of this state, with full right of ownership by survivorship in case of the death of either.
  -
- Solutions:
  - "to persons who are husband and wife" to "to persons who are spouses"
  - "shall be held by such husband and wife in joint tenancy" to "shall be held by such spouses in joint tenancy"
  - "ownership of real estate held jointly by husband and wife" to "ownership of real estate held jointly by spouses"

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Act 216 of 1981

MCL 557.21 (Status of property acquired by woman before or after marriage; earnings of married woman.)

- Text:
  - If a woman acquires real or personal property before marriage or becomes entitled to or acquires, after marriage, real or personal property through gift, grant, inheritance, devise, or other manner, that property is and shall remain the property of the woman and be a part of the woman's estate. She may contract with respect to the property, sell, transfer, mortgage, convey, devise, or bequeath the property in the same manner and with the same effect as if she were unmarried. The property shall not be liable for the debts, obligations, or engagements of any other person, including the woman's **husband**, except as provided in this act.

- Solution:
  - "including the woman's husband" to "including the woman's spouse"
    - Note, because of the inclusive clause "any other person" this change is primarily semantic and not strictly required.

Act 216 of 1981
Rights and Liabilities of Married Women

MCL 557.24 (Contract by married woman; liability of husband for breach of contract)

- Text:
  - (2)"The husband of a married woman shall not be liable for breach of a contract which was entered into by the married woman and which relates to the separate property of the married woman as provided in subsection (1) unless the husband acted as a surety, co-signor, or guarantor on the contract."

- Solutions:
  - "The husband of a married woman" to "The spouse of a married woman"
  - "Unless the husband" to "unless the spouse"

MCL 557.25 (Married woman as surety for debt or obligation of other person; judgment against married woman; satisfaction)

- Text:
  - A married woman may act as a surety for the debt or obligation of another person, including the debt of her husband, by signing a written instrument providing for the suretyship. A judgment entered against the married woman as a surety may be satisfied out of her separate property as described in section 1, whether or not the contract of suretyship benefits or concerns that separate property.

- Solution:
  - "including the debt of her husband" to "including the debt of her spouse"
    - Note, because "of another person" is inclusive the change is primarily semantic and not strictly necessary.

Act 39 of 1948

MCL 557.253 (Repeal of community property act; community property on effective date of repeal, continuance, notice of claim.)

- Text:
  - "Any property which, at the time this act takes effect, constitutes community property by virtue of the provisions of Act No. 317 of the Public Acts of 1947 shall continue to be community property and remain subject to the provisions of said act and for such purpose said act shall continue in force: Provided, That, except where the conveyance or other instrument of title under which the same was acquired or other evidence of ownership thereof expressly states the intention that such property shall be community property, any such property shall, upon the expiration of 1 year after the time this act takes effect, be deemed to be the separate property of the husband or the wife, or both, according to the name or

names set forth in the conveyance or other instrument of title under which such property was acquired or other evidence of ownership thereof, unless, within such 1 year period, either spouse having an interest therein, or any of the devisees, legatees, heirs or distributes [sic] of either of them who shall have died prior to or during the running of such 1 year period, shall file notice of claim that such property constitutes community property. Such notice of claim, to be effective, shall be in writing, shall contain a description of each item of property to which the same relates, shall be executed by the party making the same in the manner required for the execution of deeds and shall be filed in the office of the register of deeds for the county in which the spouse by whom, or in whose behalf, the same is made resides at the time of the filing thereof, or, in the event that such spouse shall have died, for the county in which such spouse resided at the time of death. In the event that such notice of claim relates to real property located in any other county or counties, to be effective as to such property, a duplicate original of such notice of claim shall also be filed in the office of the register of deeds for each such county. No disability of any kind or lack of knowledge on the part of anyone shall suspend the running of the time for filing such notice of claim, but such notice may be executed and filed by any other person acting in behalf of any party by whom such notice of claim may be filed who is under a disability or otherwise unable to make such claim in his or her own behalf."

- Solution:
    - "separate property of the husband or wife or both" to "separate property of one or both spouses"

MCL 557.254 (Repeal of community property act; community property thereafter derived, continuance, notice of claim)

- Text:
    - "Any property hereafter derived from property which constitutes community property by virtue of the provisions of Act No. 317 of the Public Acts of 1947 shall constitute community property and remain subject to the provisions of said act and for such purpose said act shall continue in force: Provided, That, except where the conveyance or other instrument of title under which the same is acquired or other evidence of ownership thereof expressly states the intention that such property shall be community property, any such property acquired within 1 year after the time this act takes effect shall be deemed to be separate property of the husband or the wife, or both, according to the name or names set forth in the conveyance or other instrument of title under which such property is acquired or other evidence of ownership thereof, unless within such 1 year period either spouse having an interest therein, or any of the devisees, legatees, heirs or distributees [sic] of either of them who shall have died prior to or during the running of such 1 year period, shall file notice of claim that such property constitutes community property: And provided further, That any such property acquired after the expiration of such 1 year period shall be deemed to be separate

property, as aforesaid, unless the conveyance or other instrument of title under which such property is acquired or other evidence of ownership thereof shall expressly state the intention that such property shall constitute community property. All of the provisions of section 3 of this act with respect to any notice of claim pursuant thereto shall be applicable with respect to any notice of claim under the provisions of this section."

- Solution:
  - "separate property of the husband or the wife, or both" to "separate property of one or both spouses"

MCL 557.26 (Pledge or assignment by married woman of interest in separate property as security for debt of other person; contract by married woman giving general guarantee; satisfaction of judgment.)

- Text:
  - (1) A married woman may enter into a written contract pledging or assigning her interest in her separate property, as described in section 1, as security for the debt of another person, including the debt of her husband. If a married woman signs a written contract pledging or assigning an interest in her separate property as security for the debt of another person or her husband, a judgment rendered for payment of the debt may be satisfied out of that separate property whether or not the separate property derives a benefit from the pledge or assignment."

- Solutions:
  - "including the debt of her husband" to "including the debt of her spouse"
  - "of another person or her husband" to "or another person or her spouse"
  - Both changes are semantic and not strictly required.

- Text:
  - (2) A married woman may enter into a written contract giving a general guarantee obligating her personally for the debt of another person, including the debt of her husband. If the married woman signs such a written contract, a judgment rendered for payment of the debt may be satisfied out of any of the separate property of the married woman described in section 1, whether or not the separate property derives a benefit from the general guarantee."

- Solution:
  - "including the debt of her husband" to "including the debt of her spouse"
    - Note: the change is semantic and not strictly required"

Act 288 of 1975.

MCL 557.71 (Equal rights of husband and wife holding property as tenants by entirety).

- Text:
  - A husband and wife shall be equally entitled to the rents, products, income, or profits, and to the control and management of real or personal property held by them as tenants by the entirety.

- Solution:
  - "A husband and wife" to "Spouses"

Act 126 of 1925

MCL 557.81 (Sale of land held in entirety; survivorship of rights of vendor)

- Text:
  - "In all cases where a husband and wife shall sell land held as a tenancy by the entirety and accept in part payment for the purchase price the note or other obligation of said purchaser payable to said husband and wife, secured by a mortgage on said land payable to husband and wife, the said debt together with all interest thereon, unless otherwise expressly stated in said mortgage, after the death of either shall be payable to the survivor, and the title to said mortgage shall vest in the survivor, and in case a contract for the sale of property owned by the husband and wife as tenants by the entirety, is entered into by them as vendors, the same provisions herein applying to the rights of the survivor in mortgages as above set forth, shall apply to the survivor of the contract."

- Solutions:
  - "where a husband wife shall" to "where spouses shall"
  - "purchaser payable to said husband and wife" to "purchaser payable to said spouses"
  - "on said land payable to husband and wife" to "on said land payable to spouses"
  - "property owned by the husband and wife" to "property owned by the spouses"

Act 21 of 1861
Confirmation of certain deeds and instruments

MCL 565.602 (married woman's joint deed with husband; validity)

- Text:
  - All deeds of lands situated in this state, heretofore or hereafter made by any married woman jointly with her husband by their attorney in fact, under a joint power of attorney, executed and acknowledged as required in the joint deed of

a husband and wife, and recorded in the office of the register of deeds of the proper county, shall be taken and deemed as between the parties thereto, and all persons claiming under or through them as valid and effectual to convey the legal title of the premises therein described, as if the same had been executed and acknowledged by the husband and wife in person.

- Solution:
  - "married woman jointly with her husband" to "married woman jointly with her spouse"
  - "joint deed of a husband and wife" to "joint deed of spouses"
  - "by the husband and wife in person" to "by the spouses in person"

Act 236 of 1961
Revised Judicature Act of 1961

MCL 600.1410 (Legal impediment to marriage as bar to action.)

- Text:
  - If 2 person have lived together as husband and wife, and a legal impediment existed to the marriage of either of the persons, their issue and the person that entered the relation in the good faith belief that the marriage was lawful are entitled to the same damages in a civil action as though no such impediment existed, when the other of such persons or their issue is injured or dies as a result of the negligent act or omission of another.

- Solution:
  - "lived together as husband and wife" to "lived together as spouses"

MCL 600.2005 (Married women; tort; action against both spouses)

- Text:
  - "No suit may be brought against husband and wife, jointly, or against the husband alone, for any tort of the wife, unless such tort was committed under such circumstances as to render them both liable."

- Solution:
  - "may be brought against husband and wife" to "may be brought against a wife and her spouse"
  - "or against the husband alone, for any tort of the wife" to "or against the spouse alone, for any tort of the wife"

MCL 600.2162 (Husband or wife as witness for or against other)

- Text:
  - (1) In a civil action or administrative proceeding, a husband shall not be examined as a witness for or against his wife without her consent or a wife for or against her husband without his consent, except as provided in subsection (3).

- Solution:
  - Change entire section to: "In a civil action or administrative proceeding, a spouse shall not be examined as a witness for or against their spouse without their consent, except as provided in subsection (3).

Revised Judicature Act of 1961
Act 236 of 1961

MCL 600.2807 (Property owned as tenants by the entirety; priority; exceptions; sale or refinance of property subject to judgement lien; limitation on proceeds)

- Text:
  - (1) A judgment lien does not attach to an interest in real property owned as tenants by the entirety unless the underlying judgment is entered against both the husband and wife.

- Solution:
  - "against both the husband and wife" to "against both spouses"

MCL 600.3344 (Release of interest by married woman; payment from proceeds of sale; effect on rights)

- Text:
  - Any married woman may release her right, interest, or estate to her husband and lawfully acknowledge this release. If the release is executed outside of this state it shall be executed, acknowledged, and certified as the laws of this state require for the execution, acknowledgment, and certification of deeds in any other state, territory, or district of the United States. Upon the release the shares of the sale arising from her contingent interest shall be paid to her. This release shall be a bar to her right, estate, or claim.

- Solution:
  - "estate to her husband" to "estate to her spouse"

MCL 600.5451 (bankruptcy; exemption for property of estate; exception; exempt property sold, damaged, destroyed, or acquired for public use; amounts adjusted by state treasurer; definitions)

- Text:
  - (1n)Property described in section 1 of 1927 PA 212, MCL 557.151, or real property, held jointly by a husband and wife as a tenancy by the entirety, except that this exemption does not apply with regard to a claim based on a joint debt of the husband and wife.

- Solutions:
  - "jointly by a husband and wife" to "jointly by spouses"
  - "joint debt of the husband and wife" to "joint debt of the spouses"

MCL 600.6023a (property held jointly by husband and wife; exemption under judgment entered against 1 spouse)

- Text:
  - Property described in section 1 of 1927 PA 212, MCL 557.151, or real property, held jointly by a husband and wife as a tenancy by the entirety is exempt from execution under a judgment entered against only 1 spouse.

- Solution:
  - "jointly by a husband and wife" to "jointly by spouses"

Revised Judicature Act of 1961
Act 236 of 1961

MCL 600.6131 (Prima facie case; burden of proof; proceedings before sale on execution; transfer of property within 1 year prior to commencement of action)

- Text:
  - (3) Where it appears that the judgment debtor at a time within 1 year prior to the date of the commencement of the action in which the judgment is entered has had title to or has paid the purchase price of any real or personal property to which at the time of the examination his wife, or a relative or a person on confidential terms with the judgment debtor may claim title or right of possession, the burden of proof shall be upon the judgment debtor, or person claiming title or right of possession, to establish that the transfer or gift from him was not made for the purpose of delaying, hindering, and defrauding creditors.

- Solution:
  - "of the examination his wife" to "of the examination their spouse"
  - "gift from him" to "gift from them"

- Note: not strictly required by Obergefell but a semantic change reflecting the understanding that this statute applies to both men and women.

Estates and Protected Individuals Code
Act 386 of 1998

MCL 700.2114 (Parent and child relationship)

- Text:
  - (1a)If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession. A child conceived by a married woman with the consent of her husband following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

- Solutions:
  - "by a married woman with the consent of her husband" to "by a married woman with the consent of her spouse"
  - "Consent of the husband is presumed" to "consent of the spouse is presumed"
  - "If a man and a woman" to "If two spouses"

MCL 700.2801 (effect of divorce, annulment, decree of separation, bigamy, and absence)

- Text:
  - (1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

- Solution:
  - "does not terminate the statute of husband and wife" to "does not terminate the status as spouses"

- Text
  - (2a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife.

- Solution:
  - "together as husband and wife" to "together as spouses"

MCL 700.2806 (definitions relating to revocation of probate and nonprobate transfers by divorce; revocation by other changes of circumstances)

- Text:
  - (b) "Divorce or annulment" means a divorce or annulment, or a dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2801. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section and sections 2807 to 2809.

- Solution:
  - "does not terminate the status of husband and wife" to "does not terminate the status as spouses"

Probate Code of 1939
Act 288 of 1939

MCL 710.24 (petition for adoption; filing; jurisdiction; verification; contents; preplacement assessment; omission of certain identifying information)

- Text:
  - (1) Except as otherwise provided in this section, if a person desires to adopt a child or an adult and to bestow upon the adoptee his or her family name, or to adopt a child or an adult without a name change, with the intent to make the adoptee his or her heir, that person, together with his wife or her husband, if married, shall file a petition with the court of the county in which the petitioner resides, where the adoptee is found or, where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated. If there has been a temporary placement of the child, the petition for adoption shall be filed with the court that received the report described in section 23d(2) of this chapter.

- Solution:
  - "together with his wife or her husband" to "together with their spouse"

MCL 710.36 (Hearing to determine whether child born out of wedlock and to determine identity and rights of father; filing proof of service of notice of intent or acknowledgment; copy of notice of intent to claim paternity; notice of hearing; contents; filing proof of service of notice of hearing; waiver; evidence of identity; adjournment of proceedings.)

- Text:
  - (1)If a child is claimed to be born out of wedlock and the mother executes or proposes to execute a release or consent relinquishing her rights to the child or joins in a petition for adoption filed by her husband, and the release or consent of the natural father cannot be obtained, the judge shall hold a hearing as soon as practical to determine whether the child was born out of wedlock, to determine the identity of the father, and to determine or terminate the rights of the father as provided in this section and sections 37 and 39 of this chapter.

- Solution:
  - "joins in a petition for adoption filed by her husband" to "joins in a petition for adoption filed by her spouse"

Act 195 of 2001

MCL 722.1309 (delivery of child to petitioner; grounds for exception; expenses; additional relief; refusal to testify; inference; privilege against disclosure)

- Text:
  - A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child cannot be invoked in a proceeding under this article.

- Solution:
  - "on the relationship of husband and wife" to "on the relationship as spouses"

Surrogate Parenting Act
Act 199 of 1988

MCL 722.853 (Definitions)

- Text:
  - (i) "Surrogate parentage contract" means a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination, or in which a female agrees to surrogate gestation, and to voluntarily relinquish her parental or custodial rights to the child. It is presumed that a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination by a person other than her husband, or in which a female agrees to surrogate gestation, includes a provision, whether or not express, that the female will relinquish her parental or custodial rights to the child.

- Solution:
  - "by a person other than her husband" to "by a person other than her spouse"

Foster Care and Adoption Services Act
Act 203 of 1994

MCL 722.954a (Placement of child in supervising agency's care; determination of placement with relative; notification; special consideration and preference to child's relative; documentation of decision; review hearing)

- Text:
  - (4b)Provide written notice of the decision and the reasons for the placement decision to the child's attorney, guardian, guardian ad litem, mother, and father; the attorneys for the child's mother and father; each relative who expresses an interest in caring for the child; the child if the child is old enough to be able to express an opinion regarding placement; and the prosecutor.

- Solution:
  - "mother, and father" to "parents"
  - "Attorneys for the child's mother and father" to "Attorneys for the child's parents"

Uniform child-custody jurisdiction and enforcement act

MCL 750.166 (wife may testify against husband)

- Text:
  - In all prosecutions under this chapter, the wife may testify against the husband without his consent.

- Solution:
  - "the wife may testify against the husband without his consent" to "the wife may testify against her spouse without such spouse's consent"

The Michigan Penal Code
Act 328 of 1931

750.30 (Adultery; punishment)

- Text:
  - Punishment—Any person who shall commit adultery shall be guilty of a felony; and when the crime is committed between a married woman and a man who is unmarried, the man shall be guilty of adultery, and liable to the same punishment.

- Solution:
  - "between a married woman and a man who is unmarried the man shall" to "between a married woman and person who is unmarried the unmarried person shall"

750.335 (Lewd and lascivious cohabitation and gross lewdness)

- Text:
  - Any man or woman, not being married to each other, who lewdly and lasciviously associates and cohabits together, and any man or woman, married or unmarried, who is guilty of open and gross lewdness and lascivious behavior, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than $1,000.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.

- Solution:
  - "Any man or woman not being married to each other" to "Any two people not being married to each other"

MCL 750.90 (Sexual intercourse under pretext of medical treatment)

- Text:
  - Sexual intercourse under pretext of medical treatment—Any person who shall undertake to medically treat any female person, and while so treating her, shall represent to such female that it is, or will be, necessary or beneficial to her health that she have sexual intercourse with a man, and shall thereby induce her to have carnal sexual intercourse with any man, and any man, not being the husband of such female, who shall have sexual intercourse with her by reason of such representation, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years.

- Solution:
  - "with any man, and any man, not being the husband" to "with any person, and any person, not being their spouse"
    - Note: the suggested change extends beyond what is strictly required but seems appropriate given other changes suggested in the report.

Revised Uniform Reciprocal Enforcement of Support Act
Act 8 of 1952

MCL 780.159a (enforcement of duties of support; defense of immunity not available)

- Text:
  - All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

- Solution:
  - "because of their relationship as husband and wife" to "because of their relationship as spouses"

MCL 780.169 (husband and wife; privilege against disclosure inapplicable; competent witnesses; compelling testimony

- Text:
  - Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

- Solution:
  - "between husband and wife" to "between spouses"
  - "Husband and wife are competent" to "Spouses are competent"

Coercion of married woman by husband Act 85 of 1935

MCL 780.401 (presumption of coercion by husband prohibited)

- Text:
  - In the prosecution of any complaint or indictment charging a criminal offense, no presumption shall be indulged that a married woman committing an offense does so under coercion because she commits it in the presence of her husband.

- Solution:
  - "because she commits it in the presence of her husband" to "because she commits it in the presence of her spouse"

SECTION 2. POLICY ISSUES

1. ESTATES IN DOWER

"Dower", at common law, is a wife's right, upon her husband's death, to a life estate in one-third of the land that he owned. Black's Law Dictionary. Michigan still has laws that recognize a wife's dower rights. No similar laws exist for a husband. The following statutory provisions relate to dower and should be reviewed, particularly in the event the Legislature repeals Michigan's dower laws. See SB 558, 559 and 560.

- **MCL 558.1 (Right of widow to dower)**
    - Text: "The widow of every deceased person, shall be entitled to dower, or the use during her natural life, of 1/3 part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof."

- **MCL 558.12 (alternative dower rights before assignment; occupation, profits and rents receipt)**
    - Text: "When a widow is entitled to dower in the lands of which her husband died seized, she may continue to occupy the same with the children or other heirs of the deceased, or may receive 1/3 part of the rents, issues and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned."

- **MCL 558.13 (barring of dower; joining in conveyance, release)**
    - Text: "A married woman residing within this state may bar her right of dower in any estate conveyed by her husband or by his guardian, if he be under guardianship, by joining in the deed of conveyance and acknowledging the same as prescribed in the preceding chapter, or by joining with her husband in a subsequent deed, acknowledged in like manner; or by deed executed by the wife alone to one who has theretofore acquired and then holds the husband's title, provided the intent to bar her right of dower shall be expressed in said deed."

- **MCL 558.14 (barring dower; jointure)**
    - Text: "A woman may also be barred of her dower in all the lands of her husband by a jointure settled on her with her assent before the marriage, provided such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband."

- **MCL 558.16 (barring of dower; antenuptial pecuniary provisions)**
    - Text: "Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband."
- **MCL 558.2 (dower in lands exchanged; election)**
    - Text: "If a husband seized of an estate of inheritance in lands, exchange them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange, within 1 year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange."
- **MCL 558.21 (Dower right of aliens and nonresidents)**
    - Text: A woman being an alien, shall not on that account be barred of her dower, and any woman residing out of the state, shall be entitled to dower of the lands of her deceased husband, lying in this state, of which her husband died seized, and the same may be assigned to her, or recovered by her, in like manner as if she and her deceased husband had been residents within the state at the time of his death.
- **558.24 (damages upon recovery of dower; widow's rights)**
    - Text: Whenever in any action brought for the purpose, a widow shall recover her dower in lands of which her husband shall have died seized, she shall be entitled also to recover damages for the withholding of such dower.
- **558.26 (Damages upon recovery of dower; use of added improvements)**
    - Text: Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband by his heirs, or by any other person claiming title to such lands.
- **558.27 (Damages upon recovery of dower; against heir alienating lands)**
    - Text: When a widow shall recover her dower in any lands alienated by the heir of her husband, she shall be entitled to recover of such heir, in an action on the case, her damages for withholding such dower, from the time of the death of her husband to the time of the alienation by the heir not exceeding 6 years in the whole; and the amount which she shall be entitled to recover from such heir, shall be deducted from the amount she would otherwise be entitled to recover from such grantee, and any amount recovered as damages, from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

- **558.28 (Assignment of dower; effect of acceptance)**
    - Text: When the widow shall have accepted an assignment of dower, in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned to her as aforesaid.
- **558.29 (Collusive recovery by widow; effect on rights of infants or others entitled to land)**
    - Text: When a widow not having right to dower, shall during the infancy of the heirs of the husband, or any of them, or of any person entitled to the lands, recover dower by the default or collusion of the guardian of such infant, heir or other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.
- **MCL 558.4 (dower in mortgaged lands; purchase money mortgage given after marriage)**
    - Text: "When a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons."
- **MCL 558.5 (dower in surplus of proceeds from foreclosure of mortgage)**
    - Text: "Where in either of the cases mentioned in the 2 last preceding sections, or in case of a mortgage in which she shall have joined with her husband, the mortgagee, or those claiming under him shall after the death of the husband cause the mortgaged premises to be sold by virtue of such mortgage, and any surplus shall remain after payment of the moneys due thereon and the costs and charges of the sale, such widow shall be entitled to the interest or income of 1/3 part of such surplus, for her life, as dower."

Act 63 of 1847
Dual Claim to, or discharge of, dower

- **558.52 (dower claimed by two or more widows; liability of land to claims after discharge of dower)**
    - Text: Where dower in any lands may be claimed by 2 or more widows, the 1 whose husband was first seized therein, shall be first entitled thereto, and in all cases where dower in any land shall have been assigned, or where it shall appear

that the owner or owners, or person or persons having an interest therein, shall have made full satisfaction to, and has obtained a discharge from the person recovering or having a prior right to dower therein by reason of the prior seizen of her husband, the said land shall not be subject to any other claim for dower during the lifetime of the person so recovering or who has received satisfaction and given a discharge as aforesaid.

- **MCL 558.6 (dower in lands released by payment of mortgage)**
    - Text: "If, in either of the cases above specified, the heir or other person claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out to her, for her dower in the mortgaged lands, the value of 1/3 of the residue after such deduction."

- **MCL 558.7 (dower in aliened lands; estimation)**
    - Text: "When a widow shall be entitled to dower out of any lands which shall have been aliened by the husband in his lifetime, and such lands shall have been enhanced in value after the alienation, such lands shall be estimated, in setting out the widow's dower, according to their value at the time when they were so aliened."

Act 58 of 1917
Filing claim of Dower

- **558.81 (Claim of dower; filing, contents)**
    - Text: All persons having or claiming dower, whether inchoate or consummate, in lands conveyed, or otherwise disposed of, more than 25 years prior to the time this act shall take effect, by the person who is or was the husband of the person claiming such dower, shall, within 6 months after this act shall take effect, file in the office of the register of deeds of the county in which such lands are situated, a claim of dower under oath setting forth the name and address of the persons claiming such dower and the name of the person who is or was her husband and through whom she claims to have obtained dower in such lands and a description of the lands in which dower is claimed.

Act 105 of 1939
Filing of Claim of Dower

- **558.91 (Claim of dower; filing, contents)**
    - Text: All persons having or claiming dower, whether inchoate or consummate, in lands heretofore or hereafter conveyed, or otherwise disposed of, by the person

who is or was the husband of the person claiming such dower, shall, within 25 years from the time of such conveyance or other disposal of said lands, or within 6 months after this act shall take effect, file in the office of the register of deeds of the county in which such lands are situated, a claim of dower under oath setting forth the name and address of the persons claiming such dower and the name of the person who is or was her husband and through whom she claims to have obtained dower in such lands and a description of the lands in which dower is claimed: Provided, however, That this act shall apply only to persons having or claiming dower, inchoate or consummate, in lands conveyed or otherwise disposed of subsequent to a time 25 years prior to August 10, 1917, that being the time Act No. 58 of the Public Acts of 1917 became effective.

600.2931 (barring dower of incompetent wife; action by husband; determination by court; disposition of proceeds; action by guardian; proceedings)

- Text:
  - (1) The husband of an insane or otherwise incompetent wife or any other person who has an interest in the real estate in which she has a right of dower may maintain an action to bar her of her right of dower in the premises.

- Text:
  - (2) If the court finds that the wife is incurably insane or for more than 2 years has remained insane or otherwise incompetent so that she has been unable from defective intellect to join her husband in the conveyance of the real estate, and that it is proper or necessary to sell the real estate or bar the wife's right of dower in it, then the court shall determine the cash value of the wife's dower interest in the premises, taking into consideration the respective ages of the husband and wife, and order that the wife shall be barred of her dower by the payment of this sum to a guardian other than her husband who shall receive and invest this sum for her sole use and support subject to the supervision of the court. On her becoming sound in mind the court shall direct the remainder to be delivered to her. On her death the court shall direct the remainder to be delivered to her husband, if living, or if not, to her personal representatives.

- Text:
  - (3) The guardian, after posting bond approved by the court, may sell at private sale the interest of his ward at a sum not less than the value of the dower as fixed by the court or he may, in a conveyance with the husband, or by separate conveyance, transfer the interest of the ward in the property to the husband's grantee or grantees, or their heirs and assigns but to no other person. Such conveyance shall bar dower as if the ward had, being in sound mind, joined her husband in a deed of the premises.

600.2933 (dower; admeasurement procedure; award of money in lieu of dower; actions equitable in nature)

- Text:
  - (1) A widow entitled to dower, or a woman entitled to dower and her husband, may maintain a claim to recover her dower in lands, tenements, and hereditaments under section 2932 after the expiration of 6 months from the time her right to dower accrued. If an action is brought to recover the dower of any widow which has not been admeasured to her before the commencement of such action, instead of a writ of possession being issued, such plaintiff shall proceed to have her dower assigned to her in the following manner:

- Text:
  - (2) In any action commenced by any widow for the recovery of dower in lands which were aliened by her husband in his lifetime, if dower cannot be assigned in the land by metes and bounds without injustice or manifest injury to the widow or to the owners or persons in possession of the land or some one of them, the court having cognizance of the matter may award a sum of money in lieu of dower to be paid to the widow, or may assign to her, as tenant in common, a just proportion of the rents, issues, and profits of the lands. In all cases the court shall consider the true value of the lands at the time of their alienation by the husband, and of the probable duration of the life of the doweress at the time the sum of money is awarded or the rents, issues, and profits are assigned to her.

2. STATUTES THAT REFERENCE "MOTHER" AND "FATHER", AND/OR "HUSBAND" AND "WIFE".

The following statutes include references to "father" and "mother", and/or "husband" and "wife", and do not recognize that parents of children may be same sex couples. The subject matters of these statutes implicate family law considerations beyond just simple changes to the text and are identified separately in this section for that reason.

Born Alive Infant Protection Act
Act 687 of 2002

MCL 333.1073 (Abortion resulting in live birth; surrender of newborn to emergency service provider; medical care; report; confidentiality of newborn's mother and father; transmission of information to newborn's mother)

- Text:
  - (4) If a newborn is considered a newborn who has been surrendered to an emergency service provider under the safe delivery of newborns law, chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, as provided in

subsection (1), the identity of the newborn's mother and father becomes confidential and shall not be revealed, either orally or in writing.

Public Health Code
Act 368 of 1978

MCL 333.2822 (Persons required to report live birth occurring in state; "abortion defined")

- Text:
  - (1)(b)(iii) The father, the mother, or, in the absence of the father and the inability of the mother, the individual in charge of the premises where the live birth occurs.

MCL 333.2824 (Registering name of husband as father of child; registering surname of child; consent; acknowledgment of parentage; designating surname of child; entering name of father and surname of child on birth certificate; father not named on birth registration; utilization of assisted reproductive technology; reference to legitimacy or illegitimacy prohibited.)

Text:

- (1) The name of the husband at the time of conception or, if none, the husband at birth shall be registered as the father of the child. The surname of the child shall be registered as designated by the child's parents.
- (2) If the child's mother was not married at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and without the completion, and filing with the state registrar, of an acknowledgment of parentage by the mother and the individual to be named as the father. The acknowledgment of parentage shall be completed in the manner provided in the acknowledgment of parentage act. For a certificate of birth completed under this subsection and upon the written request of both parents, the surname of the child shall be designated by the child's parents.
- (3) If the name of the child's father cannot be shown under subsection (1) or (2), the child shall be given the surname designated by the mother.
- (4) If the paternity of a child is determined by a court of competent jurisdiction, the name of the father shall be entered on the certificate of birth as found and ordered by the court. The surname of the child shall be entered on the certificate of birth as designated by the child's mother.
- (5) If the child's father is not named on the birth registration, no other information about the father shall be entered on the registration.
- (6) "A child conceived by a married woman with consent of her husband following the utilization of assisted reproductive technology is considered to be the legitimate child of the husband and wife."

Act 259 of 1909

MCL 552.101 (Judgment of divorce or separate maintenance; provision in lieu of dower; determining rights of wife or husband in and to policy of life insurance, endowment, or annuity; discharge of liability on policy; determination of rights; assignment of rights.)

- Text:
  - (1)When any judgment of divorce or judgment of separate maintenance is granted in any of the courts of this state, the court granting the judgment shall include in it a provision in lieu of the dower of the wife in the property of the husband, which shall be in full satisfaction of all claims that the wife may have in any property that the husband owns or may own in the future or in which he may have any interest.

600.3320 (Guardian; authority to agree to division; report; infants; infant as married woman; delivery of guardianship property to probate court guardian; discharge of circuit court guardian)

- Text:
  - (4) If the infant is a married woman the court may, upon petition, appoint her husband as her guardian and he shall be subject to the provisions of this section.

- Solution:
  - "appoint her husband as her guardian" to "appoint her spouse as her guardian"
    - Although Obergefell doesn't require any additional changes, the Legislature may take this as an opportunity to re-examine the seemingly needless gender specificity in this section.

Estates and Protected Individuals Code
Act 386 of 1998

MCL 700.1303 (Concurrent Jurisdiction; removal; policy)

- Text:
  - (1) In addition to the jurisdiction conferred by section 1302 and other laws, the court has concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent, protected individual, ward, or trust:
    - Sec. K:
      - Bar an incapacitated or minor wife of her dower right.

Probate Code of 1939
Act 288 of 1939

MCL 711.1 (Order Changing name of adult, minor, or spouse and minor children)

- Text:
  - (5) Except as provided in subsection (7), if the petitioner is a minor, the petition shall be signed by the mother and father jointly; by the surviving parent if 1 is deceased; if both parents are deceased, by the guardian of the minor; or by 1 of the minor's parents if there is only 1 legal parent available to give consent. If either parent has been declared mentally incompetent, the petition may be signed by the guardian for that parent. The written consent to the change of name of a minor 14 years of age or older, signed by the minor in the presence of the court, shall be filed with the court before an order changing the name of the minor is entered. If the court considers the child to be of sufficient age to express a preference, the court shall consult a minor under 14 years of age as to a change in his or her name, and the court shall consider the minor's wishes.

- Text:
  - (6) If the petitioner is married, the court, in its order changing the name of the petitioner, may include the name of the spouse, if the spouse consents, and may include the names of minor children of the petitioner of whom the petitioner has legal custody. The written consent to the change of name of a child 14 years of age or older, signed by the child in the presence of the court, shall be filed with the court before the court includes that child in its order. Except as provided in subsection (7), the name of a minor under 14 years of age may not be changed unless he or she is the natural or adopted child of the petitioner and unless consent is obtained from the mother and father jointly, from the surviving parent if 1 is deceased, or from 1 of the minor's parents if there is only 1 legal parent available to give consent. If the court considers the child to be of sufficient age to express a preference, the court shall consult a minor under 14 years of age as to a change in his or her name, and the court shall consider the minor's wishes.

Acknowledgement of Parentage Act
Act 305 of 1996

MCL 722.1003 (Acknowledgment of parentage; form; validity; signatures; witness; copy.)

- Text:
  - (2) An acknowledgment of parentage form is valid and effective if signed by the mother and father and those signatures are each notarized by a notary public authorized by the state in which the acknowledgment is signed or witnessed by 1 disinterested, legally competent adult. The witness must be an employee of 1 of the following: a hospital, publicly funded or licensed health clinic, pediatric office, friend of the court, prosecuting attorney, court, department of human

services, department of community health, county health agency, county records department, head start program, local social services provider, county jail, or state prison. The witness must sign and date the acknowledgment of parentage form and provide his or her printed name, address, and place of employment. An acknowledgment may be signed any time during the child's lifetime.

- Text:
  - (3) The mother and father shall be provided a copy of the completed acknowledgment at the time of signing.

MCL 722.1006 (Grant of initial custody)

- Text:
  - After a mother and father sign an acknowledgment of parentage, the mother has initial custody of the minor child, without prejudice to the determination of either parent's custodial rights, until otherwise determined by the court or otherwise agreed upon by the parties in writing and acknowledged by the court. This grant of initial custody to the mother shall not, by itself, affect the rights of either parent in a proceeding to seek a court order for custody or parenting time.

MCL 722.1010 (Consent to court jurisdiction)

- Text:
  - Except as otherwise provided by law, a mother and father who sign an acknowledgment that is filed as prescribed by section 5 are consenting to the general, personal jurisdiction of the courts of record of this state regarding the issues of the support, custody, and parenting time of the child.

Michigan Penal Code
Act 328 of 1931

MCL 750.162 (Payments for care and support of wife or children; sworn statement)

- Text:
  - When any person is convicted under section 161 and sentenced to serve a term of imprisonment either in 1 of the state prisons or other penal institution, the warden of the prison or superintendent of said penal institution in which said person shall be confined shall, in case funds are available for such purpose, at the end of each and every week during the period of said term of imprisonment, pay over to any of the superintendents of the poor of the city or county in which the wife or children of such person resides, the sum of 2 dollars and 50 cents per week, if there be only a wife, and 75 cents per week additional for each minor child under the age of 17 years; if there be no wife and there are children under the age of 17 years, the sum of 2 dollars and 50 cents per week for the oldest child, and an additional sum of 1 dollar per week for each of the other children under said age

in lieu of any earnings of such person while an inmate therein, said sums to be expended by said superintendent of the poor for the care and support of the wife or children of said person, as the case may be; and it shall be the duty of the superintendent of the poor of the city or county from which such person shall be committed to furnish the warden of the prison or superintendent of the penal institution in which said person is confined with a sworn statement, showing the names of the wife and children who are left dependent upon the city or county for support, their ages and the relation they bear to such convicted person.

- Solution:
  - Note: the statute is currently written in such a way that only incarcerated men need to provide such support.

MCL 750.163 (Complaints)

- Text:
  - Complainants—Any of the superintendents of the poor of the city or county or the county agent of the state welfare commission for the county wherein the wife or minor children of the person complained of reside, may make the complaint under the first section of this chapter.

- Solution:
  - Note: the statute is currently written in such a way that only incarcerated men need to provide such support. Therefore there are two potential changes, with different policy implications.

SECTION 3. AUTHORITY FOR USE OF A SINGLE PUBLIC ACT TO AMEND MULTIPLE SECTIONS OF MICHIGAN STATUTES AND RECOMMENDED TEXT

1. Authority for Use of a Single Public Act to Amend Multiple Sections of Michigan Statutes

Bills that amend more than one statute are introduced infrequently because of the restrictions imposed by the "Title/Object" provision of the Michigan Constitution, Const 1963, art IV, § 24, There are, however, instances where one statute having a single purpose references and affects other related statutes. See, for example, the Age of Majority Act of 1971, 1971 PA 79, MCL 722.51 et seq.; and the Executive Organization Act of 1965, 1965 PA 380, MCL 16.101 et seq. And bills that amend more than one act are permissible if the bill concerns a single object and if the bill request has been recommended by the Michigan Law Revision Commission. The use of a single public act to amend multiple statutes is permitted by the following authority.

1. CONSTITUTIONAL PROVISIONS

A. Const 1963, art IV, § 15

There shall be a bi-partisan legislative council consisting of legislators appointed in the manner prescribed by law. The legislature shall appropriate funds for the council's operations and provide for its staff which shall maintain bill drafting, research and other services for the members of the legislature. The council shall periodically examine and recommend to the legislature revision of the various laws of the state.

B. Const 1963, art IV, § 24 Laws; object, title, amendments changing purpose

No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

2. STATUTORY PROVISIONS

Legislative Council Act (Excerpt), 1986 PA 268

MCL 4.1403 Duties of commission; availability of writings to public

The Michigan law revision commission shall do each of the following:

Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

***

Recommend changes in the law it considers necessary in order to modify or eliminate antiquated and inequitable rules of law, and bring the law of this state into harmony with modern conditions.

***

Report its findings and recommendations to the council and annually, before January 2 of each year, to the legislature. If the commission considers it advisable, it shall accompany the commission's report with proposed bills to implement the recommendations.

3. LEGISLATIVE COUNCIL RULES (as adopted through October 23, 2003).

Chapter 7: Drafting; General Rules

The Bureau shall not accept a bill request unless the request is sufficiently specific to determine the subject and the purpose of the bill to be prepared.

The Bureau shall accept a bill request that will amend more than one act in a single bill if both of the following apply:

The purpose of the request has been formally approved or recommended by the Michigan Law Revision Commission pursuant to its duties as provided in Section 403 of the Legislative Council Act, Act No. 268 of the Public Acts of 1986, being section 4.1403 of the Michigan Compiled Laws.

The Bureau has determined that the sections to be amended are necessarily or properly related, or otherwise meet the requirements of Const. 1963, Art. IV, 24.

2. Michigan Law Revision Commission Recommendation and Proposed Statutory Language for Single Act to Address OBERFEFELL V HODGES.

The Michigan Law Revision Commission has the statutory duty to "Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms". MCL 4.1403(1). The recent decision of the U.S. Supreme Court in Obergefell v Hodges, 135 S.Ct. 2584 (2015) has direct implications on the text of more than one hundred Michigan laws involving a wide range of subjects, rendering those statutes anachronistic in light of the Supreme Court decision.

The Commission believes that changes are necessary to bring the laws of this State into harmony with modern conditions, and, in the interest of legislative efficiency, believes that this is a situation in which a single bill that directs the use of gender-neutral terms rather than gender-specific references may effectively be used to amend multiple acts.

For these reasons, the Commission has determined that the sections to be amended are necessarily and properly related and meet the requirements of Const. 1963, art IV, § 24.

PROPOSED TEXT FOR BILL REQUEST:

Revised Statutes of 1846 (EXCERPT)

CHAPTER 83. Of marriage and the solemnization thereof.

Sec 551.1(A). ALL PROVISIONS OF LAW THAT UTILIZE GENDER-SPECIFIC TERMS IN REFERENCE TO THE PARTIES TO A MARRIAGE SHALL BE CONSTRUED IN A GENDER-NEUTRAL MANNER AS NECESSARY TO EFFECTUATE THE INTENT OF THE UNITED STATES SUPREME COURT DECISION IN OBERGEFGELL V HODGES, 135 S.CT. 2584 (2015).

ATTACHMENT B

Report of the Nominating Committee
To the Probate & Estate Planning Council of the State Bar of Michigan
June 4, 2016

The Nominating Committee of the Probate and Estate Planning Section of the State Bar of Michigan consists of Mark K. Harder, Thomas F. Sweeney, and Amy Morrissey.

The Committee reminds the Council and Section that under the Section 5.2 of the Section's By-Laws the incumbent Chairperson Elect assumes the office of Chairperson upon the conclusion of the Section's annual meeting. The Committee therefore does not nominate a candidate for Chairperson of the Section, and the incumbent Chairperson Elect, James B. Steward, will succeed to the office of Chairperson without action by the Committee, Council or Section.

The Committee met and pursuant to Section 4.1 of the Section By-Laws, the Committee nominates the following individuals for the positions shown opposite their name

Chairperson Elect	Marlaine C. Teahan
Vice Chairperson	Marguerite Munson Lentz
Secretary	Christopher A. Ballard
Treasurer	David P. Lucas

For the Council for a second three year term:

Richard C. Mills
Lorraine F. New
Geoffrey E. Vernon

For the Council for an initial three year term:

Robert C. Labe
Nathan R. Piwowarski
Nazneen H. Syed

If David P. Lucas is elected as Treasurer, the Committee nominates Melisa M.W. Mysliwiec to serve the balance of Mr. Lucas's term as a member of the Council, which ends with the annual meeting in 2017. Mr. Mysliwiec will thereafter be eligible for election to two three-year terms as a member of the Council.

Respectfully submitted on behalf of the Nominating Committee,

Mark K. Harder, Chair

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ATTACHMENT C

600.6023(1) (j)

(j) All individual retirement accounts or individual retirement annuities as now or hereafter defined in section 408 or 408A of the internal revenue code of 1986, 26 USC 408 and 408a, and the payments or distributions from the account or annuity to the initial owner and his dependents as that term is defined in section 152 of the internal revenue code of 1986, 26 USC 152. As used herein, the reference to "all individual retirement accounts shall include, but not be limited to: so-called traditional individual retirement accounts, Roth individual retirement accounts, "inherited individual retirement accounts", rollover individual retirement accounts as defined in section 402(c) of the internal revenue code of 1986, 26 USC 402(c), "simple retirement accounts" as defined in section 408(p) of the internal revenue code of 1986, 26 USC 408(p) and "simplified employee pension plans" as defined in section 408(k) of the internal revenue code of 1986, 26 USC 408(k) . This exemption applies to the operation of the federal bankruptcy code as permitted by section 522(b)(2) of the bankruptcy code, 11 USC 522. This exemption does not apply to i) any amount contributed to the individual retirement account or individual retirement annuity within 120 days before the debtor files for bankruptcy; or ii) contributions to the individual retirement account or premiums on the individual retirement annuity, and the earnings or benefits from those contributions or premiums, if those contributions or premiums exceed, in the tax year made or paid, the deductible amount allowed under section 408 of the internal revenue code of 1986, 26 USC 408. This limitation on contributions does not apply to a rollover of a pension, profit-sharing, stock bonus, or other plan that is qualified under section 401 of the internal revenue code of 1986, 26 USC 401, or an annuity contract under section 403(b) of the internal revenue code of 1986, 26 USC 403.

This exemption does not apply to exempt an individual retirement account or individual retirement annuity from the following:

(i) An order of a court pursuant to a judgment of divorce or separate maintenance.

(ii) An order of a court concerning child support.

(i

Commented [A1]: How does a debtor establish which IRA is intended to be protected? Who choses? What does the 2nd creditor do?

Commented [A2]: To coordinate with 600.5451 + to why should a debtor be at a disadvantage if he has split his IRAs into multiple IRAs for different investment alternatives or classes? If only 1 IRA is protected, how does the creditor or debtor determine which is protected?

Commented [A3]: Proper title for Roth IRA

Commented [A4]: This includes a "qualifying child" i.e. lives in same home, is under age 19 or 24 if a student and where the parent provides over ½ of the support; could include minor brother, sister, stepchild or grandchild, the key being a dependent for Federal Income tax purposes

Commented [A5]: An SEP-IRA is now included and will overrule the 6th Circuit's opinion in *Lampkins v. Golden*, 2002 U.S. LEXIS 900, 28 Fed Appx 409, 27 EBC 1587, 2002 WL 74449 (6th Cir. 2002).

Commented [A6]: Is this intended to mean that the IRA is reachable by a creditor if payments are being made to an ex-spouse pursuant to a QDRO so that the creditor could "trump" the payments being made to the ex-spouse?

Commented [A7]: Same comment

(k) The right or interest of a person in all pension, profit-sharing, stock bonus, defined benefit, money purchase, employee stock ownership, deferred compensation plans of state and local government and tax-exempt employers for the benefit of their employees or other plans that are intended to qualify under section 401 of the internal revenue code of 1986, 26 USC 401, or an annuity contract intended to comply with section 403(b) of the internal revenue code of 1986, 26 USC 403, unless the Internal Revenue Service has revoked a favorable determination letter issued to the plan sponsor where it was not within the job responsibility of the person asserting this statute as an affirmative defense to maintain the tax qualified status of the plan or retirement vehicle in question. This exemption applies to the operation of the federal bankruptcy code, as permitted by section 522(b)(2) of the bankruptcy code, 11 USC 522. This exemption does not apply to any amount contributed to a pension, profit-sharing, stock bonus, or other plan intended to qualify for current income tax exemption under section 401(a) of the internal revenue code of 1986, 26 USC 401 or a 403(b) annuity or annuity contract issued with the intent to qualify for current income tax exemption under section 403(b) of the internal revenue code of 1986, 26 USC 401 if the contribution occurs within 120 days before a petition in bankruptcy is filed by or against the debtor. This exemption does not apply to the right or interest of a person in a pension, profit-sharing, stock bonus, or other plan intended to qualify for current income tax exemption under section 401(a) of the internal revenue code of 1986, 26 USC 401 or 403(b) of the internal revenue code of 1986, 26 USC 403b to the extent that the right or interest in the plan or annuity is subject to either of the following:

(i) An order of a court pursuant to a judgment of divorce or separate maintenance or

(ii) An order of a court concerning child support.

(l) Any interest in the following as to contributions made more than 120 days before a petition in bankruptcy is filed by or against the debtor for an annual amount that is limited to the annual gift tax of a present interest tax exclusion of section 2503(b) of the internal revenue code of 1986, 26 USC 2503(b):

(i) A trust, fund, or advance tuition payment contract established under the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1442.

Commented [A8]: Why limit the number of plans the person participates in? Which plan is entitled to the "exemption"? How would that be determined or proved?

Commented [A9]: Imposes a duty on the debtor if they have the responsibility to maintain tax qualified status as to an employer plan and to not engage in a prohibited transaction as to an IRA.

Commented [A10]: Deleted reference to 403(b) plan being subject to ERISA in order to include non-ERISA 403(b) plans maintained by 501(c)(3) organizations and public schools as well as to avoid any published or unpublished determination by the US Department of Labor as to whether the level of involvement by an employer rises to the level of becoming subject to ERISA.

Commented [A11]: Why exempt contributions made within 120 days of filing in an involuntary filing?

Commented [A12]: This is the current $14,000 annual gift tax exclusion.

(ii) An account established under the Michigan education savings program act, 2000 PA 161, MCL 390.1471 to 390.1486.

(iii) An account in a qualified tuition program or educational savings trust under section 529, 529A or 530 of the internal revenue code of 1986, 26 USC 529 and 530.

Commented [A13]: 529A is ABLE accounts enacted by Federal legislation on 2/13/2013 with the Michigan counterpart having been enacted on 10/28/15 by PA 161 of 2015-tax-advantaged savings account if disabled before age 26.

(2) The exemptions provided in this section do not extend to any lien on the exempt property that is excluded from exemption by law.

(3) If the owner of a homestead dies, leaving a surviving spouse but no children, the homestead is exempt, and the rents and profits of the homestead shall accrue to the benefit of the surviving spouse before his or her remarriage, unless the surviving spouse is the owner of a homestead in his or her own right.

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Decided October 20, 2015

Chelenyak v Veith (In re Estate of Jajuga)

312 Mich App 706
Published Michigan Court of Appeals Opinion

Before: Markey, P.J., and Stephens and Riordan, JJ.

Docket No(s) 322522
Lower Court Docket No(s) 13-016382-DE

Riordan, J.

Riordan, J.

Respondent, Joann Chelenyak, who is the personal representative of the estate of Shelby Jean Jajuga ("decedent"), appeals as of right a probate court order granting the petition for exempt property filed by petitioner, Susan P. Veith. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

The relevant facts are undisputed in this case. Petitioner is the sole surviving child of decedent, Shelby Jean Jajuga. Decedent drafted her last will and testament on January 16, 2002, under which her estate was to be divided in equal parts between three beneficiaries: (1) Mike and Joanne Chelenysk, who constituted a single, joint beneficiary, (2) Jeanette Mullins, and (3) Sherry Snyder. She further directed that petitioner and her other children, who were still living at the time, were to "inherit nothing from [her] estate." Decedent explained in the will that her decision to disinherit her children was "not because of any lack of love and affection I hold toward them but because they have either received compensation in advance of my death or because I do not believe it would be in their best interest that they inherit." The decedent later filed a codicil to her will, appointing respondent as personal representative and directing that her estate shall be divided equally between two, rather than three, named beneficiaries. The codicil reaffirmed the remainder of the will and did not alter the provision that disinherited petitioner.

Following decedent's death, petitioner filed an objection to the final account "on the basis that the Personal Representative has refused to pay Petitioner the exempt property allowance as

This Court reviews de novo an issue of statutory interpretation as a question of law. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). However, "appeals from a probate court decision are on the record, not de novo." *Id.*, citing MCL 700.1305; MCL 600.866(1); MCR 5.802(B)(1); *In re Webb H Coe Marital and Residuary Trusts*, 233 Mich App 525, 531; 593 NW2d 190 (1999). We review the probate court's factual findings for clear error and its dispositional rulings for an abuse of discretion. *Id.* A "court abuses its discretion when it chooses an outcome outside the range of reasonable and principled outcomes." *Id.*

III. WHETHER A DECEDENT MAY LIMIT OR MODIFY A SURVIVING CHILD'S CLAIM TO EXEMPT PROPERTY UNDER MCL 700.2404

On appeal, respondent asserts that the probate court erred in granting petitioner's claim of exempt property. The gravamen of respondent's claims is that a decedent may—through a provision that expressly disinherits a child under a will—eliminate an adult child's claim to exempt property under MCL 700.2404 when there is no surviving spouse. On the facts of this case, we disagree and conclude that the disinheriting language in decedent's will did not eliminate petitioner's statutory right to exempt property under MCL 700.2404.

A. APPLICABLE LAW

This is an issue of first impression under Michigan law, which requires this Court to interpret MCL 700.2404 in the context of the EPIC. [1] We restated the following principles of statutory interpretation in *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541-542; 840 NW2d 743 (2013):

> The judiciary's objective when interpreting a statute is to discern and give effect to the intent of the Legislature. First, the court examines the most reliable evidence of the Legislature's intent, the language of the statute itself. When construing statutory language, [the court] must read the statute as a whole and in its grammatical context, giving each and every word its plain and ordinary meaning unless otherwise defined. Effect must be given to every word, phrase, and clause in a statute, and the court must avoid a construction that would render part of the statute surplusage or nugatory. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted. Generally, when language is included in one section of a statute but omitted from another section, it is presumed that the drafters acted intentionally and purposely in their inclusion or exclusion. The courts may not read into the statute a requirement that the Legislature has seen fit to omit. When the Legislature fails to address a concern in the statute with a specific provision, the courts cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute's purpose. Statutes that address the same subject matter or share a common purpose are *in pari materia* and must be read collectively as one law, even when there is no reference to one another. . . . [Quotation marks and citations omitted; alteration in original.]

As a preliminary matter, we recognize that respondent emphasizes the rule of construction indicating that the primary role of the court is to ascertain the intent of the testator and, if permissible under the law, effectuate that intent: "In will cases the primary rule of construction and the primary function of courts is to ascertain from the four corners of a will the intent of the testator and, if legally possible, that intent must prevail." *Hay v Hay*, 317 Mich 370, 397; 26 NW2d 908 (1947); see also *Foster v Stevens*, 146 Mich 131, 136; 109 NW 265 (1906). In the instant case, however, we are concerned with interpreting and applying a statute, not discerning decedent's testamentary intent. Nevertheless, that rule of construction is consistent with the rule of construction applicable to the EPIC under MCL 700.1201(b), i.e., to liberally construe and apply the act in a way that promotes the discovery and execution of a decedent's intent in the distribution of the decedent's property. There is no dispute that decedent intended that petitioner would inherit nothing from her estate.

However, it is important to recognize that MCL 700.3101 provides:

> *An individual's power to leave property by will*, and the rights of creditors, devisees, and heirs to his or her property, *are subject to the restrictions and limitations contained in this act to facilitate the prompt settlement of estates. Upon an individual's death, the decedent's property devolves to the persons to whom the property is devised by the decedent's last will* or to those indicated as substitutes for them in cases involving lapse, disclaimer, or other circumstances affecting devolution of a testate estate, or in the absence of testamentary disposition, to the decedent's heirs or to those indicated as substitutes for them in cases involving disclaimer or other circumstances affecting devolution of an intestate estate, *subject to* homestead allowance, family allowance, *and exempt property*, to rights of creditors, to the surviving spouse's elective share, and to administration. [Emphasis added.]

Accordingly, it is apparent that effectuating a decedent's testamentary intent should not be our sole focus in construing MCL 700.2404, as the EPIC clearly provides that an individual's power to leave property by will is subject to the exempt property provisions under MCL 700.2404.

Thus, we reject respondent's argument that "[i]t is counterproductive to permit the decedent to disinherit an adult child on one hand and then grant the disinherited adult child rights in exempt property greater than the right of the decedent to devise his or her property." Instead, it appears that the limitations under MCL 700.3101 specifically allow for such a situation. Likewise, we do not agree that "the statutory language is silent as to whether or not [an] adult child's 'rights' to exempt property ha[ve] a first priority over the decedent's devise or other intended distribution from the estate." Again, MCL 700.3101 expressly provides that a decedent's devises are *subject to* exempt property, which clearly indicates that a decedent's intended distribution of estate property is limited by the provisions of the exempt property statute. Therefore, given that the language of an act is the most reliable evidence of the Legislature's intent, *Book-Gilbert*, 302 Mich App at 541-542, we reject respondent's claim that there is no statutory support for the court's ruling that exempt property may be distributed to

case. See MCL 700.2101(1). [2] Likewise, for the foregoing reasons, we reject respondent's claim that a conflict arises between MCL 700.2101 and MCL 700.2404 if a disinherited child is permitted to claim exempt property, as the statutes pertain to different types of property transfers.

B. STATUTORY LANGUAGE UNDER MCL 700.2404

1. MEANING OF "ENTITLED "UNDER MCL 700.2404(1) AND (2)

Respondent contends that the probate court erred in finding that the Legislature's use of the term "entitled" in MCL 700.2404(1) establishes that a decedent's children have a statutory right to exempt property when there is no surviving spouse. We disagree.

"Entitled" is not defined by statute. "When the Legislature has not defined a statute's terms, we may consider dictionary definitions to aid our interpretation." *Autodie, LLC v City of Grand Rapids*, 305 Mich App 423, 434; 852 NW2d 650 (2014). "Entitle" means "to furnish with proper grounds for seeking or claiming something." *Merriam-Webster's Collegiate Dictionary* (2014). Similarly, "entitle" has been defined as "[t]o grant a legal right to or qualify for." *Black's Law Dictionary* (10th ed). In considering both definitions, we conclude that the plain meaning of "entitled" in this context is having a legal right to exempt property, or meeting the qualifications to claim exempt property as a matter of law.

Respondent, however, asserts that "[t]he plain and ordinary meaning of 'entitled' is one of eligibility as to the right of priority" and does not establish an "absolute right to exempt property." Construing "entitled" in the manner advocated by respondent is inconsistent with the context of the word "entitled" in the statute, as MCL 700.2404(3) refers a surviving spouse's entitlement (or, if there is no surviving spouse, the entitlement of the decedent's children) to the property delineated in the statute as "rights" without indicating that the rights themselves are merely procedural rights of priority that arise once a child is eligible to claim exempt property. See *GC Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 421; 662 NW2d 710 (2003) ("In seeking meaning, words and clauses will not be divorced from those which precede and those which follow." [Quotation marks and citation omitted.]); *Potter v McLeary*, 484 Mich 397, 411; 774 NW2d 1 (2009) ("[W]hen considering the correct interpretation, [a] statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme. In defining particular words in statutes, we must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme." [Footnotes omitted.]). Instead, the language first describes the property to which a surviving spouse (or, if there is no surviving spouse, the decedent's children) is *entitled* and subsequently states that *those rights themselves* have "have priority over all claims against the estate," not that the rights only constitute rights of priority. MCL 700.2404(1), (2). Furthermore, the fact that the devises in a testator's will are *subject to* exempt property pursuant to MCL 700.3101 further suggests that surviving spouses or children have a legal right to—not just a right of priority as to—exempt property under MCL 700.2404. Thus, in reading the EPIC as a whole, see *GC Timmis*, 468 Mich at 421 (stating that

of the exempt property statute is separate and distinct from the specific devises of a will, and the decisions of other state courts interpreting language strikingly similar to MCL 700.2404, see Part III.C, *infra*.

Additionally, respondent argues that language expressly stating that an adult child is to receive nothing under a will is sufficient to trigger the "unless otherwise provided" language under MCL 700.2404, such that petitioner was not entitled to exempt property under MCL 700.2404 given the disinheriting language in the will. We disagree.

Given the existence of a right to exempt property under MCL 700.2404 that is separate from any property devised under the will, we conclude that the language in decedent's will that generally disinherited petitioner was not sufficient under MCL 700.2404 to eliminate petitioner's *statutory right* to exempt property, as the disinheriting language included no reference to petitioner's statutory rights. [5]

C. CASELAW FROM OTHER JURISDICTIONS

Our reasoning above is consistent with caselaw from other jurisdictions that considered statutes strikingly similar to MCL 700.2404. [6] In *Matter of Dunlap's Estate*, 199 Mont 488, 489; 649 P2d 1303 (1982), the decedent, whose husband predeceased her, executed a will under which she specifically disinherited her son, who sought to claim exempt property. "The sole issue before [the court was] whether a child specifically disinherited by will may take under [Mont Code Ann 72-2-802] which provides exempt property for certain heirs." *Id.* At the time, the exempt property statute provided:

> (1) In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding $3,500 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value is excess of security interests, plus that of other exempt property, is less than $3,500 or if there is not $3,500 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $3,500 value.
>
> (2) Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance.
>
> (3) These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. [*Id.* at 489-490, quoting Mont

> encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than five thousand dollars, or if there is not five thousand dollars worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the five thousand dollars value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate except for costs and expenses of administration, and except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. *These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided therein, by intestate succession, or by way of elective share.* [*Id.* at 336-337, quoting Neb Rev Stat 30–2323 (Reissue 1995).]

The court "conclude[d] that the plain and unambiguous language of § 30–2323 creates a statutory right that accrues to the surviving spouse or the surviving children jointly if there is no surviving spouse upon the death of the testator." *Id.* at 339. In determining whether "this right is indefeasibly vested or whether it may be abrogated by will," the court considered *Matter of Dunlap's Estate*, 199 Mont 488, and noted that other jurisdictions allowing a testator to provide for a bequest instead of a statutory allowance have indicated that the testator's intent to do so "must be clear from the language of the will before the court will bar the statutory grant." *In re Estate of Peterson*, 254 Neb at 339-340. The court ultimately held:

> In construing the language of § 30–2323, we conclude that the statutory rights granted therein are vested and indefeasible. The clear intent of § 30–2323 is to provide an exempt property allowance, which benefit is "in addition to" any benefits passing to the surviving spouse or surviving children by will, by intestate succession, or by way of elective share. Unless a testator clearly provides in the will that the devises and bequests are in lieu of exempt property, then the spouse or children are entitled to both. . . . [*Id.* at 340.]

Finally, the court wrote:

> If the will of a testator clearly provides otherwise, then an exempt property allowance is not "in addition to" any benefit by will, intestate succession, or elective share. Regardless, the rights set forth in § 30–2323 cannot be defeated by a testator even though the testator may require a spouse or child to choose between the devise or the exempt property allowance.
>
> The county court erred in finding that [the disinherited son] was not entitled to an exempt property allowance. The testator disinherited [the son], but [the son] is entitled to an exempt property allowance in accordance with § 30– 2323. [*Id.* at 341.] [[8]]

> the spouse in the property of the other and is an irrevocable renunciation by the spouse of all benefits that would otherwise pass to the spouse from the other spouse by intestate succession or by virtue of a will executed before the waiver or property settlement.

Based on this, respondent argues that we should infer that a surviving spouse has a vested right to exempt property that cannot be waived without the consent of the spouse, while a non-dependent adult child does not have the same vested right, such that his or her consent is not required for his or her right to exempt property to be modified or eliminated by a decedent's will.

Given the significant legal differences between—and implications of—a martial relationship as opposed to a parent-child relationship, we disagree that the express possibility of waiver "by a written contract, agreement, or waiver signed by the party waiving after fair disclosure" under MCL 700.2205 necessarily establishes that a decedent's surviving spouse has a " *vested* right" while a decedent's adult child does not. Moreover, we find that such a conclusion is tenuous in light of the statutory text. Apart from possibility of spousal waiver established under MCL 700.2205, we discern no indication that the Legislature intended for children to have different or limited rights to exempt property as compared to a surviving spouse. In light of the significant consequences of such a conclusion, we find that the Legislature, if it wished, could have expressly included such a distinction between the rights in the text if it had intended for that distinction to exist. Cf. *Sclafani v Domestic Violence Escape*, 255 Mich App 260, 269-270; 660 NW2d 97 (2003) (reasoning that the Legislature would have expressed an intention more clearly if it had intended to implement such a provision). It is not the role of the Court to judicially legislate by adding language to a statute, *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 421; 565 NW2d 844 (1997), and this Court may not engraft a limitation of a right, which is not included by the Legislature, "under the guise of statutory construction," see *Lakeland Neurocare Ctrs v State Farm Mut Auto Ins Co*, 250 Mich App 35, 39-40; 645 NW2d 59 (2002). [11]

Therefore, we reject respondent's argument that MCL 700.2205 indicates that an adult child has an inferior right to exempt property compared to a surviving spouse.

IV. CONCLUSION

Although it may have been prudent for the Legislature to specifically prescribe the way in which a statement of a decedent's intent to disinherit a child under a will affects the child's claim to exempt property, especially given that one of the express purposes and policies of the EPIC is "[t]o discover and make effective a decedent's intent in distribution of the decedent's property," MCL 700.1201(b), it is not our role to do so. "When the Legislature fails to address a concern in [a] statute with a specific provision, the courts cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute's purpose." *Book-Gilbert*, 302 Mich App at 542 (quotation marks and citations omitted).

180 (2001); *Rookledge v Garwood*, 340 Mich 444, 453; 65 NW2d 785 (1954).

5 By analogy, the Reporter's Comment to MCL 700.2404 provides, "A specific devise of personal property to the spouse or children without a further indication that it replaces this exemption should not be interpreted as within the phrase 'unless otherwise provided.' " *EPIC with Reporter's Commentary*, pp 81-82.

The Reporter's Comment to MCL 700.2402 also states the following with regard to the "unless otherwise provided" language, ultimately concluding that it is unclear whether a decedent may modify or eliminate an exemption by will:

> The phrase "unless otherwise provided" in the last sentence of §2402 permits a testator to stipulate that the allowance is to be treated as part of the share given by will to the spouse (or other recipient). The allowances in §§2402, 2043, and 2404, MCL 700.2403, .2404, are certainly intended to offer some economic protection to the surviving spouse and to children when they are eligible. May the decedent, however, stipulate in his or her will that one or more of the allowances not be paid? In other words, can a spouse or a child be omitted from coverage by these allowances? It seems clear that a spouse may not be denied these allowances through unilateral action by the decedent. Section 2205, MCL 700.2205, appears to state the only methods by which the spouse may be excluded from receiving the allowances. All require consent of the spouse. Other provisions point to the fact that a decedent could omit a child not only from taking anything under the decedent's will but also from receiving allowances as well. These sections are MCL 700.2101(2) (permitting exclusion from receiving an intestate share), and §2302, MCL 700.2302 (providing no share for a child who is deliberately or inadvertently excluded from a will, except in very limited situations). The inclusion of dependent children in the coverage of §§ 2402 and 2403 arguably is based on a public policy of providing a minimal benefit in all events for the one or those who have an economic need. Because children who may take exempt property under §2404 need not be dependent children, their inclusion may be based on simple fairness, not economic necessity. *Whatever the policy reason for including children within the coverage of these provisions, it is unclear whether the decedent may modify or eliminate these exemptions and allowances by will.* [*Id.* at 78-79 (emphasis added).]

This section permits only a spouse to waive allowances and the right to exempt property (as well as other rights). An adult dependent child may be entitled to homestead and family allowances under MCL 700.2402 and .2403. An adult child may be entitled to an exempt property allowance under MCL 700.2404. *These apparently are rights that may not be waived.* It is uncertain whether they may be modified or eliminated by the decedent's will. . . . [*EPIC with Reporter's Commentary*, p 72 (emphasis added); see also *In re Conservatorship of Bittner*, ___Mich App at ___ ; slip op at 8].

HOUSE BILL No. 5638

May 11, 2016, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled

"Estates and protected individuals code,"
by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2404. (1) The decedent's surviving spouse is also entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed $10,000.00 more than the amount of any security interests to which the property is subject. ~~If~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), IF** there is no surviving spouse, the decedent's children are entitled jointly to the same value.

(2) ~~If~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), IF** encumbered assets are selected and the value in excess of security interests, plus that of other exempt property, is less than

HOUSE BILL No. 5638

$10,000.00, or if there is not $10,000.00 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

(a) Administration costs and expenses.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The $10,000.00 amount ~~expressed~~ **DESCRIBED** in this section ~~shall~~ **MUST** be adjusted as provided in section 1210.

(4) A DECEDENT BY WILL OR OTHER SIGNED WRITING MAY EXPRESSLY EXCLUDE OR LIMIT THE RIGHT OF A CHILD WHO IS NOT A MINOR OR DEPENDENT CHILD TO MAKE A CLAIM THAT THE CHILD IS OTHERWISE ENTITLED TO UNDER THIS SECTION. THE EXCLUSION OR LIMITATION DESCRIBED IN THIS SUBSECTION MUST BE EXPRESSLY STATED BY THE DECEDENT, AND MUST SPECIFICALLY REFERENCE THE ALLOWANCE DESCRIBED IN THIS SECTION IN A MANNER SUFFICIENT TO EXPRESS THE DECEDENT'S INTENT. AN EXCLUSION OR LIMITATION STATED BY A DECEDENT BY WILL UNDER SECTION 2101, WITHOUT ADDITIONAL LANGUAGE SPECIFICALLY STATING AN INTENT TO EXCLUDE OR LIMIT A RIGHT PROVIDED UNDER THIS SECTION, IS NOT CONSIDERED SUFFICIENT LANGUAGE TO EXCLUDE OR LIMIT A RIGHT PROVIDED IN THIS SECTION.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Michele Marquardt

From: Michele Marquardt
Sent: Tuesday, May 31, 2016 8:41 AM
To: 'mkellogg@fraserlawfirm.com'; 'rpb@probateprince.com'; 'Jonathan Nahhat (jnahhat@loplyn.com)'; 'Pam Strong'; 'gdavid.law@gmail.com'; 'CBallard@honigman.com'; 'James Steward'
Subject: Suggested Changes to HB 5638
Attachments: Suggested rewrite of section (4) of House Bill 5638.pdf

Dear Committee:

After re-writing this section several times, which excluded children in a way not contemplated by EPIC, I decided to be direct and short. Do you think this does the job, or does it need to be more comprehensive?

I also had concerns about the Bill because it says that a "dependent child" cannot be excluded. Isn't it possible that a special needs adult, while perhaps a dependent for the parent, would need to be excluded to unable benefits? So that was another issue with the Bill that worried me. That problem seems to be resolved if we just stick to EPIC.

Please email us all your thoughts- thank you!
Michele

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Suggested re-write of section (4) of House Bill 5638:

(4) A DECEDENT BY WILL OR TRUST MAY EXPRESSLY EXCLUDE OR LIMIT THE RIGHT OF AN INDIVIDUAL OR CLASS TO SUCCEED TO PROPERTY OF THE DECEDENT IN ACCORDANCE WITH SECTION 2101(2) OF THE ESTATES AND PROTECTED INDIVIDUALS CODE, BEING SECTION 700.2101(2) OF THE MICHIGAN COMPILED LAWS.

HOUSE BILL No. 5704

May 26, 2016, Introduced by Rep. Hughes and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled

"Estates and protected individuals code,"

by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2404. (1) The decedent's surviving spouse is also entitled to household furniture, automobiles, furnishings, appliances, and personal effects from the estate up to a value not to exceed $10,000.00 more than the amount of any security interests to which the property is subject. If there is no surviving spouse, the decedent's children are entitled jointly to the same value **UNLESS THE DECEDENT DISINHERITS 1 OR MORE CHILDREN IN HIS OR HER WILL, IN WHICH CASE ONLY THOSE CHILDREN NOT DISINHERITED ARE ENTITLED. AS USED IN THIS SUBSECTION, "DISINHERIT" MEANS A DECEDENT BY WILL EXPRESSLY STATING THAT A CHILD TAKES NOTHING OR AN AMOUNT LESS THAN $10.00 FROM THE ESTATE.**

HOUSE BILL No. 5704

(2) If encumbered assets are selected and the value in excess

of security interests, plus that of other exempt property, is less than $10,000.00, or if there is not $10,000.00 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

(a) Administration costs and expenses.

(b) Reasonable funeral and burial expenses.

(c) Homestead allowance.

(d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The $10,000.00 amount expressed in this section ~~shall~~ **MUST** be adjusted as provided in section 1210.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

ATTACHMENT 6

CHAIR REPORT
for
MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
September 10, 2016

Each year, the Section Council adopts a Biennial Plan of Work to help guide the Council through year when prioritizing its work. As usual the Biennial Plan of Work is being updated for 2016-2018, and the current draft is attached, but is not yet final. Please provide comments and suggestions at the meeting or to any officer.

Last year we started the task of looking at the Estates & Protected Individuals Code (and the Michigan Trust Code) as a whole to identify sections that likely should be revised to reflect changes in probate or trust practice and procedures that have occurred or should occur. This will likely be the most labor intensive project that we will undertake this year, and perhaps for several years. I ask that all members of the Section follow these proposals as they are discussed during the Committee on Special Projects meetings, or at Council meetings, and provide input as to which proposed changes you believe are good, as well as those you believe to be not so good. The end result, hopefully, will be an updated EPIC which will work better for us and our clients.

Our Section Listing of Committees is also being updated and will be included in the agenda materials for the October meeting. I ask all Committee chairs to provide me with a listing of their current committee members, ongoing projects and new projects or issues which we should consider addressing. The updated committee list will be revised and circulated with the materials for the October meeting and posted on our section webpage. Section Members who would like to work on a committee should contact the chair of that committee or any officer.

As always, the work of the Council requires the participation and input of many Section members, not just those on the Council.

James B. Steward
Chair

Probate & Estate Planning Section
Biennial Plan of Work
10/1/2016 - 9/30/2018

	Statutory/Legislative	Court Rules, Procedures and Forms	Council Organization & Internal Procedures	Professional Responsibility	Education & Service to the Public & Members
Action Pending	-Dower Repeal (SB 558, 559, and 560) -Probate Appeals statute (SB 633, 634) -Prop tax uncapping exempt. (HB 5140 etc) -Qualified Distributions in Trust (SB 597,598) -Tenants by Entirety Property bill -ILIT trustee exoneration bill (SB 1010) -Jajuga legislation override				-Brochures State Bar Publication Agreement -Promotion of "Who Should I Trust?" Program* (or similar) -57th Annual P&EP Institute
Priority Items	- Assisted l Reproductive Technology -EPIC/MTC Updates -Guardian/Conservator Jurisdiction (SB 270) -Tenants by Entirety Property in Trust bill	-Probate Appeals Rules -SCAO Meetings* -New forms based on legislation		- who does the attorney for the fiduciary represent?	-Communications with members* -Social events for Section members -Liaise with local bar associations -Social media & website* -Brochures* -Annual Institute/ICLE seminars*
Secondary Priority	-Charitable Trust statute update -Expand Personal Residence Exemption -attorney for the fiduciary (Perry v Cotton issue) -Michigan Community Property Trust Act	-Review Ch. 5 of MCR for potential updates (incl. attorney representation, but not fiduciary exception)	-Amend bylaws to better coordinate transition of new officers/members		-Opportunities with ICLE - Journal Advertising
Priority To Be Determined	- Parental rights assignment criminalization -EPIC changes to reflect UPC updates -Dignified Death (Family Consent) Act -Directed/Separate Trustee Proposals -Further brochure updating -PRE after death & nursing home	-Estate Recovery	-Budget Reporting -State Bar of Michigan 21st Century Practice Task Force Report		-Probate Court Opinion Bank -Mentor program -Outreach to COA to stay apprised of pending appeals & need for involvement -Estate Recovery

*ongoing

Topic	Statute	Lead	Status	Notes
FADA fix		Howard and Meg	2/26 – Assigned to project leads	FADA currently allows the custodian to require a court order before giving access. Instead, give probate register the ability to add digital access powers in the Register's Statement following an Application for Informal Probate
Satisfaction of claims using non-probate assets	3805	Susan Chalgian and Katie Lynwood		• Clarify duties of fiduciaries regarding • Priority for use of assets to pay claims
Apostille fix		Howard	2/26 – Assigned to project lead	• Possibly an amendment to Great Seal Act, MCL 2.41 et seq • Form for certification (MC 202), refers to 28 USC 1738: o The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto. o The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form. o Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.
Petition and order of assignment for "trust funding cleanup"	3982	Nathan and Georgette	2/26 – Assigned to project lead	• (Allow assignment to devisees with appropriate waiver from surviving spouse) • Possibly add new section instead
Gender/same-sex marriage-related changes	2114 2519 2801 2806	Meg	Complete (recommended language submitted as part of TBE reform)	Substitute gender-neutral language: • 2114 Parent and child relationship. • 2519 Statutory will. • 2801 Effect of divorce, annulment, decree of separation, bigamy, and absence. • 2806 Definitions relating to revocation of probate and nonprobate

				transfers by divorce; revocation by other changes of circumstances. • Also examine MCR 5.305 and other Court Rules for related changes
Topic	**Statute**	**Lead**	**Status**	**Notes**
Exempt property allowance	2404	Nathan	2/26 – Assigned to project leads	Allow testator to override allowance for adult children
COLA in EPIC	Various	Kenneth Konop. And Rick Mills		• 1210 • 2519 Statutory will., Additional clauses ($5,000 gift to minors provision) • 3605 Demand for bond by interested person ($2,500 threshold for interest in estate for demanding a bond) • 3916 Disposition of unclaimed assets. ($250 threshold for certain distributions • 3917 Duties of county treasurer. ($1,000 threshold for county treasurer imposing certain fees on unclaimed funds) • 3918 Distribution to person under disability. ($5,000 threshold for distributions to spouse, parent, or other close relative in lieu of a conservator) • 3981 Delivery of cash not exceeding $500 and decedent's wearing apparel. • 3982 Court order assigning small estates (increase pre-COLA amount to increase COLA-adjusted figure to perhaps $50,000) • 5102 Payment or delivery ($5,000 threshold for payments f/b/o minors without the appointment of a conservator)
COLA beyond EPIC		Kenneth Konop. And Rick Mills		• 257.236 ($60,000 for the transfer of motor vehicles through the SOS) • 324.80312(3) ($100,000 for transfer of watercraft through the SOS.)
Standby guardians		Nathan		• Minors: Add new section to Article V, Part 2, MCL 5201, et seq. • Legally Incapacitated Individuals: Add new section to Article V, Part 3, MCL 5301, et seq.
Statutory forfeiture for benefiting drafter		New ad-hoc comm.		

Topic	Statute	Lead	Status	Notes
Notice; non-devisee spouse in accounts	1105(c)	Kathleen Geotsch and Ray Harris		• Consider recommending change to MCR 5.125.
Notice; family allowance petition	2405 1105(c)	Kathleen Geotsch and Ray Harris		• If a trust is a devisee, make trust beneficiaries as interested persons for the purposes of a petition to increase the family allowance under 2405(3) • Consider recommending change to MCR 5.125.
MTC Notice Fix		Geoff/ Legislative Develop-ment and Drafting Committee		• 7103(g) "Qualified trust beneficiary" means a trust beneficiary to whom 1 or more of the following apply on the date the trust beneficiary's qualification is determined: o (i) The trust beneficiary is a distributee or permissible distributee of trust income or principal. o (ii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in subparagraph (i) terminated on that date without causing the trust to terminate. o (iii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. • Related fixes in 7814 • Related fix to "nonwaivable duties" provision, 7105(2)(i): address the reference to 7814(2)(a) to (c) and fact that 7105(2)(i) does not list all the duties in 7814(2)(a) to (c). • Problem scenarios and questions – o Assume there exists a dynasty trust with all generations of the family (e.g., child, grandchild, and great grandchild) being permissible distributees (assuming "permissible distributees" are included in the term "distributees") of trust income and principal. Pursuant to (g)(ii), the clean-up clause beneficiaries (commonly charities), who are almost certainly never going to receive trust distributions (because every family member of the several generations would have to die prior to trust termination), are "qualified trust beneficiaries". Inasmuch, these clean-up

				beneficiaries are required to receive notice under section 7814(2)(a) – (c) and such notice provisions cannot be modified by the trust instrument. This cannot be the intent of the section. o With respect to (g)(iii), it matters how the trust terminates. Do we assume the trust terminates per the terms of the governing instrument (meaning, in most cases, that everybody in the family is dead)? Or do we assume that the trust was terminated by court order or as if the RAP period ended and everybody is still living? o Also with respect to (g)(iii), if trust terminates due to deaths and the new permissible distributee is another trust that hasn't been funded and has no trustee, who gets the section 7814 notices? o Is it intentional that (g)(ii) omits "permissible distributees" in the phrase "if the interests of the distributees under the trust…terminated". Is it acceptable to read that to only consider those that have actually received distributions?
MTC fixes		Jim Spica	2/26 – Assigned to project lead	• The prepositional phrase with which section 7815(2) (MCL § 7815(2)) begins (viz., "Unless the trust instrument expressly provides otherwise") should be deleted. The phrase is superfluous (and, therefore, potentially confusing) in light of section 7105(2). (The phrase's inclusion in the statute is my fault: I drafted 7815(2) as part of the 2012 decanting amendments to the MTC, and there was evidently a moment in which I forgot that I was writing statutory language rather than commentary.) • Section 7105(2)(a) should refer to section 7402 (MCL § 7501(2)(a)). The committee will have to decide whether the wanted reference to section 7402 should supplant the (existing) reference to section 7401, whether the amended provision should refer to both sections 7401 and 7402, or whether we should follow the UTC in referring simply to "the requirements for creating a trust." See Unif. Trust Code § 105(b)(1) (amended 2006). (I suspect that the existing reference in MTC section 7105(1)(a) to section 7401 was actually meant just to be a reference to section 7402, but I don't know that.) In any case, it is in section 7402 that the MTC addresses the requirements for creating a trust most directly.
Secret trusts	7814	Rick Mills		• Perhaps model on Florida statute

Topic	Statute	Lead	Status	Notes
In terrorem clauses	2518 7113	David Skidmore and George Bearup		• Confirm standard/procedure for establishing probable cause
Fees in trust contests	New section	David Skidmore and George Bearup		• Model on 3720
Knowledge of a fact	New section	Raj Malviya		• Apply principle of 7104 to all of EPIC • Add to Article I, Part 2?
UPC Updates	2805 2806	Professor Waggoner		• 2805, Reformation to Correct Mistakes. • 2806, Modification to Achieve Transferor's Tax Objectives.
Attorney-in-fact's ability to settle a trust	7402	Kenneth Konop and Rick Mills		• A settlor must have capacity to create a trust. What if agent creates trust and settlor is incapacitated? Because 7402 says that a trust is created only if all of the following apply and says settlor has to have capacity. Mark's Reporter's Comment indicates that allowing agents of incapacitated people has long been accepted in Michigan.
COT execution language	7913, plus 565.433	George Bearup		• Reconcile certificate of trust provisions of MCL 565.433 (real property recording cert) and MCL 700.7913 (MTC cert) to have the same signature / execution language. • MCL 565.433 only allows the trustee to sign the cert if the trustee is also an attorney or officer of a banking institution. MCL 700.7913 allows any trustee to sign the cert.

Topic	Statute	Lead	Status	Notes
ART updates	Various	ART Comm.	Recurring CSP agenda item	• 1201, General Definitions. • 2103, Share of Heirs Other than Surviving Spouse • 2104., Requirement of Survival by 120 Hours; Individual in Gestation. • 2108. [Reserved.] • 2114, Parent Barred from Inheriting in Certain Circumstances. • 2115, Definitions. • 2116, Effect of Parent-Child Relationship. • 2117, No Distinction Based on Marital Status; Child Born or Conceived During Marriage. • 2118, Adoptee and Adoptee's Adoptive Parent or Parents. • 2119, Adoptee and Adoptee's Genetic Parents. • 2120, Child Conceived by Assisted Reproduction Other Than Child Born to Gestational Carrier. • 2121, Child Born to Gestational Carrier. • 2122, Equitable Adoption. • 2502, Execution; Witnessed or Notarized Wills; Holographic Wills. • 2504, Self-proved Will. • 2705, Class Gifts Construed to Accord with Intestate Succession; Exceptions. • 3406, Formal Testacy Proceedings; Contested Cases. • 3715, Regarding posthumous conception. • 7821, Regarding posthumous conception. • 8101, Time of Taking Effect; Provisions for Transition.
				•
				•

PAA PUBLIC AFFAIRS associates

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AUG 0 6 2016

Council of the Probate & Estate Planning Section of the State Bar
ATTN: Mr. Shaheen Imami
800 W Long Lake Rd Ste 200
Bloomfield Hills, MI 48302-2058

August 4, 2016 **(NOT A REQUEST FOR PAYMENT)**

****

STATEMENT OF LOBBYING EXPENDITURES

****

For the Reporting Period January 1 - July 31, 2016
Report Due: August 31, 2016

According to Section 10 of the Michigan Lobbying Registration and Reporting Act (Public Act 472 of 1978), we are required to report to you the lobbying expenditures made on your behalf by Public Affairs Associates for the above reporting period.

During the course of providing lobbying services, representatives of our firm communicated with public officials with respect to administrative or legislative action.

EXPENDITURES FOR LOBBYING $7,000.00*

***This figure is to be reported on the Financial Report Summary (available at www.Michigan.gov/sos) as part of Item 7c., "All Other Expenditures." This represents the portion of retainer fees used in direct communication with public officials and not the total fees paid.**

PLEASE NOTE: We plan to file your Financial Summary Report on your behalf by the above due date (unless you notify us otherwise). Please let us know if you have anything to add to our Section 10 report including food and beverage expenses for public officials or time spent lobbying. A copy of the report we file will be sent to you for your files. Please call Jane Cheesmond at (517) 371-5136 ext. 11 or email jane@paaonline.com if you have any questions.

One Michigan Avenue Building
120 N. Washington Sq., Ste 1050
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Discover a New Level in Government Relations

Mr. Shaheen Imami
Council of the Probate & Estate Planning Section of the State Bar
800 W. Long Lake Rd., Ste 200
Bloomfield Hills, MI 48302-2058

Dear Shaheen:

Enclosed, for your records, is a stamped copy of the Financial Report Summary, which was filed at the Secretary of State's office. This form reported direct lobbying expenditures during the period January 1 through July 31, 2016, and was filed by the August 31, 2016 deadline.

The next report will be for the period, August 1 through December 31, 2016, and will be due January 31, 2017. You will be hearing from us the first part of January with our statement for that period.

Please call or email (jane@paaonline.com) if you have any questions. Thank you.

Sincerely,

Jane Cheesmond

Enclosure

August 25, 2016

One Michigan Avenue Building
120 N. Washington Sq., Ste 1050
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MICHIGAN DEPARTMENT OF STATE
BUREAU OF ELECTIONS

LOBBY REGISTRATION

2016

FINANCIAL REPORT SUMMARY

READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

1. REGISTRANT'S NAME **Council of the Probate & Estate Planning Section of the State Bar** ( ) CHECK BOX IF THIS NAME HAS CHANGED SINCE THE LAST REPORT FILED	2. REGISTRANT'S ID NUMBER **L-6350-3** 3. TELEPHONE NUMBER **(517) 377-0869**

4a. MAILING ADDRESS (ALL MAILINGS WILL BE SENT TO THE ADDRESS LISTED HERE)
ATTN: Mr. Shaheen Imami
800 W. Long Lake Rd., Ste 200
Bloomfield Hills, MI 48302-2058
( ) CHECK BOX IF THIS ADDRESS HAS CHANGED SINCE THE LAST REPORT FILED

RECEIVED/FILED
MICHIGAN DEPT. OF STATE
2016 AUG 25 A 8:54
ELECTIONS/GREAT SEAL

4b. IF INDIVIDUAL, RESIDENTIAL ADDRESS ( ) CHECK BOX IF THIS ADDRESS HAS CHANGED SINCE LAST REPORT FILED	4c. BUSINESS ADDRESS ( ) CHECK BOX IF THIS ADDRESS HAS CHANGED SINCE LAST REPORT FILED

5. TYPE OF REPORT:
a. (X) JANUARY - JULY **2016** (DUE AUGUST 31)
b. ( ) AUGUST - DECEMBER _____ (DUE JANUARY 31)
c. ( ) AMENDMENT TO ITEM(S) _____
d. ( ) TERMINATION
DATE TERMINATED

e. ITEMIZED EXPENDITURES FORM IS ATTACHED ( ) YES (X) NO

6. BRIEF DESCRIPTION OF LOBBYING ACTIVITIES: **Communicating with public officials for the purpose of influencing official action of interest to our organization.**

CHECK HERE IF THERE WAS NO LOBBYING ACTIVITY DURING THIS PERIOD: ( )

7. EXPENDITURES BY CATEGORY	THIS REPORTING PERIOD	YEAR TO DATE
a. FOOD AND BEVERAGE FOR PUBLIC OFFICIALS	$0.00	$0.00
b. MASS MAILINGS AND ADVERTISING	$0.00	$0.00
c. ALL OTHER LOBBYING EXPENDITURES	$7000.00	$7000.00
d. TOTAL LOBBYING EXPENDITURES (TOTAL OF a, b & c)	$7000.00	$7000.00

8. NAME AND ADDRESS OF EACH ADDED OR DELETED PERSON EMPLOYED, COMPENSATED OR REIMBURSED FOR LOBBYING. NOTE: THE ENTRY OF A PERSON=S NAME AND ADDRESS UNDER THIS ITEM DOES NOT REGISTER OR TERMINATE THE PERSON AS A LOBBYIST OR A LOBBYIST AGENT.

( ) ADD **N/A** ( ) DELETE	( ) ADD ( ) DELETE
( ) ADD ( ) DELETE	( ) ADD ( ) DELETE

9. VERIFICATION: I CERTIFY THAT ALL REASONABLE DILIGENCE WAS USED IN THE PREPARATION OF THE ABOVE FORM, AND THE CONTENTS ARE TRUE AND ACCURATE, TO THE BEST OF MY KNOWLEDGE.

Rebecca L. Bechler TYPE OR PRINT NAME OF AUTHORIZED SIGNATORY	
Rebecca Bechler SIGNATURE	AUG 15 2016 MONTH DAY YEAR

IT IS UNLAWFUL TO USE THIS INFORMATION FOR ANY COMMERCIAL PURPOSE

PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

*

HB 5503

*

The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

The State Bar's position in this matter is to support the bill.

The total membership of the Probate & Estate Planning Section is 3,697.

The position was adopted after a discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 20. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:
Probate & Estate Planning Section

Contact person:
Marguerite Munson Lentz

E-Mail:
mlentz@bodmanlaw.com

Bill Number:
HB 5503 (Kesto) Courts; jurisdiction; appellate review of certain court orders by probate court; preclude. Amends sec. 1303 of 1998 PA 386 (MCL 700.1303).

Date position was adopted:
June 4, 2016

Process used to take the ideological position:
Position adopted after discussion and vote at a scheduled meeting

Number of members in the decision-making body:
23

Number who voted in favor and opposed to the position:
20 Voted for position
0 Voted against position
0 Abstained from vote
3 Did not vote (absent)

Position:
Support.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.
http://legislature.mi.gov/doc.aspx?2016-HB-5503

PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

*

HB 5504 – HB 5505

*

The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 3,697.

The position was adopted after a discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 20. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:
Probate & Estate Planning Section

Contact person:
Marguerite Munson Lentz

E-Mail:
mlentz@bodmanlaw.com

Bill Numbers:
HB 5504 (Kesto) Civil procedure; statute of limitations; limitations period under uniform fraudulent transfer act for action relating to qualified dispositions in trust act; modify. Amends secs. 1, 4 & 9 of 1998 PA 434 (MCL 566.31 et seq.).

HB 5505 (Kesto) Probate; trusts; qualified dispositions in trust act; enact. Creates new act.

Date position was adopted:
June 4, 2016

Process used to take the ideological position:
Position adopted after discussion and vote at a scheduled meeting

Number of members in the decision-making body:
23

Number who voted in favor and opposed to the position:
20 Voted for position
0 Voted against position
0 Abstained from vote
3 Did not vote (absent)

Position:
Support.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.
http://legislature.mi.gov/doc.aspx?2016-HB-5504
http://legislature.mi.gov/doc.aspx?2016-HB-5505

ATTACHMENT 7

DRAFT 3

SUBSTITUTE FOR

HOUSE BILL NO. 5310

A bill to amend 1998 PA 386, entitled

"Estates and protected individuals code,"

by amending section 5306 (MCL 700.5306), as amended by 2004 PA 532.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 5306. (1) The court may appoint a guardian if the court finds by clear and convincing evidence both that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual, with each finding supported separately on the record. Alternately, the court may dismiss the proceeding or enter another appropriate order.

(2) The court shall grant a guardian only those powers and

only for that period of time as is necessary to provide for the demonstrated need of the incapacitated individual. The court shall design the guardianship to encourage the development of maximum self-reliance and independence in the individual. If the court is aware that an individual has executed a patient advocate designation under section 5506, the court shall not grant a guardian any of the same powers that are held by the patient advocate. A court order establishing a guardianship shall specify any limitations on the guardian's powers and any time limits on the guardianship.

(3) If the court finds by clear and convincing evidence that an individual is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself, the court may appoint a limited guardian to provide guardianship services to the individual, but the court shall not appoint a full guardian.

(4) If the court finds by clear and convincing evidence that the individual is incapacitated and is totally without capacity to care for himself or herself, the court shall specify that finding of fact in an order and may appoint a full guardian.

(5) If an individual executed a patient advocate designation under section 5506 before the time the court determines that he or she became a legally incapacitated individual, a guardian does not have and shall not exercise the power or duty of making medical or mental health treatment decisions that the patient advocate is designated to make. If, however, a petition for guardianship or for modification under section 5310 alleges and the court finds that

the patient advocate designation was not executed in compliance with section 5506, that the patient advocate is not complying with the terms of the designation or with the applicable provisions of sections 5506 to 5515, or that the patient advocate is not acting consistent with the ward's best interests, the court may modify the guardianship's terms to grant those powers to the guardian.

(6) IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE INDIVIDUAL IS INCAPACITATED, THAT THE PERSON THAT HAS THE CARE AND CUSTODY OF THE INCAPACITATED INDIVIDUAL DENIED A RELATIVE OF THE INCAPACITATED INDIVIDUAL ACCESS TO THE INCAPACITATED INDIVIDUAL, AND THAT THE INCAPACITATED INDIVIDUAL DESIRES CONTACT WITH THE RELATIVE OR THAT CONTACT WITH THE RELATIVE IS IN THE INCAPACITATED INDIVIDUAL'S BEST INTEREST, THE COURT MAY APPOINT A LIMITED GUARDIAN TO SUPERVISE ACCESS WITH THE RELATIVE.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

ATTACHMENT 8

Transfer Tax Committee: Tax Nuggets

IRC 2704: PROPOSED REGULATIONS SEEK TO DUMP DISCOUNTS

By Raj A. Malviya

A. Overview of Proposed Regulations under IRC 2704

a. Issuance.

i. On August 2, 2016, IRS made public a compilation of proposed regulations under various sections of the Code, most notably, IRC § 2704, addressing the special valuation rules under Chapter 14 (the "proposed regulations").

ii. Proposed regulations were published in Federal Register on August 4, 2016.

b. Purpose and overall effect

i. Were issued to address IRS's perceived belief of taxpayers abusing valuation rules through understatement of FMV upon transfer of family controlled interests.

ii. Proposed regulations are far-reaching and incredibly penetrating in the estate planning community. **If adopted in current form, they would eliminate virtually all valuation discounts for lack of control in family controlled entities, regardless of whether the entity is an active/operating business.** Indirectly, the proposed regulations may also affect lack of marketability discounts.

iii. Dump of discounts achieved through variety of proposed new rules tied to new concept called "disregarded restrictions" that would impose a deemed put right of interest's "minimum value" (net asset/liquidation value), rather than FMV actually transferred.

iv. There are additional new penetrating rules that seek to dump discounts. These include:

1. Expansion on application of "applicable restrictions" rules, which govern lapses of voting/liquidation rights upon transfer of an interest. If applicable restriction exists, the discount is disregarded.

2. Even if no lapse of voting/liquidation right occurs upon transfer of an interest, if such transfer occurs within 3 years of transferor's death, the value of lapsed right essentially becomes "phantom value" includable in transferor's gross estate.

c. IRS's position has been no secret …

i. Hint of this guidance first appeared in IRS Priority Guidance Plan for 2003-2004. Hint was changed to a promise of "Regulations" in 2010-2011 Priority Guidance Plan.

ii. Guidance appeared in Obama's Fiscal Year Rev. Proposals (Greenbooks) in 2010-2012.

iii. Interestingly, guidance was omitted from Greenbooks in 2013 – 2015. (*Mayo*?)

d. Procedural Next Steps

i. Public comments (written and electronic) due to Treasury by November 2, 2016.

ii. Public hearing held in the IRS auditorium in Washington DC on December 1, 2016.

iii. The proposed regulations could be finalized soon after December 1, 2016, but unlikely due to expected opposition and potential challenges to IRS' authority in issuance.

e. Effective date

i. New disregarded restriction rules won't be effective until 30 days after proposed regulations become final.

ii. Rules applicable to expansion of lapses of voting and liquidation rights apply to rights/restrictions created after October 9, 1990, but only to transfers occurring after proposed regulations become final.

iii. Rules applicable to transfers that cause a lapse of liquidation right within 3 years of death and subsequently forces that phantom lapse of liquidation value in transferor's gross estate appear to reach back prior to issuance of proposed regulations.

f. Top Ten Takeaways

i. Tell clients and advisors about the proposed regulations and effective dates.

ii. If adopted in their current form, they will effectively eliminate lack of control discounts on transfers of family controlled entities, and possibly affect lack of marketability discounts.

iii. They apply regardless of whether family controlled entity is an operating business; however, there may be opportunity to plan around disregarded restrictions when interest being transferred is subject to a "commercially reasonable restriction."

iv. Still much uncertainty with application of rules, how values will be calculated if restrictions are disregarded and how valuation professionals will approach valuing an interest affected by these rules.

v. Transfers subject to applicable restrictions may still get sucked into the 3-year rule regime even if transferor dies after the proposed regulations become finalized.

vi. IRC§ 2703 re: rights/restrictions in buy/sell agreements don't appear to be affected.

vii. Transfers of undivided interests in real estate are not addressed in proposed regulations.

viii. Tax apportionment clauses become even more critical in estate planning.

ix. Basis implications important; should get stepped up basis for increased estate tax value.

x. GRAT planning and defined value transactions will provide planning opportunities.

B. Preliminary Overview of Chapter 14 Valuation Rules and Relevant History

a. IRC §§ 2701 – 2704 and *Kerr v. Comm.*

i. IRC §2701: Designed to target perceived abuses of issuing preferred equity.

ii. IRC §2702: Effectively eliminated valuation benefits of GRITS.

iii. IRC §2703: Designed to disregard stock purchase agreements/buy-sell agreements and similar agreements for transfer tax purposes unless certain conditions are met.

iv. IRC §2704: Designed to catch the tax loss of value from a lapse of a voting/liquidation right upon transfer; disregard certain restrictions on liquidation that would reduce value; authorize Secretary to issue regulations to disregard "other" restriction's that reduce value but do not ultimately reduce the value to the transferee.

1. IRC §2704(b) defers to state law.

a. In general, applicable restrictions are disregarded in valuing the transfer of an entity interest. IRC §2704(b).

b. An applicable restriction is one that (i) limits the ability of a corporation or partnership to liquidate and (ii) such restriction lapses entirely or partially after the transfer OR the family can remove the restriction entirely or partially. IRC §2704(b)(2).

c. But an applicable restriction doesn't include "any restriction imposed, or required to be imposed, by any Federal or State law." IRC §2704(b)(3)(B). That means partners of a partnership or members of an LLC who don't have right to unilaterally withdraw/liquidate their interest under default state law, but state law defers to governing entity documents, doesn't create an applicable restriction.

2. IRS's Defeat in 1999 (*Kerr v. Comm.*, 113 TC 449 (1999).

a. Dealt with family partnerships created by family that had identical restrictions upon liquidation. A charity was a limited partner holding nominal interests. Partnership agreement required no liquidation for decades and all partners needed to consent. Non-charitable partners funded GRATs with limited partnership interests and claimed discounts for LOC, LOM. Gift tax returns were filed. IRS challenged valuation and disregarded the restriction on liquidation as an applicable restriction (i.e. no discount).

b. Tax Court held for taxpayer:
   i. Restriction on partners' right to liquidation was valid. Partnership agreement wasn't any more restrictive than default rule under state law (required consent of all partners).
   ii. Thus, restriction wasn't an applicable restriction.

c. Fifth Circuit in *Kerr*

i. Upheld, but on different grounds. Relied on statutory interpretation of IRC §2704(b)(2)(B)(ii).

ii. Fact that a non-family-member was a partner and had to consent supported that the family couldn't remove the liquidation restrictions on their own.

3. States Enact Legislation

a. Since the *Kerr* decision, many states have enacted favorable work-arounds of default rule addressing a partner's or member's ability to liquidate, making the default rule restrictive like in *Kerr*, but also allowing for the governing document to override unanimous consent. For example, see MCL §450.4801.

b. The application of state legislation has appeared to provide the best of both worlds: making state default law very restrictive, thus, preventing application of an "applicable restriction" under IRC §2704(b), but still allowing the family to plan through governing documents (partnership or operating agreement).

b. IRC §2704 Gave Secretary Broad Authority to Issue Regulations.

i. After suffering defeat in *Kerr* and witnessing state laws allowing family controlled entities to seemingly get around default rules on inability to withdraw/liquidate, the IRS looked to its rulemaking authority under IRC §2704(b)(4).

ii. Statute gives the Secretary the ability to issue regulations to disregard restrictions in determining the value of transfers of family controlled entities. IRC §2704(b)(4).

iii. The proposed regulations may conflict with the specific authority given to the Secretary. See IRC §2704(b)(4). They may also deviate from the guidance provided in the legislative history of 2704.

iv. Many academics and national commentators question whether the proposed regulations, in their current form, are an overreaching and unsupported exercise of authority.

v. IRS authority subject to challenge under cases such as Chevron v. NRDC, 467 U.S. 837 (1984), Mayo Found. For Med. Educ. & Research v. U.S., 562 U.S. 44 (2011) , 562 U.S, Nat's Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967 (2005) and U.S. v. Home Concrete & Supply, LLC, 132 S. Ct. 1836 (2012).

C. Detailed Review of Proposed Regulations under IRC §2704

a. IRC §2704 Applicability Under Proposed Regulations

i. Apply to Most Types of Entities. The proposed regulations state that IRC §2704 applies to all business entities: corporations, partnerships, LLCs and other business entities, regardless of tax classification. Prop. Reg §§25.2701-2(b)(5)(i); Prop. Reg. §25.2704-2(a); 25.2704-3(a). Moreover, the proposed regulations state that IRC §2704 applies regardless of whether the entity is domestic or foreign. *Id*. In other words, even if a

foreign entity is created, if state law could have been applied to form the entity, IRC §2704 and regulations seem to apply.

1. Uncertainty for business operations, joint ventures, etc. that are not incorporated.

2. Uncertainty as to straight real estate ownership with rental activity.

3. Presents challenges for practitioners who create foreign entities for tax planning.

ii. Apply to Controlled entities. The proposed regulations state that IRC §2704 and the regulations will only apply to controlled entities. Some existing rules that apply to control found in Treas. Reg. §25.2701-2(b)(5) include:

1. Corporate control means holding either 50% of total voting power or FMV.

2. Partnership control means holding at least 50% interest in profits or capital. For limited partnership, control means holding an equity interest as general partner.

3. The proposed regulations make clear that IRC §2704 also applies to other business entities and arrangements, including LLCS. Prop. Reg. § 25.2704-1.

b. **Proposed Regulations Introduce New Rules** (some of these change outcome in *Kerr*):

i. Remove Federal/State Law Default Concept. The proposed regulations get rid of the state/federal default rule concept that provides an applicable restriction doesn't include "any restriction imposed, or required to be imposed, by any Federal or State law." Rather, the proposed regulations state that only mandatory restrictions prescribed under federal or state law may be considered in valuing the interests. Prop. Reg. §25.2704-3(b)(2); Prop. Reg. §25.2703-3(b)(5)(iii).

1. In reality, this will not happen since states don't mandate that entity is prohibited, through its governing documents, from authorizing a redemption/liquidation of owner's interest.

2. Uproar in business law bar if state laws were changed to mandate restrictions.

ii. New Disregarded Restrictions Regime. The proposed regulations create new set of rules called "Disregarded Restrictions".

1. A disregarded transfer would arise if an owner transfers an interest in entity to or for the benefit of family member and transferor or transferor's family controls the entity immediately after the transfer. Prop. Reg. §25.2704-3(a) and (b).

2. Under this scenario, any restriction on owner's right to liquidate is disregarded if the restrictions will lapse at any time after transfer or transferor (or transferor's estate or family members) may remove the restriction. *Id*.

3. If transfer is subject to disregarded restrictions, they are ignored for valuation purposes and transferee is deemed to have a 6 month put right to sell interest to

the entity at "minimum value" of interest in return for cash or property. Prop. Reg. §25.2704-3(b)(6).

4. "Minimum value" is pro rata share of net value of entity as of date of liquidation or redemption. Prop. Reg. §25.2704-3(b)(1)(ii).

5. Net value of entity means FMV determined under IRC §§2031 or 2512 and applicable regulations, of the property held by entity, reduced by outstanding obligations of entity. Prop. Reg. §25.2704-3(b)(1)(ii).

6. The only outstanding obligations that may be considered are those that would be allowable deductions under IRC §2053 if those obligations instead were claims against the estate. *Id*.

7. The intended effect of the "minimum value" of the put right is to:

    a. Eliminate lack of control discounts because restrictions are disregarded.

    b. Potentially eliminate lack of marketability discounts because now a deemed market for holder of an interest to sell if needed.

    c. Is this for real? What about the 6-month window? What about a "lack of continuity" concern? What about the type of business (car dealership vs. investment company)?

8. **Exception to being subject to disregarded restriction is when "commercially reasonable restriction" exists**. Prop. Reg. §25.2704-3(b)(5).

    a. A "commercially reasonable restriction" is a commercially reasonable restriction on liquidation imposed by an unrelated person providing capital to the entity for the entity's trade or business operations, whether in the form of debt or equity.

iii. Non-Family Members Generally Disregarded. The proposed regulations prevent a family from getting around "disregarded restrictions" when including a non-family member as owner of entity unless a "10%/20%" test satisfied.

1. Under the more restrictive ownership rules, non-family member interests are disregarded under Prop. Reg. §25.2704-3(b)(4) unless:

    a. Interest was held for at least 3 years before the transfer;

    b. Non-family member owns at least 10% of the equity;

    c. All non-family member equity holders comprise at least 20% of the aggregate equity; AND

    d. Each non-family member owner has "put right at minimum value."

2. Effect of these rules is that non-family member interest that is not "economically substantial and longstanding" is ignored in valuing the entity. Prop. Reg. §25.2704-3(b)(4)(ii).

iv. Expand "Applicable Restriction" and Create 3-Year Rule. The proposed regulations **expand** the application of IRC §2704(a), which govern lapses of voting/liquidation rights upon the transfer of an interest. The new rules are as follows:

1. Expansion on application of "applicable restrictions" rules, which govern lapses of voting/liquidation rights upon transfer of an interest. If applicable restriction exists, discount is disregarded and value of transferred interest is determined under "generally applicable valuation principles." Prop. Reg. §§25.2704-2(b)(4)(iv); 25.2704-3(b)(5).

2. Transfer that results in mere assignee receiving interest (no voting power) still constitutes a lapse of the interest and thus, appears to be an applicable restriction. Prop. Reg §25.2704-1(a)(5).

3. Even if no lapse of voting/liquidation right occurs upon transfer of an interest, if such transfer occurs within 3 years of transferor's death, the value attributed to what would have been a lapse is included in transferor's gross estate. Prop. Reg. §§25.2704-1(c)(1); 25.2704-1(f) Example 4.

4. No marital or charitable deduction is available for this "phantom value" included in the transferor's gross estate.

5. If the liquidation value was taxed in the original transfer (because it was caught as a disregarded restriction), how is double taxation avoided? In other words, how is an offset given for the phantom value included in the transferor's gross estate? This doesn't appear to be addressed in the proposed regulations.

ATTACHMENT 9

Probate and Estate Planning Council: Meeting on September 10, 2016
Membership Committee Report

The Membership Committee (MC) had another productive year implementing its programming, most of which continued the grassroots efforts from 2015. The following were significant initiatives and programs that helped promote awareness of the section and its offerings and importantly, grow the section membership:

1. Consistent and ongoing personal connections with new and recently admitted attorneys to educate them on section, mentorship, probate council and benefits.

2. 2nd year of presence at ICLE Probate & EP Institute in Acme and Plymouth through a vendor table and advertising. At vendor table, partnered with the Citizens Outreach Committee in selling/distributing educational pamphlets to section members. This naturally created more foot traffic at our vendor tables.

3. 2nd year hosting a social event during ICLE Probate & EP Institute in Traverse City to provide a forum for social interaction among new and seasoned attorneys.

4. First time hosting a social event at ICLE Probate & EP Institute in Plymouth.

5. First time having presence at Young Lawyers Annual Summit June 3-4 in Novi (vendor table and sponsorship materials).

6. Continued community outreach to law schools in Michigan to educate law students interested in the probate and estate planning practice on the resources of the Section.

We are still waiting on information from the State Bar of Michigan to assess whether section membership has increased. Also, demographic information on section membership (age, primary practice area, firm size, etc.) will be available from the State Bar on October 15, 2015 and we will include any relevant information in the October report.

Finally, there will be some slight changes in the makeup of MC going forward. We have interest in a possible new chair or co-chair. We also have interest from Section members who want to formally be on the MC with others dropping off. We will be posting an updated list of the MC and its current members prior to the October meeting. The October report will address planned programming and new

initiatives for the upcoming bar year, once the newest members of the MC have had a chance to discuss.