

SUBSTITUTE FOR
HOUSE BILL NO. 6129

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 7704 (MCL 700.7704), as added by 2009 PA 46,
and by adding section 7703b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 7703B. (1) A TRUST INSTRUMENT MAY INCLUDE A SEPARATE
2 TRUSTEES PROVISION.

3 (2) WHILE A SEPARATE TRUSTEES PROVISION APPLIES, THE WHOLE
4 TRUSTEESHIP OF THE AGGREGATE TRUST IS DIVIDED, UNDER THE TERMS OF
5 THE SEPARATE TRUSTEES PROVISION, INTO DISCRETE SETS OF SEPARATELY
6 ACCEPTED FIDUCIARY RESPONSIBILITIES, WITH EACH DISCRETE SET
7 SEPARATELY ALLOCATED TO 1 OR ANOTHER OF THE AGGREGATE TRUST'S
8 SEPARATE TRUSTEES. ALL OF THE FOLLOWING APPLY WHILE A SEPARATE
9 TRUSTEES PROVISION APPLIES:

1 (A) EXCEPT AS PROVIDED IN SUBDIVISION (C) , THE AGGREGATE
2 TRUST'S SEPARATE TRUSTEES ARE NOT TREATED AS COTRUSTEES IN THEIR
3 RELATIONS TO ONE ANOTHER. WITH REGARD TO THE COMMON TITLE TO THE
4 TRUST PROPERTY DESCRIBED IN SUBDIVISION (C) (i) , ALL OF THE
5 FOLLOWING APPLY:

6 (i) A SEPARATE INVESTMENT TRUSTEE ACCEPTS THE COMMON TITLE
7 ONLY FOR PURPOSES OF PERFORMING THE TRUSTEE INVESTMENT FUNCTION
8 DESCRIBED BY THE GOVERNING SEPARATE TRUSTEES PROVISION FOR THE
9 BENEFIT OF THE TRUST BENEFICIARIES.

10 (ii) A SEPARATE DISTRIBUTIONS TRUSTEE ACCEPTS THE COMMON TITLE
11 ONLY FOR PURPOSES OF ADMINISTERING A DISCRETIONARY TRUST PROVISION
12 SPECIFIED IN THE GOVERNING SEPARATE TRUSTEES PROVISION FOR THE
13 BENEFIT OF THE TRUST BENEFICIARIES AFFECTED BY THE SPECIFIED
14 DISCRETIONARY TRUST PROVISIONS.

15 (iii) A SEPARATE RESULTANT TRUSTEE ACCEPTS THE COMMON TITLE
16 ONLY FOR PURPOSES OF PERFORMING ALL TRUSTEE FUNCTIONS NOT ALLOCATED
17 BY THE GOVERNING SEPARATE TRUSTEES PROVISION TO EITHER OF THE
18 FOLLOWING:

19 (A) A SEPARATE INVESTMENT TRUSTEE, IF ANY.

20 (B) A SEPARATE DISTRIBUTIONS TRUSTEE.

21 (B) A SEPARATE TRUSTEE SHALL ACT ON ITS OWN AUTHORITY WITH
22 RESPECT TO EACH OF ITS SEPARATE TRUSTEE FUNCTIONS. A SEPARATE
23 TRUSTEE DOES NOT NEED APPROVAL FROM ANY OTHER SEPARATE TRUSTEE TO
24 CONDUCT ITS SEPARATE TRUSTEE FUNCTIONS.

25 (C) THE AGGREGATE TRUST'S SEPARATE TRUSTEES ARE TREATED AS
26 COTRUSTEES IN THEIR RELATIONS TO ONE ANOTHER ONLY FOR THE FOLLOWING
27 PURPOSES:

1 (i) TAKING, HOLDING, TRANSFERRING, AND DEFENDING TITLE TO
2 TRUST PROPERTY.

3 (ii) DETERMINING VENUE AND INTERESTED PERSONS IN PROCEEDINGS
4 CONCERNING THE AGGREGATE TRUST.

5 (iii) LIABILITY, IF ANY, FOR INCOME, PROPERTY, OR OTHER TAXES
6 ATTRIBUTABLE TO TRUST PROPERTY.

7 (iv) THE PRIVILEGES AND IMMUNITIES OF COTRUSTEES UNDER GENERAL
8 PRINCIPLES OF LAW AND EQUITY TO COMMENT TO A SETTLOR OR BENEFICIARY
9 OF A TRUST OR OTHERS ON ONE ANOTHER'S PERFORMANCE OF FIDUCIARY
10 DUTIES.

11 (D) THE AGGREGATE TRUST'S SEPARATE TRUSTEES ARE NOT COTRUSTEES
12 FOR EITHER OF THE FOLLOWING PURPOSES:

13 (i) JOINDER OF NECESSARY PARTIES IN A PROCEEDING FOR BREACH OF
14 TRUST.

15 (ii) THE REQUIREMENT IN SECTION 7402 THAT THE SAME PERSON IS
16 NOT THE SOLE TRUSTEE AND SOLE BENEFICIARY OF A TRUST. IF THE
17 AGGREGATE TRUST HAS ONLY 1 BENEFICIARY, THE BENEFICIARY MAY NOT BE
18 A SEPARATE TRUSTEE OF THE TRUST UNLESS BOTH OF THE FOLLOWING APPLY:

19 (A) THE SEPARATE TRUSTEE COMPRISES A COTRUSTEESHIP OF WHICH
20 THE BENEFICIARY IS A COTRUSTEE.

21 (B) THE TRUST INSTRUMENT PROHIBITS THE BENEFICIARY FROM
22 SERVING ALONE.

23 (E) A SEPARATE TRUSTEE SHALL NOT ACCEPT THE SEPARATE TRUST
24 ASSOCIATED WITH, OR, EXCEPT AS OTHERWISE PROVIDED IN THIS
25 SUBDIVISION, PARTICIPATE IN OR PROVIDE ADVICE REGARDING THE
26 PERFORMANCE OF, A SEPARATE TRUSTEE FUNCTION OF ANY OTHER SEPARATE
27 TRUSTEE OF THE AGGREGATE TRUST. MINISTERIAL ACTS PERFORMED BY 1

1 SEPARATE TRUSTEE IN CONNECTION WITH A SEPARATE TRUSTEE FUNCTION OF
2 ANOTHER SEPARATE TRUSTEE OF THE AGGREGATE TRUST ARE NOT CONSIDERED
3 AN ACCEPTANCE OF THE SEPARATE TRUST ASSOCIATED WITH THE SEPARATE
4 TRUSTEE FUNCTION OF THE OTHER SEPARATE TRUSTEE. AS USED IN THIS
5 SUBDIVISION, "MINISTERIAL ACTS" INCLUDES ANY OF THE FOLLOWING:

6 (i) CONFIRMING THAT AN INVESTMENT OR DISTRIBUTION DIRECTIVE OF
7 ANOTHER SEPARATE TRUSTEE HAS BEEN CARRIED OUT.

8 (ii) RECORDING AND REPORTING THE ACTIONS OF ANOTHER SEPARATE
9 TRUSTEE OR CONFERRING WITH ANOTHER SEPARATE TRUSTEE FOR PURPOSES OF
10 ADMINISTRATIVE COORDINATION OR EFFICIENCY.

11 (F) A SEPARATE TRUSTEE DOES NOT HAVE A DUTY TO PETITION THE
12 COURT OR TO TAKE OTHER AFFIRMATIVE ACTION TO ENSURE THAT ANY
13 VACANCY IN ANY SEPARATE TRUSTEESHIP IS FILLED. IF A SEPARATE
14 TRUSTEE PETITIONS THE COURT OR TAKES OTHER AFFIRMATIVE ACTION TO
15 ENSURE THAT A VACANCY IN A SEPARATE TRUSTEESHIP IS FILLED, BOTH OF
16 THE FOLLOWING APPLY:

17 (i) THE SEPARATE TRUSTEE IS NOT CONSIDERED TO HAVE ACCEPTED
18 THE SEPARATE TRUST ASSOCIATED WITH THE VACANT SEPARATE TRUSTEESHIP.

19 (ii) THE SEPARATE TRUSTEE DOES NOT HAVE A DUTY TO PETITION THE
20 COURT OR TAKE OTHER AFFIRMATIVE ACTION TO ENSURE THAT ANY OTHER
21 VACANCY IN A SEPARATE TRUSTEESHIP IS FILLED.

22 (3) A SEPARATE TRUSTEES PROVISION MUST DETERMINE ALL OF THE
23 FOLLOWING:

24 (A) IF THERE IS A SEPARATE INVESTMENT TRUSTEE, THAT THE
25 SEPARATE INVESTMENT TRUSTEE SHALL PERFORM THE TRUSTEE INVESTMENT
26 FUNCTION.

27 (B) THAT 1 OR MORE SEPARATE DISTRIBUTIONS TRUSTEES, IF ANY,

1 SHALL EXERCISE DISCRETION UNDER 1 OR MORE SPECIFIED DISCRETIONARY
2 TRUST PROVISIONS.

3 (C) WHICH OF THE AGGREGATE TRUST'S SEPARATE TRUSTEES SHALL
4 PERFORM, DURING ANY PERIOD IN WHICH THE AGGREGATE TRUST IS NOT A
5 UNITRUST, THE FUNCTION OF ALLOCATING BETWEEN PRINCIPAL AND INCOME,
6 FOR FIDUCIARY ACCOUNTING PURPOSES, RECEIPTS AND DISBURSEMENTS OR
7 DISTRIBUTIONS AFFECTED BY THE SEPARATE TRUSTEES' SEPARATE TRUSTEE
8 FUNCTIONS.

9 (D) WHICH OF THE AGGREGATE TRUST'S SEPARATE TRUSTEES IS
10 RESPONSIBLE FOR PREPARATION AND FILING OF TAX AND INFORMATION
11 RETURNS FOR THE AGGREGATE TRUST AND FOR RESPONDING ON BEHALF OF THE
12 AGGREGATE TRUST TO INQUIRIES FROM GOVERNMENTAL AGENCIES.

13 (E) WHICH OF THE AGGREGATE TRUST'S SEPARATE TRUSTEES IS
14 RESPONSIBLE FOR RESPONDING TO A PROCEEDING CHALLENGING A PURPOSE OR
15 THE VALIDITY OF THE TRUST.

16 (F) WHICH OF THE AGGREGATE TRUST'S SEPARATE TRUSTEES IS
17 RESPONSIBLE FOR DETERMINING WHETHER AT ANY TIME CASH OR OTHER
18 PROPERTY WILL BE LOANED BY THE TRUST TO ANY OF THE FOLLOWING:

19 (i) ONE OR MORE TRUST BENEFICIARIES.

20 (ii) ONE OR MORE BUSINESS ENTERPRISES IN WHICH A TRUST
21 BENEFICIARY HAS AN OWNERSHIP INTEREST.

22 (iii) ONE OR MORE BUSINESS ENTERPRISES IN WHICH THE AGGREGATE
23 TRUST ITSELF HAS AN OWNERSHIP INTEREST.

24 (G) FOR A SEPARATE INVESTMENT TRUSTEE, WHETHER THE SEPARATE
25 INVESTMENT TRUSTEE OR THE SEPARATE RESULTANT TRUSTEE SHALL
26 DETERMINE THE AGGREGATE TRUST'S ASSET ALLOCATION FOR INVESTMENT
27 PURPOSES.

1 (H) THAT THE SEPARATE RESULTANT TRUSTEE IS RESPONSIBLE FOR THE
2 CUSTODY OF THE AGGREGATE TRUST'S PROPERTY.

3 (4) WITH REGARD TO A SEPARATE TRUSTEE FUNCTION OF A SEPARATE
4 TRUSTEE, ALL OF THE FOLLOWING APPLY:

5 (A) THE SEPARATE TRUSTEE HAS ALL OF THE DUTIES AND POWERS OF A
6 TRUSTEE DESCRIBED IN THIS PART AND PART 8 OF THIS ARTICLE.

7 (B) THE SEPARATE TRUSTEE IS SUBJECT TO CONTROL BY BOTH OF THE
8 FOLLOWING IN THE SAME CIRCUMSTANCES AS WOULD BE A TRUSTEE OR
9 COTRUSTEESHIP THAT IS NOT A SEPARATE TRUSTEE:

10 (i) EACH SETTLOR OF A REVOCABLE TRUST.

11 (ii) A HOLDER OF A POWER TO DIRECT A TRUSTEE, IF ANY.

12 (C) THE SEPARATE TRUSTEE IS REQUIRED TO SEEK OR CONSIDER THE
13 ADVICE OF A DESIGNATED TRUST ADVISOR, IF ANY, IN THE SAME
14 CIRCUMSTANCES AS WOULD A TRUSTEE OR COTRUSTEESHIP THAT IS NOT A
15 SEPARATE TRUSTEE.

16 (5) IF A SEPARATE TRUSTEE COMPRISES A COTRUSTEESHIP, WITH
17 REGARD TO A SEPARATE TRUSTEE FUNCTION OF THE SEPARATE TRUSTEE, THE
18 COTRUSTEES HAVE ALL OF THE DUTIES AND POWERS OF COTRUSTEES
19 DESCRIBED IN THIS PART.

20 (6) A SEPARATE TRUSTEE HAS THE DUTY TO INFORM AND REPORT ON
21 EACH OF ITS SEPARATE TRUSTEE FUNCTIONS TO BOTH OF THE FOLLOWING:

22 (A) TRUST BENEFICIARIES AS DESCRIBED IN SECTION 7814. HOWEVER,
23 A SEPARATE TRUSTEE IS NOT REQUIRED TO PROVIDE A BENEFICIARY A
24 REPORT THAT THE SEPARATE TRUSTEE KNOWS WILL DUPLICATE A REPORT THAT
25 ANOTHER SEPARATE TRUSTEE OF THE AGGREGATE TRUST PROVIDED OR WILL
26 PROVIDE TO THE BENEFICIARY.

27 (B) EACH OTHER SEPARATE TRUSTEE OF THE AGGREGATE TRUST AS IS

1 REASONABLY NECESSARY FOR THE OTHER SEPARATE TRUSTEE TO PERFORM A
2 SEPARATE TRUSTEE FUNCTION OF THE OTHER SEPARATE TRUSTEE.

3 (7) A SEPARATE TRUSTEE DOES NOT HAVE A DUTY TO DO ANY OF THE
4 FOLLOWING:

5 (A) MONITOR OR REVIEW THE ACTIONS OF ANY OTHER SEPARATE
6 TRUSTEE OF THE AGGREGATE TRUST.

7 (B) NOTIFY OR WARN A SETTLOR OR BENEFICIARY OF THE AGGREGATE
8 TRUST OF A BREACH OF TRUST OR POSSIBLE BREACH OF TRUST ON THE PART
9 OF ANY OTHER SEPARATE TRUSTEE.

10 (8) IF A SEPARATE TRUSTEE NOTIFIES OR WARNS A SETTLOR OR
11 BENEFICIARY AS DESCRIBED IN SUBSECTION (7) (B), BOTH OF THE
12 FOLLOWING APPLY:

13 (A) THE SEPARATE TRUSTEE IS NOT CONSIDERED TO HAVE ACCEPTED
14 THE SEPARATE TRUST ASSOCIATED WITH THE SEPARATE TRUSTEE FUNCTION OF
15 THE OTHER SEPARATE TRUSTEE.

16 (B) THE SEPARATE TRUSTEE DOES NOT HAVE A DUTY TO NOTIFY OR
17 WARN A SETTLOR OR BENEFICIARY OF ANY OTHER BREACH OR POSSIBLE
18 BREACH OF TRUST ON THE PART OF ANY OTHER SEPARATE TRUSTEE.

19 (9) ABSENT CLEAR AND CONVINCING EVIDENCE OF COLLUSION IN A
20 BREACH OF TRUST, ALL OF THE FOLLOWING APPLY:

21 (A) A SEPARATE TRUSTEE IS NOT LIABLE FOR THE ACT OR OMISSION
22 OF ANY OTHER SEPARATE TRUSTEE OF THE AGGREGATE TRUST.

23 (B) A SEPARATE TRUSTEE IN BREACH OF A TRUSTEE DUTY OF A
24 SEPARATE TRUSTEE FUNCTION OF THE SEPARATE TRUSTEE IS THE ONLY
25 SEPARATE TRUSTEE OF THE AGGREGATE TRUST OBLIGED TO DEFEND OR
26 OTHERWISE RESPOND TO ANY PROCEEDING BROUGHT BY A TRUST BENEFICIARY
27 REGARDING THAT BREACH.

1 (C) EXCEPT AS PROVIDED IN SUBDIVISION (D), A SEPARATE TRUSTEE
2 IS LIABLE TO TRUST BENEFICIARIES FOR BREACH OF A TRUSTEE DUTY OF A
3 SEPARATE TRUSTEE FUNCTION OF THE SEPARATE TRUSTEE AS IF THE OTHER
4 SEPARATE TRUSTEES OF THE AGGREGATE TRUST WERE NOT IN OFFICE AND THE
5 SEPARATE TRUSTEE WERE THE SOLE TRUSTEE OF THE AGGREGATE TRUST.

6 (D) A SEPARATE TRUSTEE MAY BE LIABLE CONCERNING A TRUSTEE
7 FUNCTION OF ANOTHER SEPARATE TRUSTEE OF THE AGGREGATE TRUST ONLY
8 FOR THE SEPARATE TRUSTEE'S OWN ACTIONS IN THE PERFORMANCE OF
9 MINISTERIAL ACTS PURSUANT TO THE OTHER SEPARATE TRUSTEE'S
10 INSTRUCTION AND ONLY TO THE EXTENT THE SEPARATE TRUSTEE ACTS IN BAD
11 FAITH.

12 (10) AS USED IN THIS SECTION:

13 (A) "AFFIRMATIVE ACTION" BY A SEPARATE TRUSTEE DOES NOT
14 INCLUDE A FAILURE TO ACT.

15 (B) "AGGREGATE TRUST" MEANS THE INCLUSIVE SET OF SEPARATE
16 RELATIONS OF TRUST TO BE SEPARATELY ACCEPTED BY THE SEPARATE
17 TRUSTEES UNDER A GIVEN SEPARATE TRUSTEES PROVISION.

18 (C) "COTRUSTEESHIP" MEANS A SET OF 1 OR MORE COTRUSTEES WHOSE
19 RELATIONS TO ONE ANOTHER IN RESPECT OF TRUST PROPERTY IS GOVERNED
20 BY SECTION 7703.

21 (D) "SEPARATE DISTRIBUTIONS TRUSTEE" MEANS A PERSON OR A
22 COTRUSTEESHIP THAT IS DESIGNATED BY A SEPARATE TRUSTEES PROVISION
23 TO EXERCISE DISCRETION AS A TRUSTEE OR TRUSTEES UNDER A
24 DISCRETIONARY TRUST PROVISION.

25 (E) "SEPARATE INVESTMENT TRUSTEE" MEANS A PERSON OR A
26 COTRUSTEESHIP THAT IS DESIGNATED BY A SEPARATE TRUSTEES PROVISION
27 TO PERFORM THE TRUSTEE INVESTMENT FUNCTION AS A TRUSTEE OR

1 TRUSTEES.

2 (F) "SEPARATE RESULTANT TRUSTEE" MEANS A PERSON OR A
3 COTRUSTEESHIP THAT IS DESIGNATED AS A TRUSTEE OR TRUSTEES TO
4 PERFORM ALL TRUSTEE FUNCTIONS NOT ALLOCATED BY THE SEPARATE
5 TRUSTEES PROVISION TO A SEPARATE INVESTMENT TRUSTEE OR TO ANY
6 SEPARATE DISTRIBUTIONS TRUSTEE.

7 (G) "SEPARATE TRUSTEE" MEANS A SEPARATE RESULTANT TRUSTEE,
8 SEPARATE INVESTMENT TRUSTEE, OR SEPARATE DISTRIBUTIONS TRUSTEE.

9 (H) "SEPARATE TRUSTEES PROVISION" MEANS A TRUST PROVISION THAT
10 DESIGNATES OR PROVIDES A METHOD OF DESIGNATING BOTH OF THE
11 FOLLOWING:

12 (i) A SEPARATE RESULTANT TRUSTEE.

13 (ii) A SEPARATE INVESTMENT TRUSTEE OR 1 OR MORE SEPARATE
14 DISTRIBUTIONS TRUSTEES.

15 (I) "SEPARATE TRUSTEESHIP" MEANS THE OFFICE OF A SEPARATE
16 TRUSTEE.

17 (J) "TRUSTEE INVESTMENT FUNCTION" MEANS A TRUSTEE FUNCTION
18 EXPRESSLY ALLOCATED BY THE SEPARATE TRUSTEES PROVISION TO A
19 SEPARATE INVESTMENT TRUSTEE. A TRUSTEE INVESTMENT FUNCTION MAY BE
20 BROADLY OR NARROWLY DEFINED BY THE SEPARATE TRUSTEES PROVISION AND
21 MAY INCLUDE ANY OF THE FOLLOWING:

22 (i) DETERMINING FOR TRUST INVESTMENT PURPOSES THE RETENTION,
23 PURCHASE, SALE, ASSIGNMENT, EXCHANGE, TENDER, OR ENCUMBRANCE OF
24 TRUST PROPERTY AND THE INVESTMENT AND REINVESTMENT OF UNDISTRIBUTED
25 INCOME AND PRINCIPAL OF THE AGGREGATE TRUST.

26 (ii) MANAGEMENT, CONTROL, AND EXERCISE OF VOTING POWERS
27 RELATED DIRECTLY OR INDIRECTLY TO ANY TRUST ASSET.

1 (iii) FOR NONPUBLICLY TRADED INVESTMENTS OR PROPERTY FOR WHICH
2 THERE IS NO READILY AVAILABLE MARKET VALUE, DETERMINING THE
3 METHODOLOGY FOR VALUING THE PROPERTY AND THE FREQUENCY OF
4 VALUATIONS.

5 Sec. 7704. (1) A vacancy in a trusteeship occurs if 1 or more
6 of the following occur:

7 (a) A person designated as trustee rejects the trusteeship.

8 (b) A person designated as trustee cannot be identified or
9 does not exist.

10 (c) A trustee resigns.

11 (d) A trustee is disqualified or removed.

12 (e) A trustee dies.

13 (f) A guardian or conservator is appointed for an individual
14 serving as trustee.

15 (2) If 1 or more cotrustees remain in office, a vacancy in a
16 trusteeship need not be filled. **THOUGH ANY SEPARATE TRUSTEE MAY**
17 **COMPRISE A COTRUSTEESHIP, THE RELATION BETWEEN RESPECTIVE SEPARATE**
18 **TRUSTEES SERVING UNDER A GIVEN SEPARATE TRUSTEES PROVISION IS NOT**
19 **ITSELF A COTRUSTEESHIP.** A vacancy in a trusteeship ~~shall~~**MUST** be
20 filled if the **VACANCY LEAVES EITHER OF THE FOLLOWING:**

21 **(A) A trust has no THAT IS NOT SUBJECT TO A SEPARATE TRUSTEES**
22 **PROVISION AS OF THE TIME OF THE VACANCY WITHOUT ANY** remaining
23 trustee.

24 **(B) ANY OF THE SEVERAL SEPARATE TRUSTEESHIPS GOVERNED BY AN**
25 **OPERATIVE SEPARATE TRUSTEES PROVISION WITHOUT ANY REMAINING**
26 **TRUSTEE.**

27 (3) If a vacancy in a trusteeship of a noncharitable trust is

1 to be filled, the vacancy ~~shall~~**MUST** be filled in the following
2 order of priority:

3 (a) In the manner designated by the terms of the trust.

4 (b) By a person appointed by the court.

5 (4) If a vacancy in a trusteeship of a charitable trust is to
6 be filled, the vacancy ~~shall~~**MUST** be filled in the following order
7 of priority:

8 (a) In the manner designated by the terms of the trust.

9 (b) By a person selected by the charitable organizations
10 expressly designated to receive distributions under the terms of
11 the trust if the attorney general concurs in the selection.

12 (c) By a person appointed by the court.

13 (5) Whether or not a vacancy in a trusteeship exists or is
14 required to be filled, the court may appoint an additional trustee
15 or special fiduciary upon the showing of good cause.

16 **(6) AS USED IN THIS SECTION, "COTRUSTEESHIP", "SEPARATE**
17 **TRUSTEE", "SEPARATE TRUSTEES PROVISION", AND "SEPARATE TRUSTEESHIP"**
18 **MEAN THOSE TERMS AS DEFINED IN SECTION 7703B.**

19 Enacting section 1. This amendatory act does not take effect
20 unless all of the following bills of the 99th Legislature are
21 enacted into law:

22 (a) House Bill No. 6130.

23 (b) House Bill No. 6131.