

Senate Bill No. 209

A bill to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 ARTICLE I

2 DEFINITIONS, GENERAL PROVISIONS, AND COURT JURISDICTION

3 PART 1

4 SHORT TITLE AND DEFINITIONS

5 Sec. 1101. This act shall be known and may be cited as the
6 ["estates and protected individuals code".]

7 Sec. 1102. The definitions contained in this part apply
8 throughout this act unless the context requires otherwise or
9 unless a term defined elsewhere in this act is applicable to a
10 specific article, part, or section.

11 Sec. 1103. As used in this act:

12 (a) "Agent" includes, but is not limited to, an
13 attorney-in-fact under a durable or nondurable power of attorney
14 and an individual authorized to make decisions as a patient advo-
15 cate concerning another's health care.

16 (b) "Application" means a written request to the probate
17 register for an order of informal probate or appointment under
18 part 3 of article III.

19 (c) "Beneficiary" includes, but is not limited to, the
20 following:

21 (i) In relation to a trust beneficiary, a person that is an
22 interested trust beneficiary.

23 (ii) In relation to a charitable trust, a person that is
24 entitled to enforce the trust.

25 (iii) In relation to a beneficiary of a beneficiary
26 designation, a person that is a beneficiary of an insurance or

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

3

1 annuity policy, of an account with POD designation, of a security
2 registered in beneficiary form (TOD), of a pension,
3 profit-sharing, retirement, or similar benefit plan, or of
4 another nonprobate transfer at death.

5 (iv) In relation to a beneficiary designated in a governing
6 instrument, a person that is a grantee of a deed, devisee, trust
7 beneficiary, beneficiary of a beneficiary designation, donee,
8 appointee, taker in default of a power of appointment, or person
9 in whose favor a power of attorney or power held in an individu-
10 al, fiduciary, or representative capacity is exercised.

11 (d) "Beneficiary designation" means the naming in a govern-
12 ing instrument of a beneficiary of an insurance or annuity
13 policy, of an account with POD designation, of a security regis-
14 tered in beneficiary form (TOD), of a pension, profit-sharing,
15 retirement, or similar benefit plan, or of another nonprobate
16 transfer at death.

17 (e) "Child" includes, but is not limited to, an individual
18 entitled to take as a child under this act by intestate succes-
1. 19 sion from the parent whose relationship is involved. [Child]
20 does not include an individual who is only a stepchild, a foster
21 child, or a grandchild or more remote descendant.

22 (f) "Claim" includes, but is not limited to, in respect to a
23 decedent's or protected individual's estate, a liability of the
24 decedent or protected individual, whether arising in contract,
25 tort, or otherwise, and a liability of the estate that arises at
26 or after the decedent's death or after a conservator's
27 appointment, including funeral expenses and expenses of

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

4

1 administration. [Claim] does not include an estate or
2 inheritance tax, or a demand or dispute regarding a decedent's or
3 protected individual's title to specific property alleged to be
4 included in the estate.

5 (g) "Conservator" means a person appointed by a court to
6 manage a protected individual's estate.

7 (h) "Cost-of-living adjustment factor" means, a fraction,
8 the numerator of which is the United States consumer price index
9 for the prior calendar year and the denominator of which is the
10 United States consumer price index for 1997. As used in this
11 subdivision, "United States consumer price index" means the
12 annual average of the United States consumer price index for all
13 urban consumers as defined and reported by the United States
14 department of labor, bureau of labor statistics, or its successor
15 agency [, and as certified by the state treasurer].

16 (i) "Court" means the probate court [or, when applicable, the
family division of the circuit court].

17 (j) "Current trust beneficiary" means a beneficiary about
18 which 1 of the following is true:

19 (i) The beneficiary has a current right to receive all or a
20 portion of the income, if any, of the trust property.

21 (ii) The beneficiary is currently eligible to receive all or
22 a portion of a mandatory or discretionary distribution of income
23 or principal.

24 (iii) The beneficiary possesses a testamentary or presently
25 exercisable general or special power of appointment.

26 (k) "Descendant" means, in relation to an individual, all of
27 his or her descendants of all generations, with the relationship

1 of parent and child at each generation being determined by the
2 definitions of child and parent contained in this act.

3 (l) "Devise" means, when used as a noun, a testamentary dis-
4 position of real or personal property and, when used as a verb,
5 to dispose of real or personal property by will.

6 (m) "Devisee" means a person designated in a will to receive
7 a devise. For the purposes of article II, for a devise to a
8 trustee of an existing trust or to a trustee under a will, the
9 trustee is a devisee and a beneficiary is not.

10 (n) "Disability" means cause for a protective order as
11 described in section 5401.

12 (o) "Distributee" means a person that receives a decedent's
13 property from the decedent's personal representative other than
14 as a creditor or purchaser. A testamentary trustee is a distrib-
15 utee only to the extent that distributed property or an increment
16 of the distributed property remains in the trustee's hands. A
17 testamentary trust beneficiary to whom the trustee distributes
18 property received from a personal representative is a distributee
19 of the personal representative. For the purposes of this subdi-
20 vision, testamentary trustee includes a trustee to whom property
21 is transferred by will to the extent of the devised property.

22 Sec. 1104. As used in this act:

23 (a) "Environmental law" means a federal, state, or local
24 law, rule, regulation, or ordinance that relates to the protec-
25 tion of the environment or human health.

26 (b) "Estate" includes the property of the decedent, trust,
27 or other person whose affairs are subject to this act as the

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

6

1 property is originally constituted and as it exists throughout
2 administration. Except when used in the term "probate estate",
3 [estate] includes the right of an estate described in section
4 7502 to proceed against a recipient of a nonprobate transfer on
5 death and against a trust subject to a power of revocation as
6 necessary to enable the estate to discharge claims and family
7 allowances.

8 (c) "Exempt property" means property of a decedent's estate
9 that is described in section 2404.

10 (d) "Family allowance" is the allowance prescribed in sec-
11 tion 2403.

12 (e) "Fiduciary" includes, but is not limited to, a personal
13 representative, guardian, conservator, trustee, plenary or par-
14 tial guardian appointed as provided in chapter 6 of the mental
15 health code, 1974 PA 258, MCL 330.1600 to 330.1644, and successor
16 fiduciary.

17 (f) "Financial institution" means an organization authorized
18 to do business under state or federal laws relating to a finan-
19 cial institution and includes, but is not limited to, a bank,
20 trust company, savings bank, building and loan association, sav-
21 ings and loan company or association, and credit union.

22 (g) "Foreign personal representative" means a personal rep-
23 resentative appointed by another jurisdiction.

24 (h) "Formal proceedings" means proceedings conducted before
25 a judge with notice to interested persons.

26 (i) "General personal representative" means a personal
27 representative other than a special personal representative.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

7

1 (j) "Governing instrument" means a deed; will; trust;
2 insurance or annuity policy; account with POD designation; secur-
3 ity registered in beneficiary form (TOD); pension,
4 profit-sharing, retirement, or similar benefit plan; instrument
5 creating or exercising a power of appointment or a power of
6 attorney; or dispositive, appointive, or nominative instrument of
7 any similar type.

8 [(k) "Guardian" means a person who has qualified as a guardian
9 of a minor or incapacitated individual under a parental or spousal
10 nomination or a court appointment and includes a limited guardian
as described in sections 5205, 5206, and 5306.] [Guardian] does not
include a guardian ad litem.

11 (l) "Hazardous substance" means a substance defined as haz-
12 ardous or toxic or otherwise regulated by an environmental law.

13 (m) "Heir" means, except as controlled by section 2720, a
14 person, including the surviving spouse or the state, that is
15 entitled under the statutes of intestate succession to a
16 decedent's property.

17 (n) "Homestead allowance" means the allowance prescribed in
18 section 2402.

19 Sec. 1105. As used in this act:

20 (a) "Incapacitated individual" means an individual who is
21 impaired by reason of mental illness, mental deficiency, physical
22 illness or disability, chronic use of drugs, chronic intoxica-
23 tion, or other cause, not including minority, to the extent of
24 lacking sufficient understanding or capacity to make or communi-
25 cate informed decisions.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

8

1 (b) "Informal proceedings" means proceedings for probate of
2 a will or appointment of a personal representative conducted by
3 the probate register without notice to interested persons.

4 (c) "Interested person" includes, but is not limited to, an
5 heir, devisee, child, spouse, creditor, and beneficiary and any
6 other person that has a property right in or claim against a
7 trust estate or the estate of a decedent, ward, or protected
8 individual; a person that has priority for appointment as per-
9 sonal representative; and a fiduciary representing an interested
10 person. Identification of interested persons may vary from time
11 to time and shall be determined according to the particular pur-
12 poses of, and matter involved in, a proceeding [, and by the supreme
court rules].

13 (d) "Interested trust beneficiary" means a person that has 1
14 or more of the following interests in a trust:

15 (i) Life estate.

16 (ii) Eligible recipient of a mandatory or discretionary dis-
17 tribution by the trustee of income or principal.

18 (iii) Eligible recipient of a mandatory or discretionary
19 distribution by the trustee of income or principal upon termina-
20 tion of an interest of a person described in subparagraph (i) or
21 (ii).

22 (iv) Presently exercisable or testamentary general or spe-
23 cial power of appointment.

24 (e) "Issue" means an individual's descendant.

25 (f) "Joint tenants with the right of survivorship" or
26 "community property with the right of survivorship" includes, but
27 is not limited to, co-owners or ownership of property held under

1 circumstances that entitle 1 or more to the whole of the property
2 on the death of the other or others, but does not include forms
3 of co-ownership registration in which the underlying ownership of
4 each party is in proportion to that party's contribution.

5 (g) "Lease" includes, but is not limited to, an oil, gas, or
6 other mineral lease.

7 (h) "Letters" includes, but is not limited to, letters tes-
8 tamentary, letters of guardianship, letters of administration,
9 and letters of conservatorship.

10 Sec. 1106. As used in this act:

11 (a) "Michigan prudent investor rule" means the fiduciary
12 investment and management rule prescribed by part 5 of this
13 article.

14 (b) "Minor" means an individual who is less than 18 years of
15 age.

16 (c) "Minor ward" means a minor for whom a guardian is
17 appointed solely because of minority.

18 (d) "Mortgage" means a conveyance, agreement, or arrangement
19 in which property is encumbered or used as security.

20 (e) "Nonresident decedent" means a decedent who was domi-
21 ciled in another jurisdiction at the time of his or her death.

22 (f) "Organization" means a corporation, business trust,
23 estate, trust, partnership, joint venture, association, limited
24 liability company, government, governmental subdivision or
25 agency, or another legal or commercial entity.

26 (g) "Parent" includes, but is not limited to, an individual
27 entitled to take, or who would be entitled to take, as a parent

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

10

1 under this act by intestate succession from a child who dies
2 without a will and whose relationship is in question. [Parent]
3 does not include an individual who is only a stepparent, foster
4 parent, or grandparent.

5 (h) "Patient advocate" means an individual designated to
6 exercise powers concerning another individual's care, custody,
7 and medical treatment as provided in section 5506.

8 (i) "Patient advocate designation" means the written docu-
9 ment executed and with the effect as described in sections 5506
10 to 5512.

11 (j) "Payor" means a trustee, insurer, business entity,
12 employer, government, governmental subdivision or agency, or
13 other person authorized or obligated by law or a governing
14 instrument to make payments.

15 [(k) "Person" means an individual, partnership, corporation,
association, governmental entity, or other legal entity.]

16 (l) "Personal representative" includes, but is not limited
17 to, an executor, administrator, successor personal representa-
18 tive, and special personal representative, and any other person
19 who performs substantially the same function under the law gov-
20 erning that person's status.

21 (m) "Petition" means a written request to the court for an
22 order after notice.

23 (n) "Proceeding" includes an application and a petition, and
24 may be an action at law or a suit in equity. A proceeding may be
25 denominated a civil action under court rules.

1 (o) "Property" means anything that may be the subject of
2 ownership, and includes both real and personal property or an
3 interest in real or personal property.

4 (p) "Protected individual" means a minor or other individual
5 for whom a conservator has been appointed or other protective
6 order has been made as provided in part 4 of article 5.

7 (q) "Protective proceeding" means a proceeding under the
8 provisions of part 4 of article 5.

9 Sec. 1107. As used in this act:

10 (a) "Register" or "probate register" means the official of
11 the court designated to perform the functions of register as pro-
12 vided in section 1304.

13 (b) "Revised judicature act of 1961" means the revised judi-
14 cature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

15 (c) "Security" includes, but is not limited to, a note,
16 stock, treasury stock, bond, debenture, evidence of indebtedness,
17 certificate of interest or participation in an oil, gas, or
18 mining title or lease or in payments out of production under such
19 a title or lease, collateral trust certificate, transferable
20 share, voting trust certificate, or interest in a regulated
21 investment company or other entity generally referred to as a
22 mutual fund or, in general, an interest or instrument commonly
23 known as a security, or a certificate of interest or participa-
24 tion for, a temporary or interim certificate, receipt, or certif-
25 icate of deposit for, or any warrant or right to subscribe to or
26 purchase any of the foregoing.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

12

1 (d) "Settlement" means, in reference to a decedent's estate,
2 the full process of administration, distribution, and closing.

3 (e) "Special personal representative" means a personal rep-
4 resentative as described by sections 3614 to 3618.

5 (f) "State" means a state of the United States, the District
6 of Columbia, the Commonwealth of Puerto Rico, or a territory or
7 insular possession subject to the jurisdiction of the United
8 States.

9 (g) "Successor" means a person, other than a creditor, who
10 is entitled to property of a decedent under the decedent's will
11 or this act.

12 (h) "Successor personal representative" means a personal
13 representative, other than a special personal representative, who
14 is appointed to succeed a previously appointed personal
15 representative.

16 (i) "Supervised administration" means the proceedings
17 described in part 5 of article III.

18 (j) "Survive" means that an individual neither predeceases
19 an event, including the death of another individual, nor is con-
20 sidered to predecease an event under section 2104 or 2702.
21 [Survive] includes its derivatives, such as survives, survived,
22 survivor, and surviving.

23 (k) "Testacy proceeding" means a proceeding to establish a
24 will or determine intestacy.

25 (l) "Testator" includes an individual of either sex.

26 (m) "Trust" includes, but is not limited to, an express
27 trust, private or charitable, with additions to the trust,

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

13

1 wherever and however created. [Trust] includes, but is not
2 limited to, a trust created or determined by judgment or decree
3 under which the trust is to be administered in the manner of an
4 express trust. [Trust] does not include a constructive trust or
5 a resulting trust, conservatorship, personal representative, cus-
6 todial arrangement under the Michigan uniform gifts to minors
7 act, 1959 PA 172, MCL 554.451 to 554.461, business trust provid-
8 ing for a certificate to be issued to a beneficiary, common trust
9 fund, voting trust, security arrangement, liquidation trust, or
10 trust for the primary purpose of paying debts, dividends, inter-
11 est, salaries, wages, profits, pensions, or employee benefits of
12 any kind, or another arrangement under which a person is a nomi-
13 nee or escrowee for another.

14 (n) "Trustee" includes an original, additional, or successor
15 trustee, whether or not appointed or confirmed by the court.

16 Sec. 1108. As used in this act:

17 (a) "Ward" means an individual for whom a guardian is
18 appointed.

19 (b) "Will" includes, but is not limited to, a codicil and a
20 testamentary instrument that appoints a personal representative,
21 revokes or revises another will, nominates a guardian, or
22 expressly excludes or limits the right of an individual or class
23 to succeed to the decedent's property that is passing by intes-
24 tate succession.

25

PART 2

CONSTRUCTION AND GENERAL PROVISIONS

1 CONSTRUCTION AND GENERAL PROVISIONS
2 Sec. 1201. This act shall be liberally construed and
3 applied to promote its underlying purposes and policies, which
4 include all of the following:

5 (a) To simplify and clarify the law concerning the affairs
6 of decedents, missing individuals, protected individuals, minors,
7 and legally incapacitated individuals.

8 (b) To discover and make effective a decedent's intent in
9 distribution of the decedent's property.

10 (c) To promote a speedy and efficient system for liquidating
11 a decedent's estate and making distribution to the decedent's
12 successors.

13 (d) To facilitate use and enforcement of certain trusts.

14 (e) To make the law uniform among the various jurisdictions,
15 both within and outside of this state.

16 Sec. 1203. (1) Unless displaced by the particular provi-
17 sions of this act, general principles of law and equity supple-
18 ment this act's provisions.

19 (2) This act is a general act intended as a unified coverage
20 of its subject matter and a part of it shall not be considered
21 impliedly repealed by subsequent legislation if that result can
22 reasonably be avoided.

23 Sec. 1205. (1) The court may order a person to appear
24 before the court and be examined upon the matter of a complaint
25 that is filed with the court under oath by a fiduciary, benefi-
26 ciary, creditor, or another interested person of a decedent's or
27 ward's trust or estate alleging any of the following:

1 (a) The person is suspected of having, or has knowledge that
2 another may have, concealed, embezzled, conveyed away, or dis-
3 posed of the trustee's, decedent's, or ward's property.

4 (b) The person has possession or knowledge of a deed, con-
5 veyance, bond, contract, or other writing that contains evidence
6 of, or tends to disclose, the right, title, interest, or claim of
7 the trustee, decedent, or ward to any of the trust or estate.

8 (c) The person has possession or knowledge of a decedent's
9 last will.

10 (2) If the person ordered under subsection (1) refuses to
11 appear and be examined, or refuses to answer the interrogatories
12 asked of the person that relate to the complaint, the judge may
13 by warrant commit the person to the county jail to remain in cus-
14 tody until that person submits to the order of the court.

15 (3) If fraud is perpetrated in connection with a proceeding
16 or in a statement filed under this act or if fraud is used to
17 avoid or circumvent the provisions or purposes of this act, a
18 person injured by the fraud may obtain appropriate relief against
19 the perpetrator of the fraud or restitution from a person, other
20 than a bona fide purchaser, that benefited from the fraud,
21 whether innocent or not. An action under this subsection shall
22 be commenced within 2 years after the discovery of the fraud, but
23 an action shall not be brought against a person that is not a
24 perpetrator of the fraud later than 5 years after the time of the
25 fraud's commission. This section does not affect a remedy relat-
26 ing to fraud perpetrated against a decedent during his or her
27 lifetime that affects the succession of the decedent's estate.

1 (4) If a person embezzles or wrongfully converts a
2 decedent's property before letters of authority are granted, or
3 refuses, without colorable claim of right, to transfer possession
4 of the decedent's property to the personal representative upon
5 demand, that person is liable in an action brought by the per-
6 sonal representative for the benefit of the estate for double the
7 value of the property embezzled, converted, or withheld.

8 Sec. 1207. In addition to the rules of evidence in courts
9 of general jurisdiction, the court shall determine death or
10 status in accordance with the following:

11 (a) Death occurs when an individual is determined to be dead
12 under the determination of death act, 1992 PA 90, MCL 333.1031 to
13 333.1034.

14 (b) A certified or authenticated copy of a death certificate
15 purporting to be issued by an official or agency of the place
16 where the death purportedly occurred is prima facie evidence of
17 the decedent's identity and of the fact, place, date, and time of
18 the decedent's death.

19 (c) A certified or authenticated copy of a record or report
20 of a governmental agency, domestic or foreign, that an individual
21 is missing, detained, dead, or alive is prima facie evidence of
22 the individual's status and of the dates, circumstances, and
23 places disclosed by the record or report.

24 (d) In the absence of prima facie evidence of death under
25 subdivision (b) or (c), the fact of death may be established by
26 clear and convincing evidence, including circumstantial
27 evidence.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

17

1 (e) The fact of death may be established under the procedure
2 prescribed in section 1208 to establish the death of an individ-
3 ual described in that section.

4 (f) At the hearing upon the petition, the court upon its own
5 motion may, or upon motion of an interested person shall, impanel
6 a jury as provided by law. If it is established by a preponder-
7 ance of the evidence presented at the hearing that an accident or
8 disaster occurred in which the individual named in the petition
9 was killed or may be presumed to have died, the court shall enter
10 an order that establishes the location of the accident or
11 disaster, the date of death, and, if possible, the time of death
12 and that states that the individual is dead.

13 (g) A certified copy of an order issued under this section
14 is sufficient when presented to the medical examiner for the
15 preparation of a certificate of death. The medical examiner
16 shall forward the completed certificate of death to the state
17 registrar. The state registrar shall register the death as pro-
18 vided in section 2845 of the public health code, 1978 PA 368, MCL
19 333.2845. The state registrar shall forward a copy of the regis-
20 tered death record to the local registrar of the place where the
21 death occurred as established under this section.

22 Sec. 1208. [(1)] The procedure to establish the death of an
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23 vidual who is an accident or disaster victim and whose remains
24 have disappeared or are unidentifiable is as follows:

25 (a) If an accident or disaster occurs that apparently causes
26 the death of the individual described in this section, any of the

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

19

1 is unidentifiable, and the names and addresses of all individuals
2 known or believed to be heirs at law of the presumed decedent.

3 (e) Upon the filing of a petition under this section, the
4 court shall fix the time and place for a hearing. The petitioner
5 shall give or cause to be given notice of the hearing as provided
6 by supreme court rule.

7 [(2)] An individual whose death is not otherwise established
8 under this section or section [1207], who is absent for a continu-
9 ous period of 5 years during which he or she has not been heard
10 from, and whose absence is not satisfactorily explained after
11 diligent search or inquiry is presumed to be dead. The
12 individual's death is presumed to have occurred at the end of the
13 period unless there is sufficient evidence to determine that
14 death occurred earlier.

15 [(3)] In the absence of evidence disputing the time of death
16 stated on a document described in [section 1207(b), (c), or
17 (g), a document described in section 1207(b), (c), or (g)
18] that states a time of death 120 hours or more
19 after the time of death of another individual, however the time
20 of death of the other individual is determined, establishes by
21 clear and convincing evidence that the individual survived the
22 other individual by 120 hours.

23 Sec. 1209. For the purpose of granting consent or approval
24 with regard to the acts or accounts of a personal representative
25 or trustee, including relief from liability or penalty for fail-
26 ure to post bond, to register a trust, or to perform other
27 duties, the sole holder or all coholders of a presently

1 exercisable or testamentary general or special power of
2 appointment, including 1 in the form of a power of amendment or
3 revocation, are deemed to act for beneficiaries to the extent
4 their interests, as objects, takers in default, or otherwise, are
5 subject to the power. For the purpose, however, of granting con-
6 sent or approval to modification or termination of a trust or to
7 deviation from its terms, including consent or approval to set-
8 tlement agreements described in section 7207, only the holder or
9 holders of a presently exercisable or testamentary general power
10 of appointment are deemed to act for beneficiaries whose inter-
11 ests are subject to the power.

12 Sec. 1210. (1) The specific dollar amounts stated in sec-
13 tions 2102, 2402, 2404, 2405, and [3983] apply to decedents who
14 die before January 1, [2001]. For decedents who die after December
15 31, [2000], these specific dollar amounts shall be multiplied by
16 the cost-of-living adjustment factor for the calendar year in
17 which the decedent dies.

18 (2) Before February 1, [2001, and annually after 2001], the
19 department of treasury shall publish the cost-of-living adjust-
20 ment factor to be applied to the specific dollar amounts referred
21 to in subsection (1) for decedents who die during that calendar
22 year. A product resulting from application of the cost-of-living
23 adjustment factor to a specific dollar amount must be rounded to
24 the nearest \$1,000.00 amount.

25 Sec. 1211. Court personnel shall not provide or offer to
26 provide legal advice or legal counsel to a fiduciary or an
27 interested person and shall not complete a form, petition, or

1 document for a fiduciary or interested person. This section does
2 not prohibit the court from providing [general information, blank
forms, and]
3 information concerning [the preparation of] a form provided by the
court.

4 Sec. 1212. (1) A fiduciary stands in a position of confi-
5 dence and trust with respect to each heir, devisee, beneficiary,
[protected individual,]
6 or ward for whom the person is a fiduciary. A fiduciary shall
7 observe the standard of care described in section 7302 and shall
8 discharge all of the duties and obligations of a confidential and
9 fiduciary relationship, including the duties of undivided loyal-
10 ty; impartiality between heirs, devisees, and beneficiaries; care
11 and prudence in actions; and segregation of assets held in the
12 fiduciary capacity. With respect to investments, a fiduciary
13 shall conform to the Michigan prudent investor rule.

14 (2) Except in response to legal process, in cases expressly
15 required by law, or in the necessary or proper administration of
16 the estate, a fiduciary shall not disclose facts or knowledge
17 pertaining to property in the fiduciary's possession or to the
18 affairs of those for whom the fiduciary is acting in any manner
19 without the consent of the heirs, devisees, beneficiaries,
[protected individuals,] or
20 wards. The fiduciary of a minor or an incapacitated individual
21 may give this consent on behalf of that individual. This
22 subsection's restriction on disclosure does not apply in an
23 action or proceeding in which the fiduciary and the fiduciary's
24 heir, devisee, beneficiary, [protected individual,] or ward are
parties adverse to each
25 other after the identity and relationship is determined and
26 established.

1 [Sec. 1213. If an individual includes a provision in a will,
2 trust document, or beneficiary designation that is designed to
3 reduce federal estate tax liability to 0 or the lowest possible
amount payable by describing a portion or amount measured by
reference to the unified credit, the exemption equivalent, other
credits, or other deductions, then unless specifically stated
otherwise, the reference to the credits, exemption, or deductions
shall be considered to include a reference to the family-owned
business deduction available under section 2057 of the internal
revenue code of 1986, 26 U.S.C. 2057. Unless specifically stated
otherwise, the reference to the unified credit or exemption
equivalent, or to the family-owned business deduction, shall be
considered to refer to the credit, exemption, or deduction as it
exists at the time of death of the individual.

Sec. 1214. Unless the governing instrument expressly
authorizes such a transaction or investment, unless authorized by
the court, or except as provided in section 185 of the banking code
of 1969, 1969 PA 319, MCL 487.485, a fiduciary in the fiduciary's
personal capacity shall not engage in a transaction with the estate
that the fiduciary represents and shall not invest estate money in a
company, corporation, or association with which the fiduciary is
affiliated, other than as a bondholder or minority stockholder. A
fiduciary in the fiduciary's personal capacity shall not personally
derive a profit from the purchase, sale, or transfer of the estate's
property. A fiduciary's deposit of money in a bank or trust
company, in which the fiduciary is interested as an officer,
director, or stockholder, does not constitute a violation of this
section.]

4 PART 3

5 SCOPE, JURISDICTION, AND COURTS

6
7 Sec. 1301. Except as otherwise provided in this act, this
8 act applies to all of the following:

9 (a) The affairs and estate of a decedent, missing individu-
10 al, or protected individual who is domiciled in this state.

11 (b) A nonresident's property that is located in this state
12 or property coming into the control of a fiduciary that is
13 subject to the laws of this state.

14 (c) An incapacitated individual or minor in this state.

15 (d) Survivorship and related accounts in this state.

16 (e) A trust subject to administration in this state.

17 Sec. 1302. The court has exclusive legal and equitable
18 jurisdiction of all of the following:

19 (a) A matter that relates to the settlement of a deceased
20 individual's estate, whether testate or intestate, who was at the
21 time of death domiciled in the county or was at the time of death
22 domiciled out of state leaving an estate within the county to be
23 administered, including, but not limited to, all of the following
24 proceedings:

25 (i) The internal affairs of the estate.

26 (ii) Estate administration, settlement, and distribution.

27 (iii) Declaration of rights that involve an estate, devisee,
28 heir, or fiduciary.

SB0209, As Passed House, September 24, 1998

01006'97 *

S.B. 209 as amended September 24, 1998

23

- 1 (iv) Construction of a will.
- 2 (v) Determination of heirs.
- 3 (vi) Determination of death of an accident or disaster
4 victim under section 1208.
- 5 (b) A proceeding that concerns the validity, internal
6 affairs, or settlement of a trust; the administration, distribu-
7 tion, modification, reformation, or termination of a trust; or
8 the declaration of rights that involve a trust, trustee, or trust
9 beneficiary, including, but not limited to, proceedings to do all
10 of the following:
- 11 (i) Appoint or remove a trustee.
- 12 (ii) Review the fees of a trustee.
- 13 (iii) Require, hear, and settle interim or final accounts.
- 14 (iv) Ascertain beneficiaries.
- 15 (v) Determine a question that arises in the administration
16 or distribution of a trust, including a question of construction
17 of a will or trust.
- 18 (vi) Instruct a trustee and determine relative to a trustee
19 the existence or nonexistence of an immunity, power, privilege,
20 duty, or right.
- 21 (vii) Release registration of a trust.
- 22 (viii) Determine an action or proceeding that involves set-
23 tlement of an irrevocable trust.
- 24 (c) [Except as otherwise provided in section 1021 of the
revised judicature act of 1961, 1961 PA 236, MCL 600.1021, a]
proceeding that concerns a guardianship, conservator-
25 ship, or protective proceeding.
- 26 (d) A proceeding to require, hear, or settle the accounts of
27 a fiduciary and to order, upon request of an interested person,

01006'97 *

1 instructions or directions to a fiduciary that concern an estate
2 within the court's jurisdiction.

3 Sec. 1303. (1) In addition to the jurisdiction conferred by
4 section 1302 and other laws, the court has concurrent legal and
5 equitable jurisdiction to do all of the following in regard to an
6 estate of a decedent, [protected individual,] ward, or trust:

7 (a) Determine a property right or interest.

8 (b) Authorize partition of property.

9 (c) Authorize or compel specific performance of a contract
10 in a joint or mutual will or of a contract to leave property by
11 will.

12 (d) Ascertain if individuals have survived as provided in
13 this act.

14 (e) Determine [cy-pres] or a gift, grant, bequest, or devise
15 in trust or otherwise as provided in 1915 PA 280, MCL 554.351 to
16 554.353.

17 (f) Hear and decide an action or proceeding against a dis-
18 tributee of [a fiduciary of the estate] to enforce liability that
 arises
19 because the estate was liable upon some claim or demand before
20 distribution of the estate.

21 (g) Impose a constructive trust.

22 (h) Hear and decide a claim by or against a fiduciary or
23 trustee for the return of property.

24 (i) Hear and decide a contract proceeding or action by or
25 against an estate, trust, or ward.

26 (j) Require, hear, or settle an accounting of an agent under
27 a power of attorney.

1 (2) If the probate court has concurrent jurisdiction of an
2 action or proceeding that is pending in another court, on the
3 motion of a party to the action or proceeding and after a finding
4 and order on the jurisdictional issue, the other court may order
5 removal of the action or proceeding to the probate court. If the
6 action or proceeding is removed to the probate court, the other
7 court shall forward to the probate court the original of all
8 papers in the action or proceeding. After that transfer, the
9 other court shall not hear the action or proceeding, except by
10 appeal or review as provided by law or supreme court rule, and
11 the action or proceeding shall be prosecuted in the probate court
12 as a probate court proceeding.

13 (3) The underlying purpose and policy of this section is to
14 simplify the disposition of an action or proceeding involving a
15 decedent's, [a protected individual's,] a ward's, or a trust estate
16 by consolidating the pro-
17 bate and other related actions or proceedings in the probate
18 court.

18 Sec. 1304. If this act specifies that the probate register
19 perform an act or order, the probate judge, or the probate regis-
20 ter or a deputy probate register if authorized in accordance with
21 section 834 of the revised judicature act of 1961, being
22 section 600.834 of the Michigan Compiled Laws, or in accordance
23 with supreme court rule, may perform the act or order.

24 Sec. 1305. Appellate review, including the right to appel-
25 late review or interlocutory appeal and provisions as to time,
26 manner, notice, appeal bond, stays, scope of review, record on
27 appeal, briefs, arguments, and the power of the appellate court,

1 is governed by the revised judicature act of 1961 and by supreme
2 court rule.

3 Sec. 1306. Except as otherwise specifically provided in
4 this act or by supreme court rule, a document, including an
5 application, petition, or demand for notice, filed with the court
6 under this act is considered to include an oath, affirmation, or
7 statement to the effect that the document's representations are
8 true as far as the individual executing or filing the document
9 knows or is informed, and penalties for perjury may follow delib-
10 erate falsification in the document.

11 Sec. 1307. (1) Court records shall be maintained in accord-
12 ance with section 832 of the revised judicature act of 1961,
13 being section 600.832 of the Michigan Compiled Laws. Upon pay-
14 ment of the fee required by law, the probate register shall issue
15 a certified copy of a probated will, letters issued to a personal
16 representative, or any other record or paper filed or recorded.
17 A certificate that relates to a probated will shall indicate
18 whether the decedent was domiciled in this state and whether the
19 probate was formal or informal. A certificate that relates to
20 letters shall show the date of appointment and the date to which
21 the letters continued in force.

22 (2) A certified copy of letters of authority may be recorded
23 in the office of the register of deeds for the county in which a
24 written instrument that is executed by a person under authority
25 of the letters is recorded.

26 Sec. 1308. (1) A fiduciary is liable for a loss to an
27 estate that arises from embezzlement by the fiduciary; for a loss

1 Sec. 1401. (1) If notice of a hearing on a petition is
2 required and except for specific notice requirements as otherwise
3 provided by supreme court rule, the petitioner shall cause notice
4 of the time and place of the hearing on the petition to be given
5 to each interested person or the person's attorney if the person
6 has appeared by attorney or requested that notice be sent to the
7 person's attorney. Unless otherwise provided by supreme court
8 rule, notice must be given by 1 of the following methods:

9 (a) Mailing a copy at least 14 days before the time set for
10 the hearing by certified, registered, or first-class mail
11 addressed to the person being notified at the post office address
12 given in the person's demand for notice, if any, or at the
13 person's office or place of residence, if known.

14 (b) Delivering a copy to the person being notified person-
15 ally at least 7 days before the time set for the hearing.

16 (c) If the address or identity of the person is not known
17 and cannot be ascertained with reasonable diligence, publishing
18 once a copy in a newspaper having general circulation in the
19 county where the hearing is to be held at least 14 days before
20 the time set for the hearing.

21 (2) The court for good cause shown may provide for a differ-
22 ent method or time of giving notice for a hearing.

23 (3) Proof that notice was given must be made at or before
24 the hearing and filed in the proceeding.

25 (4) If a person entitled to notice under section 3306, 3310,
26 3403, 3414, [3705, or 5426] is a resident in and a citizen of a
foreign

27 country, the person required to give notice must notify the

1 consul of the foreign nation in the city of New York or of the
2 district having jurisdiction, or the consul, vice-consul, or con-
3 sular agent resident in this state, if there is one, of the mat-
4 ters and with the particulars described in the relevant section
5 of this act.

6 Sec. 1402. A person, including a guardian ad litem, conser-
7 vator, or other fiduciary, may waive notice and consent to the
8 granting of a petition by a writing signed by the person or the
9 person's attorney and filed in the proceeding. A person for whom
10 a guardianship or other protective order is sought, a ward, or a
11 protected person may not waive notice. A fiduciary shall not
12 waive or consent on a petition, account, or report made as the
13 fiduciary or in a different fiduciary capacity.

14 Sec. 1403. In a formal proceeding that involves a trust or
15 estate of a decedent, minor, protected individual, or incapaci-
16 tated individual or in a judicially supervised settlement, the
17 following apply:

18 (a) An interest to be affected shall be described in plead-
19 ings that give reasonable information to owners by name or class,
20 by reference to the instrument that creates the interests, or in
21 another appropriate manner.

22 (b) A person is bound by an order binding others in each of
23 the following cases:

24 (i) An order that binds the sole holder or all co-holders of
25 a power of revocation or a presently exercisable or testamentary
26 general or special power of appointment, including one in the
27 form of a power of amendment, binds another person to the extent

1 the person's interest, as an object, taker in default, or
2 otherwise, is subject to the power.

3 (ii) To the extent there is no conflict of interest between
4 the persons represented, an order that binds a conservator binds
5 the person whose estate the conservator controls; an order that
6 binds a guardian binds the ward if no conservator of the ward's
7 estate has been appointed; an order that binds a trustee binds
8 beneficiaries of the trust in proceedings to probate a will, to
9 establish or add to a trust, or to review an act or account of a
10 prior fiduciary, or in proceedings that involve a creditor or
11 another third party; and an order that binds a personal represen-
12 tative binds a person interested in the undistributed assets of a
13 decedent's estate in an action or proceeding by or against the
14 estate. If there is no conflict of interest and a conservator or
15 guardian has not been appointed, a parent may represent his or
16 her minor child.

17 (iii) An unborn or unascertained person who is not otherwise
18 represented is bound by an order to the extent the person's
19 interest is adequately represented by another party that has a
20 substantially identical interest in the proceeding.

21 (c) Notice is required as follows:

22 (i) Notice as prescribed by section 1401 shall be given to
23 every interested person or to one who can bind an interested
24 person as described in subdivision (b)(i) or (ii). Notice may be
25 given both to a person and to another who may bind the person.

26 (ii) Notice is given to an unborn or unascertained person,
27 who is not represented under subdivision (b)(i) or (ii), by

1 giving notice to all known persons whose interests in the
2 proceedings are substantially identical to those of the unborn or
3 unascertained person.

4 (d) At any point in a proceeding, the court may appoint a
5 guardian ad litem to represent the interest of a minor, an inca-
6 pacitated individual, an unborn or unascertained person, or a
7 person whose identity or address is unknown, if the court deter-
8 mines that representation of the interest otherwise would be
9 inadequate. If not precluded by a conflict of interest, a guard-
10 ian ad litem may be appointed to represent several persons or
11 interests. The court shall set out the reasons for appointing a
12 guardian ad litem as a part of the record of the proceeding. If
13 he or she accepts the appointment, the guardian ad litem shall
14 report of his or her investigation and recommendation concerning
15 the matters for which he or she is appointed in writing or
16 recorded testimony. After the attorney general files an appear-
17 ance as required by law in an estate proceeding on behalf of an
18 unknown or unascertained heir at law, the attorney general repre-
19 sents the interest of the heir at law, and the court shall not
20 appoint a guardian ad litem. If a guardian ad litem was previ-
21 ously appointed for the interest, the appointment of the guardian
22 ad litem terminates.

23 PART 5

24 PRUDENT INVESTOR RULE

25 Sec. 1501. (1) This part shall be known and may be cited as
26 the "Michigan prudent investor rule". This part prescribes the
27 Michigan prudent investor rule.

1 (2) As used in this part:

2 (a) "Governing instrument" includes, but is not limited to,
3 a court order.

4 (b) "Portfolio" means all property of every kind and charac-
5 ter held by a fiduciary on behalf of a fiduciary estate.

6 Sec. 1502. (1) A fiduciary shall invest and manage assets
7 held in a fiduciary capacity as a prudent investor would, taking
8 into account the purposes, terms, distribution requirements
9 expressed in the governing instrument, and other circumstances of
10 the fiduciary estate. To satisfy this standard, the fiduciary
11 must exercise reasonable care, skill, and caution.

12 (2) The Michigan prudent investor rule is a default rule
13 that may be expanded, restricted, eliminated, or otherwise
14 altered by the provisions of the governing instrument. A fidu-
15 ciary is not liable to a beneficiary to the extent that the fidu-
16 ciary acted in reasonable reliance on the provisions of the gov-
17 erning instrument.

18 Sec. 1503. (1) A fiduciary's investment and management
19 decisions with respect to individual assets shall be evaluated
20 not in isolation, but rather in the context of the fiduciary
21 estate portfolio as a whole and as a part of an overall invest-
22 ment strategy having risk and return objectives reasonably suited
23 to the fiduciary estate.

24 (2) Among circumstances that a fiduciary must consider in
25 investing and managing fiduciary assets are all of the following
26 that are relevant to the fiduciary estate or its beneficiaries:

1 (a) General economic conditions.

2 (b) The possible effect of inflation or deflation.

3 (c) The expected tax consequences of an investment decision
4 or strategy.

5 (d) The role that each investment or course of action plays
6 within the overall portfolio, which may include financial assets,
7 interests in closely-held enterprises, tangible and intangible
8 personal property, and real property.

9 (e) The expected total return from income and the apprecia-
10 tion of capital.

11 (f) Other resources of the beneficiaries.

12 (g) The need for liquidity, regularity of income, and pre-
13 servation or appreciation of capital.

14 (h) An asset's special relationship or special value, if
15 any, to the purposes of the fiduciary estate or to 1 or more of
16 the beneficiaries.

17 (3) A fiduciary shall make a reasonable effort to verify
18 facts relevant to the investment and management of fiduciary
19 assets.

20 (4) A fiduciary may invest in any kind of property or type
21 of investment consistent with the standards of the Michigan pru-
22 dent investor rule. A particular investment is not inherently
23 prudent or imprudent.

24 (5) A fiduciary who has special skill or expertise, or is
25 named fiduciary in reliance upon the fiduciary's representation
26 that the fiduciary has special skill or expertise, has a duty to
27 use that special skill or expertise.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

34

1 Sec. 1504. A fiduciary shall diversify the investments of a
2 fiduciary estate unless the fiduciary reasonably determines that,
3 because of special circumstances, the purposes of the fiduciary
4 estate are better served without diversifying.

5 Sec. 1505. Within a reasonable time after accepting
6 appointment as a fiduciary or receiving fiduciary assets, a fidu-
7 ciary shall review the assets, and make and implement decisions
8 concerning the retention and disposition of assets, in order to
9 bring the fiduciary portfolio into compliance with the purposes,
10 terms, distribution requirements expressed in the governing
11 instrument, and other circumstances of the fiduciary estate, and
12 with the requirements of the Michigan prudent investor rule.

13 Sec. 1506. [] A fiduciary shall invest and manage fidu-
14 ciary assets solely in the interest of the beneficiaries.

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4 Sec. 1507. If a fiduciary estate has 2 or more beneficia-
5 ries, the fiduciary shall act impartially in investing and manag-
6 ing the fiduciary assets, and shall take into account any differ-
7 ing interests of the beneficiaries.

8 Sec. 1508. In investing and managing fiduciary assets, a
9 fiduciary may only incur costs that are appropriate and reason-
10 able in relation to the assets, the purposes of the fiduciary
11 estate, and the skills of the fiduciary.

12 Sec. 1509. Compliance with the prudent investor rule is
13 determined in light of the facts and circumstances that exist at
14 the time of a fiduciary's decision or action, and not by
15 hindsight. The prudent investor rule requires a standard of con-
16 duct, not outcome or performance.

17 Sec. 1510. (1) A fiduciary may delegate investment and man-
18 agement functions provided that the fiduciary exercises reason-
19 able care, skill, and caution in all of the following:

20 (a) Selecting an agent.

21 (b) Establishing the scope and terms of the delegation, con-
22 sistent with the purposes and terms of the governing instrument.

23 (c) Periodically reviewing the agent's actions in order to
24 monitor the agent's performance and compliance with the terms of
25 the delegation.

26 (2) A fiduciary who complies with the requirements of
27 subsection (1) is not liable to the beneficiaries or to the

1 fiduciary estate for a decision or action of the agent to whom
2 the function was delegated.

3 (3) In performing a delegated function, an agent owes a duty
4 to the fiduciary estate to exercise reasonable care to comply
5 with the terms of the delegation. If an agent accepts the dele-
6 gation of a fiduciary function from a fiduciary that is subject
7 to the laws of this state, the agent submits to the jurisdiction
8 of this state's court.

9 Sec. 1511. The following terms or similar language in a
10 governing instrument, unless otherwise limited or modified,
11 authorize any investment or strategy permitted under the Michigan
12 prudent investor rule:

13 (a) "Investments permissible by law for investment of trust
14 funds".

15 (b) "Legal investments".

16 (c) "Authorized investments".

17 (d) "Using the judgment and care under the circumstances
18 then prevailing that persons of prudence, discretion, and intel-
19 ligence exercise in the management of their own affairs, not in
20 regard to speculation but in regard to the permanent disposition
21 of their funds, considering the probable income as well as the
22 probable safety of their capital".

23 (e) "Prudent man rule".

24 (f) "Prudent trustee rule".

25 (g) "Prudent person rule".

26 (h) "Prudent investor rule".

1 Sec. 1512. The Michigan prudent investor rule applies to a
2 fiduciary estate that exists on or is created after this act's
3 effective date. As applied to a fiduciary estate that exists on
4 this act's effective date, the Michigan prudent investor rule
5 governs only a decision or action that occurs after that date.

1

ARTICLE II

2

INTESTACY, WILLS, AND DONATIVE TRANSFERS

3

PART 1

4

INTESTATE SUCCESSION

5

Sec. 2101. (1) Any part of a decedent's estate not effec-

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tively disposed of by will passes by intestate succession to the

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decedent's heirs as prescribed in this act, except as modified by

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the decedent's will.

9

(2) A decedent by will may expressly exclude or limit the

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right of an individual or class to succeed to property of the

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decedent that passes by intestate succession. If that individual

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or a member of that class survives the decedent, the share of the

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decedent's intestate estate to which that individual or class

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would have succeeded passes as if that individual or each member

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of that class had disclaimed his or her intestate share.

16

[Sec. 2102. (1) The intestate share of a decedent's surviving

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spouse is 1 of the following:

18

(a) The entire intestate estate if no descendant or parent of

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the decedent survives the decedent.

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(b) The first \$150,000.00, plus $\frac{1}{2}$ of any balance of the

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intestate estate, if all of the decedent's surviving descendants

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are also descendants of the surviving spouse and there is no other

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descendants of the surviving spouse who survives the decedent.

24

(c) The first \$150,000.00, plus $\frac{3}{4}$ of any balance of the

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jintestate estate, if no descendant of the decedent survives the

26

decedent, but a parent of the decedent survives the decedent.

1 (d) The first \$150,000.00, plus $\frac{1}{2}$ of any balance of the
2 intestate estate, if all of the decedent's surviving descendants are
3 also descendants of the surviving spouse and the surviving spouse
4 has 1 or more surviving descendants who are not descendants of the
5 decedent.

6 (e) The first \$150,000.00, plus $\frac{1}{2}$ of any balance of the
7 intestate estate, if 1 or more, but not all, of the decedent's
8 surviving descendants are not descendants of the surviving spouse.

9 (f) The first \$100,000.00, plus $\frac{1}{2}$ of any balance of the
10 intestate estate, if none of the decedent's surviving descendants
11 are descendants of the surviving spouse.

12 (2) Each dollar amount listed in subsection (1) shall be
13 adjusted as provided in section 1210.

14

15]

16 Sec. 2103. Any part of the intestate estate that does not
17 pass to the decedent's surviving spouse under section 2102, or
18 the entire intestate estate if there is no surviving spouse,
19 passes in the following order to the following individuals who
20 survive the decedent:

21 (a) The decedent's descendants by representation.

22 (b) If there is no surviving descendant, the decedent's par-
23 ents equally if both survive or to the surviving parent.

24 (c) If there is no surviving descendant or parent, the
25 descendants of the decedent's parents or of either of them by
26 representation.

1 (d) If there is no surviving descendant, parent, or
2 descendant of a parent, but the decedent is survived by 1 or more
3 grandparents or descendants of grandparents, 1/2 of the estate
4 passes to the decedent's paternal grandparents equally if both
5 survive, or to the surviving paternal grandparent, or to the
6 descendants of the decedent's paternal grandparents or either of
7 them if both are deceased, the descendants taking by representa-
8 tion; and the other 1/2 passes to the decedent's maternal rela-
9 tives in the same manner. If there is no surviving grandparent
10 or descendant of a grandparent on either the paternal or the
11 maternal side, the entire estate passes to the decedent's rela-
12 tives on the other side in the same manner as the 1/2.

13 Sec. 2104. An individual who fails to survive the decedent
14 by 120 hours is considered to have predeceased the decedent for
15 purposes of homestead allowance, exempt property, and intestate
16 succession, and the decedent's heirs are determined accordingly.
17 If it is not established by clear and convincing evidence that an
18 individual who would otherwise be an heir survived the decedent
19 by 120 hours, it is considered that the individual failed to sur-
20 vive for the required period. This section does not apply if its
21 application would result in a taking of the intestate estate by
22 the state under section 2105.

23 Sec. 2105. If there is no taker under the provisions of
24 this article, the intestate estate passes to this state.

25 Sec. 2106. (1) If, under section 2103(a), a decedent's
26 intestate estate or a part of the estate passes by representation
27 to the decedent's descendants, the estate or part of the estate

1 is divided into as many equal shares as the total of the
2 surviving descendants in the generation nearest to the decedent
3 that contains 1 or more surviving descendants and the deceased
4 descendants in the same generation who left surviving descen-
5 dants, if any. Each surviving descendant in the nearest genera-
6 tion is allocated 1 share. The remaining shares, if any, are
7 combined and then divided in the same manner among the surviving
8 descendants of the deceased descendants as if the surviving
9 descendants who were allocated a share and their surviving
10 descendants had predeceased the decedent.

11 (2) If, under section 2103(c) or (d), a decedent's intestate
12 estate or a part of the estate passes by representation to the
13 descendants of the decedent's deceased parents or either of them
14 or to the descendants of the decedent's deceased paternal or
15 maternal grandparents or either of them, the estate or part of
16 the estate is divided into as many equal shares as the total of
17 the surviving descendants in the generation nearest the deceased
18 parents or either of them, or the deceased grandparents or either
19 of them, that contains 1 or more surviving descendants and the
20 deceased descendants in the same generation who left surviving
21 descendants, if any. Each surviving descendant in the nearest
22 generation is allocated 1 share. The remaining shares, if any,
23 are combined and then divided in the same manner among the sur-
24 viving descendants of the deceased descendants as if the surviv-
25 ing descendants who were allocated a share and their surviving
26 descendants had predeceased the decedent.

1 (3) As used in this section:

2 (a) "Deceased descendant", "deceased parent", or "deceased
3 grandparent" means a descendant, parent, or grandparent who
4 either predeceased the decedent or is considered to have prede-
5 ceased the decedent under section 2104.

6 (b) "Surviving descendant" means a descendant who neither
7 predeceased the decedent nor is considered to have predeceased
8 the decedent under section 2104.

9 Sec. 2107. A relative of the half blood inherits the same
10 share he or she would inherit if he or she were of the whole
11 blood.

12 Sec. 2108. An individual in gestation at a particular time
13 is treated as living at that time if the individual lives 120
14 hours or more after birth.

15 Sec. 2109. (1) If an individual dies intestate as to all or
16 a portion of his or her estate, property the decedent gave during
17 the decedent's lifetime to an individual who, at the decedent's
18 death, is an heir is treated as an advancement against the heir's
19 intestate share only under either of the following
20 circumstances:

21 (a) The decedent declared in a contemporaneous writing or
22 the heir acknowledged in writing that the gift is an
23 advancement.

24 (b) The decedent's contemporaneous writing or the heir's
25 written acknowledgment otherwise indicates that the gift is to be
26 taken into account in computing the division and distribution of
27 the decedent's intestate estate.

1 (2) For purposes of subsection (1), property advanced is
2 valued as of the time the heir came into possession or enjoyment
3 of the property or as of the time of the decedent's death, which-
4 ever first occurs.

5 (3) If the recipient of property advanced fails to survive
6 the decedent, the property is not taken into account in computing
7 the division and distribution of the decedent's intestate estate,
8 unless the decedent's contemporaneous writing provides
9 otherwise.

10 Sec. 2110. A debt owed to a decedent is not charged against
11 the intestate share of any individual except the debtor. If the
12 debtor fails to survive the decedent, the debt is not taken into
13 account in computing the intestate share of the debtor's
14 descendants.

15 Sec. 2111. An individual is not disqualified to take as an
16 heir because the individual or an individual through whom he or
17 she claims is or has been an alien.

18 []

19 Sec. 2113. An individual who is related to the decedent
20 through 2 lines of relationship is entitled to only a single
21 share based on the relationship that would entitle the individual
22 to the larger share.

23 Sec. 2114. (1) Except as provided in subsections (2), (3),
24 and (4), for purposes of intestate succession by, through, or
25 from an individual, an individual is the child of his or her nat-
26 ural parents, regardless of their marital status. The parent and

1 child relationship may be established in any of the following
2 manners:

3 (a) If a child is born or conceived during a marriage, both
4 spouses are presumed to be the natural parents of the child for
5 purposes of intestate succession. A child conceived by a married
6 woman with the consent of her husband following utilization of
7 assisted reproductive technology is considered as their child for
8 purposes of intestate succession. Consent of the husband is pre-
9 sumed unless the contrary is shown by clear and convincing
10 evidence. If a man and a woman participated in a marriage cere-
11 mony in apparent compliance with the law before the birth of a
12 child, even though the attempted marriage is void, the child is
13 presumed to be their child for purposes of intestate succession.

14 (b) Only the individual presumed to be the natural parent of
15 a child under subdivision (a) may disprove a presumption that is
16 relevant to the relationship, and this exclusive right to do so
17 terminates upon the death of the presumed parent.

18 (c) If a child is born out of wedlock or if a child is born
19 or conceived during a marriage but is not the issue of that mar-
20 riage, a man is considered to be the natural father of that child
21 for purposes of intestate succession if any of the following
22 occur:

23 (i) The man joins with the mother of the child and acknowl-
24 edges that child as his child by completing an acknowledgment of
25 parentage as prescribed in the acknowledgment of parentage act,
26 1996 PA 305, MCL 722.1001 to 722.1013.

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

5 (iii) The man and child have borne a mutually acknowledged
6 relationship of parent and child that begins before the child
7 becomes age 18 and continues until terminated by the death of
8 either.

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

12 (2) An adopted individual is the child of his or her adop-
13 tive parent or parents and not of his or her natural parents, but
14 adoption of a child by the spouse of either natural parent has no
15 effect on either the relationship between the child and that nat-
16 ural parent or, except as provided in subsection (3), the right
17 of the child or a descendant of the child to inherit from or
18 through the other natural parent. An individual is considered to
19 be adopted for purposes of this subsection when a court of compe-
20 tent jurisdiction enters an interlocutory decree of adoption that
21 is not vacated or reversed.

22 (3) The permanent termination of parental rights of a minor
23 child by an order of a court of competent jurisdiction; by a
24 release for purposes of adoption given by the parent, but not a
25 guardian, to the family independence agency or a licensed child
26 placement agency, or before a probate or juvenile court; or by
27 any other process recognized by the law governing the

1 parent-child status at the time of termination, excepting
2 termination by emancipation or death, ends kinship between the
3 parent whose rights are so terminated and the child for purposes
4 of intestate succession by that parent from or through that
5 child.

6 (4) Inheritance from or through a child by either natural
7 parent or his or her kindred is precluded unless that natural
8 parent has openly treated the child as his or hers, and has not
9 refused to support the child.

10

PART 2

11

ELECTIVE SHARE OF SURVIVING SPOUSE

12 Sec. 2201. Subject to sections 2203 to 2205, upon an
13 individual's death, the individual's surviving spouse has the
14 right described by section 2202.

15 Sec. 2202. (1) The surviving spouse of a decedent who was
16 domiciled in this state and who dies testate may file with the
17 court an election in writing that the spouse elects 1 of the
18 following:

19 (a) That the spouse will abide by the terms of the will.

20 (b) That the spouse will take 1/2 of the sum or share that
21 would have passed to the spouse had the testator died intestate,
22 reduced by 1/2 of the value of all property derived by the spouse
23 from the decedent by any means other than testate or intestate
24 succession upon the decedent's death.

[(c) If a widow, that she will take her dower right under
sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.]

25 (2) The surviving spouse is entitled to only 1 election
26 choice under subsection (1) unless the contrary plainly appears
27 by the will to be intended by the testator. The right of

1 election of the surviving spouse must be exercised during the
2 lifetime of the surviving spouse. The election must be made
3 within [63] days after the date for presentment of claims or within
4 [63] days after the filing of proof of service of the inventory
5 upon the surviving spouse, whichever is later.

6 (3) Notice of right of election shall be served upon the
7 decedent's spouse, if any, as provided in section 3705(5), and
8 proof of that notice shall be filed with the court. An election
9 as provided by this section may be filed instead of service of
10 notice and filing of proof.

11 (4) In the case of a legally incapacitated person, the right
12 of election may be exercised only by order of the court in which
13 a proceeding as to that person's property is pending, after find-
14 ing that exercise is necessary to provide adequate support for
15 the legally incapacitated person during that person's life
16 expectancy.

17 (5) The surviving spouse of a decedent who was not domiciled
18 in this state is entitled to election against the will only as
19 may be provided by the law of the place in which the decedent was
20 domiciled at the time of death.

21 (6) As used in subsection (1), "property derived by the
22 spouse from the decedent" includes all of the following
23 transfers:

24 (a) A transfer made within 2 years before the decedent's
25 death to the extent that the transfer is subject to federal gift
26 or estate taxes.

1 (b) A transfer made before the date of death subject to a
2 power retained by the decedent that would make the property, or a
3 portion of the property, subject to federal estate tax.

4 (c) A transfer effectuated by the decedent's death through
5 joint ownership, tenancy by the entireties, insurance beneficia-
6 ry, or similar means.

7 Sec. 2203. If a surviving spouse fails to make an election
8 within the time specified in section 2202, it is conclusively
9 presumed that the spouse elects to abide by the terms of the will
10 except in either of the following instances:

11 (a) If an election is not made and the principal administra-
12 tion is closed, and if after that administration is closed it
13 appears to the court that assets belonging to the estate are dis-
14 covered and administration is granted, the election may be made
15 out of the newly discovered assets only upon good cause shown at
16 any time before that administration is closed.

17 (b) Before the estate is closed, upon petition of the spouse
18 and after notice to all interested [persons], the court may permit
19 the spouse to make an election to which the spouse was entitled
20 as though the spouse had done so within the time specified in
21 section 2202, if the court considers it proper on account of
22 litigation connected with the estate or the establishment of fur-
23 ther claims against the deceased, or for other cause. The court
24 shall limit the time within which the spouse may make an election
25 under this subdivision.

26 Sec. 2204. Filing of a petition to admit the will of a
27 deceased spouse, failing to object or consenting to admission of

1 share of the estate the surviving spouse would have received if
2 the testator had died intestate as to that portion of the
3 testator's estate, if any, that is not any of the following:

4 (a) Property devised to a child of the testator who was born
5 before the testator married the surviving spouse and who is not
6 the surviving spouse's child.

7 (b) Property devised to a descendant of a child described in
8 subdivision (a).

9 (c) Property that passes under section 2603 or 2604 to a
10 child described in subdivision (a) or to a descendant of such a
11 child.

12 (2) Subsection (1) does not apply if any of the following
13 are true:

14 (a) From the will or other evidence, it appears that the
15 will was made in contemplation of the testator's marriage to the
16 surviving spouse.

17 (b) The will expresses the intention that it is to be effec-
18 tive notwithstanding a subsequent marriage.

19 (c) The testator provided for the spouse by transfer outside
20 the will, and the intent that the transfer be a substitute for a
21 testamentary provision is shown by the testator's statements or
22 is reasonably inferred from the amount of the transfer or other
23 evidence.

24 (3) In satisfying the share provided by this section,
25 devises made by the will to the testator's surviving spouse, if
26 any, are applied first, and other devises, other than a devise to
27 a child of the testator who was born before the testator married

1 the surviving spouse and who is not the surviving spouse's child
2 or a devise or substitute gift under section 2603 or 2604 to a
3 descendant of such a child, abate as provided in section 3902.

4 Sec. 2302. (1) Except as provided in subsection (2), if a
5 testator fails to provide in his or her will for a child of the
6 testator born or adopted after the execution of the will, the
7 omitted after-born or after-adopted child receives a share in the
8 estate as provided in 1 of the following:

9 (a) If the testator had no child living when he or she exe-
10 cuted the will, an omitted after-born or after-adopted child
11 receives a share in the estate equal in value to that which the
12 child would have received had the testator died intestate, unless
13 the will devised all or substantially all of the estate to the
14 other parent of the omitted child and that other parent survives
15 the testator and is entitled to take under the will.

16 (b) If the testator had 1 or more children living when he or
17 she executed the will, and the will devised property or an inter-
18 est in property to 1 or more of the then-living children, an
19 omitted after-born or after-adopted child is entitled to share in
20 the testator's estate subject to all of the following:

21 (i) The portion of the testator's estate in which the
22 omitted after-born or after-adopted child is entitled to share is
23 limited to devises made to the testator's then-living children
24 under the will.

25 (ii) The omitted after-born or after-adopted child is enti-
26 tled to receive the share of the testator's estate, as limited in
27 subparagraph (i), that the child would have received had the

1 testator included all omitted after-born and after-adopted
2 children with the children to whom devises were made under the
3 will and had given an equal share of the estate to each child.

4 (iii) To the extent feasible, the interest granted an
5 omitted after-born or after-adopted child under this section must
6 be of the same character, whether equitable or legal, present or
7 future, as that devised to the testator's then-living children
8 under the will.

9 (iv) In satisfying a share provided by this subdivision,
10 devises to the testator's children who were living when the will
11 was executed abate ratably. In abating the devises of the
12 then-living children, the court shall preserve to the maximum
13 extent possible the character of the testamentary plan adopted by
14 the testator.

15 (2) Subsection (1) does not apply if either of the following
16 applies:

17 (a) It appears from the will that the omission was
18 intentional.

19 (b) The testator provided for the omitted after-born or
20 after-adopted child by transfer outside the will and the intent
21 that the transfer be a substitute for a testamentary provision is
22 shown by the testator's statements or is reasonably inferred from
23 the amount of the transfer or other evidence.

24 (3) If at the time of execution of the will the testator
25 fails to provide in his or her will for a living child solely
26 because he or she believes the child to be dead, the child is

1 entitled to share in the estate as if the child were an omitted
2 after-born or after-adopted child.

3 (4) In satisfying a share provided by subsection (1)(a),
4 devises made by the will abate under section 3902.

5 PART 4

6 EXEMPT PROPERTY AND ALLOWANCES

7 Sec. 2401. This part applies to the estate of a decedent
8 who dies domiciled in this state. For a decedent who dies domi-
9 ciled outside of this state, rights to homestead allowance,
10 family allowance, and exempt property are governed by the law of
11 the decedent's domicile at death.

12 Sec. 2402. [] A decedent's surviving spouse is entitled to
13 a homestead allowance of \$15,000.00, adjusted as provided in sec-
14 tion 1210. If there is no surviving spouse, each minor child and
15 each dependent child of the decedent is entitled to a homestead
16 allowance equal to \$15,000.00, adjusted as provided in section
17 1210, divided by the number of the decedent's minor and dependent
18 children. The homestead allowance is exempt from and has prior-
19 ity over all claims against the estate. A homestead allowance is
20 in addition to any share passing to the surviving spouse or minor
21 or dependent child by the will of the decedent, unless otherwise
22 provided, by intestate succession, or by elective share.

23 [

24

25

26]

1 Sec. 2403. (1) For their maintenance during the period of
2 administration, a reasonable family allowance is payable to the
3 decedent's surviving spouse and minor children whom the decedent
4 was obligated to support, and children of the decedent or another
5 who were in fact being supported by the decedent, which allowance
6 shall not continue for longer than 1 year if the estate is inade-
7 quate to discharge allowed claims. The family allowance may be
8 paid in a lump sum or in periodic installments. The family
9 allowance is payable to the surviving spouse, if living, for the
10 use of the surviving spouse and minor and dependent children;
11 otherwise to the children or persons having their care and
12 custody. If a minor child or dependent child is not living with
13 the surviving spouse, the allowance may be paid partially to the
14 child or to a fiduciary or other person having the child's care
15 and custody, and partially to the spouse, as their needs may
16 appear.

17 (2) The family allowance is exempt from and has priority
18 over all claims except the homestead allowance. The family
19 allowance is not chargeable against a benefit or share passing to
20 the surviving spouse or children by the will of the decedent,
21 unless otherwise provided, by intestate succession, or by way of
22 elective share. The death of an individual entitled to family
23 allowance terminates the right to allowances not yet paid.

24 Sec. 2404. (1) The decedent's surviving spouse is also
25 entitled to household furniture, automobiles, furnishings, appli-
26 ances, and personal effects from the estate up to a value not to
27 exceed \$10,000.00 more than the amount of any security interests

1 to which the property is subject. If there is no surviving
2 spouse, the decedent's children are entitled jointly to the same
3 value.

4 (2) If encumbered assets are selected and the value in
5 excess of security interests, plus that of other exempt property,
6 is less than \$10,000.00, or if there is not \$10,000.00 worth of
7 exempt property in the estate, the spouse or children are enti-
8 tled to other assets of the estate, if any, to the extent neces-
9 sary to make up the \$10,000.00 value. Rights to exempt property
10 and assets needed to make up a deficiency of exempt property have
11 priority over all claims against the estate, except that the
12 right to assets to make up a deficiency of exempt property abates
13 as necessary to permit payment of homestead allowance and family
14 allowance.

15 (3) The rights under this section are in addition to a bene-
16 fit or share passing to the surviving spouse or children by the
17 decedent's will, unless otherwise provided, by intestate succes-
18 sion, or by elective share. The \$10,000.00 amount expressed in
19 this section shall be adjusted as provided in section 1210.

20 Sec. 2405. (1) If the estate is otherwise sufficient, prop-
21 erty specifically devised shall not be used to satisfy rights to
22 homestead allowance or exempt property. Subject to this restric-
23 tion, the surviving spouse, fiduciaries or others that have the
24 care and custody of minor children, or children who are adults
25 may select property of the estate as homestead allowance and
26 exempt property.

1 (2) The personal representative may make those selections if
2 the surviving spouse, the adult children, or those acting for the
3 minor children are unable or fail to do so within a reasonable
4 time. The personal representative may execute a deed of distri-
5 bution or other instrument to establish the ownership of property
6 taken as homestead allowance or exempt property. The personal
7 representative may determine the family allowance in a lump sum
8 not exceeding \$18,000.00, adjusted as provided in section 1210,
9 or periodic installments not exceeding 1/12 of that amount per
10 month for 1 year, and may disburse funds of the estate in payment
11 of the family allowance and any part of the homestead allowance
12 payable in cash.

13 (3) The personal representative or an interested person
14 aggrieved by a selection, determination, payment, proposed pay-
15 ment, or failure to act under this section may petition the court
16 for appropriate relief, which may include a family allowance
17 other than that which the personal representative determined or
18 could have determined.

19 PART 5

20 WILLS, WILL CONTRACTS, AND

21 CUSTODY AND DEPOSIT OF WILLS

22 Sec. 2501. An individual 18 years of age or older who is of
23 sound mind may make a will.

24 Sec. 2502. (1) Except as provided in subsection (2) and in
25 sections 2503, 2506, and 2513, a will is valid only if it is all
26 of the following:

1 (a) In writing.

2 (b) Signed by the testator or in the testator's name by some
3 other individual in the testator's conscious presence and by the
4 testator's direction.

5 (c) Signed by at least 2 individuals, each of whom signed
6 within a reasonable time after he or she witnessed either the
7 signing of the will as described in subdivision (b) or the
8 testator's acknowledgment of that signature or acknowledgment of
9 the will.

10 [(2) A will that does not comply with subsection (1) is valid
11 as a holographic will, whether or not witnessed, if it is dated,
12 and if the testator's signature and the document's material portions
13 are in the testator's handwriting.

14 (3) Intent that the document constitutes a testator's will
15 can be established by extrinsic evidence, including, for a holo-
16 graphic will, portions of the document that are not in the
17 testator's handwriting.]

18 Sec. 2503. Although a document or writing added upon a doc-
19 ument was not executed in compliance with section 2502, the docu-
20 ment or writing is treated as if it had been executed in compli-
21 ance with that section if the proponent of the document or writ-
22 ing establishes by clear and convincing evidence that the dece-
23 dent intended the document or writing to constitute any of the
24 following:

25 (a) The decedent's will.

26 (b) A partial or complete revocation of the decedent's
27 will.

1 (c) An addition to or an alteration of the decedent's will.

2 (d) A partial or complete revival of the decedent's formerly
3 revoked will or of a formerly revoked portion of the decedent's
4 will.

5 Sec. 2504. (1) A will may be simultaneously executed,
6 attested, and made self-proved by acknowledgment of the will by
7 the testator and 2 witnesses' [sworn statements], each made before
8 an
9 officer authorized to administer oaths under the laws of the
10 state in which execution occurs and evidenced by the officer's
11 certificate, under official seal, in substantially the following
12 form:

13 I, _____, the testator, sign my name to
14 this document on _____, _____. I have taken an oath, admin-
15 istered by the officer whose signature and seal appear on this
16 document, swearing that the statements in this document are
17 true. I declare to that officer that this document is my will;
18 that I sign it willingly or willingly direct another to sign for
19 me; that I execute it as my voluntary act for the purposes
20 expressed in this will; and that I am 18 years of age or older,
21 of sound mind, and under no constraint or undue influence.

22 _____

23 (Signature) Testator

24 We, _____ and

25 _____, the witnesses, sign our
26 names to this document and have taken an oath, administered by
27 the officer whose signature and seal appear on this document, to
28 swear that all of the following statements are true: the

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

59

1 individual signing this document as the testator executes the
2 document as his or her will, signs it willingly or willingly
3 directs another to sign for him or her, and executes it as his or
4 her voluntary act for the purposes expressed in this will; each
5 of us, in the testator's presence, signs this will as witness to
6 the testator's signing; and, to the best of our knowledge, the
7 testator is 18 years of age or older, of sound mind, and under no
8 constraint or undue influence.

9 _____
10 (Signature) Witness

11 _____
12 (Signature) Witness

13 The State of _____
14 County of _____

15 Sworn to and signed in my presence by _____, the
16 testator, and sworn to and signed in my presence by
17 _____ and _____, witnesses, on

18 _____,
19 _____ month/day, _____ year.

20 _____
21 (SEAL) (Signed)

22 _____
23 (official capacity of officer)

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

1 The State of _____

2 County of _____

3 We, _____, _____, and
4 _____, the testator and the witnesses, respective-
5 ly, whose names are signed to the attached will, sign this docu-
6 ment and have taken an oath, administered by the officer whose
7 signature and seal appear on this document, to swear that all of
8 the following statements are true: the individual signing this
9 document as the will's testator executed the will as his or her
10 will, signed it willingly or willingly directed another to sign
11 for him or her, and executed it as his or her voluntary act for
12 the purposes expressed in the will; each witness, in the
13 testator's presence, signed the will as witness to the testator's
14 signing; and, to the best of the witnesses' knowledge, the testa-
15 tor, at the time of the will's execution, was 18 years of age or
16 older, of sound mind, and under no constraint or undue
17 influence.

18 _____
19 (Signature) Testator

20 _____
21 (Signature) Witness

22 _____
23 (Signature) Witness

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

29 _____

1 (SEAL) (Signed)

2 _____
3 (official capacity of officer)

4 (3) A codicil to a will may be simultaneously executed and
5 attested, and both the codicil and the original will made self-
6 proved, by acknowledgment of the codicil by the testator and by
7 witnesses' [sworn statements], each made before an officer
authorized to
8 administer oaths under the laws of the state in which execution
9 occurs and evidenced by the officer's certificate, under official
10 seal, in substantially the following form:

11 I, _____, the testator, sign my name to this docu-
12 ment on _____, _____. I have taken an oath, administered by
13 the officer whose signature and seal appear on this document,
14 swearing that the statements in this document are true. I
15 declare to that officer that this document is a codicil to my
16 will; that I sign it willingly or willingly direct another to
17 sign for me; that I execute it as my voluntary act for the pur-
18 poses expressed in this codicil; and that I am 18 years of age or
19 older, of sound mind, and under no constraint or undue
20 influence.

21 _____
22 (Signature) Testator

23 We, _____ and _____, the witnesses, sign
24 our names to this document and have taken an oath, administered
25 by the officer whose signature and seal appear on this document,
26 to swear that all of the following statements are true: the
27 individual signing this document as the testator executes the
28 document as a codicil to his or her will, signs it willingly or

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

62

1 willingly directs another to sign for him or her, and executes it
2 as his or her voluntary act for the purposes expressed in this
3 codicil; each of us, in the testator's presence, signs this codi-
4 cil as witness to the testator's signing; and, to the best of our
5 knowledge, the testator is 18 years of age or older, of sound
6 mind, and under no constraint or undue influence.

7 _____
8 (Signature) Witness

9 _____
10 (Signature) Witness

11 The State of _____

12 County of _____

13 Sworn to and signed in my presence by _____, the
14 testator, and sworn to and signed in my presence by

15 _____ and _____, witnesses, on _____

16 _____,
17 _____ month/day _____ year.

18 _____
19 (SEAL) (Signed)

20 _____
21 (official capacity of officer)

22
23 (4) If necessary to prove the will's due execution, a signa-
24 ture affixed to a self-proving [sworn statement] attached to a will
is

25 considered a signature affixed to the will.

26 Sec. 2505. (1) An individual generally competent to be a
27 witness may act as a witness to a will.

28 (2) The signing of a will by an interested witness does not
29 invalidate the will or any provision of it.

30 Sec. 2506. A written will is valid if executed in
31 compliance with section 2502 or 2503, with the law at the time of

1 execution of the place where the will is executed, or with the
2 law of the place where, at the time of execution or at the time
3 of death, the testator is domiciled, has a place of abode, or is
4 a national.

5 Sec. 2507. (1) A will or a part of a will is revoked by
6 either of the following acts:

7 (a) Execution of a subsequent will that revokes the previous
8 will or a part of the will expressly or by inconsistency.

9 (b) Performance of a revocatory act on the will, if the tes-
10 tator performed the act with the intent and for the purpose of
11 revoking the will or a part of the will or if another individual
12 performed the act in the testator's conscious presence and by the
13 testator's direction. For purposes of this subdivision,
14 "revocatory act on the will" includes burning, tearing, cancel-
15 ing, obliterating, or destroying the will or a part of the will.
16 A burning, tearing, or canceling is a revocatory act on the will,
17 whether or not the burn, tear, or cancellation touches any of the
18 words on the will.

19 (2) If a subsequent will does not expressly revoke a previ-
20 ous will, the execution of the subsequent will wholly revokes the
21 previous will by inconsistency if the testator intended the sub-
22 sequent will to replace rather than supplement the previous
23 will.

24 (3) The testator is presumed to have intended a subsequent
25 will to replace rather than supplement a previous will if the
26 subsequent will makes a complete disposition of the testator's
27 estate. If this presumption arises and is not rebutted by clear

1 and convincing evidence, the previous will is revoked, and only
2 the subsequent will is operative on the testator's death.

3 (4) The testator is presumed to have intended a subsequent
4 will to supplement rather than replace a previous will if the
5 subsequent will does not make a complete disposition of the
6 testator's estate. If this presumption arises and is not
7 rebutted by clear and convincing evidence, the subsequent will
8 revokes the previous will only to the extent the subsequent will
9 is inconsistent with the previous will, and each will is fully
10 operative on the testator's death to the extent they are not
11 inconsistent.

12 Sec. 2508. Except as provided in sections 2802 to 2809, a
13 change of circumstances does not revoke a will or a part of a
14 will.

15 Sec. 2509. (1) If a subsequent will that wholly revoked a
16 previous will is later revoked by a revocatory act under section
17 2507(1)(b), the previous will remains revoked unless it is
18 revived. The previous will is revived if it is evident from the
19 circumstances of the revocation of the subsequent will or from
20 the testator's contemporary or subsequent declarations that the
21 testator intended the previous will to take effect as executed.

22 (2) If a subsequent will that partly revoked a previous will
23 is later revoked by a revocatory act under section 2507(1)(b), a
24 revoked part of the previous will is revived unless it is evident
25 from the circumstances of the revocation of the subsequent will
26 or from the testator's contemporary or subsequent declarations

1 that the testator did not intend the revoked part to take effect
2 as executed.

3 (3) If a subsequent will that revoked a previous will in
4 whole or in part is later revoked by another, later will, the
5 previous will remains revoked in whole or in part, unless it or
6 its revoked part is revived. The previous will or its revoked
7 part is revived to the extent it appears from the terms of the
8 later will that the testator intended the previous will to take
9 effect.

10 Sec. 2510. A writing in existence when a will is executed
11 may be incorporated by reference if the language of the will man-
12 ifests this intent and describes the writing sufficiently to
13 permit its identification.

14 Sec. 2511. (1) A will may validly devise property to the
15 trustee of a trust established or to be established in any of the
16 following manners:

17 (a) During the testator's lifetime by the testator, by the
18 testator and some other person, or by some other person, includ-
19 ing a funded or unfunded life insurance trust, although the set-
20 tlor has reserved any or all rights of ownership of the insurance
21 contracts.

22 (b) At the testator's death by the testator's devise to the
23 trustee, if the trust is identified in the testator's will and
24 its terms are set forth in a written instrument, other than a
25 will, executed before, concurrently with, or after the execution
26 of the testator's will or in another individual's will if that

1 other individual has predeceased the testator, regardless of the
2 existence, size, or character of the trust corpus.

3 (2) A devise described in subsection (1) is not invalid
4 because the trust is amendable or revocable, or because the trust
5 was amended after the execution of the will or the testator's
6 death. Unless the testator's will provides otherwise, property
7 devised to a trust described in subsection (1) is not held under
8 a testamentary trust of the testator, but it becomes a part of
9 the trust to which it is devised, and shall be administered and
10 disposed of in accordance with the provisions of the governing
11 instrument setting forth the terms of the trust, including an
12 amendment to the trust made before or after the testator's
13 death.

14 (3) Unless the testator's will provides otherwise, a revoca-
15 tion or termination of the trust before the testator's death
16 causes the devise to lapse.

17 Sec. 2512. A will may dispose of property by reference to
18 acts and events that have significance apart from their effect
19 upon the dispositions made by the will, whether they occur before
20 or after the execution of the will or before or after the
21 testator's death. The execution or revocation of another
22 individual's will is such an event.

23 Sec. 2513. Whether or not the provisions relating to a
24 holographic will apply, a will may refer to a written statement
25 or list to dispose of items of tangible personal property not
26 otherwise specifically disposed of by the will, other than
27 money. To be admissible under this section as evidence of the

1 intended disposition, the writing must be signed by the testator
2 and must describe the items and the devisees with reasonable
3 certainty. The writing may be referred to as one to be in exis-
4 tence at the time of the testator's death; it may be prepared
5 before or after the execution of the will; it may be altered by
6 the testator after its preparation; and it may be a writing that
7 has no significance apart from its effect on the dispositions
8 made by the will.

9 Sec. 2514. (1) If executed after July 1, 1979, a contract
10 to make a will or devise, not to revoke a will or devise, or to
11 die intestate may be established only by 1 or more of the
12 following:

13 (a) Provisions of a will stating material provisions of the
14 contract.

15 (b) An express reference in a will to a contract and extrin-
16 sic evidence proving the terms of the contract.

17 (c) A writing signed by the decedent evidencing the
18 contract.

19 (2) The execution of a joint will or mutual wills does not
20 create a presumption of a contract not to revoke the will or
21 wills.

22 Sec. 2515. (1) A will in writing that is enclosed in a
23 sealed wrapper, on which is endorsed the testator's name, place
24 of residence, and social security number or state of Michigan
25 driver's license number, if any, and the day on which and the
26 name of the person by whom it is delivered, may be deposited by
27 the individual making the will, or by a person for him or her,

1 with the court in the county where the testator resides. The
2 court shall receive and safely keep the will and give a certifi-
3 cate of the deposit of the will. For this service, the court
4 shall charge and collect a fee as provided by supreme court rule
5 or the revised judicature act of 1961.

6 (2) During the lifetime of the testator, the will shall be
7 delivered only to the testator, or to some person authorized by
8 the testator in writing that is duly proved by the oath of a sub-
9 scribing witness. After the death of the testator and at the
10 first session of the court after the court receives notice of the
11 testator's death, the will shall be publicly opened and retained
12 by the court.

13 (3) After the death of the testator, if jurisdiction of the
14 will for probate belongs to a court in another county, upon
15 request of the personal representative named in the will or
16 another person interested in its provisions, the will shall be
17 forwarded by registered mail to the other court or delivered to
18 the personal representative, or to some other person interested
19 in the provisions of the will, to be presented for probate in the
20 other court.

21 Sec. 2516. A custodian of a will or codicil or person
22 having possession or care of a will or codicil shall forward it
23 to the court having jurisdiction with reasonable promptness after
24 the death of the testator either by delivering it personally or
25 by sending it properly addressed by registered mail. A person
26 who neglects to perform this duty without reasonable cause is
27 liable for damages that are sustained by the neglect. A person

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

69

1 who willfully refuses or fails to deliver a will or codicil after
2 being ordered by the court in a proceeding brought for the pur-
3 pose of compelling delivery is guilty of contempt of court and
4 subject to the penalty for contempt.

5 Sec. 2517. (1) In the estate of a decedent who died before
6 October 1, 1993, the following apply to the opening of a safe
7 deposit box:

8 (a) A safe deposit box of which the decedent was an individ-
9 ual or joint lessee may be opened following the decedent's death
10 only upon compliance with the Michigan estate tax act, 1899 PA
11 188, MCL 205.201 to 205.256.

12 (b) A safe deposit box of the decedent who was an individual
13 or joint lessee and for whom a fiduciary was appointed may be
14 opened by that fiduciary in a like manner as provided by the
15 Michigan estate tax act, 1899 PA 188, MCL 205.201 to 205.256, as
16 it relates to deceased individuals.

17 (2) In the estate of a decedent who dies after September 30,
18 1993, the following apply to the opening of a safe deposit box:

19 (a) Whenever it appears to the court by petition of an
20 interested [person] that a safe and collateral deposit company,
21 trust company, corporation, bank, or other institution has leased
22 to a decedent, either as an individual or joint lessee, a safe
23 deposit box in the county in which the probate court has juris-
24 diction and that the safe deposit box may contain a will of the
25 decedent or a deed to a burial plot in which the decedent is to
26 be interred, the court may make an order directing the
27 institution to permit the person named in the order to examine

1 the safe deposit box in the presence of an officer or other
2 authorized employee of the institution, and if a paper purporting
3 to be a will of the decedent or a deed to a burial plot is found
4 in the box, to deliver the will or deed to the probate register
5 or his or her deputy. The probate register or his or her deputy
6 shall furnish a receipt to the institution. An item contained in
7 the safe deposit box other than the will or deed shall not be
8 removed from the safe deposit box. At the time of the opening of
9 the safe deposit box, all individuals in attendance shall execute
10 a written statement certifying whether a will or deed to a burial
11 plot is found and that no other items are removed, which state-
12 ment shall be delivered within 7 days after execution to the pro-
13 bate register or his or her deputy. Before the court enters the
14 order, there shall be paid to the probate register a fee of
15 \$10.00, which shall be credited to the general fund of the
16 county. If the decedent's estate is administered in a probate
17 court in the state, the party making payment of the fee may file
18 a claim in the estate for that amount, which shall be charged as
19 a cost of administration.

20 (b) The safe deposit box of an individual who is an individ-
21 ual or joint lessee and for whom a fiduciary was appointed may be
22 opened by that fiduciary and its contents removed. If the safe
23 deposit box is jointly leased, then the fiduciary may examine the
24 safe deposit box only in the presence of an officer or other
25 authorized employee of the safe deposit and collateral company,
26 trust company, corporation, bank, or other institution. At the
27 time of the opening of the safe deposit box, all individuals in

1 attendance shall execute a written statement certifying as to
2 what is removed from the box by the fiduciary. The fiduciary
3 shall serve a copy of that statement on the other joint lessees
4 within 7 days after removing the items.

5 (c) Notwithstanding another provision of this section, a
6 surviving joint lessee of a joint safe deposit box has full
7 access to the safe deposit box.

8 Sec. 2518. A provision in a will purporting to penalize an
9 interested person for contesting the will or instituting other
10 proceedings relating to the estate is unenforceable if probable
11 cause exists for instituting proceedings.

12 Sec. 2519. (1) A will executed in the form prescribed by
13 subsection (2) and otherwise in compliance with the terms of the
14 Michigan statutory will form is a valid will. A person printing
15 and distributing the Michigan statutory will shall print and dis-
16 tribute the form verbatim as it appears in subsection (2). The
17 notice provisions shall be printed in 10-point boldfaced type.

18 (2) The form of the Michigan statutory will is as follows:

19 MICHIGAN STATUTORY WILL NOTICE

20 1. An individual age 18 or older and of sound mind may sign
21 a will.

22 2. There are several kinds of wills. If you choose to com-
23 plete this form, you will have a Michigan statutory will. If
24 this will does not meet your wishes in any way, you should talk
25 with a lawyer before choosing a Michigan statutory will.

26 3. Warning! It is strongly recommended that you do not add
27 or cross out any words on this form except for filling in the

1 MICHIGAN STATUTORY WILL OF _____

2 _____

3 (PRINT OR TYPE YOUR FULL NAME)

4 ARTICLE 1. DECLARATIONS

5 This is my will and I revoke any prior wills and codicils.

6 I live in _____ County, Michigan.

7 My spouse is _____.

8 (Insert spouse's name or write "none")

9 My children now living are:

10 _____

11 _____

12 _____

13 (Insert names or write "none")

14 ARTICLE 2. DISPOSITION OF MY ASSETS

15 2.1 CASH GIFTS TO PERSONS OR CHARITIES.

16 (Optional)

17 I can leave no more than two (2) cash gifts. I make the
18 following cash gifts to the persons or charities in the amount
19 stated here. Any transfer tax due upon my death shall be paid
20 from the balance of my estate and not from these gifts. Full
21 name and address of person or charity to receive cash gift (name
22 only 1 person or charity here):

23 _____

24 (Insert name of person or charity)

25 _____

26 (Insert address)

27 AMOUNT OF GIFT (In figures): \$ _____

28 AMOUNT OF GIFT (In words): _____ Dollars

29 _____

30 (Your signature)

31 Full name and address of person or charity to receive cash gift

32 (Name only 1 person or charity):

1 _____
2 (Insert name of person or charity)
3 _____
4 (Insert address)

5 AMOUNT OF GIFT (In figures): \$ _____

6 AMOUNT OF GIFT (In words): _____ Dollars

7 _____
8 (Your signature)

9 2.2 PERSONAL AND HOUSEHOLD ITEMS.

10 I may leave a separate list or statement, either in my hand-
11 writing or signed by me at the end, regarding gifts of specific
12 books, jewelry, clothing, automobiles, furniture, and other per-
13 sonal and household items.

14 I give my spouse all my books, jewelry, clothing, automo-
15 biles, furniture, and other personal and household items not
16 included on such a separate list or statement. If I am not mar-
17 ried at the time I sign this will or if my spouse dies before me,
18 my personal representative shall distribute those items, as
19 equally as possible, among my children who survive me. If no
20 children survive me, these items shall be distributed as set
21 forth in paragraph 2.3.

22 2.3 ALL OTHER ASSETS.

23 I give everything else I own to my spouse. If I am not mar-
24 ried at the time I sign this will or if my spouse dies before me,
25 I give these assets to my children and the descendants of any
26 deceased child. If no spouse, children, or descendants of chil-
27 dren survive me, I choose 1 of the following distribution clauses
28 by signing my name on the line after that clause. If I sign on

1 both lines, if I fail to sign on either line, or if I am not now
2 married, these assets will go under distribution clause (b).

3 Distribution clause, if no spouse, children, or descendants
4 of children survive me.

5 (Select only 1)

6 (a) One-half to be distributed to my heirs as if I did not
7 have a will, and one-half to be distributed to my spouse's heirs
8 as if my spouse had died just after me without a will.

9 _____
10 (Your signature)

11 (b) All to be distributed to my heirs as if I did not have a
12 will.

13 _____
14 (Your signature)

15 ARTICLE 3. NOMINATIONS OF PERSONAL REPRESENTATIVE,
16 GUARDIAN, AND CONSERVATOR

17 Personal representatives, guardians, and conservators have a
18 great deal of responsibility. The role of a personal representa-
19 tive is to collect your assets, pay debts and taxes from those
20 assets, and distribute the remaining assets as directed in the
21 will. A guardian is a person who will look after the physical
22 well-being of a child. A conservator is a person who will manage
23 a child's assets and make payments from those assets for the
24 child's benefit. Select them carefully. Also, before you select
25 them, ask them whether they are willing and able to serve.

26 3.1 PERSONAL REPRESENTATIVE.

27 (Name at least 1)

1 I nominate _____
2 (Insert name of person or eligible financial institution)
3 of _____ to serve as personal representative.
4 (Insert address)

5 If my first choice does not serve, I nominate _____
6 _____
7 (Insert name of person or eligible financial institution)
8 of _____ to serve as personal representative.
9 (Insert address)

10 3.2 GUARDIAN AND CONSERVATOR.

11 Your spouse may die before you. Therefore, if you have a
12 child under age 18, name an individual as guardian of the child,
13 and an individual or eligible financial institution as conserva-
14 tor of the child's assets. The guardian and the conservator may,
15 but need not be, the same person.

16 If a guardian or conservator is needed for a child of mine,

17 I nominate _____
18 (Insert name of individual)
19 of _____ as guardian and
20 (Insert address)

21 _____
22 (Insert name of individual or eligible financial institution)
23 of _____
24 (Insert address)
25 to serve as conservator.

26 If my first choice cannot serve, I nominate

27 _____
28 (Insert name of individual)

29 of _____ as guardian and
30 (Insert address)

31 _____
32 (Insert name of individual or eligible financial institution)

33 of _____
34 (Insert address)
35 to serve as conservator.

1 3.3 BOND.

2 A bond is a form of insurance in case your personal repre-
3 sentative or a conservator performs improperly and jeopardizes
4 your assets. A bond is not required. You may choose whether you
5 wish to require your personal representative and any conservator
6 to serve with or without bond. Bond premiums would be paid out
7 of your assets. (Select only 1)

8 (a) My personal representative and any conservator I have
9 named shall serve with bond.

10 _____
11 (Your signature)

12
13 (b) My personal representative and any conservator I have
14 named shall serve without bond.

15 _____
16 (Your signature)

17 3.4 DEFINITIONS AND ADDITIONAL CLAUSES.

18
19 Definitions and additional clauses found at the end of this
20 form are part of this will.

21 I sign my name to this Michigan statutory will on

22 _____, 19____.

23 _____
24 (Your signature)

25 NOTICE REGARDING WITNESSES

26 You must use 2 adults who will not receive assets under this
27 will as witnesses. It is preferable to have 3 adult witnesses.
28 All the witnesses must observe you sign the will, have you tell
29 them you signed the will, or have you tell them the will was
30 signed at your direction in your presence.

1

STATEMENT OF WITNESSES

2 We sign below as witnesses, declaring that the individual
3 who is making this will appears to be of sound mind and appears
4 to be making this will freely, without duress, fraud, or undue
5 influence, and that the individual making this will acknowledges
6 that he or she has read the will, or has had it read to him or
7 her, and understands the contents of this will.

8

9 (Print Name)

10

11

12 (Signature of witness)

13

14

15 (Address)

16

1 _____
 2 (City) (State) (Zip)
 3
 4 _____
 5 (Print name)
 6
 7 _____
 8 (Signature of witness)
 9
 10 _____
 11 (Address)
 12
 13 _____
 14 (City) (State) (Zip)
 15
 16 _____
 17 (Print name)
 18
 19 _____
 20 (Signature of witness)
 21
 22 _____
 23 (Address)
 24
 25 _____
 26 (City) (State) (Zip)
 27

28 DEFINITIONS

29 The following definitions and rules of construction apply to
30 this Michigan statutory will:

31 (a) "Assets" means all types of property you can own, such
32 as real estate, stocks and bonds, bank accounts, business inter-
33 ests, furniture, and automobiles.

34 (b) "Descendants" means your children, grandchildren, and
35 their descendants.

36 (c) "Descendants" or "children" includes individuals born or
37 conceived during marriage, individuals legally adopted, and indi-
38 viduals born out of wedlock who would inherit if their parent
39 died without a will.

1 (d) "Jointly held assets" means those assets to which
2 ownership is transferred automatically upon the death of 1 of the
3 owners to the remaining owner or owners.

4 (e) "Spouse" means your husband or wife at the time you sign
5 this will.

6 (f) Whenever a distribution under a Michigan statutory will
7 is to be made to an individual's descendants, the assets are to
8 be divided into as many equal shares as there are then living
9 descendants of the nearest degree of living descendants and
10 deceased descendants of that same degree who leave living
11 descendants. Each living descendant of the nearest degree shall
12 receive 1 share. The remaining shares, if any, are combined and
13 then divided in the same manner among the surviving descendants
14 of the deceased descendants as if the surviving descendants who
15 were allocated a share and their surviving descendants had prede-
16 ceased the descendant. In this manner, all descendants who are
17 in the same generation will take an equal share.

18 (g) "Heirs" means those persons who would have received your
19 assets if you had died without a will, domiciled in Michigan,
20 under the laws that are then in effect.

21 (h) "Person" includes individuals and institutions.

22 (i) Plural and singular words include each other, where
23 appropriate.

24 (j) If a Michigan statutory will states that a person shall
25 perform an act, the person is required to perform that act. If a
26 Michigan statutory will states that a person may do an act, the

1 have. A conservator named in this will has all of the powers
2 conferred by law.

3 PART 6

4 RULES OF CONSTRUCTION

5 APPLICABLE ONLY TO WILLS

6 Sec. 2601. As used in this part:

7 (a) "Alternative devise" means a devise that is expressly
8 created by the will and, under the terms of the will, can take
9 effect instead of another devise on the happening of 1 or more
10 events, including survival of the testator or failure to survive
11 the testator, whether an event is expressed in
12 condition-precedent, condition-subsequent, or another form. A
13 residuary clause constitutes an alternative devise with respect
14 to a nonresiduary devise only if the will specifically provides
15 that, upon lapse or failure, the nonresiduary devise or nonresid-
16 uary devises in general pass under the residuary clause.

17 (b) "Class member" includes, but is not limited to, an indi-
18 vidual who fails to survive the testator but who would have taken
19 under a devise in the form of a class gift had he or she survived
20 the testator.

21 (c) "Devise" includes, but is not limited to, an alternative
22 devise, a devise in the form of a class gift, and an exercise of
23 a power of appointment.

24 (d) "Devisee" includes, but is not limited to, the
25 following:

26 (i) A class member if the devise is in the form of a class
27 gift.

1 (ii) The beneficiary of a trust, but not the trustee.

2 (iii) An individual or class member who was deceased at the
3 time the testator executed his or her will or an individual or
4 class member who was living at that time, but fails to survive
5 the testator.

6 (iv) An appointee under a power of appointment exercised by
7 the testator's will.

8 (e) "Stepchild" means a child of the surviving, deceased, or
9 former spouse of the testator or of the donor of a power of
10 appointment, who is not the testator's or donor's child.

11 (f) "Surviving devisee" or "surviving descendant" means a
12 devisee or a descendant who neither predeceased the testator nor
13 is considered to have predeceased the testator under section
14 2702.

15 (g) "Testator" includes the donee of a power of appointment
16 if the power is exercised in the testator's will.

17 Sec. 2602. (1) In the absence of a finding of a contrary
18 intention, the rules of construction in this part control the
19 construction of a will.

20 (2) A will may provide for the passage of all property that
21 the testator owns at death and all property acquired by the
22 estate after the testator's death.

23 Sec. 2603. (1) If a devisee fails to survive the testator
24 and is a grandparent, a grandparent's descendant, or a stepchild
25 of either the testator or the donor of a power of appointment
26 exercised by the testator's will, the following apply:

1 (a) Except as provided in subdivision (d), if the devise is
2 not in the form of a class gift and the deceased devisee leaves
3 surviving descendants, a substitute gift is created in the
4 devisee's surviving descendants. Those surviving descendants
5 take by representation the property to which the devisee would
6 have been entitled had the devisee survived the testator.

7 (b) Except as provided in subdivision (d), if the devise is
8 in the form of a class gift, other than a devise to "issue",
9 "descendants", "heirs of the body", "heirs", "next of kin",
10 "relatives", or "family", or to a class described by language of
11 similar import, a substitute gift is created in the surviving
12 descendants of a deceased devisee. The property to which the
13 devisee would have been entitled had all class members survived
14 the testator passes to the surviving devisees and the deceased
15 devisees' surviving descendants. Each surviving devisee takes
16 the share to which he or she would have been entitled had the
17 deceased devisees survived the testator. Each deceased devisee's
18 surviving descendants who are substituted for the deceased devi-
19 see take by representation the share to which the deceased devi-
20 see would have been entitled had the deceased devisee survived
21 the testator. For the purposes of this subdivision, "deceased
22 devisee" means a class member who fails to survive the testator
23 and leaves 1 or more surviving descendants.

24 (c) For the purposes of section 2602(1), words of survivor-
25 ship, such as in a devise to an individual "if he survives me" or
26 in a devise to "my surviving children", are not, in the absence

1 of additional evidence, a sufficient indication of an intent
2 contrary to the application of this section.

3 (d) If the will creates an alternative devise with respect
4 to a devise for which a substitute gift is created by
5 subdivision (a) or (b), the substitute gift is superseded by the
6 alternative devise only if an expressly designated devisee of the
7 alternative devise is entitled to take under the will.

8 (e) Unless the language creating a power of appointment
9 expressly excludes the substitution of the appointee's descen-
10 dants for the appointee, a surviving descendant of a deceased
11 appointee of a power of appointment can be substituted for the
12 appointee under this section, whether or not the descendant is an
13 object of the power.

14 (2) If, under subsection (1), substitute gifts are created
15 and not superseded with respect to more than 1 devise and the
16 devises are alternative devises, one to the other, the determina-
17 tion of which of the substitute gifts take effect is resolved as
18 follows:

19 (a) Except as provided in subdivision (b), the devised prop-
20 erty passes under the primary substitute gift.

21 (b) If there is a younger-generation devise, the devised
22 property passes under the younger-generation substitute gift and
23 not under the primary substitute gift.

24 (3) As used in this section:

25 (a) "Primary devise" means the devise that would have taken
26 effect had all the deceased devisees of the alternative devises
27 who left surviving descendants survived the testator.

1 (b) "Primary substitute gift" means the substitute gift
2 created with respect to the primary devise.

3 (c) "Younger-generation devise" means a devise for which all
4 of the following are true:

5 (i) Is to a descendant of a devisee of the primary devise.

6 (ii) Is an alternative devise with respect to the primary
7 devise.

8 (iii) Is a devise for which a substitute gift is created.

9 (iv) Would have taken effect had all the deceased devisees
10 who left surviving descendants survived the testator except the
11 deceased devisee or devisees of the primary devise.

12 (d) "Younger-generation substitute gift" means the substi-
13 tute gift created with respect to the younger-generation devise.

14 Sec. 2604. (1) Except as provided in section 2603, a
15 devise, other than a residuary devise, that fails for any reason
16 becomes a part of the residue.

17 (2) Except as provided in section 2603, if the residue is
18 devised to 2 or more persons, the share of a residuary devisee
19 that fails for any reason passes to the other residuary devisee
20 or to other residuary devisees in proportion to the interest of
21 each in the remaining part of the residue.

22 Sec. 2605. (1) If a testator executes a will that devises
23 securities and the testator then owns securities that meet the
24 description in the will, the devise includes additional securi-
25 ties owned by the testator at death to the extent the additional
26 securities are acquired by the testator after the will was

1 executed as a result of the testator's ownership of the described
2 securities and are securities of any of the following types:

3 (a) Securities of the same organization acquired by reason
4 of action initiated by the organization or any successor, relat-
5 ed, or acquiring organization, excluding any acquired by exercise
6 of purchase options.

7 (b) Securities of another organization acquired as a result
8 of a merger, consolidation, reorganization, or other distribution
9 by the organization or any successor, related, or acquiring
10 organization.

11 (c) Securities of the same organization acquired as a result
12 of a plan of reinvestment.

13 (2) Distributions in cash before death with respect to a
14 described security are not part of the devise.

15 Sec. 2606. (1) A specific devisee has a right to the spe-
16 cifically devised property in the testator's estate at death and
17 all of the following:

18 (a) Any balance of the purchase price, together with any
19 security agreement, owing from a purchaser to the testator at
20 death by reason of sale of the property.

21 (b) Any amount of a condemnation award for the taking of the
22 property unpaid at death.

23 (c) Any proceeds unpaid at death on fire or casualty insur-
24 ance on, or other recovery for, injury to the property.

25 (d) Property owned by the testator at death and acquired as
26 a result of foreclosure, or obtained in lieu of foreclosure, of
27 the security interest for a specifically devised obligation.

1 (e) Real property or tangible personal property owned by the
2 testator at death that the testator acquired as a replacement for
3 specifically devised real property or tangible personal
4 property.

5 (f) Unless the facts and circumstances indicate that ademp-
6 tion of the devise was intended by the testator or ademption of
7 the devise is consistent with the testator's manifested plan of
8 distribution, the value of the specifically devised property to
9 the extent the specifically devised property is not in the
10 testator's estate at death and its value or its replacement is
11 not covered by subdivisions (a) to (e).

12 (2) If [] an agent acting within the authority
13 of a durable power of attorney for an incapacitated principal [or a
conservator]
14 sells or mortgages specifically devised property, or if a condem-
15 nation award, insurance proceeds, or recovery for injury to the
16 property are paid [] to an agent acting within
17 the authority of a durable power of attorney for an incapacitated
18 principal [or to a conservator], the specific devisee has the right
to a general pecu-
19 niary devise equal to the net sale price, the amount of the
20 unpaid loan, the condemnation award, the insurance proceeds, or
21 the recovery.

22 (3) The right of a specific devisee under subsection (2) is
23 reduced by a right the devisee has under subsection (1).

24 (4) For the purposes of the references in subsection (2) to
25 a conservator, subsection (2) does not apply if after the sale,
26 mortgage, condemnation, casualty, or recovery, it was adjudicated

1 that the testator's [disability] ceased and the testator survived
2 the adjudication by 1 year.

3 (5) For the purposes of the references in subsection (2) to
4 an agent acting within the authority of a durable power of attor-
5 ney for an incapacitated principal, an incapacitated principal is
6 a principal who is an incapacitated individual, an adjudication
7 of the individual's incapacity before death is not necessary, and
8 the acts of an agent within the authority of a durable power of
9 attorney are presumed to be for an incapacitated principal.

10 Sec. 2607. A specific devise and a transfer under an exer-
11 cise of a power of appointment that is equivalent to a specific
12 devise, including the exercise of a right to withdraw specific
13 property, passes subject to any mortgage or other security inter-
14 est existing on the date of death, without right of exoneration,
15 regardless of a general directive in the will to pay debts.

16 Sec. 2608. (1) Property a testator gave in his or her life-
17 time to a person is treated as a satisfaction of a devise in
18 whole or in part only if any of the following are true:

19 (a) The will provides for a deduction of the gift.

20 (b) The testator declared in a contemporaneous writing that
21 the gift is in satisfaction of the devise or that its value is to
22 be deducted from the value of the devise.

23 (c) The devisee acknowledges in writing that the gift is in
24 satisfaction of the devise or that its value is to be deducted
25 from the value of the devise.

26 (2) For purposes of partial satisfaction, property given
27 during the testator's lifetime is valued as of the time the

1 devisee came into possession or enjoyment of the property or at
2 the testator's death, whichever occurs first.

3 (3) If the devisee fails to survive the testator, the gift
4 is treated as a full or partial satisfaction of the devise, as
5 appropriate, in applying sections 2603 and 2604, unless the
6 testator's contemporaneous writing provides otherwise.

7 PART 7

8 RULES OF CONSTRUCTION APPLICABLE TO DONATIVE

9 DISPOSITIONS IN WILLS AND OTHER GOVERNING INSTRUMENTS

10 Sec. 2701. In the absence of a finding of a contrary inten-
11 tion, the rules of construction in this part control the con-
12 struction of a governing instrument. The rules of construction
13 in this part apply to a governing instrument unless the applica-
14 tion of a particular section is limited by its terms to a spe-
15 cific type of provision or governing instrument.

16 Sec. 2702. (1) For the purposes of this act, except as pro-
17 vided in subsection (4), an individual who is not established by
18 clear and convincing evidence to have survived an event, includ-
19 ing the death of another individual, by 120 hours is considered
20 to have predeceased the event.

21 (2) Except as provided in subsection (4), for purposes of a
22 provision of a governing instrument that relates to an individual
23 surviving an event, including the death of another individual, an
24 individual who is not established by clear and convincing evi-
25 dence to have survived the event by 120 hours is considered to
26 have predeceased the event.

1 (3) Except as provided in subsection (4), if it is not
2 established by clear and convincing evidence that 1 of 2
3 co-owners with right of survivorship survived the other co-owner
4 by 120 hours, 1/2 of the co-owned property passes as if 1 had
5 survived by 120 hours and 1/2 as if the other had survived by 120
6 hours. If there are more than 2 co-owners and it is not estab-
7 lished by clear and convincing evidence that at least 1 of them
8 survived the others by 120 hours, the property passes in the pro-
9 portion that 1 bears to the whole number of co-owners. For the
10 purposes of this subsection, "co-owners with right of
11 survivorship" includes joint tenants, tenants by the entireties,
12 and other co-owners of property or accounts held under circum-
13 stances that entitles 1 or more to the whole of the property or
14 account on the death of the other or others.

15 (4) Survival by 120 hours is not required under any of the
16 following circumstances:

17 (a) The governing instrument contains language dealing
18 explicitly with simultaneous deaths or deaths in a common
19 disaster and that language is operable under the facts of the
20 case.

21 (b) The governing instrument expressly indicates that an
22 individual is not required to survive an event, including the
23 death of another individual, by any specified period or expressly
24 requires the individual to survive the event by a specified
25 period. Survival of the event or the specified period, however,
26 must be established by clear and convincing evidence.

1 (c) The imposition of a 120-hour requirement of survival
2 would cause a nonvested property interest or a power of
3 appointment to fail to qualify for validity under
4 section 2(1)(a), (2)(a), or (3)(a) of the uniform statutory rule
5 against perpetuities, 1988 PA 418, MCL 554.72, or to become
6 invalid under section 2(1)(b), (2)(b), or (3)(b) of the uniform
7 statutory rule against perpetuities, 1988 PA 418, MCL 554.72.

8 (d) The application of a 120-hour requirement of survival to
9 multiple governing instruments would result in an unintended
10 failure or duplication of a disposition. Survival, however, must
11 be established by clear and convincing evidence.

12 Sec. 2703. (1) Except as otherwise provided in this sec-
13 tion, a payor or other third party is not liable for having made
14 a payment or transferred an item of property or another benefit
15 to a beneficiary designated in a governing instrument who, under
16 section 2702, is not entitled to the payment or item of property,
17 or for having taken another action in reliance on the
18 beneficiary's apparent entitlement under the terms of the govern-
19 ing instrument. A payor or other third party is liable for a
20 payment made or other action taken 3 or more business days after
21 the payor or other third party actually receives written notice
22 of a claimed lack of entitlement under section 2702. A payor or
23 other third party is not obligated to inquire as to whether the
24 120-hour survival provision of section 2702 applies to any indi-
25 vidual or to seek evidence regarding whether that provision
26 applies to any individual. A recipient who incorrectly receives
27 a payment, transfer of property, or other benefit is liable for

1 the payment or transfer received, whether or not written notice
2 of the claim is given.

3 (2) Written notice of a claimed lack of entitlement under
4 subsection (1) must be mailed to the payor's or other third
5 party's main office or home by registered or certified mail,
6 return receipt requested, or served upon the payor or other third
7 party in the same manner as a summons in a civil action. Notice
8 to a sales representative of a payor or other third party does
9 not constitute notice to the payor or other third party.

10 (3) The written notice under subsection (1) must include the
11 decedent's name, the name of the person asserting an interest,
12 the nature of the payment, item of property, or other benefit,
13 and a statement that the beneficiary designated in the governing
14 instrument did not survive the decedent by 120 hours. Notice in
15 a form or service in a manner other than that described in this
16 section does not impose liability on a payor or other third party
17 for an action taken in accordance with a governing instrument.

18 (4) Upon receipt of written notice of a claimed lack of
19 entitlement under section 2702, a payor or other third party may
20 pay an amount owed to the county treasurer of the county of the
21 court having jurisdiction of the probate proceedings relating to
22 the decedent's estate, or if proceedings have not been commenced,
23 to the county treasurer of the county of the decedent's
24 residence. With a payment under this section, the payor or other
25 third party shall file a copy of the written notice received by
26 the payor or other third party. A payment made to the county

1 treasurer discharges the payor or other third party from all
2 claims for the value of amounts paid to the county treasurer.

3 (5) The county treasurer shall not charge a filing fee for a
4 payment to the county treasurer under this section. The county
5 treasurer shall hold the money in accordance with section 3917
6 and, upon the court's determination under section 2702, shall
7 disburse the money in accordance with the determination.

8 (6) The provision for payment to the county treasurer under
9 this section does not preclude a payor or other third party from
10 taking another action authorized by law or the governing
11 instrument.

12 Sec. 2704. (1) Section 2702 does not obligate a person who
13 purchases property for value and without notice, or who receives
14 a payment or other item of property in partial or full satisfac-
15 tion of a legally enforceable obligation, to return the payment,
16 item of property, or benefit and does not make such a person
17 liable for the amount of the payment or the value of the item of
18 property or benefit. However, a person who, not for value,
19 receives a payment, item of property, or another benefit to which
20 the person is not entitled under section 2702 is obligated to
21 return the payment, item of property, or benefit or is personally
22 liable for the amount of the payment, or the value of the item of
23 property or benefit, to the person who is entitled to it under
24 section 2702.

25 (2) If section 2702 or any part of that section is preempted
26 by federal law with respect to a payment, an item of property, or
27 another benefit covered by section 2702, a person who, not for

1 value, receives the payment, item of property, or another benefit
2 to which the person is not entitled under section 2702 is obli-
3 gated to return the payment, item of property, or benefit or is
4 personally liable for the amount of the payment, or the value of
5 the item of property or benefit, to the person who would have
6 been entitled to it if section 2702 or part of that section were
7 not preempted.

8 Sec. 2705. A governing instrument's meaning and legal
9 effect are determined by the local law of the state selected in
10 the governing instrument, unless the application of that law is
11 contrary to the provisions relating to the elective share
12 described in part 2 of this article, the provisions relating to
13 exempt property and allowances described in part 4 of this arti-
14 cle, or another public policy of this state otherwise applicable
15 to the disposition.

16 Sec. 2706. If a governing instrument creating a power of
17 appointment expressly requires that the power be exercised by a
18 reference, an express reference, or a specific reference to the
19 power or its source, it is presumed that the donor's intention,
20 in requiring that the donee exercise the power by making refer-
21 ence to the particular power or to the creating instrument, was
22 to prevent an inadvertent exercise of the power.

23 Sec. 2707. (1) An adopted individual or an individual born
24 out of wedlock, and his or her respective descendants if appro-
25 priate to the class, are included in class gifts and other terms
26 of relationship in accordance with the rules for intestate
27 succession. Terms of relationship that do not differentiate

1 relationships by blood from those by affinity, such as "uncles",
2 "aunts", "nieces", or "nephews", are construed to exclude rela-
3 tives by affinity. Terms of relationship that do not differenti-
4 ate relationships by the half blood from those by the whole
5 blood, such as "brothers", "sisters", "nieces", or "nephews", are
6 construed to include both types of relationships.

7 (2) In addition to the requirements of subsection (1), in
8 construing a dispositive provision of a transferor who is not a
9 natural parent, an individual born to the natural parent is not
10 considered the child of that parent unless the individual lived
11 while a minor as a regular member of the household of that natu-
12 ral parent or of that natural parent's parent, brother, sister,
13 spouse, or surviving spouse.

14 (3) In addition to the requirements of subsection (1), in
15 construing a dispositive provision of a transferor who is not an
16 adopting parent, an adopted individual is not considered the
17 child of the adopting parent unless the adopted individual lived
18 while a minor, either before or after the adoption, as a regular
19 member of the household of the adopting parent.

20 Sec. 2708. As used in this section and sections 2709 to
21 2712:

22 (a) "Alternative beneficiary designation" means a benefi-
23 ciary designation that is expressly created by the governing
24 instrument and, under the terms of the governing instrument, can
25 take effect instead of another beneficiary designation on the
26 happening of 1 or more events, including survival of the decedent

1 or failure to survive the decedent, whether an event is expressed
2 in condition-precedent, condition-subsequent, or another form.

3 (b) "Beneficiary" means the beneficiary of a beneficiary
4 designation under which the beneficiary must survive the
5 decedent. [Beneficiary] includes a class member if the benefi-
6 ciary designation is in the form of a class gift; an individual
7 or class member who was deceased at the time the beneficiary des-
8 ignation was executed; and an individual or class member who was
9 then living but who failed to survive the decedent.

10 [Beneficiary] excludes a joint tenant of a joint tenancy with the
11 right of survivorship and a party to a joint and survivorship
12 account.

13 (c) "Beneficiary designation" includes an alternative bene-
14 ficiary designation and a beneficiary designation in the form of
15 a class gift.

16 (d) "Class member" includes an individual who fails to sur-
17 vive the decedent, but who would have taken under a beneficiary
18 designation in the form of a class gift had he or she survived
19 the decedent.

20 (e) "Stepchild" means a child of the decedent's surviving,
21 deceased, or former spouse, and not of the decedent.

22 (f) "Surviving beneficiary" or "surviving descendant" means
23 a beneficiary or a descendant who did not predecease the decedent
24 and is not considered to have predeceased the decedent under sec-
25 tion 2702.

1 Sec. 2709. If a beneficiary fails to survive the decedent
2 and is a grandparent, a grandparent's descendant, or the
3 decedent's stepchild, the following apply:

4 (a) Except as provided in subdivision (d), if the benefi-
5 ciary designation is not in the form of a class gift and the
6 deceased beneficiary leaves surviving descendants, a substitute
7 gift is created in the beneficiary's surviving descendants. They
8 take by representation the property to which the beneficiary
9 would have been entitled had the beneficiary survived the
10 decedent.

11 (b) Except as provided in subdivision (d), if the benefi-
12 ciary designation is in the form of a class gift, other than a
13 beneficiary designation to "issue", "descendants", "heirs of the
14 body", "heirs", "next of kin", "relatives", or "family" or a
15 class described by language of similar import, a substitute gift
16 is created in the surviving descendants of each deceased
17 beneficiary. The property to which the beneficiaries would have
18 been entitled had all of them survived the decedent passes to the
19 surviving beneficiaries and the surviving descendants of the
20 deceased beneficiaries. Each surviving beneficiary takes the
21 share to which he or she would have been entitled had the
22 deceased beneficiaries survived the decedent. Each deceased
23 beneficiary's surviving descendants who are substituted for the
24 deceased beneficiary take by representation the share to which
25 the deceased beneficiary would have been entitled had the
26 deceased beneficiary survived the decedent. For the purposes of
27 this subdivision, "deceased beneficiary" means a class member who

1 failed to survive the decedent and left 1 or more surviving
2 descendants.

3 (c) For the purposes of section 2701, words of survivorship,
4 such as in a beneficiary designation to an individual "if he sur-
5 vives me" or in a beneficiary designation to "my surviving
6 children", are not, in the absence of additional evidence, a suf-
7 ficient indication of an intent contrary to the application of
8 this section.

9 (d) If a governing instrument creates an alternative benefi-
10 ciary designation with respect to a beneficiary designation for
11 which a substitute gift is created by subdivision (a) or (b), the
12 substitute gift is superseded by the alternative beneficiary des-
13 igation only if an expressly designated beneficiary of the
14 alternative beneficiary designation is entitled to take.

15 Sec. 2710. (1) If, under section 2709, substitute gifts are
16 created and not superseded with respect to more than 1 benefi-
17 ciary designation and the beneficiary designations are alterna-
18 tive beneficiary designations, one to the other, the determina-
19 tion of which of the substitute gifts takes effect is resolved as
20 follows:

21 (a) Except as provided in subdivision (b), the property
22 passes under the primary substitute gift.

23 (b) If there is a younger-generation beneficiary designa-
24 tion, the property passes under the younger-generation substitute
25 gift and not under the primary substitute gift.

26 (2) As used in this section:

1 (a) "Primary beneficiary designation" means the beneficiary
2 designation that would have taken effect had all the deceased
3 beneficiaries of the alternative beneficiary designations who
4 left surviving descendants survived the decedent.

5 (b) "Primary substitute gift" means the substitute gift cre-
6 ated with respect to the primary beneficiary designation.

7 (c) "Younger-generation beneficiary designation" means a
8 beneficiary designation for which all of the following are true:

9 (i) Is to a descendant of a beneficiary of the primary bene-
10 ficiary designation.

11 (ii) Is an alternative beneficiary designation with respect
12 to the primary beneficiary designation.

13 (iii) Is a beneficiary designation for which a substitute
14 gift is created.

15 (iv) Would have taken effect had all the deceased beneficia-
16 ries who left surviving descendants survived the decedent except
17 the deceased beneficiary or beneficiaries of the primary benefi-
18 ciary designation.

19 (d) "Younger-generation substitute gift" means the substi-
20 tute gift created with respect to the younger-generation benefi-
21 ciary designation.

22 Sec. 2711. (1) Except as otherwise provided in this sec-
23 tion, a payor or other third party is not liable for making a
24 payment under the terms of a beneficiary designation. Payment
25 made before the actual receipt of a written notice of a claim to
26 a substitute gift discharges the payor or other third party, but
27 not the recipient, from a claim for the amount paid. A payor or

1 other third party is liable for a payment made 3 or more business
2 days after the payor or other third party actually receives writ-
3 ten notice of the claim. A payor or other third party is not
4 obligated to inquire as to whether a substitute gift exists under
5 sections 2709 and 2710 or to seek evidence regarding such a
6 gift. A recipient who incorrectly receives a payment is liable
7 for the payment received, whether or not written notice of the
8 claim is given.

9 (2) A written notice of a substitute claim must be mailed to
10 the payor's or other third party's main office or home by regis-
11 tered or certified mail, return receipt requested, or served upon
12 the payor or other third party in the same manner as a summons in
13 a civil action. Notice to a sales representative of a payor or
14 other third party does not constitute notice to the payor or
15 other third party.

16 (3) The written notice under subsection (1) must include the
17 decedent's name, the name of the person asserting an interest,
18 the nature of the payment, item of property, or other benefit,
19 and a statement that a claim to a substitute gift is being made
20 under sections 2709 and 2710. Notice in a form or service in a
21 manner other than that described in this section does not impose
22 liability on a payor or other third party for an action taken in
23 accordance with a governing instrument.

24 (4) Upon receipt of a written notice of the claim, a payor
25 or other third party may pay any amount the payor or other third
26 party owes to the county treasurer of the county of the court
27 having jurisdiction of the probate proceedings relating to the

1 decedent's estate or, if no proceedings have been commenced, to
2 the county treasurer of the county of the decedent's residence.
3 With a payment under this section, the payor or other third party
4 shall file a copy of the written notice received by the payor or
5 other third party. A payment made to the county treasurer dis-
6 charges the payor or other third party from all claims for the
7 amount paid.

8 (5) The county treasurer shall not charge a filing fee for a
9 payment to the county treasurer under this section. The county
10 treasurer shall hold the money in accordance with section 3917
11 and, upon the court's determination under sections 2709 and 2710,
12 shall disburse the money in accordance with the determination.

13 (6) The provision for payment to the county treasurer under
14 this section does not preclude a payor or other third party from
15 taking another action authorized by law or the governing
16 instrument.

17 Sec. 2712. (1) A person who purchases property for value
18 and without notice, or who receives a payment or other item of
19 property in partial or full satisfaction of a legally enforceable
20 obligation, is not obligated to return the payment, item of prop-
21 erty, or benefit and is not liable for the amount of the payment
22 or the value of the item of property or benefit. However, a
23 person who, not for value, receives a payment, item of property,
24 or another benefit to which the person is not entitled under
25 sections 2709 and 2710 is obligated to return the payment, item
26 of property, or benefit, or is personally liable for the amount
27 of the payment or the value of the item of property or benefit,

1 to the person who is entitled to it under sections 2709 and
2 2710.

3 (2) If this section and sections 2709 and 2710 are, or any
4 part of these sections is, preempted by federal law with respect
5 to a payment, an item of property, or another benefit covered by
6 these sections, a person who, not for value, receives the pay-
7 ment, item of property, or another benefit to which the person is
8 entitled under those sections is obligated to return the payment,
9 item of property, or benefit, or is personally liable for the
10 amount of the payment or the value of the item of property or
11 benefit, to the person who would have been entitled to it if
12 these sections or a part of these sections were not preempted.

13 Sec. 2713. As used in this section and sections 2714 to
14 2716:

15 (a) "Alternative future interest" means an expressly created
16 future interest that can take effect in possession or enjoyment
17 instead of another future interest on the happening of 1 or more
18 events, including survival of an event or failure to survive an
19 event, whether an event is expressed in condition-precedent,
20 condition-subsequent, or another form. A residuary clause in a
21 will does not create an alternative future interest with respect
22 to a future interest created in a nonresiduary devise in the
23 will, whether or not the will specifically provides that a lapsed
24 or failed devise is to pass under the residuary clause.

25 (b) "Beneficiary" means the beneficiary of a future interest
26 and includes a class member if the future interest is in the form
27 of a class gift.

1 (c) "Class member" includes, but is not limited to, an
2 individual who failed to survive the distribution date but who
3 would have taken under a future interest in the form of a class
4 gift had he or she survived the distribution date.

5 (d) "Distribution date" means, with respect to a future
6 interest, the time when the future interest takes effect in pos-
7 session or enjoyment. The distribution date does not need to
8 occur at the beginning or end of a calendar day, but can occur at
9 a time during the course of a day.

10 (e) "Future interest" includes, but is not limited to, an
11 alternative future interest and a future interest in the form of
12 a class gift.

13 (f) "Future interest under the terms of a trust" means a
14 future interest that is created by a transfer creating a trust or
15 to an existing trust or by an exercise of a power of appointment
16 to an existing trust, directing the continuance of an existing
17 trust, designating a beneficiary of an existing trust, or creat-
18 ing a trust.

19 (g) "Surviving beneficiary" or "surviving descendant" means
20 a beneficiary or a descendant who does not predecease the distri-
21 bution date and who is not considered to have predeceased the
22 distribution date under section 2702.

23 Sec. 2714. A future interest under the terms of a trust is
24 contingent on the beneficiary surviving the distribution date.
25 If a beneficiary of a future interest under the terms of a trust
26 fails to survive the distribution date, the following apply:

1 (a) Except as provided in subdivision (d), if the future
2 interest is not in the form of a class gift and the deceased
3 beneficiary leaves surviving descendants, a substitute gift is
4 created in the beneficiary's surviving descendants. The surviv-
5 ing descendants take by representation the property to which the
6 beneficiary would have been entitled had the beneficiary survived
7 the distribution date.

8 (b) Except as provided in subdivision (d), if the future
9 interest is in the form of a class gift, other than a future
10 interest to "issue", "descendants", "heirs of the body", "heirs",
11 "next of kin", "relatives", or "family" or a class described by
12 language of similar import, a substitute gift is created in the
13 surviving descendants of a deceased beneficiary. The property to
14 which the beneficiaries would have been entitled had all of them
15 survived the distribution date passes to the surviving beneficia-
16 ries and the surviving descendants of the deceased
17 beneficiaries. Each surviving beneficiary takes the share to
18 which he or she would have been entitled had the deceased benefi-
19 ciaries survived the distribution date. Each deceased
20 beneficiary's surviving descendants who are substituted for the
21 deceased beneficiary take by representation the share to which
22 the deceased beneficiary would have been entitled had the
23 deceased beneficiary survived the distribution date. For the
24 purposes of this subdivision, "deceased beneficiary" means a
25 class member who fails to survive the distribution date and
26 leaves 1 or more surviving descendants.

1 (c) For the purposes of section 2701, words of survivorship
2 attached to a future interest are not, in the absence of
3 additional evidence, a sufficient indication of an intent con-
4 trary to the application of this section. Words of survivorship
5 include words of survivorship that relate to the distribution
6 date or to an earlier or an unspecified time, whether those words
7 of survivorship are expressed in condition-precedent,
8 condition-subsequent, or another form.

9 (d) If a governing instrument creates an alternative future
10 interest with respect to a future interest for which a substitute
11 gift is created by subdivision (a) or (b), the substitute gift is
12 superseded by the alternative future interest only if an
13 expressly designated beneficiary of the alternative future inter-
14 est is entitled to take in possession or enjoyment.

15 Sec. 2715. (1) If, under section 2714, substitute gifts are
16 created and not superseded with respect to more than 1 future
17 interest and the future interests are alternative future inter-
18 ests, one to the other, the determination of which of the substi-
19 tute gifts takes effect is resolved as follows:

20 (a) Except as provided in subdivision (b), the property
21 passes under the primary substitute gift.

22 (b) If there is a younger-generation future interest, the
23 property passes under the younger-generation substitute gift and
24 not under the primary substitute gift.

25 (2) As used in this section:

26 (a) "Primary future interest" means the future interest that
27 would have taken effect had all the deceased beneficiaries of the

1 alternative future interests who left surviving descendants
2 survived the distribution date.

3 (b) "Primary substitute gift" means the substitute gift cre-
4 ated with respect to the primary future interest.

5 (c) "Younger-generation future interest" means a future
6 interest for which all of the following are true:

7 (i) Is to a descendant of a beneficiary of the primary
8 future interest.

9 (ii) Is an alternative future interest with respect to the
10 primary future interest.

11 (iii) Is a future interest for which a substitute gift is
12 created.

13 (iv) Would have taken effect had all the deceased beneficia-
14 raries who left surviving descendants survived the distribution
15 date except the deceased beneficiary or beneficiaries of the pri-
16 mary future interest.

17 (d) "Younger-generation substitute gift" means the substi-
18 tute gift created with respect to the younger-generation future
19 interest.

20 Sec. 2716. (1) Except as provided in subsection (2), if,
21 after the application of sections 2714 and 2715, there is no sur-
22 viving taker, the property passes in the following order:

23 (a) If the trust is created in a nonresiduary devise in the
24 transferor's will or in a codicil to the transferor's will, the
25 property passes under the residuary clause in the transferor's
26 will. For purposes of this section, the residuary clause is

1 treated as creating a future interest under the terms of a
2 trust.

3 (b) If a taker is not produced by the application of
4 subdivision (a), the property passes to the transferor's heirs
5 under section 2720.

6 (2) If, after the application of sections 2714 and 2715,
7 there is no surviving taker and if the future interest was cre-
8 ated by the exercise of a power of appointment, the following
9 apply:

10 (a) The property passes under the donor's gift-in-default
11 clause, if any, which clause is treated as creating a future
12 interest under the terms of a trust.

13 (b) If a taker is not produced by the application of subdi-
14 vision (a), the property passes as provided in subsection (1).
15 For purposes of subsection (1), "transferor" means the donor if
16 the power was a nongeneral power and means the donee if the power
17 was a general power.

18 Sec. 2717. If a class gift in favor of "descendants",
19 "issue", or "heirs of the body" does not specify the manner in
20 which the property is to be distributed among the class members,
21 the property is distributed among the class members who are
22 living when the interest is to take effect in possession or
23 enjoyment in the shares each class member would receive under the
24 applicable law of intestate succession if the designated ancestor
25 had died intestate at the time of distribution owning the subject
26 matter of the class gift.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

109

1 Sec. 2718. (1) If an applicable statute or a governing
2 instrument calls for the property to be distributed "by
3 representation" or "per capita at each generation", the property
4 is divided into as many equal shares as there are surviving
5 descendants in the generation nearest to the designated ancestor
6 that contains 1 or more surviving descendants and deceased
7 descendants in the same generation who left surviving descen-
8 dants, if any. Each surviving descendant in the nearest genera-
9 tion is allocated 1 share. The remaining shares, if any, are
10 combined and then divided in the same manner among the surviving
11 descendants of the deceased descendants as if the surviving
12 descendants of the deceased descendants who were allocated a
13 share and their surviving descendants had predeceased the distri-
14 bution date. This rule of construction applies to documents
15 originally created after the effective date of this act, and to
16 all instruments amended after the effective date of this act,
17 that use the phrase "by representation" or "per capita at each
18 generation". If an amendment uses either phrase, the rule of
19 this section applies to the entire instrument.

20 (2) If a governing instrument calls for property to be dis-
21 tributed "per [stirpes]", the property is divided into as many
22 equal shares as there are surviving children of the designated
23 ancestor and deceased children who left surviving descendants.
24 Each surviving child, if any, is allocated 1 share. The share of
25 each deceased child with surviving descendants is divided in the
26 same manner, with subdivision repeating at each succeeding

1 generation until the property is fully allocated among surviving
2 descendants.

3 (3) For the purposes of subsections (1) and (2), a deceased
4 individual who left no surviving descendant is disregarded, and
5 an individual who leaves a surviving ancestor who is a descendant
6 of the designated ancestor is not entitled to a share.

7 (4) As used in this section:

8 (a) "Deceased child" or "deceased descendant" means a child
9 or descendant who either predeceases the distribution date or is
10 considered to predecease the distribution date under section
11 2702.

12 (b) "Distribution date" means, with respect to an interest,
13 the time when the interest is to take effect in possession or
14 enjoyment. The distribution date does not need to occur at the
15 beginning or end of a calendar day, but can occur at a time
16 during the course of a day.

17 (c) "Surviving ancestor", "surviving child", or "surviving
18 descendant" means an ancestor, a child, or a descendant who does
19 not predecease the distribution date and is not considered to
20 have predeceased the distribution date under section 2702.

21 Sec. 2719. The doctrine of worthier title is abolished as a
22 rule of law and as a rule of construction. Language in a govern-
23 ing instrument describing the beneficiaries of a disposition as
24 the transferor's "heirs", "heirs at law", "next of kin",
25 "distributees", "relatives", or "family", or language of similar
26 import, does not create or presumptively create a reversionary
27 interest in the transferor.

1 Sec. 2720. If an applicable statute or a governing
2 instrument calls for a present or future distribution to or cre-
3 ates a present or future interest in a designated individual's
4 "heirs", "heirs at law", "next of kin", "relatives", or "family"
5 or language of similar import, the property passes to those per-
6 sons, including the state, in the shares that would succeed to
7 the designated individual's intestate estate under the intestate
8 succession law of the designated individual's domicile if the
9 designated individual died when the disposition is to take effect
10 in possession or enjoyment. If the designated individual's sur-
11 viving spouse is living, but is remarried at the time the dispo-
12 sition is to take effect in possession or enjoyment, the surviv-
13 ing spouse is not an heir of the designated individual.

14 Sec. 2721. A provision contained in a governing instrument
15 that makes reference to a "minor", "age of majority", or a simi-
16 lar phrase differentiating between an individual's majority and
17 minority status shall be construed to refer to the legal age of
18 majority in effect at the time the governing instrument was
19 executed.

20 Sec. 2722. (1) Subject to subsection (3), if a trust is for
21 a specific lawful noncharitable purpose or for lawful noncharita-
22 ble purposes to be selected by the trustee, and if there is no
23 definite or definitely ascertainable beneficiary designated, the
24 trust may be performed by the trustee for 21 years, but no
25 longer, whether or not the terms of the trust contemplate a
26 longer duration.

1 (2) Subject to this subsection and subsection (3), a trust
2 for the care of a designated domestic or pet animal is valid.
3 The trust terminates when no living animal is covered by the
4 trust. A governing instrument shall be liberally construed to
5 bring the transfer within this subsection, to presume against the
6 merely precatory or honorary nature of the disposition, and to
7 carry out the general intent of the transferor. Extrinsic evi-
8 dence is admissible in determining the transferor's intent.

9 (3) In addition to the provisions of subsection (1) or (2),
10 a trust covered by either of those subsections is subject to the
11 following provisions:

12 (a) Except as expressly provided otherwise in the trust
13 instrument, no portion of the principal or income may be con-
14 verted to the use of the trustee or to a use other than for the
15 trust's purposes or for the benefit of a covered animal.

16 (b) Upon termination, the trustee shall transfer the unex-
17 pended trust property in the following order:

18 (i) As directed in the trust instrument.

19 (ii) If the trust was created in a nonresiduary clause in
20 the transferor's will or in a codicil to the transferor's will,
21 under the residuary clause in the transferor's will.

22 (iii) if no taker is produced by the application of subpara-
23 graph (i) or (ii), to the transferor's heirs under section 2720.

24 (c) For the purposes of sections 2714 to 2716, the residuary
25 clause is treated as creating a future interest under the terms
26 of a trust.

1 (d) The intended use of the principal or income can be
2 enforced by an individual designated for that purpose in the
3 trust instrument or, if none, by an individual appointed by a
4 court upon [petition] to it by an individual.

5 (e) Except as ordered by the court or required by the trust
6 instrument, no filing, report, registration, periodic accounting,
7 separate maintenance of funds, appointment, or fee is required by
8 reason of the existence of the fiduciary relationship of the
9 trustee.

10 (f) The court may reduce the amount of the property trans-
11 ferred if it determines that that amount substantially exceeds
12 the amount required for the intended use. The amount of the
13 reduction, if any, passes as unexpended trust property under
14 subdivision (b).

15 (g) If a trustee is not designated or no designated trustee
16 is willing or able to serve, the court shall name a trustee. The
17 court may order the transfer of the property to another trustee
18 if the transfer is necessary to [ensure] that the intended use is
19 carried out, and if a successor trustee is not designated in the
20 trust instrument or if no designated successor trustee agrees to
21 serve or is able to serve. The court may also make other orders
22 and determinations as are advisable to carry out the intent of
23 the transferor and the purpose of this section.

24 (h) The trust is not subject to the uniform statutory rule
25 against perpetuities, 1988 PA 418, MCL 554.71 to 554.78.

PART 8

GENERAL PROVISIONS CONCERNING PROBATE
AND NONPROBATE TRANSFERS

1
2
3
4 Sec. 2801. (1) An individual who is divorced from the dece-
5 dent or whose marriage to the decedent has been annulled is not a
6 surviving spouse unless, by virtue of a subsequent marriage, he
7 or she is married to the decedent at the time of death. A decree
8 of separation that does not terminate the status of husband and
9 wife is not a divorce for purposes of this section.

10 (2) For purposes of parts 1 to 4 of this article and of sec-
11 tion 3203, a surviving spouse does not include any of the
12 following:

13 (a) An individual who obtains or consents to a final decree
14 or judgment of divorce from the decedent or an annulment of their
15 marriage, which decree or judgment is not recognized as valid in
16 this state, unless they subsequently participate in a marriage
17 ceremony purporting to marry each to the other or live together
18 as husband and wife.

19 (b) An individual who, following an invalid decree or judg-
20 ment of divorce or annulment obtained by the decedent, partici-
21 pates in a marriage ceremony with a third individual.

22 (c) An individual who was a party to a valid proceeding con-
23 cluded by an order purporting to terminate all marital property
24 rights.

25 (d) An individual who, at the time of the decedent's death,
26 is living in a bigamous relationship with another individual.

1 (e) An individual who did any of the following for 1 year or
2 more before the death of the deceased person:

3 (i) Was willfully absent from the decedent spouse.

4 (ii) Deserted the decedent spouse.

5 (iii) Willfully neglected or refused to provide support for
6 the decedent spouse if required to do so by law.

7 Sec. 2802. As used in this section and sections 2803 and
8 2804:

9 (a) "Disposition or appointment of property" includes, but
10 is not limited to, a transfer of an item of property or another
11 benefit to a beneficiary designated in a governing instrument.

12 (b) "Governing instrument" means a governing instrument exe-
13 cuted by the decedent.

14 (c) "Revocable" means, with respect to a disposition,
15 appointment, provision, or nomination, one under which the dece-
16 dent, at the time of or immediately before death, was alone
17 empowered, by law or under the governing instrument, to cancel
18 the designation in favor of the killer, whether or not the dece-
19 dent was then empowered to designate himself or herself in place
20 of his or her killer and whether or not the decedent then had the
21 capacity to exercise the power.

22 Sec. 2803. (1) An individual who feloniously and intention-
23 ally kills the decedent forfeits all benefits under this article
24 with respect to the decedent's estate, including an intestate
25 share, an elective share, an omitted spouse's or child's share, a
26 homestead allowance, a family allowance, and exempt property. If

1 the decedent died intestate, the decedent's intestate estate
2 passes as if the killer disclaimed his or her intestate share.

3 (2) The felonious and intentional killing of the decedent
4 does all of the following:

5 (a) Revokes all of the following that are revocable:

6 (i) Disposition or appointment of property made by the dece-
7 dent to the killer in a governing instrument.

8 (ii) Provision in a governing instrument conferring a gen-
9 eral or nongeneral power of appointment on the killer.

10 (iii) Nomination of the killer in a governing instrument,
11 nominating or appointing the killer to serve in a fiduciary or
12 representative capacity, including a personal representative,
13 executor, trustee, or agent.

14 (b) Severs the interests of the decedent and killer in prop-
15 erty held by them at the time of the killing as joint tenants
16 with the right of survivorship, transforming the interests of the
17 decedent and killer into tenancies in common.

18 (3) A severance under subsection (2)(b) does not affect a
19 third party interest in property acquired for value and in good
20 faith reliance on an apparent title by survivorship in the killer
21 unless a writing declaring the severance has been noted, regis-
22 tered, filed, or recorded in records appropriate to the kind and
23 location of the property that are relied upon, in the ordinary
24 course of transactions involving that type of property, as evi-
25 dence of ownership.

26 (4) A provision of a governing instrument is given effect as
27 if the killer disclaimed all provisions revoked by this section

1 or, in the case of a revoked nomination in a fiduciary or
2 representative capacity, as if the killer predeceased the
3 decedent.

4 (5) A killer's wrongful acquisition of property or interest
5 not covered by this section shall be treated in accordance with
6 the principle that a killer cannot profit from his or her wrong.

7 (6) After all right to appeal has been exhausted, a judgment
8 of conviction establishing criminal accountability for the felo-
9 nious and intentional killing of the decedent conclusively estab-
10 lishes the convicted individual as the decedent's killer for pur-
11 poses of this section. In the absence of a conviction, the
12 court, upon the petition of an interested person, shall determine
13 whether, under the preponderance of evidence standard, the indi-
14 vidual would be found criminally accountable for the felonious
15 and intentional killing of the decedent. If the court determines
16 that, under that standard, the individual would be found crimi-
17 nally accountable for the felonious and intentional killing of
18 the decedent, the determination conclusively establishes that
19 individual as the decedent's killer for purposes of this
20 section.

21 Sec. 2804. (1) Except as otherwise provided in this sec-
22 tion, a payor or other third party is not liable for having made
23 a payment or transferred an item of property or another benefit
24 to a beneficiary designated in a governing instrument affected by
25 an intentional and felonious killing, or for having taken another
26 action in reliance on the validity of the governing instrument,
27 upon request and satisfactory proof of the decedent's death. A

1 payor or other third party is liable for a payment made or other
2 action taken 3 or more business days after the payor or other
3 third party actually receives written notice of a claimed forfei-
4 ture or revocation under section 2803. A payor or other third
5 party is not obligated to determine whether the decedent was the
6 victim of felonious killing or to seek evidence relating to such
7 a killing even if the circumstances of the decedent's death are
8 suspicious as to the beneficiary's participation in such a
9 killing. A recipient who incorrectly receives a payment, trans-
10 fer of property, or other benefit is liable for the payment or
11 transfer received, whether or not written notice of the claim is
12 given.

13 (2) Written notice of a claimed forfeiture or revocation
14 under subsection (1) must be mailed to the payor's or other third
15 party's main office or home by registered or certified mail,
16 return receipt requested, or served upon the payor or other third
17 party in the same manner as a summons in a civil action. Notice
18 to a sales representative of a payor or other third party does
19 not constitute notice to the payor or other third party.

20 (3) The written notice under subsection (1) must include the
21 decedent's name, the name of the person asserting an interest,
22 the nature of the payment, item of property, or other benefit,
23 and a statement that a claim of forfeiture or revocation is being
24 made under section 2803. Notice in a form or service in a manner
25 other than that described in this section does not impose liabil-
26 ity on a payor or other third party for an action taken in
27 accordance with a governing instrument.

1 (4) Upon receipt of written notice of a claimed forfeiture
2 or revocation under this section, a payor or other third party
3 may pay an amount owed to the county treasurer of the county of
4 the court having jurisdiction of the probate proceedings relating
5 to the decedent's estate or, if no proceedings have been com-
6 menced, to the county treasurer of the county of the decedent's
7 residence. With a payment under this section, the payor or other
8 third party shall file a copy of the written notice received by
9 the payor or other third party. A payment made to the county
10 treasurer discharges the payor or other third party from a claim
11 for the value of an amount paid to the county treasurer.

12 (5) The county treasurer shall not charge a filing fee for a
13 payment to the county treasurer under this section. The county
14 treasurer shall hold the money in accordance with section 3917
15 and, upon the court's determination under section 2803, shall
16 disburse the money in accordance with the determination.

17 (6) The provision for payment to the county treasurer under
18 this section does not preclude a payor or other third party from
19 taking another action authorized by law or the governing
20 instrument.

21 Sec. 2805. (1) Section 2803 does not obligate a person who
22 purchases property for value and without notice, or who receives
23 a payment or other item of property in partial or full satisfac-
24 tion of a legally enforceable obligation, to return the payment,
25 item of property, or benefit, and such a person is not liable
26 under section 2803 for the amount of the payment or the value of
27 the item of property or benefit. However, a person who, not for

1 value, receives a payment, an item of property, or another
2 benefit to which the person is not entitled under section 2803 is
3 obligated to return the payment, item of property, or benefit, or
4 is personally liable for the amount of the payment or the value
5 of the item of property or benefit, to the person who is entitled
6 to it under section 2803.

7 (2) If this section and sections 2803 and 2804 are, or a
8 part of those sections is, preempted by federal law with respect
9 to a payment, an item of property, or another benefit covered by
10 these sections, a person who, not for value, receives the pay-
11 ment, item of property, or another benefit to which the person is
12 not entitled under these sections is obligated to return the pay-
13 ment, item of property, or benefit, or is personally liable for
14 the amount of the payment or the value of the item of the prop-
15 erty or benefit, to the person who would have been entitled to it
16 if these sections or a part of these sections were not
17 preempted.

18 Sec. 2806. As used in this section and sections 2807 to
19 2809:

20 (a) "Disposition or appointment of property" includes, but
21 is not limited to, a transfer of an item of property or another
22 benefit to a beneficiary designated in a governing instrument.

23 (b) "Divorce or annulment" means a divorce or annulment, or
24 a dissolution or declaration of invalidity of a marriage, that
25 would exclude the spouse as a surviving spouse within the meaning
26 of section 2801. A decree of separation that does not terminate

1 the status of husband and wife is not a divorce for purposes of
2 this section and sections 2807 to 2809.

3 (c) "Divorced individual" includes, but is not limited to,
4 an individual whose marriage has been annulled.

5 (d) "Governing instrument" means a governing instrument exe-
6 cuted by a divorced individual before the divorce from, or annul-
7 ment of his or her marriage to, his or her former spouse.

8 (e) "Relative of the divorced individual's former spouse"
9 means an individual who is related to the divorced individual's
10 former spouse by blood, adoption, or affinity and who, after the
11 divorce or annulment, is not related to the divorced individual
12 by blood, adoption, or affinity.

13 (f) "Revocable" means, with respect to a disposition,
14 appointment, provision, or nomination, one under which the
15 divorced individual, at the time of the divorce or annulment, was
16 alone empowered, by law or under the governing instrument, to
17 cancel the designation in favor of his or her former spouse or
18 former spouse's relative, whether or not the divorced individual
19 was then empowered to designate himself or herself in place of
20 his or her former spouse or in place of his or her former
21 spouse's relative and whether or not the divorced individual then
22 had the capacity to exercise the power.

23 Sec. 2807. (1) Except as provided by the express terms of a
24 governing instrument, court order, or contract relating to the
25 division of the marital estate made between the divorced individ-
26 uals before or after the marriage, divorce, or annulment, the
27 divorce or annulment of a marriage does all of the following:

1 (a) Revokes all of the following that are revocable:

2 (i) A disposition or appointment of property made by a
3 divorced individual to his or her former spouse in a governing
4 instrument and a disposition or appointment created by law or in
5 a governing instrument to a relative of the divorced individual's
6 former spouse.

7 (ii) A provision in a governing instrument conferring a gen-
8 eral or nongeneral power of appointment on the divorced
9 individual's former spouse or on a relative of the divorced
10 individual's former spouse.

11 (iii) A nomination in a governing instrument, nominating a
12 divorced individual's former spouse or a relative of the divorced
13 individual's former spouse to serve in a fiduciary or representa-
14 tive capacity, including, but not limited to, a personal repre-
15 sentative, executor, trustee, conservator, agent, or guardian.

16 (b) Severs the interests of the former spouses in property
17 held by them at the time of the divorce or annulment as joint
18 tenants with the right of survivorship or as community property
19 with the right of survivorship, transforming the interests of the
20 former spouses into tenancies in common.

21 (2) A severance under subsection (1)(b) does not affect a
22 third-party interest in property acquired for value and in good
23 faith reliance on an apparent title by survivorship in the survi-
24 vor of the former spouses unless a writing declaring the sever-
25 ance has been noted, registered, filed, or recorded in records
26 appropriate to the kind and location of the property that are

1 relied upon, in the ordinary course of transactions involving
2 that type of property, as evidence of ownership.

3 (3) Each provision of a governing instrument is given effect
4 as if the former spouse and relatives of the former spouse dis-
5 claimed all provisions revoked by this section or, in the case of
6 a revoked nomination in a fiduciary or representative capacity,
7 as if the former spouse and relatives of the former spouse died
8 immediately before the divorce or annulment.

9 (4) Each provision revoked solely by this section is revived
10 by the divorced individual's remarriage to the former spouse or
11 by a nullification of the divorce or annulment.

12 (5) No change of circumstances other than as described in
13 this section and in sections 2803 to 2805, 2808, and 2809 affects
14 a revocation.

15 Sec. 2808. (1) Except as otherwise provided in this sec-
16 tion, a payor or other third party is not liable for having made
17 a payment or transferred an item of property or another benefit
18 to a beneficiary designated in a governing instrument affected by
19 a divorce, annulment, or remarriage, or for having taken another
20 action in reliance on the validity of the governing instrument.
21 A payor or other third party is liable for a payment made or
22 other action taken 3 or more business days after the payor or
23 other third party actually receives written notice of a claimed
24 revocation or severance under section 2807. A payor or other
25 third party is not obligated to inquire as to the continued mari-
26 tal relationship between the decedent and a beneficiary described
27 in this subsection or to seek evidence about such a

1 relationship. A recipient who incorrectly receives a payment,
2 transfer of property, or other benefit is liable for the payment
3 or transfer received, whether or not written notice of the claim
4 is given.

5 (2) Written notice of the divorce, annulment, or remarriage
6 under subsection (1) must be mailed to the payor's or other third
7 party's main office or home by registered or certified mail,
8 return receipt requested, or served upon the payor or other third
9 party in the same manner as a summons in a civil action. Notice
10 to a sales representative of a payor or other third party does
11 not constitute notice to the payor or other third party.

12 (3) The written notice under subsection (1) must include the
13 decedent's name, the name of the person asserting an interest,
14 the nature of the payment, item of property, or other benefit,
15 and a statement that a divorce, annulment, or remarriage of the
16 decedent and the designated individual occurred. Notice in a
17 form or service in a manner other than that described in this
18 section does not impose liability on a payor or other third party
19 for an action taken in accordance with a governing instrument.

20 (4) Upon receipt of written notice of the divorce, annul-
21 ment, or remarriage, a payor or other third party may pay an
22 amount owed to the county treasurer of the county of the court
23 having jurisdiction of the probate proceedings relating to the
24 decedent's estate or, if no proceedings have been commenced, to
25 the county treasurer of the county of the decedent's residence.
26 With a payment under this section, the payor or other third party
27 shall file a copy of the written notice received by the payor or

1 other third party. A payment made to the county treasurer
2 discharges the payor or other third party from a claim for the
3 value of an amount paid to the county treasurer.

4 (5) The county treasurer shall not charge a filing fee for a
5 payment to the county treasurer under this section. The county
6 treasurer shall hold the money in accordance with section 3917
7 and, upon the court's determination under section 2807, shall
8 disburse the money in accordance with the determination.

9 (6) The provision for payment to the county treasurer under
10 this section does not preclude a payor or other third party from
11 taking another action authorized by law or the governing
12 instrument.

13 Sec. 2809. (1) Section 2807 does not obligate an individual
14 who purchases property from a former spouse, a relative of a
15 former spouse, or another person for value and without notice, or
16 who receives from a former spouse, a relative of a former spouse,
17 or another person a payment or other item of property in partial
18 or full satisfaction of a legally enforceable obligation, to
19 return the payment, item of property, or benefit, and such a
20 person is not liable under section 2807 for the amount of the
21 payment or the value of the item of property or benefit.

22 However, a former spouse, relative of a former spouse, or other
23 person who, not for value, received a payment, item of property,
24 or another benefit to which that person is not entitled under
25 section 2807 is obligated to return the payment, item of proper-
26 ty, or benefit, or is personally liable for the amount of the

1 not considered to be an interest retained or conferred upon the
2 disclaimant even if the disclaimant created the joint property.

3 (c) "Effective date of a governing instrument other than a
4 will or testamentary trust" means the date on which a property
5 right vests or a contract right arises, even though either right
6 is subject to divestment.

7 (d) "Fiduciary" includes, but is not limited to, an agent, a
8 conservator, a guardian if no conservator has been appointed, a
9 guardian ad litem, a personal representative, a trustee, a pro-
10 bate court acting through a protective order under this act, and
11 a temporary, successor, or foreign fiduciary.

12 (e) "Fiduciary power" means a management power relating to
13 the administration or management of assets similar to those
14 powers granted to a personal representative in section 3715 and a
15 trustee in section 7401, and granted by law to a fiduciary or
16 conferred upon a fiduciary in a governing instrument.

17 (f) "Governing instrument" means a deed, assignment, bill of
18 sale, will, trust, beneficiary designation, contract, instrument
19 creating or exercising a power of appointment or a power of
20 attorney, or another instrument under which property devolves, a
21 property right is created, or a contract right is created.

22 [Governing instrument] includes the provable terms of an oral
23 contract or arrangement under which property devolves or a prop-
24 erty right is created.

25 (g) "Joint property" means property that is owned by 2 or
26 more persons with rights of survivorship, and includes a tenancy
27 by the entireties in real property, a tenancy in personal

1 property as provided in section 1 of 1927 PA 212, MCL 557.151, a
2 joint tenancy, a joint tenancy with rights of survivorship, and a
3 joint life estate with contingent remainder in fee. For purposes
4 of this part, [joint property] is considered to consist of a
5 present interest and a future interest. The future interest is
6 the right of survivorship.

7 (h) "Person" includes an entity and an individual, but does
8 not include a fiduciary, an estate, or a trust.

9 (i) "Property" means anything that may be the subject of
10 ownership. Property includes both real and personal property and
11 an interest in property, including a present interest; a future
12 interest; a legal interest; an equitable interest; an interest
13 acquired by [testate succession, by intestate or other statutory] by
succession to a
14 disclaimed interest, or by lapse or release of a power of
15 appointment; or an interest that may be otherwise acquired under
16 a governing instrument.

17 (j) "Trust" means a fiduciary relationship with respect to
18 property that subjects the person who holds title to the property
19 to equitable duties to deal with the property for the benefit of
20 another person, which fiduciary relationship arises as a result
21 of a manifestation of an intention to create it. [Trust]
22 includes an express trust, private or charitable, with additions
23 to the trust, whether created by will or other than by will, and
24 includes a trust created by statute, judgment, or decree under
25 which the trust is to be administered in the manner of an express
26 trust. [Trust] does not include a constructive trust or a
27 resulting trust.

1 Sec. 2902. (1) A person, or a fiduciary representing a
2 person to whom a disclaimable interest devolves, may disclaim a
3 disclaimable interest in whole or in part. A trustee, with
4 respect to the trust as a whole or with respect to a separate
5 trust that is or will be established under the governing instru-
6 ment, may disclaim a disclaimable interest, in whole or in part,
7 but only to the extent that the governing instrument expressly
8 gives the trustee the right to disclaim.

9 (2) A disclaimer may be of a fractional or percentage share
10 or of a limited interest or estate. A provision in a power of
11 attorney granting the agent the authority to do whatever the
12 principal could do, or words of similar effect, includes the
13 authority to disclaim, unless the authority to disclaim is spe-
14 cifically excluded or limited. Except for a trust or a power of
15 attorney, the right to disclaim a disclaimable interest exists
16 notwithstanding a spendthrift provision or a restriction or limi-
17 tation on the right to disclaim contained in the governing
18 instrument.

19 (3) A fiduciary may disclaim a fiduciary power. The right
20 to disclaim a fiduciary power exists notwithstanding a restric-
21 tion or limitation on the right to disclaim contained in the gov-
22 erning instrument.

23 Sec. 2903. (1) A disclaimer is not valid unless it complies
24 with all of the following:

25 (a) Is in writing.

26 (b) Declares the disclaimer.

1 (c) Describes the disclaimed interest.

2 (d) Is signed by the disclaimant.

3 (e) Is delivered as provided in sections 2904, 2905, and
4 2906.

5 (2) If a disclaimable interest is disclaimed by a fiduciary
6 on behalf of the person to whom the disclaimable interest
7 devolves, the disclaimer must be signed by all incumbent
8 fiduciaries. Unless the governing instrument requires otherwise,
9 a disclaimer of a disclaimable interest by a trustee may be
10 signed by less than all incumbent trustees. A disclaimer of a
11 fiduciary power by a fiduciary may be signed by less than all
12 incumbent fiduciaries.

13 Sec. 2904. (1) Except as provided in section 2905, if a
14 disclaimed interest arises under a will or testamentary trust, or
15 by the laws of intestacy, the disclaimer must be delivered after
16 the death of the owner of the property and before any event
17 described in section 2910. If a disclaimed interest arises under
18 a will or by the laws of intestacy, the disclaimer must be deliv-
19 ered to the personal representative of the deceased owner's
20 estate. If a disclaimed interest arises under a testamentary
21 trust, the disclaimer must be delivered to the trustee of the
22 testamentary trust or, if a trustee has not been appointed, to
23 the personal representative of the deceased owner's estate.

24 (2) Except as provided in section 2905, if a disclaimed
25 interest arises under a governing instrument other than a will or
26 testamentary trust, the disclaimer must be delivered after the
27 effective date of the governing instrument and before any event

1 described in section 2910. A disclaimer under this subsection
2 must be delivered in 1 of the following manners:

3 (a) If the disclaimer is made by a beneficiary of a trust,
4 the disclaimer must be delivered to the trustee.

5 (b) If the disclaimer is made by a donee with respect to a
6 gift from a living donor, the disclaimer must be delivered to the
7 donor of the gift.

8 (c) If the disclaimer is made by a beneficiary under a bene-
9 ficiary designation, the disclaimer must be delivered to the
10 payor.

11 (d) If the disclaimer is made by a trustee with respect to a
12 separate trust that is or will be established under the governing
13 instrument, the disclaimer must be delivered to another incumbent
14 trustee of that trust who has not disclaimed or to all the bene-
15 ficiaries of that trust who are then living and whose whereabouts
16 are known or reasonably ascertainable.

17 Sec. 2905. (1) A disclaimed interest that is subject to, or
18 arises under, an exercise, release, or lapse of a power of
19 appointment, must comply with the following:

20 (a) A disclaimer by an appointee must be delivered to the
21 donee, to the personal representative of the donee's estate, or
22 to the fiduciary under the instrument that created the power of
23 appointment. The disclaimer by the appointee must be delivered
24 after the exercise of the power of appointment by the donee and
25 before any event described in section 2910.

26 (b) A disclaimer by a taker in default must be delivered to
27 the donee, to the fiduciary under the instrument that created the

1 power of appointment, or to 1 of the persons entitled to the
2 property in the event of a disclaimer. The disclaimer by a taker
3 in default may be delivered before or after the lapse or release
4 of the power of appointment, and must be delivered before any
5 event described in section 2910.

6 (2) If the disclaimed interest arises out of joint property,
7 the disclaimer must be delivered after creation of the joint
8 ownership and before any event described in section 2910, to the
9 person who created the joint property, to a remaining owner who
10 has not disclaimed, or to the person [or fiduciary] entitled to the
disclaimed
11 interest in the event of a disclaimer. The barring of the right
12 to disclaim a present interest under section 2910 does not bar
13 the right to disclaim the future interest.

14 (3) A fiduciary power may be disclaimed at any time, before
15 or after exercise of the power. The disclaimer must be delivered
16 to the person who established the instrument that gave rise to
17 the power or to 1 of the following:

18 (a) If the fiduciary is a personal representative, to all
19 the devisees under the will who are then living and whose where-
20 abouts are known or reasonably ascertainable.

21 (b) If the fiduciary is a trustee, to another incumbent
22 trustee who has not disclaimed the power or to all the beneficia-
23 ries of the trust who are then living and whose whereabouts are
24 known or reasonably ascertainable.

25 (c) If the fiduciary is a guardian or conservator, to the
26 interested [persons].

1 (d) If the fiduciary is an agent, to the principal or, if
2 the principal is legally incapacitated, to the principal's
3 presumptive heirs at law.

4 Sec. 2906. (1) A disclaimer must be delivered in 1 of the
5 following manners:

6 (a) By personally handing it to the person to whom it is to
7 be delivered or to a fiduciary representing that person.

8 (b) By enclosing it in a sealed envelope with first-class
9 postage fully prepaid, addressed to the person to whom it is to
10 be delivered or to a fiduciary representing that person, and
11 depositing the envelope and its contents in the United States
12 mail.

13 (c) By another means that is reasonably likely to accomplish
14 delivery to the person who is to receive the disclaimer or to a
15 fiduciary representing that person.

16 (2) If delivery is to be made to a fiduciary, the following
17 apply:

18 (a) If a fiduciary is not currently serving, the delivery of
19 the disclaimer is made by filing the disclaimer with the probate
20 court that has jurisdiction to entertain proceedings to appoint
21 or qualify the fiduciary.

22 (b) If the fiduciary cannot be located, the delivery of the
23 disclaimer is made by filing the disclaimer with the probate
24 court that has jurisdiction over the fiduciary.

25 (3) A copy of a disclaimer may be filed in a probate court
26 where proceedings are pending concerning the disclaimed interest
27 or in a probate court that would have jurisdiction if proceedings

1 were commenced. If the disclaimed interest pertains to real
2 property, a copy of the disclaimer may be recorded in the office
3 of the register of deeds of the county in which the property is
4 located.

5 Sec. 2907. (1) Except as otherwise provided in this section
6 and section 2908, if a disclaimed interest arises under a will or
7 testamentary trust, or by the laws of intestacy, and the decedent
8 has not provided for another disposition of that interest if it
9 is disclaimed or for another disposition of disclaimed or failed
10 interests in general, the disclaimed interest devolves as if the
11 disclaimant had predeceased the decedent. However, if by law, or
12 under the will or testamentary trust, the descendants of the dis-
13 claimant would take the disclaimant's share by representation if
14 the disclaimant predeceased the decedent, then the disclaimed
15 interest passes by representation to the descendants of the dis-
16 claimant who survive the decedent.

17 (2) A future interest that takes effect in possession or
18 enjoyment upon the termination of the disclaimed interest takes
19 effect as if the disclaimant had predeceased the decedent. A
20 future interest that is held by the disclaimant and that takes
21 effect at a time certain is not accelerated and takes effect at
22 the time certain.

23 (3) Except as otherwise provided in this section and section
24 2908, if the disclaimed interest arises under a governing instru-
25 ment other than a will or testamentary trust, and the governing
26 instrument does not provide for another disposition of that
27 interest if it is disclaimed or for another disposition of

1 disclaimed or failed interests in general, the disclaimed
2 interest devolves as if the disclaimant had died before the time
3 when the interest was entitled to take effect in possession or
4 enjoyment. However, if by law or under the governing instrument
5 the descendants of the disclaimant would take the disclaimant's
6 share by representation if the disclaimant predeceased the effec-
7 tive date of the instrument, then the disclaimed interest passes
8 by representation to the descendants of the disclaimant who sur-
9 vive the effective date of the instrument.

10 (4) A future interest that takes effect in possession or
11 enjoyment at or after the termination of the disclaimed interest
12 takes effect as if the disclaimant had died before the time when
13 the interest was entitled to take effect in possession or
14 enjoyment. A future interest that is held by the disclaimant and
15 that takes effect at a time certain is not accelerated and takes
16 effect at the time certain.

17 Sec. 2908. (1) If the disclaimed interest arises out of
18 joint property created by a governing instrument, testamentary or
19 nontestamentary, the following apply:

20 (a) If the disclaimant is the only living owner, the dis-
21 claimed interest devolves to the estate of the last to die of the
22 other joint owners.

23 (b) If the disclaimant is not the only living owner, the
24 disclaimed interest devolves to the [other] living joint owners
equally
25 or, if there is only 1 living owner, all to the other living
26 owner.

1 (2) If the donee of a power of appointment disclaims the
2 power of appointment, the property that is subject to the power
3 of appointment devolves as follows:

4 (a) If the power of appointment arises out of a will or tes-
5 tamentary instrument, as if the donee died before the decedent.

6 (b) If the power of appointment arises out of a governing
7 instrument other than a will or testamentary trust, as if the
8 disclaimant died before the effective date of the governing
9 instrument.

10 (3) If all incumbent trustees disclaim a disclaimable inter-
11 est, and the governing instrument does not provide for another
12 disposition of the disclaimed interest if it is disclaimed or for
13 another disposition of disclaimed or failed interests in general,
14 then the disclaimed interest devolves as if the trust with
15 respect to which the disclaimer was made never existed. If less
16 than all incumbent trustees disclaim a disclaimable interest and
17 the governing instrument does not provide for another disposition
18 of the disclaimed interest under those circumstances, then the
19 trustee who disclaims is treated as never having had any interest
20 in or power over the disclaimed interest.

21 (4) If a fiduciary disclaims a fiduciary power, the fidu-
22 ciary power ceases to exist as of the effective date of the
23 disclaimer. A disclaimer of a fiduciary power by 1 of multiple
24 incumbent fiduciaries is binding only on the fiduciary who dis-
25 claims and is not binding on the other incumbent fiduciaries or
26 on successor fiduciaries. A disclaimer of a fiduciary power by

1 all incumbent fiduciaries is binding on all successor
2 fiduciaries, unless the disclaimer states otherwise.

3 Sec. 2909. (1) A disclaimer, or a written waiver of the
4 right to disclaim, is binding upon the disclaimant or person
5 waiving the right to disclaim, and all persons claiming through
6 or under him or her.

7 (2) A disclaimer acts as a nonacceptance of the disclaimed
8 interest, rather than as a transfer of the disclaimed interest.
9 The disclaimant is treated as never having received the dis-
10 claimed interest.

11 Sec. 2910. (1) The right to disclaim property is barred by
12 any of the following events that occur after the event giving
13 rise to the right to disclaim and before the disclaimer is
14 perfected:

15 (a) An assignment, conveyance, encumbrance, pledge, or
16 transfer of the property, or a contract for such a transaction.

17 (b) A written waiver of the right to disclaim.

18 (c) An acceptance of the disclaimable interest or a benefit
19 under the disclaimable interest after actual knowledge that a
20 property right has been conferred.

21 (d) A sale of the property under judicial sale.

22 (e) The expiration of the permitted applicable perpetuities
23 period.

24 (2) The right to disclaim is barred to the extent provided
25 by other applicable law. A partial bar does not preclude the
26 disclaimant from disclaiming all or any part of the balance of
27 the property if the disclaimant has received a portion of the

1 property and there still remains an interest that the disclaimant
2 is yet to receive. An act that bars the right to disclaim a
3 present interest in joint property does not bar the right to dis-
4 claim a future interest in joint property.

[(3) A spouse who is the beneficiary of a property interest for which a marital deduction is claimed under the internal revenue code of 1986 cannot disclaim his or her interest after 9 months after the date on which the governing instrument containing the transfer is irrevocable.]

5 Sec. 2911. The common law right of disclaimer or renuncia-
6 tion is abolished. This part does not abridge the right of a
7 person to waive, release, disclaim, or renounce property or an
8 interest in property under another statute.

9 Sec. 2912. An interest in property that exists on the
10 effective date of this act as to which, if a present interest,
11 the time for delivering a disclaimer under this part has not
12 expired or, if a future interest, the interest has not become
13 indefeasibly vested or the taker finally ascertained, may be dis-
14 claimed after the effective date of this act and before any event
15 described in section 2910.

16 PART 10

17 INTERNATIONAL WILLS

18 Sec. [2951]. As used in this part:

19 (a) "International will" means a will executed in conformity
20 with [this part].

21 (b) "Authorized individual" means an individual who by sec-
22 tion [2959] or by the laws of the United States, including members
23 of the diplomatic and consular service of the United States des-
24 igned by foreign service regulations, is empowered to supervise
25 the execution of international wills.

26 Sec. [2952]. (1) If a will is made in the form of an
27 international will that complies with the requirements of this

1 part, the will is valid in regard to its form irrespective of the
2 particular place where the will is made, of the location of
3 assets, or of the testator's nationality, domicile, or
4 residence.

5 (2) A will's invalidity as an international will does not
6 affect its formal validity as a will of another kind.

7 (3) This part does not apply to the form of a testamentary
8 disposition made by 2 or more individuals in 1 instrument.

9 Sec. [2953]. To comply with this part as a valid interna-
10 tional will, a will shall meet all of the following requirements
11 regarding form and procedure:

12 (a) The will shall be made in writing, but does not need to
13 be written by the testator personally. The will may be written
14 in any language and may be written by hand or by any other
15 means.

16 (b) The testator shall declare in the presence of 2 wit-
17 nesses and an authorized individual that the document is the
18 testator's will and that he or she knows its contents. The tes-
19 tator need not inform the witnesses or the authorized person of
20 the will's contents.

21 (c) In the witnesses' and the authorized individual's pres-
22 ence, the testator shall sign the will or, if the testator has
23 previously signed the will, shall acknowledge his or her
24 signature.

25 (d) If the testator is unable to sign the international
26 will, the absence of the testator's signature does not affect the
27 will's validity if the testator indicates the reason for the

1 inability and the authorized individual makes note of the reason
2 on the will. In such a case, it is permissible, but not
3 required, for another individual present, including a witness or
4 the authorized individual, to sign the testator's name at the
5 testator's direction, which act the authorized individual shall
6 also note on the will.

7 (e) The witnesses and the authorized individual shall there
8 and then attest the will by signing in the presence of the
9 testator.

10 Sec. [2954]. (1) To further assure an international will's
11 acceptance, in addition to the section [2953] requirements, all of
12 the following are recommended regarding form and procedure:

13 (a) The testator's, witnesses', and authorized individual's
14 signatures should be placed at the end of the will. If the will
15 consists of several sheets, the testator should sign each sheet.
16 If the testator is unable to sign, the individual signing on the
17 testator's behalf should sign each sheet or, if there is no such
18 individual, the authorized individual should sign each sheet. In
19 addition, each sheet should be consecutively numbered.

20 (b) The will's date is the date of its signature by the
21 authorized individual. The authorized individual should note
22 that date at the end of the will.

23 (c) The authorized individual should ask the testator
24 whether he or she wishes to make a declaration concerning the
25 will's safekeeping. If so and at the testator's express request,
26 the place where the testator intends to have the will kept should
27 be mentioned in the certificate provided for in section [2955].

1 (2) A will executed in compliance with section [2953] is not
2 invalid merely because it does not comply with this section.

3 Sec. [2955]. The authorized individual shall attach to the
4 will a certificate signed by the authorized individual establish-
5 ing that the will complies with the requirements of this part for
6 valid execution of an international will. The authorized indi-
7 vidual shall keep a copy of the certificate and deliver another
8 to the testator. The certificate must be in substantially the
9 following form, except the provisions of the form that are
10 optional provisions need only be included if the circumstances of
11 the will render them applicable:

12 CERTIFICATE

13 (CONVENTION OF OCTOBER 26, 1973)

14 1. I, _____,
15 (Name, address and capacity)

16 a person authorized to act in connection with international wills

17 2. Certify that on _____ at _____
18 (Date) (Place)

19 3. (Testator) _____
20 (Name, address, date and place of birth)

21 in my presence and that of the witnesses

22 4. (a) _____
23 (Name, address, date and place of birth)

24 (b) _____
25 (Name, address, date and place of birth)

26 has declared that the attached document is his (or her) will and
27 that he (or she) knows the contents thereof.

28 5. I furthermore certify that:

29 6. (a) In my presence and in that of the witnesses (1) the
30 testator has signed the will or has acknowledged his (or her)

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

142

1 signature previously affixed. * following a declaration of the
2 testator stating that he (or she) (2) was unable to sign his (or
3 her) will for the following reason _____, I
4 have mentioned this declaration on the will * and the signature
5 has been affixed by

6 _____

7 (Name and address)

8 7. (b) The witnesses and I have signed the will;

9 8. *(c) Each page of the will has been signed by
10 _____ and numbered;

11 9. (d) I have satisfied myself as to the identity of the
12 testator and of the witnesses as designated above;

13 10. (e) The witnesses have met the conditions requisite to
14 act as such according to the law under which I am acting;

15 11. *(f) The testator has requested me to include the fol-
16 lowing statement concerning the safekeeping of his (or her)
17 will:

18 12. PLACE OF EXECUTION

19 13. DATE

20 14. SIGNATURE and, if necessary, SEAL

21 * to be completed if appropriate

22 Sec. [2956]. In the absence of evidence to the contrary, the
23 authorized individual's certificate is conclusive of an interna-
24 tional will's validity under this part. The absence or irregu-
25 larity of a certificate does not affect the validity of a will
26 under this part.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

143

1 Sec. [2957]. An international will is subject to the
2 ordinary rules of revocation of wills.

3 Sec. [2958. Sections 2951 to 2957] derive from "Annex to
4 Convention of October 26, 1973, Providing a Uniform Law on the
5 Form of an International Will". In interpreting and applying
6 this part, regard shall be had to its international origin and to
7 the need for uniformity in its interpretation.

8 Sec. [2959]. An individual who is admitted to practice law
9 before the courts of this state and who is in good standing as an
10 active law practitioner of this state is an authorized individual
11 empowered to supervise the execution of an international will.

ARTICLE III

PROBATE OF WILLS AND ADMINISTRATION

PART 1

GENERAL PROVISIONS

1 Sec. 3101. An individual's power to leave property by will,
2 and the rights of creditors, devisees, and heirs to his or her
3 property, are subject to the restrictions and limitations con-
4 tained in this act to facilitate the prompt settlement of
5 estates. Upon an individual's death, the decedent's property
6 devolves to the persons to whom the property is devised by the
7 decedent's last will or to those indicated as substitutes for
8 them in cases involving lapse, disclaimer, or other circumstances
9 affecting devolution of a testate estate, or in the absence of
10 testamentary disposition, to the decedent's heirs or to those
11 indicated as substitutes for them in cases involving disclaimer
12 or other circumstances affecting devolution of an intestate
13 estate, subject to homestead allowance, family allowance, and
14 exempt property, to rights of creditors, to the surviving
15 spouse's elective share, and to administration.

16 Sec. 3102. To be effective to prove the transfer of prop-
17 erty or to nominate a personal representative, a will must be
18 declared valid by a register's order of informal probate or by a
19 court's adjudication of probate.

20 Sec. 3103. Except as otherwise provided in article IV, to
21 acquire the powers and undertake the duties and liabilities of a
22 decedent's personal representative, a person must be appointed by
23 the register or by court order, must qualify, and must be issued

1 letters. The issuance of letters commences an estate's
2 administration.

3 Sec. 3104. (1) Except as otherwise provided in subsection
4 (2), a proceeding to enforce a claim against a decedent's estate
5 or the decedent's successors shall not be revived or commenced
6 before the appointment of a personal representative. After the
7 appointment and until distribution, a proceeding or action to
8 enforce a claim against the estate is governed by the procedure
9 prescribed by this article. After distribution, a creditor whose
10 claim has not been barred may recover from the distributees as
11 provided in section [3955] or from a former personal representa-
12 tive individually liable as provided in section [3956].

13 (2) This act does not apply to a proceeding by a secured
14 creditor of the decedent to enforce the creditor's right to the
15 creditor's security except as provided in part 8 of article III
16 and part 5 of article VII.

17 Sec. 3105. A person interested in a decedent's estate may
18 apply to the register for a determination in the informal pro-
19 ceedings provided in this article and may petition the court for
20 orders in formal proceedings within the court's jurisdiction.

21 Sec. 3106. In a proceeding within the court's jurisdiction
22 in which notice is required by this act or by court rule, and in
23 a proceeding to construe a probated will or determine heirs that
24 concerns an estate that has not been opened for administration,
25 an interested person may be bound by court order with respect to
26 property in, or subject to the laws of, this state by notice in
27 conformity with section 1401. An order is binding on all who are

1 given notice of the proceeding, even if [fewer] than all interested
2 persons are notified.

3 Sec. 3107. (1) Unless a proceeding involves supervised
4 administration as described in part 5 of this article, the fol-
5 lowing apply:

6 (a) Each proceeding before the court or register is indepen-
7 dent of any other proceeding involving the same estate.

8 (b) A petition for a formal court order may combine various
9 requests for relief in a single proceeding if the order sought
10 may be a final order and may be granted without delay.

11 (2) Except as required in this article for another proceed-
12 ing, the following apply:

13 (a) A petition is not defective because it fails to embrace
14 all matters that might then be the subject of a final order.

15 (b) A proceeding for probate of a will or an adjudication of
16 no will may be combined with a proceeding for appointment of a
17 personal representative.

18 (c) A proceeding for appointment of a personal representa-
19 tive is concluded by an order making or declining the
20 appointment.

21 Sec. 3108. A statute of limitations running on a cause of
22 action belonging to a decedent, which action was not barred as of
23 the date of the decedent's death, does not apply to bar a cause
24 of action surviving the decedent's death sooner than [1 year]
25 after death. A cause of action that, but for this section, would
26 have been barred less than [1 year] after the decedent's death
27 is barred after [1 year] unless tolled.

1 PART 2

2 VENUE FOR PROBATE AND ADMINISTRATION, PRIORITY
3 TO ADMINISTER, AND DEMAND FOR NOTICE

4
5 Sec. 3201. (1) Venue for the first informal or formal tes-
6 tacy or appointment proceeding after a decedent's death is 1 of
7 the following:

8 (a) The county where the decedent was domiciled at the time
9 of death.

10 (b) If the decedent was not domiciled in this state, in a
11 county where property of the decedent was located at the time of
12 death.

13 (2) Venue for a subsequent proceeding that is within the
14 court's exclusive jurisdiction is in the place where the initial
15 proceeding occurred, unless the initial proceeding has been
16 transferred as provided in subsection (3) [, in section 856 of the
revised judicature act of 1961, MCL 600.856, or by supreme court
rule].

17 (3) If the first proceeding described in subsection (1) was
18 informal, on application of an interested person and after notice
19 to the proponent in the first proceeding, the court, upon finding
20 that venue is elsewhere, may transfer the proceeding and the file
21 to the other court.

22 (4) On motion by a party or on the court's own initiative, a
23 proceeding's venue may be changed to another county by court
24 order for the convenience of the parties and witnesses, for the
25 attorneys' convenience, or if an impartial trial cannot be had in
26 the county where the action is pending.

27 (5) For the purpose of aiding determinations concerning
28 location of property that may be relevant in cases involving
29 nondomiciliaries, other than a debt evidenced by investment or

1 commercial paper or other instrument in favor of a
2 nondomiciliary, a debt is located where the debtor resides or, if
3 the debtor is a person other than an individual, at the place
4 where the debtor has its principal office. Commercial paper,
5 investment paper, and other instruments are located where the
6 instrument is. An interest in property held in trust is located
7 where the trustee may be sued.

8 Sec. 3202. If conflicting claims as to the decedent's domi-
9 cile are made in a formal testacy or appointment proceeding com-
10 menced in this state and in a testacy or appointment proceeding
11 after notice pending at the same time in another state, the court
12 of this state shall stay, dismiss, or permit suitable amendment
13 in the proceeding in this state unless it is determined that this
14 state's proceeding was commenced before the proceeding
15 elsewhere. The determination of domicile in the proceeding first
16 commenced is determinative in this state's proceeding.

17 Sec. 3203. (1) For either formal or informal proceedings,
18 subject to subsection (2), persons who are not disqualified have
19 priority for appointment as personal representative in the fol-
20 lowing order:

21 (a) The person with priority as determined by a probated
22 will including a person nominated by a power conferred in a
23 will.

24 (b) The decedent's surviving spouse if the spouse is a devi-
25 see of the decedent.

26 (c) Other devisees of the decedent.

1 (d) The decedent's surviving spouse.

2 (e) Other heirs of the decedent.

3 (f) After [42] days after the decedent's death, the nominee of
4 a creditor if the court finds the nominee suitable.

5 (g) The state or county public administrator if any of the
6 following apply:

7 (i) No interested person applied or petitioned for appoint-
8 ment of a personal representative within [42] days after the
9 decedent's death.

10 (ii) The decedent died apparently leaving no known heirs.

11 (iii) There is no spouse, heir, or beneficiary under a will
12 who is a United States resident and is entitled to a distributive
13 share in the decedent's estate.

14 (2) An objection to the appointment of a personal represen-
15 tative may be made only in a formal proceeding. If an objection
16 is made, the priorities prescribed by subsection (1) apply except
17 in either of the following circumstances:

18 (a) If the estate appears to be more than adequate to meet
19 exemptions and costs of administration but inadequate to dis-
20 charge anticipated unsecured claims, on petition of creditors,
21 the court may appoint any qualified person.

22 (b) If a devisee or heir who appears to have a substantial
23 interest in the estate objects to the appointment of a person
24 whose priority is not determined by will, the court may appoint a
25 person who is acceptable to the devisees and heirs whose inter-
26 ests in the estate appear to be worth in total more than 1/2 of

1 the probable distributable value or, if no person is acceptable
2 to these devisees and heirs, any suitable person.

3 (3) A person entitled to letters under subsection (1)(b) to
4 (e) may nominate a qualified person to act as personal
5 representative. A person may renounce his or her right to nomi-
6 nate or to an appointment by filing an appropriate writing with
7 the court. If 2 or more persons share a priority, those of them
8 who do not renounce shall concur in nominating another to act for
9 them or in applying for appointment.

10 Sec. 3204. (1) A conservator of a protected individual's
11 estate or, if there is no conservator, a guardian of a minor or
12 incapacitated individual may exercise the same right to nominate,
13 to object to another's appointment, or to participate in deter-
14 mining the preference of a majority in interest of the devisees
15 and heirs that the protected individual or ward would have if
16 qualified for appointment.

17 (2) A person who does not have priority, including priority
18 resulting from renunciation or nomination determined under this
19 section or section 3203, shall be appointed only in a formal
20 proceeding. Before appointing a person without priority, the
21 court shall determine that persons having priority have been
22 notified of the proceedings and have failed to request appoint-
23 ment or to nominate another person for appointment, and that
24 administration is necessary.

25 (3) A person is not qualified to serve as a personal repre-
26 sentative if the person is either under the age of 18 or is a
27 person whom the court finds unsuitable in formal proceedings.

1 (4) A personal representative appointed by a court of the
2 decedent's domicile has priority over all other persons except if
3 the decedent's will nominates different persons to be personal
4 representatives in this state and in the state of domicile. The
5 domiciliary personal representative may nominate another person,
6 who has the same priority as the domiciliary personal
7 representative.

8 (5) This section and section 3203 govern priority for
9 appointment of a successor personal representative, but do not
10 apply to the selection of a special personal representative.

11 Sec. 3205. A person who wants notice of any order or filing
12 pertaining to a decedent's estate in which the person has a
13 financial or property interest may file a demand for notice with
14 the court at any time after the decedent's death stating the
15 decedent's name, the nature of the person's interest in the
16 estate, and the address of the person or the person's attorney.
17 If a proceeding is not pending at the time a demand is filed
18 under this section, the person filing the demand must pay the fee
19 required to commence a proceeding. The person filing a demand
20 shall mail a copy of the demand to the decedent's attorney, if
21 known, to the personal representative if one has been appointed,
22 and to the personal representative's attorney. After filing the
23 demand, the person is an interested person entitled to notice as
24 provided in section 1401 and the other provisions of this act.

25

PART 3

1 INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

2 Sec. 3301. (1) An application for informal probate or
3 informal appointment shall be made by an interested person and
4 directed to the register. The applicant shall [swear that the
5 application is] accurate and complete to the best of the applicant's
6 knowledge and belief as to all of the following information:

7 (a) In an application for informal probate of a will or for
8 informal appointment of a personal representative, other than a
9 special or successor representative, all of the following:

10 (i) A statement of the applicant's interest.

11 (ii) The decedent's name, date of death, and age; the
12 decedent's county and state of domicile at the time of death; and
13 the names and addresses of the spouse, children, devisees, and
14 heirs with the ages of any who are minors so far as known or
15 ascertainable with reasonable diligence by the applicant.

16 (iii) If the decedent was not domiciled in the state at the
17 time of the decedent's death, a statement showing venue.

18 (iv) A statement identifying and indicating the address of a
19 personal representative of the decedent appointed in this state
20 or elsewhere whose appointment has not been terminated.

21 (b) In an application for informal probate of a will, in
22 addition to the statements and information required by
23 subdivision (a), all of the following:

24 (i) That the original of the decedent's last will is in the
25 court's possession or accompanies the application, or that an
26 authenticated copy of a will probated in another jurisdiction
27 accompanies the application.

1 (ii) That, to the best of the applicant's knowledge, the
2 will was validly executed.

3 (iii) That, after the exercise of reasonable diligence, the
4 applicant is unaware of an instrument revoking the will and that
5 the applicant believes that the instrument that is the subject of
6 the application is the decedent's last will.

7 (c) In an application for informal appointment of a personal
8 representative to administer an estate under a will, all of the
9 following:

10 (i) A description of the will by date of execution.

11 (ii) The time and place of probate or the pending applica-
12 tion for probate.

13 (iii) A statement adopting the statements in the application
14 or petition for probate.

15 (iv) The name, address, and priority for appointment of the
16 person whose appointment is sought.

17 (d) In an application for informal appointment of a personal
18 representative in intestacy, in addition to the statements and
19 information required by subdivision (a), all of the following:

20 (i) That, after the exercise of reasonable diligence, the
21 applicant is unaware of any unrevoked testamentary instrument
22 relating to property located in this state under section 1301, or
23 a statement why such an instrument of which the applicant is
24 aware is not being probated.

25 (ii) The priority of the person whose appointment is sought
26 and the names of any other persons having a prior or equal right
27 to the appointment under section 3203.

1 (e) In an application for appointment of a personal
2 representative to succeed a personal representative appointed
3 under a different testacy status, all of the following:

4 (i) A reference to the order in the most recent testacy
5 proceeding.

6 (ii) The name and address of the person whose appointment is
7 sought and of the person whose appointment will be terminated if
8 the application is granted.

9 (iii) A description of the applicant's priority.

10 (f) In an application for appointment of a personal repre-
11 sentative to succeed a personal representative who tenders a res-
12 ignation as provided in section 3610 or whose appointment is ter-
13 minated by death or removal, all of the following:

14 (i) A statement adopting the statements in the application
15 or petition that led to the appointment of the person being suc-
16 ceeded, except as specifically changed or corrected.

17 (ii) The name and address of the person who seeks appoint-
18 ment as successor.

19 (iii) A description of the applicant's priority.

20 (2) By [swearing to] an application for informal probate or
21 informal appointment, the applicant submits personally to the
22 jurisdiction of the court in any proceeding for relief from fraud
23 relating to the application or for perjury that may be instituted
24 against the applicant.

25 Sec. 3302. Upon receipt of an application requesting infor-
26 mal probate of a will and after making the findings required by
27 section 3303, the register shall issue a written statement of

1 informal probate. Informal probate is conclusive as to all
2 persons until superseded by an order in a formal testacy
3 proceeding. A defect in an application or procedure relating to
4 the application that leads to informal probate of a will does not
5 render the probate void.

6 Sec. 3303. (1) In an informal proceeding for original pro-
7 bate of a will, the register shall determine whether all of the
8 following are true:

9 (a) The application is complete.

10 (b) The applicant has made oath or affirmation that the
11 statements contained in the application are true to the best of
12 the applicant's knowledge and belief.

13 (c) The applicant appears from the application to be an
14 interested person.

15 (d) On the basis of the statements in the application, venue
16 is proper.

17 (e) An original, properly executed, and apparently unrevoked
18 will is in the register's possession.

19 (f) That the application is not within section 3304.

20 (2) The register shall deny the application if the applica-
21 tion indicates that a personal representative has been appointed
22 in another county of this state or, except as provided in subsec-
23 tion (4), if it appears that this or another will of the decedent
24 has been the subject of a previous probate order.

25 (3) A will that appears to have the required signatures and
26 that contains an attestation clause showing that requirements of
27 execution under section 2502 or 2506 have been met shall be

1 probated without further proof. In other cases, the register may
2 assume execution if the will appears to have been properly exe-
3 cuted, or the register may accept a sworn statement []
4 of a person having knowledge of the circumstances of execution,
5 whether or not the person was a witness to the will.

6 (4) Informal probate of a will that was previously probated
7 elsewhere may be granted at any time upon written application by
8 an interested person, together with deposit of an authenticated
9 copy of the will and of the statement probating it from the
10 office or court where the will was first probated.

11 (5) A will from a place that does not provide for probate of
12 a will after death and that is not eligible for probate under
13 subsection (1) may be probated in this state upon receipt by the
14 register of a properly authenticated copy of the will and a prop-
15 erly authenticated certificate of its legal custodian that the
16 copy filed is a true copy and that the will has become operative
17 under the law of the other place.

18 Sec. 3304. The register shall deny an application for
19 informal probate if the probate relates to 1 or more of a known
20 series of testamentary instruments, not including a will and 1 or
21 more codicils to that will, the latest of which instruments does
22 not expressly revoke the earlier.

23 Sec. 3305. If the register is not satisfied that a will is
24 entitled to be probated in informal proceedings because of fail-
25 ure to meet the requirements of section 3303 or 3304 or for
26 another reason, the register may deny the application. A
27 register's denial of informal probate is not an adjudication and

1 does not preclude formal probate proceedings. If the application
2 is denied, the register shall clearly state the reason for
3 denial.

4 Sec. 3306. (1) Within [28] days after an informal probate is
5 granted, the applicant shall give written information of the pro-
6 bate to the heirs, devisees, a person who demands it under sec-
7 tion 3205, and other interested persons. The applicant also
8 shall give information of the probate to the attorney general,
9 public administration division, if the devisees under the will
10 would not be entitled to share in the estate but for the terms of
11 the will and the decedent died without leaving any known heirs.

12 (2) The information required by subsection (1) must include
13 the applicant's name and address, the name and location of the
14 court granting the informal probate, and the date of the
15 probate. The information must be delivered or sent by ordinary
16 mail to each person entitled to notice whose address is reason-
17 ably available to the applicant. There is no duty to give infor-
18 mation as required by this section if a personal representative
19 is appointed who is required to give the written information
20 required by section 3705. An applicant's failure to give infor-
21 mation as required by this section is a breach of the applicant's
22 duty to a person entitled to notice, but does not affect the
23 validity of the probate.

24 Sec. 3307. (1) Upon receipt of an application for informal
25 appointment of a personal representative, other than a special
26 personal representative as provided in section 3614, and after
27 making the determinations required by section 3308, the register

1 shall appoint the [person whose appointment is sought] subject to qualification and

2 acceptance. If the decedent was a nonresident, the register
3 shall delay the order of appointment until [28] days after the
4 death unless the personal representative appointed at the
5 decedent's domicile is the applicant or unless the decedent's
6 will directs that the estate be subject to the laws of this
7 state.

8 (2) The personal representative's status and the powers and
9 duties pertaining to the office are fully established by informal
10 appointment. An appointment, and the office of personal repre-
11 sentative created by the appointment, is subject to termination
12 as provided in sections 3608 to 3612, but is not subject to ret-
13 roactive vacation.

14 Sec. 3308. (1) In informal appointment proceedings, the
15 register shall determine whether all of the following are true:

16 (a) The application for the personal representative's infor-
17 mal appointment is complete.

18 (b) The applicant has made oath or affirmation that the
19 statements contained in the application are true to the best of
20 the applicant's knowledge and belief.

21 (c) The applicant appears from the application to be an
22 interested person.

23 (d) On the basis of the statements in the application, venue
24 is proper.

25 (e) A will to which the requested appointment relates has
26 been formally or informally probated. This subdivision does not
27 apply to the appointment of a special personal representative.

1 (f) From the statements in the application, the person whose
2 appointment is sought has priority to the appointment or the
3 requirements of section 3310 have been satisfied.

4 (2) Unless section 3612 controls, the register shall deny
5 the application if it indicates any of the following:

6 (a) That a personal representative who has not filed a writ-
7 ten statement of resignation as provided in section 3610 has been
8 appointed in this or another county of this state.

9 (b) That, unless the applicant is the domiciliary personal
10 representative or his or her nominee, the decedent was not domi-
11 ciled in this state and that a personal representative whose
12 appointment has not been terminated has been appointed by a court
13 in the state of domicile.

14 (c) That the other requirements of this section are not
15 met.

16 Sec. 3309. If the register is not satisfied that a
17 requested informal appointment of a personal representative
18 should be made because of failure to meet the requirements of
19 section 3307 or 3308, or for another reason, the register may
20 deny the application. A register's denial of informal appoint-
21 ment is not an adjudication and does not preclude appointment in
22 formal proceedings. If the application is denied, the register
23 shall clearly state the reason for denial.

24 Sec. 3310. The applicant shall give notice as described by
25 section 1401 of the applicant's intention to seek an appointment
26 informally to each person having a prior or equal right to an
27 appointment not waived in writing and filed with the court.

1 (4) Unless a petition in a formal testacy proceeding also
2 requests confirmation of the previous informal appointment, after
3 receipt of notice of the commencement of a formal probate pro-
4 ceeding, a previously appointed personal representative shall
5 refrain from exercising the power to make any further distribu-
6 tion of the estate during the pendency of the formal proceeding.
7 A petitioner who seeks the appointment of a different personal
8 representative in a formal proceeding may also request an order
9 restraining the acting personal representative from exercising
10 that office's powers and may request the appointment of a special
11 personal representative. In the absence of a request under this
12 subsection or if the request is denied, the commencement of a
13 formal proceeding has no effect on the powers and duties of a
14 previously appointed personal representative other than those
15 relating to distribution.

16 Sec. 3402. (1) A petition for formal probate of a will or
17 for adjudication of intestacy with or without request for
18 appointment of a personal representative must be directed to the
19 court, must request a judicial order after notice and hearing,
20 and must contain the statements required by this section. A
21 petition for formal probate of a will must include all of the
22 following:

23 (a) A request for an order as to the testacy of the decedent
24 in relation to a particular instrument that may or may not have
25 been informally probated and a request for an order determining
26 the decedent's heirs.

1 (b) The statements required for an informal application
2 prescribed by section 3301(1)(a) and (b)(ii) and (iii).

3 (c) A statement as to whether the original of the decedent's
4 last will is in the court's possession or accompanies the
5 petition. If the original will is not in the court's possession
6 or neither the original will nor an authenticated copy of a will
7 probated in another jurisdiction accompanies the petition, the
8 petition must also state the will's contents and shall indicate
9 that the will is lost, destroyed, or otherwise unavailable.

10 (2) A petition for adjudication of intestacy and appointment
11 of a personal representative in intestacy must include all of the
12 following:

13 (a) A request for a judicial finding and order that the
14 decedent left no will and determining the heirs.

15 (b) The statements required by section 3301(1)(a) and (d).

16 (c) A statement indicating whether supervised administration
17 is sought. A petition under this subsection may request an order
18 determining intestacy and heirs without requesting the appoint-
19 ment of a personal representative, in which case, the statements
20 required by section 3301(1)(d)(ii) may be omitted.

21 Sec. 3403. (1) Upon commencement of a formal testacy pro-
22 ceeding, the court shall fix a time and place of hearing. The
23 petitioner shall give notice in the manner prescribed by
24 section 1401 to each of the following persons:

25 (a) The decedent's heirs.

26 (b) The devisees and personal representatives named in a
27 will that is being, or has been, probated or offered for informal

1 or formal probate in the county, or that is known by the
2 petitioner to have been probated or offered for informal or
3 formal probate elsewhere.

4 (c) A personal representative of the decedent whose appoint-
5 ment has not been terminated.

6 (d) A person who has filed a demand for notice under
7 section 3205.

8 (e) The trustee of a trust described in section 7501(1) as
9 to which the decedent was settlor.

10 (2) Notice may be given to other persons. In addition, the
11 petitioner shall give notice by publication to each unknown
12 person and to each known person whose address is unknown who has
13 an interest in the matters being litigated. If the proceeding
14 involves a request for appointment of a personal representative
15 and it appears that the deceased died intestate without leaving a
16 known heir, the petitioner shall give notice to the attorney gen-
17 eral, public administration division.

18 (3) If it appears by the petition or otherwise that the fact
19 of the decedent's death may be in doubt, or on the written demand
20 of an interested person, a copy of the notice of the hearing on
21 the petition shall be sent by registered mail to the alleged
22 decedent at his or her last known address. The court shall
23 direct the petitioner to report the results of, or make and
24 report back concerning, a reasonably diligent search for the
25 alleged decedent in any manner that may seem advisable, including
26 by any of the following methods:

1 (a) Inserting in 1 or more suitable periodicals a notice
2 requesting information from anyone having knowledge of the
3 alleged decedent's whereabouts.

4 (b) Notifying law enforcement officials and public welfare
5 agencies in appropriate locations of the alleged decedent's
6 disappearance.

7 (c) Engaging an investigator's services.

8 (4) The costs of a search conducted under subsection (3)
9 shall be paid by the petitioner if there is no administration or
10 by the decedent's estate if there is administration.

11 Sec. 3404. A party to a formal proceeding who opposes the
12 probate of a will for any reason shall state in his or her plead-
13 ings the party's objections to probate of the will.

14 Sec. 3405. (1) If a petition in a testacy proceeding is
15 unopposed, the court may either order probate or intestacy on the
16 strength of the pleadings if satisfied that the conditions of
17 section 3409 have been met or conduct a hearing in open court and
18 require proof of the matters necessary to support the order
19 sought.

20 (2) If evidence concerning execution of the will is neces-
21 sary, the [sworn statement] or testimony of 1 of the attesting
witnesses
22 to the instrument is sufficient. If the [sworn statement] or
testimony
23 of an attesting witness is not available, execution of the will
24 may be proved by other evidence or [sworn statement]. If, after
diligent
25 search and effort and after the signature of the testator is
26 identified, it appears that the whereabouts of the witnesses to a
27 will cannot be ascertained and it appears on the face of the will

1 that the requirements in this section for a valid will have been
2 met, a presumption arises that the will was executed in all par-
3 ticulars as required by law.

4 Sec. 3406. (1) If evidence concerning execution of an
5 attested will that is not self-proved is necessary in a contested
6 case, the testimony of at least 1 of the attesting witnesses, if
7 within the state and if competent and able to testify, is
8 required. Due execution of an attested or unattested will may be
9 proved by other evidence.

10 (2) If a will is self-proved, compliance with signature
11 requirements for execution is conclusively presumed and other
12 requirements of execution are presumed subject to rebuttal with-
13 out the testimony of any witness upon filing the will and the
14 acknowledgment and [sworn statements] annexed or attached to the
15 will,
16 unless there is proof of fraud or forgery affecting the acknowl-
17 edgment or [a sworn statement].

18 (3) If a witness is competent at the time he or she signs
19 the will, the witness's subsequent incompetency from whatever
20 cause does not prevent admission of the will to probate, if it is
21 otherwise satisfactorily proved.

22 Sec. 3407. (1) All of the following apply in a contested
23 case:

24 (a) A petitioner who seeks to establish intestacy has the
25 burden of establishing prima facie proof of death, venue, and
26 heirship.

27 (b) A proponent of a will has the burden of establishing
prima facie proof of due execution in all cases and, if the

1 proponent is also a petitioner, prima facie proof of death and
2 venue.

3 (c) A contestant of a will has the burden of establishing
4 lack of testamentary intent or capacity, undue influence, fraud,
5 duress, mistake, or revocation.

6 (d) A party has the ultimate burden of persuasion as to a
7 matter with respect to which the party has the initial burden of
8 proof.

9 (2) If a will is opposed by a petition for probate of a
10 later will revoking the former, the court shall first determine
11 whether the later will is entitled to probate. If a will is
12 opposed by a petition for a declaration of intestacy, the court
13 shall first determine whether the will is entitled to probate.

14 Sec. 3408. This state's court shall accept as determinative
15 a final order of a court of another state determining testacy, or
16 the validity or construction of a will, made in a proceeding
17 involving notice to and an opportunity for contest by all inter-
18 ested persons if the order includes, or is based upon, a finding
19 that the decedent was domiciled at death in the state where the
20 order was made.

21 Sec. 3409. (1) After the time expires for any required
22 notice, upon proof of notice and after a hearing, if necessary,
23 if the court finds that the testator is dead and that venue is
24 proper, the court shall determine the decedent's domicile at
25 death, the decedent's heirs, and the decedent's state of
26 testacy. The petition shall be dismissed or appropriate

1 amendment allowed if the court is not satisfied that the alleged
2 decedent is dead.

3 (2) A will found to be valid and unrevoked shall be formally
4 probated. Termination of a previous informal appointment of a
5 personal representative, which may be appropriate in view of the
6 relief requested and findings, is governed by section 3612. A
7 will from a place that does not provide for probate of a will
8 after death may be proved for probate in this state by a duly
9 authenticated certificate of its legal custodian that the copy
10 introduced is a true copy and that the will is effective under
11 the law of the other place.

12 Sec. 3410. If 2 or more instruments are offered for probate
13 before a final order is entered in a formal testacy proceeding,
14 more than 1 instrument may be probated if neither expressly
15 revokes the other and neither contains provisions that work a
16 total revocation by implication. If more than 1 instrument is
17 probated, the order shall indicate which provisions control in
18 respect to the nomination of the personal representative, if
19 any. The order may, but need not, indicate how any provisions of
20 a particular instrument are affected by another instrument.
21 After a final order in a testacy proceeding has been entered, a
22 petition for probate of another instrument of the decedent shall
23 not be entertained, except incident to a petition to vacate or
24 modify a previous probate order and subject to the time limits of
25 section 3412.

26 Sec. 3411. If it becomes evident in the course of a formal
27 testacy proceeding that, though 1 or more instruments are

1 entitled to be probated, the decedent's estate is or may be
2 partially intestate, the court shall enter an order to that
3 effect.

4 Sec. 3412. (1) Subject to appeal and subject to vacation as
5 provided in this section and section 3413, a formal testacy order
6 under sections 3409 to 3411, including an order that the decedent
7 did not leave a valid will and that determines heirs, is final as
8 to all persons with respect to all issues concerning the
9 decedent's estate that the court considered or might have consid-
10 ered incident to its rendition relevant to the question of
11 whether the decedent left a valid will and to the determination
12 of heirs, except that:

13 (a) The court shall entertain a petition for modification or
14 vacation of its order and probate of another will of the decedent
15 if it is shown that the proponents of the later-offered will were
16 unaware of that will's existence at the time of the earlier pro-
17 ceeding, or were unaware and were given no notice of that earlier
18 proceeding, except by publication.

19 (b) If intestacy of all or part of the estate has been
20 ordered, the determination of the decedent's heirs may be recon-
21 sidered if it is shown that an individual was omitted from the
22 determination and that the omitted individual was unaware of his
23 or her relationship to the decedent, was unaware of the
24 decedent's death, or was not given notice of any proceeding con-
25 cerning the decedent's estate, except by publication.

26 (2) A petition for vacation filed under subsection (1) shall
27 be filed before the earlier of the following time limits:

1 (a) If a personal representative is appointed for the
2 estate, the time of entry of an order approving final distribu-
3 tion of the estate or, if the estate is closed by statement, 6
4 months after the filing of the closing statement.

5 (b) [One year] after the entry of the order sought to be
6 vacated.

7 (3) The order originally rendered in the testacy proceeding
8 may be modified or vacated, if appropriate under the circum-
9 stances, by the order of probate of the later-offered will or the
10 order redetermining heirs.

11 (4) The finding of the fact of death is conclusive as to the
12 alleged decedent only if notice of the hearing on the petition in
13 the formal testacy proceeding was sent by registered or certified
14 mail addressed to the alleged decedent at his or her last known
15 address and the court finds that a search was made under section
16 3403(3).

17 (5) If the alleged decedent is not dead, even if notice was
18 sent and the search was made, the alleged decedent may recover
19 estate assets in the hands of the personal representative. In
20 addition to any remedies available to the alleged decedent by
21 reason of any fraud or intentional wrongdoing, the alleged dece-
22 dent may recover any estate or its proceeds from distributees
23 that is in their hands, or the value of distributions received by
24 them, to the extent that any recovery from distributees is equi-
25 table in view of all of the circumstances.

1 Sec. 3413. For good cause shown, an order in a formal
2 testacy proceeding may be modified or vacated within the time
3 allowed for appeal.

4 Sec. 3414. (1) If an issue concerning the decedent's tes-
5 tacy is or may be involved, a formal proceeding for adjudication
6 regarding the priority or qualification of an individual who is
7 [seeking] appointment as personal representative or who
8 was previously appointed personal representative in informal pro-
9 ceedings is governed by this section and section 3402. In other
10 cases, the petition must contain or adopt the statements required
11 by section 3301(1)(a) and shall describe the question relating to
12 the personal representative's priority or qualification that is
13 to be resolved.

14 (2) If a formal proceeding precedes the appointment of a
15 personal representative, the formal proceeding stays an informal
16 appointment proceeding that is pending or that is commenced after
17 the formal proceeding's commencement. If the formal proceeding
18 is commenced after the appointment of a personal representative
19 and after the personal representative receives notice of the com-
20 mencement, the personal representative shall not exercise a power
21 of administration except as necessary to preserve the estate or
22 unless the court orders otherwise.

23 (3) After notice to interested persons, including all per-
24 sons interested in the administration of the estate as successors
25 under the applicable assumption concerning testacy, a previously
26 appointed personal representative, a person having or claiming
27 priority for appointment as personal representative, and any

1 to directions concerning the estate made by the court on its own
2 motion or on the motion of an interested [person].

3 (3) Except as otherwise provided in this part or as other-
4 wise ordered by the court, a supervised personal representative
5 has the same duties and powers as a personal representative who
6 is not supervised.

7 Sec. 3502. (1) Any interested person or a personal repre-
8 sentative may file a petition for supervised administration at
9 any time, or a petition for supervised administration may be
10 joined with a petition in a formal testacy or appointment
11 proceeding.

12 (2) If a decedent's testacy or a personal representative's
13 priority and qualification have not been previously adjudicated,
14 a petition for supervised administration shall include the mat-
15 ters required of a petition in a formal testacy proceeding, and
16 the notice requirements and procedures applicable to a formal
17 testacy proceeding apply. If not previously adjudicated, the
18 court shall adjudicate the decedent's testacy and questions
19 relating to the personal representative's priority and qualifica-
20 tions in any case involving a request for supervised administra-
21 tion, even though the request for supervised administration may
22 be denied.

23 (3) After notice to interested persons, the court shall
24 order supervised administration of a decedent's estate in any of
25 the following circumstances:

26 (a) If the decedent's will directs supervised
27 administration, the court shall order supervised administration

1 unless the court finds that circumstances bearing on the need for
2 supervised administration have changed since the execution of the
3 will and that supervised administration is not necessary.

4 (b) If the decedent's will directs unsupervised administra-
5 tion, the court shall only order supervised administration on a
6 finding that it is necessary for protection of persons interested
7 in the estate.

8 (c) In other cases, the court shall order supervised admin-
9 istration if the court finds that supervised administration is
10 necessary under the circumstances.

11 Sec. 3503. (1) The pendency of a proceeding for supervised
12 administration of a decedent's estate stays action on a pending
13 informal application or an informal application filed after com-
14 mencement of the proceeding for supervised administration.

15 (2) If a will has been previously probated in informal pro-
16 ceedings, the filing of a petition for supervised administration
17 has the same effect as a formal testacy proceeding under
18 section 3401.

19 (3) After receipt of notice of the filing of a supervised
20 administration petition, a personal representative who has been
21 previously appointed shall not exercise the power to distribute
22 the estate. The filing of such a petition does not affect the
23 personal representative's other powers and duties unless the
24 court restricts the exercise of any of those powers and duties
25 pending full hearing on the petition.

26 Sec. 3504. Unless restricted by the court, a supervised
27 personal representative has, without an interim order approving

1 if the personal representative reasonably believes the real
2 estate or other property owned by the business entity is or may
3 be contaminated by a hazardous substance, or is or has been used
4 for any activity directly or indirectly involving a hazardous
5 substance, that could result in liability to the estate or other-
6 wise impair the value of property held in the estate. The per-
7 sonal representative must identify the real estate or ownership
8 interest being excluded and shall specify the time period of
9 exclusion.

10 (3) If the personal representative identifies excluded prop-
11 erty under subsection (2), the personal representative's respon-
12 sibilities extend to the excluded property at the end of the
13 exclusion period or upon the personal representative's notice to
14 the court of acceptance of that property, unless, before the end
15 of the exclusion period, the personal representative requests the
16 court to appoint a special personal representative with respect
17 to the excluded property or to exercise administrative authority
18 over the excluded property by direct judicial order.

19 (4) In response to a request by the general personal repre-
20 sentative under subsection (3), the court may do either of the
21 following:

22 (a) Appoint a special personal representative with the duty
23 and authority to collect and manage the excluded property, but
24 only to the extent necessary for proper settlement of the estate
25 and to preserve, account with respect to, and distribute or oth-
26 erwise dispose of the excluded property as directed by the
27 general personal representative or other court order.

1 (b) Directly administer the excluded property by judicial
2 orders without the appointment of a personal representative with
3 respect to the property.

4 Sec. 3602. By accepting appointment, a personal representa-
5 tive submits personally to the court's jurisdiction in a proceed-
6 ing relating to the estate that may be instituted by an inter-
7 ested person. The interested person instituting the proceeding
8 must give notice of the proceeding to the personal representative
9 by personal service or by ordinary first-class mail mailed to the
10 personal representative's address as stated in the application or
11 petition for appointment, or as otherwise reported to the court,
12 and if different, to the personal representative's address as
13 then known to the interested person.

14 Sec. 3603. (1) A bond is not required of a personal repre-
15 sentative appointed in informal proceedings, except in any of the
16 following circumstances:

17 (a) A special personal representative is appointed.

18 (b) The personal representative is appointed to administer
19 an estate under a will containing an express requirement of
20 bond.

21 (c) Bond is required under section 3605.

22 (2) Except as otherwise provided in this subsection, in a
23 formal proceeding, the court may order bond at the time of the
24 personal representative's appointment. The court shall not order
25 bond of the personal representative in the formal proceeding if
26 the will relieves the personal representative of bond, unless an
27 interested [person] requests bond and the court is satisfied that

1 bond is desirable. If a will in a formal proceeding requires
2 bond, bond may be dispensed with if the court determines it is
3 unnecessary.

4 (3) Bond is not required of a personal representative who
5 deposits, as [determined by the court], cash or collateral with [the
6 county treasurer] to secure performance of the fiduciary
7 duties.

8 Sec. 3604. If bond is required and the provisions of the
9 will or order do not specify the amount, unless stated in the
10 person's application or petition, a person qualifying shall file
11 a statement under oath with the register indicating the person's
12 best estimate of the value of the decedent's personal estate and
13 of the income expected from the personal and real estate during
14 the next year, and shall execute and file a bond with the regis-
15 ter, or give other suitable security, in an amount not less than
16 the estimate. The register shall determine that the bond is duly
17 executed by a corporate surety, or 1 or more individual sureties
18 whose performance is secured by pledge of personal property,
19 mortgage on real property, or other adequate security. The reg-
20 ister may permit the amount of the bond to be reduced by the
21 value of estate property deposited [in this state with a financial
22 institution] in a manner that pre-
23 vents the property's unauthorized disposition. On petition of
24 the personal representative or another interested person or on
25 the court's own motion, the court may excuse a requirement of
26 bond, increase or reduce the amount of the bond, release

1 sureties, or permit the substitution of another bond with the
2 same or different sureties.

3 Sec. 3605. A person apparently having an interest in the
4 estate worth in excess of \$2,500.00 or a creditor having a claim
5 against the estate in excess of \$2,500.00 may make a written
6 demand that a personal representative give bond. The demand must
7 be filed with the register, and if appointment and qualification
8 have occurred, a copy must be mailed to the personal
9 representative. Upon filing of the demand, bond is required, but
10 the requirement ceases if the person demanding bond ceases to be
11 interested in the estate or if bond is excused as provided in
12 section 3603 or 3604. After receipt of notice and until the
13 filing of the bond or cessation of the requirement of bond, the
14 personal representative shall refrain from exercising any powers
15 of the fiduciary office except as necessary to preserve the
16 estate. Failure of the personal representative to meet a
17 requirement of bond by giving suitable bond within [28] days after
18 receipt of notice is cause for removal and appointment of a suc-
19 cessor personal representative.

20 Sec. 3606. The following requirements and provisions apply
21 to a bond required by this part:

22 (a) A bond shall name the state of Michigan as obligee for
23 the benefit of the persons interested in the estate and shall be
24 conditioned upon the faithful discharge by the fiduciary of all
25 duties according to law.

26 (b) Unless otherwise provided by the terms of the approved
27 bond, sureties are jointly and severally liable with the personal

1 representative and with each other. The address of sureties
2 shall be stated in the bond.

3 (c) By executing an approved bond of a personal representa-
4 tive, the surety consents to the jurisdiction of the court that
5 issues letters to the primary obligor in a proceeding pertaining
6 to the personal representative's fiduciary duties and naming the
7 surety as a party. The petitioner shall notify a surety of a
8 proceeding by personal service or by registered or certified mail
9 to the surety's address as listed with the court where the bond
10 is filed and to the surety's address as then known to the
11 petitioner.

12 (d) On petition of a successor personal representative,
13 another personal representative of the same decedent, or an
14 interested person, a proceeding in the court may be initiated
15 against a surety for breach of the obligation of the personal
16 representative's bond. If a fiduciary fails to perform a duty or
17 perform a duty properly, the court may order a surety to perform
18 an act the fiduciary should have performed or to correct an act
19 the fiduciary performed improperly.

20 (e) The personal representative's bond is not void after the
21 first recovery but may be proceeded against from time to time
22 until the whole penalty is exhausted.

23 (f) An action or proceeding shall not be commenced against
24 the surety on a matter as to which an action or proceeding
25 against the primary obligor is barred by adjudication or
26 limitation.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

180

1 Sec. 3607. (1) On petition of a person who appears to be an
2 interested person or acting on the court's own motion, the court,
3 by temporary order, may restrain a personal representative from
4 performing a specified act of administration, disbursement, or
5 distribution, or from exercising a power or discharging a duty of
6 the personal representative's office, or may make another order
7 to secure proper performance of the personal representative's
8 duty, if it appears to the court that the personal representative
9 otherwise may take some action that would jeopardize unreasonably
10 the interest of the petitioner or of some other interested
11 person. A person with whom the personal representative may
12 transact business may be made a party.

13 (2) The court shall set a hearing date for a matter
14 described in subsection (1), which hearing date shall be not more
15 than [14] days after the date of the issuance of the temporary
16 order, unless the parties agree otherwise. Notice shall be given
17 as the court directs to the personal representative, to the per-
18 sonal representative's attorney of record, if any, and to any
19 parties named defendant in the petition.

20 Sec. 3608. Termination of appointment of a personal repre-
21 sentative occurs as provided in sections 3609 to 3612.
22 Termination ends the right and power pertaining to the office of
23 personal representative as conferred by this act or a will,
24 except that a personal representative, at any time before distri-
25 bution or until restrained or enjoined by court order, may per-
26 form an act necessary to protect the estate and may deliver
27 property to a successor personal representative. Termination

1 does not discharge a personal representative from liability for a
2 transaction or omission occurring before termination, or relieve
3 the personal representative of the duty to preserve property
4 subject to the personal representative's control, and to account
5 for and deliver that property. Termination does not affect the
6 court's jurisdiction over the personal representative, but does
7 terminate the personal representative's authority to represent
8 the estate in a pending or future proceeding.

9 Sec. 3609. The personal representative's death or a
10 conservator's appointment for the personal representative's
11 estate terminates the appointment of that individual. Until
12 appointment and qualification of a successor or special personal
13 representative to replace the deceased or protected personal rep-
14 resentative, the personal representative of the estate of the
15 deceased or conservator of the protected personal representative
16 has the duty to protect the estate possessed and being adminis-
17 tered by the decedent or ward at the time the appointment termi-
18 nates, has the power to perform acts necessary for that protec-
19 tion, and shall account for and deliver the estate property to a
20 successor or special personal representative upon the successor's
21 appointment and qualification.

22 Sec. 3610. (1) A personal representative's appointment ter-
23 minates 1 year after the filing of a closing statement as pro-
24 vided in section [3954].

25 (2) A personal representative's appointment terminates when
26 the court enters an order closing an estate as provided in
27 section [3952 or 3953].

1 (3) After giving at least [14] days' written notice to known
2 interested persons, a personal representative may resign by
3 filing a written statement of resignation with the register. If
4 no one applies or petitions for appointment of a successor per-
5 sonal representative within the time indicated in the notice, the
6 filed statement of resignation is ineffective as a termination of
7 appointment and is effective only upon the appointment and quali-
8 fication of a successor personal representative and delivery of
9 the estate property to the successor personal representative.

10 Sec. 3611. (1) An interested person may petition for
11 removal of a personal representative for cause at any time. Upon
12 filing of the petition, the court shall fix a time and place for
13 hearing. The petitioner shall give notice to the personal repre-
14 sentative and to other persons as the court orders. Except as
15 otherwise ordered under section 3607, after receipt of notice of
16 removal proceedings, the personal representative shall not act
17 except to account, to correct maladministration, or preserve the
18 estate. If removal is ordered, the court shall also direct by
19 order the disposition of the property remaining in the name of,
20 or under the control of, the personal representative being
21 removed.

22 (2) The court may remove a personal representative under any
23 of the following circumstances:

24 (a) Removal is in the best interests of the estate.

25 (b) It is shown that the personal representative or the
26 person who sought the personal representative's appointment

1 intentionally misrepresented material facts in a proceeding
2 leading to the appointment.

3 (c) The personal representative did any of the following:

4 (i) Disregarded a court order.

5 (ii) Became incapable of discharging the duties of office.

6 (iii) Mismanaged the estate.

7 (iv) Failed to perform a duty pertaining to the office.

8 (3) Unless the decedent's will directs otherwise, a personal
9 representative appointed at the decedent's domicile, incident to
10 securing appointment of an ancillary personal representative, may
11 obtain removal of another who was appointed personal representa-
12 tive in this state to administer in state assets.

13 Sec. 3612. Except as otherwise ordered in formal proceed-
14 ings, the probate of a will after the appointment of a personal
15 representative in intestacy or under a will that is superseded by
16 formal probate of another will, or the vacation of an informal
17 probate of a will after the appointment of the personal represen-
18 tative under that will, does not terminate the personal
19 representative's appointment, although the personal
20 representative's powers may be reduced as provided in section
21 3401. Termination occurs upon appointment in informal or formal
22 appointment proceedings of a person entitled to appointment under
23 the later assumption concerning testacy. If no request for new
24 appointment is made within [28] days after expiration of time for
25 appeal from the order in formal testacy proceedings, or from the
26 informal probate, changing the assumption concerning testacy, the
27 previously appointed personal representative upon request may be

1 appointed personal representative under the subsequently probated
2 will, or as in intestacy as the case may be.

3 Sec. 3613. The appointment of a personal representative to
4 succeed a personal representative whose appointment is terminated
5 is governed by parts 3 and 4 of this article. After appointment
6 and qualification, a successor personal representative must be
7 substituted in all actions and proceedings in which the former
8 personal representative was a party. A notice, process, or claim
9 that was given or served upon the terminated personal representa-
10 tive need not be given to or served upon the successor personal
11 representative in order to preserve a position or right the
12 person that gave the notice or filed the claim may have obtained
13 or preserved with reference to the former personal
14 representative. Except as the court otherwise orders, the suc-
15 cessor personal representative has the powers and duties in
16 respect to the continued administration that the former personal
17 representative would have had if the appointment had not been
18 terminated.

19 Sec. 3614. A special personal representative may be
20 appointed in any of the following circumstances:

21 (a) Informally by the register on the application of an
22 interested person if necessary to protect the estate of a dece-
23 dent before the appointment of a general personal representative
24 or if a prior appointment is terminated as provided in
25 section 3609.

26 (b) By the court on its own motion or in a formal proceeding
27 by court order on the petition of an interested person if in

1 either case, after notice and hearing, the court finds that the
2 appointment is necessary to preserve the estate or to secure its
3 proper administration, including its administration in circum-
4 stances in which a general personal representative cannot or
5 should not act. If it appears to the court that an emergency
6 exists, the court may order the appointment without notice.

7 Sec. 3615. (1) If a special personal representative is to
8 be appointed pending the probate of a will that is the subject of
9 a pending application or petition for probate, the person named
10 personal representative in the will shall be appointed as the
11 special personal representative, if available and qualified [,unless
the court finds the appointment is not in the best interest of the
estate or the estate's beneficiaries].

12 (2) In any other case, the court may appoint any proper
13 person as special personal representative.

14 Sec. 3616. A special personal representative appointed by
15 the register in informal proceedings as provided in section 3614
16 has the duty to collect and manage the estate property, to pre-
17 serve and account for the property, and to deliver the property
18 to the general personal representative upon qualification. This
19 special personal representative has the power of a personal rep-
20 resentative under this act necessary to perform his or her
21 duties.

22 Sec. 3617. A special personal representative appointed by
23 order of the court in a formal proceeding has a general personal
24 representative's power except as limited in the appointment and
25 duties as prescribed in the order. The appointment may be for a
26 specified time, to perform particular acts, or on other terms as
27 the court directs.

1 Sec. 3703. (1) A personal representative is a fiduciary who
2 shall observe the standard of care applicable to a trustee as
3 described by section 7302. A personal representative is under a
4 duty to settle and distribute the decedent's estate in accordance
5 with the terms of a probated and effective will and this act, and
6 as expeditiously and efficiently as is consistent with the best
7 interests of the estate. The personal representative shall use
8 the authority conferred by this act, the terms of the will, if
9 any, and an order in a proceeding to which the personal represen-
10 tative is party for the best interests of claimants whose claims
11 have been allowed and of successors to the estate.

12 (2) A personal representative shall not be surcharged for
13 acts of administration or distribution if the conduct in question
14 was authorized at the time. Subject to other obligations of
15 administration, an informally probated will is authority to
16 administer and distribute the estate according to the will's
17 terms. Whether issued in an informal or formal proceeding, an
18 order of appointment of a personal representative is authority to
19 distribute apparently intestate property to the decedent's heirs
20 if, at the time of distribution, the personal representative is
21 not aware of a pending testacy proceeding, a proceeding to vacate
22 an order entered in an earlier testacy proceeding, a formal pro-
23 ceeding questioning the personal representative's appointment or
24 fitness to continue, or a supervised administration proceeding.
25 Nothing in this section affects the personal representative's
26 duty to administer and distribute the estate in accordance with
27 the rights of a claimant whose claim has been allowed, the

1 surviving spouse, a minor or dependent child, or a pretermitted
2 child of the decedent as described elsewhere in this act.

3 (3) Except as to a proceeding that does not survive the
4 decedent's death, a personal representative of a decedent domi-
5 ciled in this state at death has the same standing to sue and be
6 sued in the courts of this state and the courts of another juris-
7 diction as the decedent had immediately prior to death.

8 (4) The personal representative shall keep each presumptive
9 distributee informed of the estate settlement. Until a
10 beneficiary's share is fully distributed, the personal represen-
11 tative shall annually, and upon completion of the estate settle-
12 ment, account to each beneficiary by supplying a statement of the
13 activities of the estate and of the personal representative,
14 specifying all receipts and disbursements and identifying prop-
15 erty belonging to the estate.

16 Sec. 3704. A personal representative shall proceed expedi-
17 tiously with the settlement and distribution of a decedent's
18 estate and, except as otherwise specified or ordered in regard to
19 a supervised personal representative, do so without adjudication,
20 order, or direction of the court. However, the personal repre-
21 sentative may invoke the court's jurisdiction in a proceeding
22 authorized by this act to resolve a question concerning the
23 estate or its administration.

24 Sec. 3705. (1) Not later than [28] days after a personal
25 representative's appointment or other time specified by court
26 rule, the personal representative, except a special personal
27 representative, shall give notice of the appointment to the

1 decedent's heirs and devisees, except those who have executed a
2 written waiver of notice, including, if there has been no formal
3 testacy proceeding and if the personal representative is
4 appointed on the assumption that the decedent died intestate, the
5 devisees in a will mentioned in the application for appointment
6 of a personal representative and to the trustee of a trust
7 described in section 7501(1) as to which the decedent was
8 settlor. The personal representative shall give the notice by
9 personal service or by ordinary first-class mail to each person
10 required to receive notice under this subsection whose address is
11 reasonably available to the personal representative. However,
12 the personal representative is not required to notify a person
13 who was adjudicated in a prior formal testacy proceeding to have
14 no interest in the estate. The notice required under this sec-
15 tion must be in a form approved by the supreme court and must
16 include all of the following information:

17 (a) That the court will not supervise the personal
18 representative. This statement shall not be included if the
19 appointment is made in a supervised proceeding under part 5 of
20 this article.

21 (b) That, unless a person files a written objection to the
22 appointment of the person named as personal representative in the
23 notice or files a demand that bond or higher bond be posted, the
24 person named in the notice is the personal representative without
25 bond or with bond in the amount shown in the notice. This state-
26 ment shall not be included if the personal representative is
27 appointed in a formal appointment proceeding.

1 (c) The name and address of the person appointed as the
2 estate's personal representative.

3 (d) That, during the course of administering the estate, the
4 personal representative must provide all interested persons with
5 all of the following:

6 (i) A copy of the petition for the personal representative's
7 appointment and a copy of the will, if any, with the notice.

8 (ii) A copy of the inventory.

9 (iii) A copy of the settlement petition or of the closing
10 statement.

[(iv) Unless waived, a copy of the account, including, but not
limited to, fiduciary fees and attorney fees charged to the estate.]

11 (e) That an interested [person] may petition the court for a
12 court hearing on any matter at any time during the estate's
13 administration [, including, but not limited to, distribution of
assets and expenses of administration].

14 (f) That federal and Michigan estate taxes, if any, must be
15 paid within 9 months after the date of the decedent's death or
16 another time period specified by law, to avoid penalties.

17 (g) That, if the estate is not settled within [1 year]
18 after the personal representative's appointment, within [28] days
19 after the anniversary of the appointment, the personal represen-
20 tative must file with the court and send to each interested
21 person a notice that the estate remains under administration and
22 must specify the reason for the continuation of settlement
23 proceedings. If such a notice is not received, an interested
24 person may petition the court for a hearing on the necessity for
25 continued administration or for closure of the estate.

26 (h) The identity and location of the court where papers
27 relating to the estate are on file.

1 (2) The personal representative's failure to give the
2 information required by subsection (1) is a breach of the per-
3 sonal representative's duty to the persons concerned, but does
4 not affect the validity of the personal representative's appoint-
5 ment, powers, or other duties. A personal representative may
6 inform other persons of the appointment by delivery or ordinary
7 first-class mail.

8 (3) A personal representative shall also give notice that
9 includes the information described in subsection (1) to the
10 attorney general, public administration division, under any of
11 the following circumstances:

12 (a) It appears from the petition that the decedent died
13 intestate without leaving a known heir.

14 (b) In the administration of an intestate estate, it appears
15 that the decedent did not leave a known heir.

16 (c) In the administration of a testate estate, it appears
17 that devisees of the purported will would not be entitled to
18 share in the estate but for the terms of the will and that the
19 decedent died without leaving a known heir.

20 (4) If notice is required to be given to the attorney gen-
21 eral under subsection (3), the attorney general, representing the
22 state, has all the rights of an heir to be heard and to contest
23 the validity of a claim, the appointment of a personal represen-
24 tative, an action of the personal representative, an order, an
25 appointment, or an instrument purporting to be a decedent's con-
26 tract or will, and has all the rights granted or accruing to an
27 heir, representative, or creditor by a law relating to the

1 settlement of a testate or intestate estate in court, or by way
2 of rehearing or appeal.

3 (5) Within [28] days after the personal representative's
4 appointment or another time specified by court rule, the personal
5 representative, except a special personal representative, shall
6 notify the decedent's surviving spouse, if any, of the spouse's
7 right to election under part 2 of article II and of the time
8 within which the election must be exercised.

9 Sec. 3706. (1) Within [91 days] after appointment or other
10 time specified by court rule, a personal representative, who is
11 not a special personal representative or a successor to another
12 representative who has previously discharged this duty, shall
13 prepare an inventory of property owned by the decedent at the
14 time of death, listing it with reasonable detail, and indicating
15 as to each listed item, its fair market value as of the date of
16 the decedent's death, and the type and amount of an encumbrance
17 that may exist with reference to each listed item.

18 (2) The personal representative shall send a copy of the
19 inventory to all presumptive distributees and to all other inter-
20 ested persons who request it, and may also file the original of
21 the inventory with the court. The personal representative shall
22 submit to the court on a timely basis information necessary to
23 calculate the probate inventory fee.

24 Sec. 3707. The personal representative may employ a quali-
25 fied and disinterested appraiser to assist in ascertaining the
26 fair market value as of the date of the decedent's death of
27 property, the value of which may be subject to reasonable doubt.

1 Different persons may be employed to appraise different kinds of
2 property included in the estate. Each appraiser's name and
3 address shall be indicated on the inventory with the item or
4 items he or she appraised.

5 Sec. 3708. If property not included in the original inven-
6 tory comes to the knowledge of a personal representative or if
7 the personal representative learns that the value or description
8 indicated in the original inventory for an item is erroneous or
9 misleading, the personal representative shall make a supplemen-
10 tary inventory or appraisal showing the market value as of the
11 date of the decedent's death of the new item or the revised
12 market value or description, and showing the appraiser or other
13 data relied upon, if any. The personal representative shall fur-
14 nish copies or information of the supplementary inventory to per-
15 sons interested in the new information, and shall file it with
16 the court if the original inventory was filed or submit the
17 information contained in the supplemental inventory to the court
18 for recalculation of the probate inventory fee.

19 Sec. 3709. Except as otherwise provided by a decedent's
20 will or by this section, a personal representative has a right
21 to, and if necessary for purposes of administration, shall take
22 possession or control of, the decedent's property, except that
23 real property or tangible personal property may be left with or
24 surrendered to the person presumptively entitled to that property
25 unless or until, in the personal representative's judgment, pos-
26 session of the property will be necessary for purposes of
27 administration. A personal representative's request for delivery

1 of property possessed by an heir or devisee is conclusive
2 evidence, in an action against the heir or devisee for possession
3 of that property, that the possession of the property by the per-
4 sonal representative is necessary for purposes of
5 administration. The personal representative shall pay taxes on,
6 and take all steps reasonably necessary for the management, pro-
7 tection, and preservation of, the estate in the personal
8 representative's possession. The personal representative may
9 maintain an action to recover possession of, or to determine the
10 title to, property.

11 Sec. 3710. The property liable for the payment of unsecured
12 debts of a decedent includes all property transferred by the
13 decedent by any means that is in law void or voidable as against
14 the decedent's creditors, and subject to prior liens, the right
15 to recover this property, so far as necessary for the payment of
16 the decedent's unsecured debts, is exclusively in the personal
17 representative.

18 Sec. 3711. Until termination of the appointment, a personal
19 representative has the same power over the title to estate prop-
20 erty that an absolute owner would have, in trust, however, for
21 the benefit of creditors or others interested in the estate.
22 This power may be exercised without notice, hearing, or court
23 order.

24 Sec. 3712. If the exercise or failure to exercise a power
25 concerning the estate is improper, the personal representative is
26 liable to interested persons for damage or loss resulting from
27 breach of fiduciary duty to the same extent as a trustee of an

1 express trust. The right of purchasers and others dealing with a
2 personal representative shall be determined as provided in sec-
3 tions 3713 and 3714.

4 Sec. 3713. A sale or encumbrance to the personal represen-
5 tative, the personal representative's spouse, agent, or attorney,
6 or a corporation or trust in which the personal representative
7 has a substantial beneficial interest, or a transaction that is
8 affected by a substantial conflict of interest on the part of the
9 personal representative, is voidable by an interested person
10 except a person who consents after fair disclosure, unless any of
11 the following are true:

12 (a) The will or a contract entered into by the decedent
13 expressly authorized the transaction.

14 (b) The transaction is approved by the court after notice to
15 interested persons.

16 (c) The transaction is otherwise permitted by statute.

17 Sec. 3714. (1) A person who in good faith either assists a
18 personal representative or deals with the personal representative
19 for value is protected as if the personal representative properly
20 exercised a power. The fact that a person knowingly deals with a
21 personal representative does not alone require the person to
22 inquire into the existence of a power or the propriety of its
23 exercise.

24 (2) Except for restrictions on powers of supervised personal
25 representatives that are endorsed on letters as provided in sec-
26 tion 3504, a provision in a will or court order purporting to

1 limit a personal representative's power is not effective except
2 as to a person with actual knowledge of the limit.

3 (3) A person is not bound to see to the proper application
4 of estate property paid or delivered to a personal
5 representative.

6 (4) The protection under this section extends to instances
7 in which a procedural irregularity or jurisdictional defect
8 occurs in a proceeding leading to the issuance of letters,
9 including a case in which the alleged decedent is found to be
10 alive. The protection under this section does not substitute for
11 the protection provided by a comparable provision of law relating
12 to a commercial transaction or a law simplifying a transfer of
13 securities by a fiduciary. Nothing in this section discharges a
14 lien for transfer taxes that may affect title to estate
15 property.

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

21 (a) Retain property owned by the decedent pending distribu-
22 tion or liquidation including property in which the personal rep-
23 resentative is personally interested or that is otherwise
24 improper for trust investment.

25 (b) Receive property from a fiduciary or another source.

26 (c) Perform, compromise, or refuse performance of a contract
27 of the decedent that continues as an estate obligation, as the

1 personal representative determines under the circumstances. If
2 the contract is for a conveyance of land and requires the giving
3 of warranties, the personal representative shall include in the
4 deed or other instrument of conveyance the required warranties.
5 The warranties are binding on the estate as though the decedent
6 made them but do not bind the personal representative except in a
7 fiduciary capacity. In performing an enforceable contract by the
8 decedent to convey or lease land, the personal representative,
9 among other possible courses of action, may do any of the
10 following:

11 (i) Execute and deliver a deed of conveyance for cash pay-
12 ment of the amount remaining due or for the purchaser's note for
13 the amount remaining due secured by a mortgage on the land.

14 (ii) Deliver a deed in escrow with directions that the pro-
15 ceeds, when paid in accordance with the escrow agreement, be paid
16 to the decedent's successors, as designated in the escrow
17 agreement.

18 (d) If, in the judgment of the personal representative, the
19 decedent would have wanted the pledge satisfied under the circum-
20 stances, satisfy a written charitable pledge of the decedent
21 irrespective of whether the pledge constitutes a binding obliga-
22 tion of the decedent or is properly presented as a claim.

23 (e) If funds are not needed to meet a debt or expenses cur-
24 rently payable and are not immediately distributable, deposit or
25 invest liquid assets of the estate, including funds received from
26 the sale of other property in accordance with the Michigan
27 prudent investor rule.

1 (f) Acquire or dispose of property, including land in this
2 or another state, for cash or on credit, at public or private
3 sale; and manage, develop, improve, exchange, partition, change
4 the character of, or abandon estate property.

5 (g) Make an ordinary or extraordinary repair or alteration
6 in a building or other structure, demolish an improvement, or
7 raze an existing or erect a new party wall or building.

8 (h) Subdivide, develop, or dedicate land to public use, make
9 or obtain the vacation of a plat or adjust a boundary, adjust a
10 difference in valuation on exchange or partition by giving or
11 receiving consideration, or dedicate an easement to public use
12 without consideration.

13 (i) Enter into a lease as lessor or lessee for any purpose,
14 with or without an option to purchase or renew, for a term within
15 or extending beyond the period of administration.

16 (j) Enter into a lease or arrangement for exploration and
17 removal of minerals or another natural resource, or enter into a
18 pooling or unitization agreement.

19 (k) Abandon property when, in the opinion of the personal
20 representative, it is valueless, or is so encumbered or in such a
21 condition as to be of no benefit to the estate.

22 (l) Vote stocks or another security in person or by general
23 or limited proxy.

24 (m) Pay a call, assessment, or another amount chargeable or
25 accruing against or on account of a security, unless barred by a
26 provision relating to claims.

1 (n) Hold a security in the name of a nominee or in other
2 form without disclosure of the estate's interest. However, the
3 personal representative is liable for an act of the nominee in
4 connection with the security so held.

5 (o) Insure the estate property against damage, loss, and
6 liability and insure the personal representative against liabil-
7 ity as to third persons.

8 (p) Borrow money with or without security to be repaid from
9 the estate property or otherwise, and advance money for the
10 estate's protection.

11 (q) Effect a fair and reasonable compromise with a debtor or
12 obligor, or extend, renew, or in any manner modify the terms of
13 an obligation owing to the estate. If the personal representa-
14 tive holds a mortgage, pledge, or other lien upon another
15 person's property, the personal representative may, in lieu of
16 foreclosure, accept a conveyance or transfer of encumbered prop-
17 erty from the property's owner in satisfaction of the indebted-
18 ness secured by lien.

19 (r) Pay a tax, an assessment, the personal representative's
20 compensation, or another expense incident to the estate's
21 administration.

22 (s) Sell or exercise a stock subscription or conversion
23 right.

24 (t) Consent, directly or through a committee or other agent,
25 to the reorganization, consolidation, merger, dissolution, or
26 liquidation of a corporation or other business enterprise.

1 (u) Allocate items of income or expense to either estate
2 income or principal, as permitted or provided by law.

3 (v) Employ, and pay reasonable compensation for [reasonably
4 necessary] services
5 performed by, a person, including, but not limited to, an [
6] auditor, investment advisor, or agent, even if the person is
7 associated with the personal representative, to advise or assist
8 the personal representative in the performance of administrative
9 duties; act on such a person's recommendations without indepen-
10 dent investigation; and instead of acting personally, employ 1 or
11 more agents to perform an act of administration, whether or not
12 discretionary.

[w) Employ an attorney to perform necessary legal services or
to advise or assist the personal representative in the performance
of the personal representative's administrative duties. An attorney
employed under this subdivision shall receive reasonable
compensation for that employment.]

12 [(x)] Prosecute or defend a claim or proceeding in any juris-
13 diction for the protection of the estate and of the personal rep-
14 resentative in the performance of the personal representative's
15 duties.

16 [(y)] Sell, mortgage, or lease estate property or an interest
17 in estate property for cash, credit, or part cash and part
18 credit, and with or without security for unpaid balances.

19 [(z)] Continue a business or venture in which the decedent was
20 engaged at the time of death as a sole proprietor or a general
21 partner, including continuation as a general partner by a per-
22 sonal representative that is a corporation in any of the follow-
23 ing manners:

24 (i) In the same business form for a period of not more than
25 4 months after the date of appointment of a general personal rep-
26 resentative if continuation is a reasonable means of preserving
27 the value of the business, including goodwill.

1 (ii) In the same business form for an additional period of
2 time that may be approved by court order in a formal proceeding
3 to which the persons interested in the estate are parties.

4 (iii) Throughout the period of administration if the per-
5 sonal representative incorporates the business or converts the
6 business to a limited liability company and if none of the proba-
7 ble distributees of the business who are competent adults object
8 to its incorporation or conversion and its retention in the
9 estate.

10 [(aa)] Change the form of a business or venture in which the
11 decedent was engaged at the time of death through incorporation
12 or formation as a limited liability company, or other entity
13 offering protection against or limiting exposure to liabilities.

14 [(bb)] Provide for the personal representative's exoneration
15 from personal liability in a contract entered into on the
16 estate's behalf.

17 [(cc)] Respond to an environmental concern or hazard affecting
18 estate property as provided in section 3722.

19 [(dd)] Satisfy and settle claims and distribute the estate as
20 provided in this act.

21 [(ee)] Make tax elections that are appropriate in order to
22 carry out the decedent's estate planning objectives and to reduce
23 the overall burden of taxation, both in the present and in the
24 future. This authority includes, but is not limited to, all of
25 the following:

26 (i) Electing to take expenses as estate tax or income tax
27 deductions.

1 (ii) Electing to allocate the exemption from the tax on
2 generation skipping transfers among transfers subject to estate
3 or gift tax.

4 (iii) Electing to have all or a portion of a transfer for a
5 spouse's benefit qualify for the marital deduction.

6 [(ff)] Divide portions of the estate, including portions to be
7 allocated into trust, into 2 or more separate portions or trusts
8 with substantially identical terms and conditions, and allocate
9 property between them, in order to simplify administration for
10 generation skipping transfer tax purposes, to segregate property
11 for management purposes, or to meet another estate or trust
12 objective.

13 Sec. 3716. A successor personal representative has the same
14 powers and duties as the original personal representative to com-
15 plete the administration and distribution of the estate, as expe-
16 ditiously as possible, but the successor personal representative
17 shall not exercise a power expressly made personal to the per-
18 sonal representative named in the will.

19 Sec. 3717. If 2 or more persons are appointed personal co-
20 representatives and unless the will provides otherwise, the con-
21 currence of all is required on an act connected with the estate's
22 administration or distribution. This restriction does not apply
23 if a personal corepresentative receives and gives a receipt for
24 property due the estate, if the concurrence of all cannot readily
25 be obtained in the time reasonably available for emergency action
26 necessary to preserve the estate, or if a personal
27 corepresentative has been delegated to act for the other. If

1 actually unaware that another also has been appointed to serve or
2 if advised by the personal representative with whom the person
3 deals that 1 personal representative alone has authority to act
4 for a reason mentioned in this section, a person dealing with a
5 personal corepresentative is as fully protected as if the per-
6 sonal corepresentative with whom the person deals is the sole
7 personal representative.

8 Sec. 3718. Unless the will provides otherwise, each power
9 exercisable by personal corepresentatives may be exercised by the
10 1 or more remaining personal corepresentatives after the appoint-
11 ment of 1 or more is terminated. Unless the will provides other-
12 wise, if 1 of 2 or more persons nominated as personal corepresen-
13 tatives is not appointed, those or the 1 appointed may exercise
14 all the powers incident to the office.

15 Sec. 3719. (1) A personal representative is entitled to
16 reasonable compensation for services performed. A personal rep-
17 resentative may pay the personal representative's own compensa-
18 tion periodically as earned without prior court approval.

[(2) If an attorney serves as personal representative, the attorney shall maintain time records that state the identity of the person performing personal representative services, the date the services are performed, the amount of time expended in performing the services, and a brief description of the services. Upon request of an interested person affected by payment of personal representative fees, the attorney shall send the time records to the interested person.]

19 [(3)] If a will provides for the personal representative's
20 compensation and there is no contract with the decedent regarding
21 compensation, the personal representative may renounce the provi-
22 sion before qualifying and be entitled to reasonable
23 compensation. A written contract between the decedent and the
24 personal representative regarding compensation for estate settle-
25 ment services is binding on the personal representative.

26 [(4)] A personal representative also may renounce the right to
27 all or a part of the compensation. A written renunciation of fee

1 entity, for the purpose of determining compliance with
2 environmental law affecting the property and to respond to an
3 actual or threatened violation of an environmental law affecting
4 property held by the personal representative.

5 (b) Take action necessary to prevent, abate, or otherwise
6 remedy an actual or threatened violation of an environmental law
7 affecting property held by the personal representative, either
8 before or after a governmental body initiates an enforcement
9 action.

10 (c) Settle or compromise at any time a claim against the
11 estate that a governmental body or private party may assert
12 involving the alleged violation of an environmental law affecting
13 property held in the trust or estate.

14 (d) Disclaim a power granted by a document, statute, or rule
15 of law that, in the sole discretion of the personal representa-
16 tive, may cause the personal representative to incur personal
17 liability under an environmental law.

18 (e) Decline to serve or resign as a personal representative
19 if the personal representative reasonably believes that there is
20 or may be a conflict of interest between it in its fiduciary
21 capacity and in its individual capacity because of a potential
22 claim or liability that may be asserted against the personal rep-
23 resentative on the estate's behalf because of the type or condi-
24 tion of property held in the estate.

25 (f) Charge the cost of an inspection, review, abatement,
26 response, cleanup, settlement of claim, or remedial action

1 authorized by this section against the income or principal of the
2 estate.

3 (2) A personal representative is not personally liable to a
4 beneficiary or other party for a decrease in value of estate
5 property by reason of the personal representative's compliance
6 with an environmental law, specifically including a reporting
7 requirement under that law. The personal representative's accep-
8 tance of property or failure to inspect property or a business
9 operation does not create an inference that there is or may be
10 liability under an environmental law with respect to the property
11 or business operation. The authority granted by this section is
12 solely to facilitate the administration and protection of estate
13 property and is not to impose greater responsibility or liability
14 on the personal representative than imposed by law absent this
15 section.

16 PART 8

17 CREDITORS' CLAIMS

18 Sec. 3801. (1) Unless notice has already been given, upon
19 appointment a personal representative shall publish, and a spe-
20 cial personal representative may publish, a notice as provided by
21 supreme court rule notifying estate creditors to present their
22 claims within 4 months after the date of the notice's publication
23 or be forever barred. A personal representative who has pub-
24 lished notice shall also send, within the time prescribed in sub-
25 section (2), a copy of the notice or a similar notice to each
26 estate creditor whom the personal representative knows at the
27 time of publication or during the 4 months following publication

1 and to the trustee of a trust described in section 7501(1) as to
2 which the decedent is settlor. For purposes of this section, the
3 personal representative knows a creditor of the decedent if the
4 personal representative has actual notice of the creditor or the
5 creditor's existence is reasonably ascertainable by the personal
6 representative based on an investigation of the decedent's avail-
7 able records for the 2 years immediately preceding death and mail
8 following death.

9 (2) Notice to a known creditor of the estate shall be given
10 within the following time limits:

11 (a) Within 4 months after the date of the publication of
12 notice to creditors.

13 (b) If the personal representative first knows of an estate
14 creditor less than [28 days] before the expiration of the time
15 limit in subdivision (a), within [28 days] after the personal rep-
16 resentative first knows of the creditor.

17 (3) If the personal representative or the attorney for the
18 estate in good faith believes that notice to a creditor of the
19 estate is or may be required by this section, and if the personal
20 representative gives notice based on that belief, neither the
21 personal representative nor the attorney is liable to any person
22 for having given notice.

23 (4) If the personal representative or the attorney for the
24 estate in good faith believes that notice to a person is not
25 required by this section and if the personal representative fails
26 to give notice to that person based on that belief, neither the
27 personal representative nor the attorney is personally liable to

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998 208

1 any person for the failure to give notice. Liability, if any,
2 for failure to give notice is on the estate.

3 Sec. 3802. (1) Unless an estate is insolvent, the personal
4 representative, with the consent of all interested [persons] whose
5 interests would be affected, may waive a statute of limitations
6 defense available to the estate. If a statute of limitations
7 defense is not waived, a claim that was barred by a statute of
8 limitations at the time of the decedent's death shall not be
9 allowed or paid.

10 (2) The running of a statute of limitations measured from an
11 event other than death or publication for a claim against a dece-
12 dent is suspended during the 4 months following the decedent's
13 death but resumes after that time as to a claim not barred under
14 this part.

15 (3) For purposes of a statute of limitations, the proper
16 presentation of a claim under section 3804 is equivalent to com-
17 mencement of a proceeding on the claim.

18 Sec. 3803. (1) A claim against a decedent's estate that
19 arose before the decedent's death, including a claim of the state
20 or a subdivision of the state, whether due or to become due,
21 absolute or contingent, liquidated or unliquidated, based on con-
22 tract, tort, or another legal basis, if not barred earlier by
23 another statute of limitations or nonclaim statute, is barred
24 against the estate, the personal representative, the decedent's
25 heirs and devisees, and nonprobate transferees of the decedent
26 unless presented within 1 of the following time limits:

1 (a) If notice is given in compliance with section 3801,
2 within 4 months after the date of the publication of notice to
3 creditors, except that a claim barred by a statute at the
4 decedent's domicile before the publication for claims in this
5 state is also barred in this state.

6 (b) In the case of a creditor whom the personal representa-
7 tive knows at the time of publication or during the 4 months fol-
8 lowing publication, within 1 month after the subsequent sending
9 of notice or 4 months after the date of the publication of notice
10 to creditors, whichever is later.

11 (c) If the notice requirements of section 3801 have not been
12 met, within 3 years after the decedent's death.

13 (2) A claim against the estate that arises at or after the
14 decedent's death, including a claim of the state or a subdivision
15 of the state, whether due or to become due, absolute or contin-
16 gent, liquidated or unliquidated, based on contract, tort, or
17 another legal basis, is barred against the estate, the personal
18 representative, and the decedent's heirs and devisees, unless
19 presented within 1 of the following time limits:

20 (a) For a claim based on a contract with the personal repre-
21 sentative, within 4 months after performance by the personal rep-
22 resentative is due.

23 (b) For a claim not within subdivision (a), within 4 months
24 after the claim arises or the time specified in subsection
25 (1)(a), whichever is later.

26 (3) This section does not affect or prevent any of the
27 following:

1 (a) A proceeding to enforce a mortgage, pledge, or other
2 lien on estate property.

3 (b) A proceeding to establish the decedent's or the personal
4 representative's liability for which the decedent or the personal
5 representative is protected by liability insurance to the insur-
6 ance protection limits only.

7 (c) Collection of compensation for services rendered and
8 reimbursement of expenses advanced by the personal representative
9 or by an attorney, auditor, investment adviser, or other special-
10 ized agent or assistant for the personal representative of the
11 estate.

12 Sec. 3804. (1) A claimant must present a claim against a
13 decedent's estate in either of the following ways:

14 (a) By delivering or mailing a written statement to the per-
15 sonal representative or proposed personal representative indicat-
16 ing the claim's basis, the claimant's name and address, and the
17 amount claimed, or by filing with the court a written statement
18 of the claim in the form prescribed by supreme court rule and
19 delivering or mailing a copy of the statement to the personal
20 representative or proposed personal representative. The claim
21 shall be considered presented on receipt of the claim statement
22 by the personal representative or the filing of the claim state-
23 ment with the court, whichever occurs first. If a claim is not
24 yet due, the statement shall state the date when it will become
25 due. If the claim is contingent or unliquidated, the statement
26 shall state the nature of the uncertainty. If the claim is
27 secured, the statement shall describe the security. Failure to

1 describe correctly the security, the nature of any uncertainty,
2 or the due date of a claim not yet due does not invalidate the
3 claim's presentation.

4 (b) By commencing a proceeding to obtain payment of a claim
5 against the estate in a court in which the personal representa-
6 tive may be subjected to jurisdiction. The commencement of the
7 proceeding shall occur within the time limit for presenting the
8 claim. The presentation of a claim is not required in regard to
9 a matter claimed in a proceeding against the decedent that is
10 pending at the time of death.

11 (2) Except as otherwise provided in this subsection, if a
12 claim is presented under subsection (1)(a), a proceeding on the
13 claim shall not be commenced more than 63 days after the personal
14 representative delivers or mails a notice of disallowance to the
15 claimant. For a claim that is not presently due or that is con-
16 tingent or unliquidated, the personal representative may consent
17 to an extension of the 63-day period or, to avoid injustice, the
18 court, on petition, may order an extension of the 63-day period,
19 but an extension shall not be consented to or ordered if the
20 extension would run beyond the applicable statute of
21 limitations.

22 (3) A claim by the personal representative against the
23 estate shall be in the form prescribed by supreme court rule.
24 The personal representative must give a copy of the claim to all
25 interested persons not later than 7 days after the time for the
26 claim's original presentation expires. The claim must contain a
27 warning that the personal representative's claim will be allowed

1 unless a notice of objection is delivered or mailed to the
2 personal representative within 63 days after the time for the
3 claim's original presentation expires. This subsection does not
4 apply to a claim for compensation for services rendered or for
5 reimbursement of expenses advanced by the personal
6 representative.

7 Sec. 3805. (1) If the applicable estate property is insuf-
8 ficient to pay all claims in full, the personal representative
9 shall make payment in the following order of priority:

10 (a) Costs and expenses of administration.

11 (b) Reasonable funeral and burial expenses.

12 (c) Debts and taxes with priority under federal law.

13 (d) Reasonable and necessary medical and hospital expenses
14 of the decedent's last illness, including a compensation of per-
15 sons attending the decedent.

16 (e) Debts and taxes with priority under other laws of this
17 state.

18 (f) All other claims.

19 (2) A preference shall not be given in the payment of a
20 claim over another claim of the same class, and a claim due and
21 payable is not entitled to a preference over a claim not due.

22 (3) If there are insufficient assets to pay all claims in
23 full or to satisfy homestead allowance, family allowance, and
24 exempt property, the personal representative shall certify the
25 amount and nature of the deficiency to the trustee of a trust
26 described in section 7501(1) for payment by the trustee in
27 accordance with section 7502. If the personal representative is

1 aware of other nonprobate transfers that may be liable for claims
2 and allowances, then, unless the will provides otherwise, the
3 personal representative shall proceed to collect the deficiency
4 in a manner reasonable under the circumstances so that each non-
5 probate transfer, including those made under a trust described in
6 section 7501(1), bears a proportionate share or equitable share
7 of the total burden.

8 Sec. 3806. (1) If a claim is presented in the manner
9 described in section 3804 and within the time limit prescribed in
10 section 3803, the personal representative may deliver or mail a
11 notice to a claimant stating that the claim has been disallowed
12 in whole or in part. If, after allowing or disallowing a claim,
13 the personal representative changes a decision concerning the
14 claim, the personal representative shall notify the claimant.
15 The personal representative shall not change a decision disallow-
16 ing a claim if the time for the claimant to file a petition for
17 allowance passes or if the time to commence a proceeding on the
18 claim expires and the claim is barred. A claim that the personal
19 representative disallows in whole or in part is barred to the
20 extent disallowed unless the claimant files a petition for allow-
21 ance in the court or commences a proceeding against the personal
22 representative not later than 63 days after the mailing of the
23 notice of disallowance or partial allowance if the notice warns
24 the claimant of the impending bar.

25 (2) The personal representative's failure to deliver or mail
26 to a claimant notice of action on the claim within 63 days after
27 the time for the claim's presentation expires or within 63 days

1 after the personal representative's appointment, whichever is
2 later, constitutes a notice of allowance. An interested person's
3 failure to deliver or mail to the personal representative notice
4 of an objection to a personal representative's claim within 63
5 days after the time the claim's original presentation expires
6 constitutes a notice of allowance.

7 (3) After allowing or disallowing a claim, the personal rep-
8 resentative may change the allowance or disallowance as provided
9 in this subsection. Before payment of a claim, the personal rep-
10 resentative may change the allowance to a disallowance in whole
11 or in part, but not after allowance by a court order or judgment
12 or an order directing the claim's payment. The personal repre-
13 sentative shall notify the claimant of the change to disallow-
14 ance, and the disallowed claim is then subject to bar as provided
15 in subsection (1). The personal representative may change a dis-
16 allowance to an allowance, in whole or in part, until it is
17 barred under subsection (1). After a claim is barred, it may be
18 allowed and paid only if the estate is solvent and all successors
19 whose interests would be affected consent.

20 (4) Upon the personal representative's or a claimant's peti-
21 tion, the court may allow in whole or in part a claim properly
22 presented in due time and not barred by subsection (1). Upon an
23 interested person's petition concerning a personal
24 representative's claim, the court may allow in whole or in part
25 the personal representative's claim properly presented in due
26 time and not previously allowed under subsection (1).

1 (5) A judgment in a proceeding in another court against a
2 personal representative to enforce a claim against a decedent's
3 estate constitutes an allowance of the claim.

4 (6) Unless otherwise provided in a judgment in another court
5 entered against the personal representative, an allowed claim
6 bears interest at a rate determined under section 6013 of the
7 revised judicature act of 1961, 1961 PA 236, MCL 600.6013, for
8 the period commencing 63 days after the time for the claim's
9 original presentation expires unless based on a contract provid-
10 ing for interest, in which case the claim bears interest in
11 accordance with the contract.

12 Sec. 3807. (1) Upon the expiration of 4 months after the
13 publication date of the notice to creditors, and after providing
14 for the homestead, family, and exempt property allowances, for
15 claims already presented that have not yet been allowed or whose
16 allowance has been appealed, and for unbarred claims that may yet
17 be presented, including costs and expenses of administration, the
18 personal representative shall pay the claims allowed against the
19 estate in the order of priority as provided in this act. A
20 claimant whose claim has been allowed, but not paid as provided
21 in this section, may petition the court to secure an order
22 directing the personal representative to pay the claim to the
23 extent that property of the estate is available for the payment.

24 (2) The personal representative may pay a claim that is not
25 barred at any time, with or without formal presentation, but is
26 individually liable to another claimant whose claim is allowed

1 and who is injured by the payment if either of the following
2 occurs:

3 (a) Payment is made before the expiration of the time limit
4 stated in subsection (1) and the personal representative fails to
5 require the payee to give adequate security for the refund of any
6 of the payment necessary to pay another claimant.

7 (b) Payment is made, due to the negligence or willful fault
8 of the personal representative, in a manner that deprives the
9 injured claimant of priority.

10 (3) If a claim is allowed, but the claimant's whereabouts
11 are unknown at the time the personal representative attempts to
12 pay the claim, upon petition by the personal representative and
13 after notice that the court considers advisable, the court may
14 disallow the claim. If the court disallows a claim under this
15 subsection, the claim is barred.

16 Sec. 3808. (1) Unless otherwise provided in the contract, a
17 personal representative is not individually liable on a contract
18 properly entered into in the personal representative's fiduciary
19 capacity in the course of administration of the estate unless the
20 personal representative fails to reveal his or her representative
21 capacity and to identify the estate in the contract.

22 (2) A personal representative is individually liable for an
23 obligation arising from ownership or control of the estate or for
24 a tort committed in the course of estate administration only if
25 the personal representative is personally at fault.

26 (3) A claim based on a contract entered into by a personal
27 representative in the personal representative's fiduciary

1 capacity, on an obligation arising from ownership or control of
2 the estate, or on a tort committed in the course of estate admin-
3 istration may be asserted against the estate by proceeding
4 against the personal representative in the personal
5 representative's fiduciary capacity, whether or not the personal
6 representative is individually liable.

7 (4) An issue of liability between the estate and the per-
8 sonal representative individually may be determined in a proceed-
9 ing for accounting, surcharge, or indemnification or in another
10 appropriate proceeding.

11 Sec. 3809. A personal representative shall pay a secured
12 claim on the basis of the amount allowed if the creditor surren-
13 ders the security. Otherwise, the personal representative shall
14 pay on the basis of 1 of the following:

15 (a) If the creditor exhausts the security before receiving
16 payment, upon the amount of the claim allowed less the fair value
17 of the security.

18 (b) If the creditor does not have the right to exhaust the
19 security or has not done so, upon the amount of the claim allowed
20 less the value of the security determined by converting it into
21 money according to the terms of the agreement under which the
22 security was delivered to the creditor or by the creditor and
23 personal representative by agreement, arbitration, compromise, or
24 litigation.

25 Sec. 3810. (1) This section applies to a claim that will
26 become due at a future time, a contingent claim, and an
27 unliquidated claim.

1 (2) If a claim becomes due or certain before distribution of
2 the estate and if the claim has been allowed or established by a
3 proceeding, the claim shall be paid in the same manner as a pres-
4 ently due and absolute claim of the same class.

5 (3) For a claim not covered by subsection (2), the personal
6 representative or, on the personal representative's or claimant's
7 petition in a proceeding for the purpose, the court may provide
8 for payment in 1 of the following manners:

9 (a) If the claimant consents, the claimant may be paid the
10 claim's present or agreed value, taking any uncertainty into
11 account.

12 (b) Arrangement for future payment, or possible payment, on
13 the happening of a contingency or on liquidation may be made by
14 creating a trust, giving a mortgage, obtaining a bond or security
15 from a distributee, or otherwise.

16 Sec. 3811. In allowing a claim, the personal representative
17 may deduct a counterclaim that the estate has against the
18 claimant. In determining a claim against an estate, the court
19 shall reduce the amount allowed by the amount of a counterclaim
20 and, if counterclaims exceed the claim, render a judgment against
21 the claimant in the excess amount. A counterclaim, liquidated or
22 unliquidated, may arise from a transaction other than that upon
23 which the claim is based. A counterclaim may give rise to relief
24 exceeding in amount or different in kind from that sought in the
25 claim.

26 Sec. 3812. An execution shall not issue upon nor shall a
27 levy be made against estate property under a judgment against a

1 decedent or personal representative. This section shall not be
2 construed to prevent the enforcement of a mortgage, pledge, or
3 lien upon property in an appropriate proceeding.

4 Sec. 3813. If a claim against the estate is presented in
5 the manner provided in section 3804 and it appears to be in the
6 estate's best interest, the personal representative may settle
7 the claim, whether due or not due, absolute or contingent, liqui-
8 dated or unliquidated.

9 Sec. 3814. If property of the estate is encumbered by mort-
10 gage, pledge, lien, or other security interest and it appears to
11 be in the estate's best interest, the personal representative may
12 pay the encumbrance or a part of the encumbrance, renew or extend
13 an obligation secured by the encumbrance, or convey or transfer
14 the property to the creditor in satisfaction of the lien, in
15 whole or in part, whether or not the encumbrance holder has
16 presented a claim. Payment of an encumbrance does not increase
17 the share of the distributee entitled to the encumbered property
18 unless the distributee is entitled to exoneration.

19 Sec. 3815. (1) Estate property being administered in this
20 state is subject to a claim, allowance, or charge existing or
21 established against the personal representative wherever
22 appointed.

23 (2) If the estate, either in this state or as a whole, is
24 insufficient to cover all family exemptions and allowances deter-
25 mined by the law of the decedent's domicile, prior charges, and
26 claims, after satisfaction of the exemptions, allowances, and
27 charges, each claimant whose claim has been allowed, either in

1 this state or elsewhere in administrations of which the personal
2 representative is aware, is entitled to receive payment of an
3 equal proportion of the claim. If a preference or security in
4 regard to a claim is allowed in another jurisdiction but not in
5 this state, the benefited creditor shall receive dividends from
6 property located in this state only upon the balance of the claim
7 after deducting the amount of the benefit.

8 (3) If the family exemptions, allowances, prior charges, and
9 claims of the entire estate exceed the total value of the por-
10 tions of the estate being administered in separate states and if
11 this state is not the state of the decedent's last domicile, a
12 claim allowed in this state shall be paid from property located
13 in this state if that property is adequate for the purpose, and
14 after that payment, the balance of that property shall be trans-
15 ferred to the domiciliary personal representative. If local
16 property located in this state is not sufficient to pay all
17 claims allowed in this state, that property shall be marshaled so
18 that each claim allowed in this state shall be paid its propor-
19 tion as far as possible, after taking into account all dividends
20 on claims allowed in this state from property in other
21 jurisdictions.

22 PART 9

23 SPECIAL PROVISIONS RELATING TO DISTRIBUTION

24 Sec. 3901. In the absence of administration, the decedent's
25 heirs and devisees are entitled to the estate in accordance with
26 the terms of a probated will or the laws of intestate
27 succession. A devisee may establish title by the probated will

1 to devised property. An individual entitled to property by
2 homestead allowance, exemption, or intestacy may establish title
3 to the property by proof of the decedent's ownership, the
4 decedent's death, and the individual's relationship to the
5 decedent. A successor takes subject to charges for administra-
6 tion, including the creditors' claims and the surviving spouse's
7 and dependent children's allowances, and subject to the rights of
8 others resulting from abatement, retainer, advancement, or
9 redemption.

10 Sec. 3902. (1) Subject to subsection (2) and except as pro-
11 vided in connection with the share of the surviving spouse who
12 elects to take an elective share, distributees' shares abate,
13 without a preference or priority between real and personal prop-
14 erty, in the following order:

15 (a) Property not disposed of by the will.

16 (b) Residuary devisees.

17 (c) General devisees.

18 (d) Specific devisees.

19 (2) For purposes of abatement, a general devise charged on
20 specific property is a specific devise to the extent of the value
21 of that specific property and, upon the failure or insufficiency
22 of the property on which the devise is charged, a general devise
23 to the extent of the failure or insufficiency. Abatement within
24 each classification is in proportion to the amount of property
25 each beneficiary would have received if full distribution of the
26 property had been made in accordance with the terms of the will.

1 (3) If the will expresses a different order of abatement,
2 the will controls. If the testamentary plan or the devise's
3 express or implied purpose would be defeated by the order of
4 abatement stated in subsection (1), the distributees' shares
5 abate as found necessary to give effect to the testator's
6 intention.

7 (4) If the subject of a preferred devise is sold or used
8 incident to administration, abatement shall be achieved by appro-
9 priate adjustments in, or contribution from, other interests in
10 the remaining assets.

11 Sec. 3903. The amount of a successor's noncontingent
12 indebtedness to the estate if due, or its present value if not
13 due, shall be offset against the successor's interest. However,
14 the successor has the benefit of a defense that would be avail-
15 able to the successor in a direct proceeding for recovery of the
16 debt.

17 Sec. 3904. Unless a contrary intent is indicated by the
18 will, a general pecuniary devise bears interest at the legal rate
19 beginning 1 year after the first appointment of a personal repre-
20 sentative until payment.

21 Sec. 3905. In accordance with section 2518, a provision in
22 a will purporting to penalize an interested person for contesting
23 the will or instituting another proceeding relating to the estate
24 shall not be given effect if probable cause exists for institut-
25 ing a proceeding contesting the will or another proceeding relat-
26 ing to the estate.

1 Sec. 3906. (1) Unless the will indicates a contrary
2 intention, the distributable property of a decedent's estate
3 shall be distributed in kind to the extent possible through
4 application of the following provisions:

5 (a) A specific devisee is entitled to distribution of the
6 property devised to him or her, and a spouse or child who selects
7 particular estate property as provided in section 2404 shall
8 receive the property selected.

9 (b) A homestead or family allowance, or devise of a stated
10 sum of money, may be satisfied in kind provided all of the fol-
11 lowing are true:

12 (i) The person entitled to the payment does not demand pay-
13 ment in cash.

14 (ii) The property distributed in kind is valued at fair
15 market value as of its distribution date.

16 (iii) A residuary devisee does not request that the property
17 in question remain a part of the estate residue.

18 (c) The residuary estate may be distributed in any equitable
19 manner.

20 (2) Property described in subsection (1)(b) shall be valued
21 in accordance with the following:

22 (a) A security regularly traded on recognized exchanges, if
23 distributed in kind, is valued at the price for the last sale of
24 like securities traded on the business day before distribution
25 or, if there was no sale on that day, at the median between
26 amounts bid and offered at the close of that day.

1 (b) Property consisting of money owed the decedent or the
2 estate by a solvent debtor as to which there is no known dispute
3 or defense is valued at the amount due with accrued interest or
4 discounted to the distribution date.

5 (c) Property that does not have a readily ascertainable
6 value is valued as of a date not more than [28] days before the
7 distribution date, if otherwise reasonable.

8 (d) For purposes of facilitating distribution, the personal
9 representative may ascertain property value as of the time of the
10 proposed distribution in any reasonable way, including the
11 employment of qualified appraisers, even if the property may have
12 been previously appraised.

13 Sec. 3907. (1) This section governs a distribution in kind
14 in satisfaction, wholly or partly, of a pecuniary bequest or
15 transfer in trust of a pecuniary amount.

16 (2) Whether a devise or transfer in trust is pecuniary in
17 character depends upon the testator's or settlor's intention.

18 (3) If the fiduciary elects to satisfy wholly or partly in
19 kind a pecuniary devise or transfer in trust of a pecuniary
20 amount, unless the governing instrument otherwise expressly pro-
21 vides, the property the fiduciary selects for that purpose shall
22 be valued at its value on the distribution date.

23 (4) If a will or a trust agreement requires the personal
24 representative or trustee to value the property the fiduciary
25 selects for distribution as of a date other than the distribution
26 date, unless the governing instrument otherwise expressly
27 provides, the property selected to satisfy the pecuniary devise

1 or transfer in trust, together with any cash distributed, shall
2 have an aggregate value on the distribution date amounting to not
3 less than, and to the extent practicable to not more than, the
4 amount of the devise or transfer in trust as stated in, or deter-
5 mined by, the formula stated in the governing instrument.

6 (5) As used in this section, "pecuniary bequest" and
7 "transfer in trust of a pecuniary amount" mean a devise in a will
8 or a transfer under a trust agreement to, or for the benefit of,
9 the testator's or settlor's spouse of a specific amount of money
10 which amount is either expressly stated in the instrument or
11 determinable by means of a formula that is stated in the
12 instrument.

13 Sec. 3908. After the probable charges against the estate
14 are known, the personal representative may mail or deliver a pro-
15 posal for distribution to all persons who have a right to object
16 to the proposed distribution. The right of a distributee to
17 object to the proposed distribution on the basis of the kind or
18 value of property the distributee is to receive, if not waived
19 earlier in writing, terminates if the distributee fails to object
20 in a writing received by the personal representative within [28]
21 days after mailing or delivery of the proposal.

22 Sec. 3909. If distribution in kind is made, the personal
23 representative shall execute an instrument or deed of distribu-
24 tion assigning, transferring, or releasing the property to the
25 distributee as evidence of the distributee's title to the
26 property.

1 Sec. 3910. Proof that a distributee has received an
2 instrument or deed of distribution of property in kind, or
3 payment in distribution, from a personal representative is con-
4 clusive evidence that the distributee has succeeded to the inter-
5 est of the estate in the distributed property, as against all
6 persons interested in the estate, except that the personal repre-
7 sentative may recover the property or its value if the distribu-
8 tion was improper.

9 Sec. 3911. Unless the distribution or payment no longer can
10 be questioned because of adjudication, estoppel, or limitation, a
11 distributee of property that is improperly distributed or paid,
12 or a claimant that is improperly paid, is liable to return the
13 property improperly received and its income since distribution if
14 the recipient has the property. If the recipient does not have
15 the property, then the recipient is liable to return the value as
16 of the disposition date of the property improperly received and
17 its income and gain received by the recipient.

18 Sec. 3912. (1) If property distributed in kind or a secur-
19 ity interest in that property is acquired for value by a pur-
20 chaser from or lender to a distributee who has received an
21 instrument or deed of distribution from the personal representa-
22 tive, or is so acquired by a purchaser from or lender to a trans-
23 feree from such a distributee, the purchaser or lender takes
24 title free of rights of an interested person in the estate and
25 incurs no personal liability to the estate, or to an interested
26 person, whether or not the distribution was proper or supported

1 by court order or the personal representative's authority was
2 terminated before execution of the instrument or deed.

3 (2) This section protects a purchaser from or lender to a
4 distributee who, as personal representative, has executed a deed
5 of distribution to himself or herself, as well as a purchaser
6 from or lender to another distributee or his or her transferee.
7 To be protected under this section, a purchaser or lender does
8 not need to inquire whether a personal representative acted prop-
9 erly making the distribution in kind, even if the personal repre-
10 sentative and the distributee are the same person, or whether the
11 authority of the personal representative had terminated before
12 the distribution.

13 (3) A recorded instrument described in this section on which
14 an exemption listed in section 5 of 1966 PA 135, MCL 207.505, or
15 section 6 of the state real estate transfer tax act, 1993 PA 330,
16 MCL 207.526, is not noted is prima facie evidence that the trans-
17 fer is made for value. Notwithstanding this section, a purchaser
18 or lender takes title free of the lien for Michigan estate tax
19 only to the extent provided by section 43 of the Michigan estate
20 tax act, 1899 PA 188, MCL 205.243.

21 Sec. 3913. If 2 or more heirs or devisees are entitled to
22 distribution of an undivided interest in estate property, the
23 personal representative or 1 or more of the heirs or devisees may
24 petition the court to make partition before the formal or infor-
25 mal closing of the estate. After notice to the interested heirs
26 or devisees, the court shall partition the property in the same
27 manner as provided by law for a civil action of partition. The

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

228

1 court may direct the personal representative to sell property
2 that cannot be partitioned without prejudice to the owners and
3 that cannot conveniently be allotted to 1 party.

4 Sec. 3914. (1) Subject to the rights of creditors and
5 taxing authorities, competent successors may agree among them-
6 selves to alter the interests, shares, or amounts to which they
7 are entitled under the will of the decedent, or under the laws of
8 intestacy, in any way that they provide in a written agreement
9 executed by all who are affected by its provisions. If there is,
10 or may be, an interested [person] to the agreement who is a minor or
11 incapacitated individual or if there is an inalienable estate or
12 future contingent interest, after notice to the representative of
13 the individual or interest as provided by supreme court rule, the
14 court having jurisdiction of the matter may, if the agreement is
15 made in good faith and appears just and reasonable for the indi-
16 vidual or interest, direct the representative of the individual
17 or interest to sign and enter into the agreement. The personal
18 representative shall abide by the agreement's terms subject to
19 the personal representative's obligation to administer the estate
20 for the benefit of creditors, to pay all taxes and costs of
21 administration, and to carry out the fiduciary office's responsi-
22 bilities for the benefit of a successor of the decedent who is
23 not a party.

24 (2) A personal representative of a decedent's estate is not
25 required to see to the performance of a trust if the trustee of
26 the trust is another person who is willing to accept the trust.
27 Accordingly, a trustee of a testamentary trust is a successor for

1 the purposes of this section. Nothing in this section relieves a
2 trustee of a duty owed to a trust beneficiary.

3 Sec. 3915. (1) Before distributing to a trustee, the per-
4 sonal representative may require that the trust be registered if
5 the state in which it is to be administered provides for regis-
6 tration and that the trustee inform the beneficiaries as provided
7 in section 7303.

8 (2) If the trust instrument does not excuse the trustee from
9 giving bond, the personal representative may petition the appro-
10 priate court to require that the trustee post bond if the per-
11 sonal representative apprehends that distribution might jeopar-
12 dize the interests of persons who are not able to protect them-
13 selves, and the personal representative may withhold distribution
14 until the court acts.

15 (3) An inference of negligence on the personal
16 representative's part shall not be drawn from failure to exercise
17 the authority conferred by subsections (1) and (2).

18 (4) If it becomes necessary or convenient in the settlement
19 or distribution of a decedent's estate to appoint a trustee to
20 take charge of or invest and distribute a portion of the estate,
21 the court may appoint a trustee upon the [request] of the per-
22 sonal representative or another interested person.

23 Sec. 3916. (1) In exchange for suitable receipts and fol-
24 lowing a court order if the administration is supervised, a fidu-
25 ciary making final distribution shall deposit with the county
26 treasurer the money or personal property the fiduciary has that
27 belongs to any of the following:

1 (a) An heir, devisee, trust beneficiary, or claimant whose
2 whereabouts the fiduciary cannot ascertain after diligent
3 inquiry.

4 (b) An heir, devisee, trust beneficiary, or claimant who
5 declines to accept the money awarded to the person.

6 (c) A person if the right of the person is the subject of
7 appeal from an order of the court.

8 (2) As an alternative to deposit with the county treasurer
9 under subsection (1), if the amount involved for a person
10 described under subsection (1)(a) or (b) is \$250.00 or less, the
11 fiduciary may distribute the amount as part of the residue of the
12 decedent's estate or to those entitled to the trust fund
13 balance. If the fiduciary has property other than money that
14 belongs to a person described in subsection (1)(a) or (b), the
15 fiduciary may sell the property for the purpose of reducing it to
16 money to be deposited with the county treasurer.

17 (3) The fiduciary shall retain or file the county
18 treasurer's receipt for property deposited under this section in
19 the same fashion as though the fiduciary paid or delivered the
20 money or property to, and received a receipt from, the heir,
21 devisee, trust beneficiary, or claimant.

22 Sec. 3917. (1) The county treasurer shall receive and
23 safely keep money deposited under authority of this act in a sep-
24 arate fund and keep a separate account for each distributee or
25 claim. The county treasurer shall deposit the money in a county
26 depository at the current rate of interest, shall pay out from
27 the fund upon the order of the court, and shall turn over any

1 surplus left in the treasurer's hands at the termination of the
2 treasurer's term of office to the treasurer's successor.

3 (2) At the commencement of each term of office and before
4 receiving money under authority of this act, the county treasurer
5 shall give a bond running to the judge and the judge's successor
6 in office, with 2 or more sufficient sureties approved by the
7 court. The bond shall be in the amount the judge directs, condi-
8 tioned that the county treasurer and his or her deputy shall do
9 all of the following:

10 (a) Pay out the money only on court order, whether the money
11 was turned over to the treasurer by his or her predecessor in
12 office, or deposited with the treasurer during the term that he
13 or she is then commencing or during a prior term of office.

14 (b) At the end of each year, render to the court, and to the
15 county board of commissioners, a true account of that money.

16 (c) Deliver over to his or her successor in office the money
17 deposited under authority of this act and books, papers, and
18 other records relating to that money.

19 (3) The court may at any time require the county treasurer
20 to give new or additional bond, as the court considers necessary,
21 conditioned as provided in subsection (2). A bond deposited by
22 the county treasurer and his or her sureties on the bond are dis-
23 charged from further liability under the bond upon the filing of
24 a new bond by a successor to the office who is named on the new
25 bond, unless the county treasurer fails to account for any money
26 as required in this article, or fails to turn that money over to
27 the successor in office.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

232

1 (4) For the care of the fund received under authority of
2 this act, the county treasurer may take 1% from the different
3 amounts paid out under court order unless the amount paid out to
4 a single individual exceeds \$1,000.00, in which case the county
5 treasurer shall take \$10.00 plus 1/2 of 1% of the excess of the
6 amount over \$1,000.00.

7 (5) A person entitled to the money may [petition] the court
8 having jurisdiction for an order directing the county treasurer
9 to pay over money that is deposited with the county treasurer.
10 Upon receiving the [petition], the court shall make an order as
11 to notice of the hearing as the court considers proper. Upon
12 satisfactory proof being made to the court of the claimant's
13 right to the money, the court shall order the county treasurer to
14 pay the money to the claimant.

15 (6) If a person does not make a claim to funds deposited by
16 a fiduciary before the expiration of 3 years after the deposit
17 date, the money that would be distributed under this section to
18 the person, if alive, less expenses, shall be distributed by
19 court order to each person who would be entitled to the money if
20 the person were deceased, and the person is forever barred from
21 all claim or right to the money.

22 (7) An action on the bond given by the county treasurer
23 under this section may be started in the name of the state, for
24 the use and benefit of anyone interested, in the same manner and
25 with the same effect as allowed by law upon fiduciary bonds.

26 Sec. 3918. (1) A personal representative may discharge the
27 personal representative's obligation to distribute to an

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

233

1 individual under legal disability by distributing in a manner
2 expressly provided in the will.

3 (2) Unless contrary to an express provision in the will, the
4 personal representative may discharge the personal
5 representative's obligation to distribute to an individual under
6 legal disability as authorized by section 5102 or another
7 statute. [If the personal representative knows that a conservator
8 has been appointed for an individual or that a proceeding for
9 appointment of a conservator for the individual is pending,
10 the personal representative is authorized to distribute only to
11 the conservator. If the personal representative knows that a
12 guardian of the estate of an individual with a developmental
13 disability has been appointed under the mental health code, 1974 PA
258, MCL 330.1001 to 330.2106, or that a proceeding for appointment
of a guardian of the estate for the individual with the
developmental disability is pending, the personal representative is
authorized to distribute only to the guardian of the estate.]

14 (3) If the heir or devisee is under legal disability other
15 than minority, the personal representative is authorized to dis-
16 tribute to any of the following:

17 (a) A trustee appointed by the court under section 3915(4).

18 (b) An attorney in fact who has authority under a power of
19 attorney to receive property for that person.

20 (c) The spouse, parent, or other close relative with whom
21 the individual under legal disability resides if [both of the
22 following are true:

23 (i) A conservator has not been appointed for the individual.

24 (ii) The distribution is in amounts not exceeding \$5,000.00 a
year or property not exceeding \$5,000.00 in value, unless the court
authorizes a higher amount or value.]

25 (4) A person receiving money or property for an individual
26 under legal disability shall use the money or property only for
27 that individual's support and for reimbursement of out-of-pocket

1 expenses for goods and services necessary for that individual's
2 support. Excess money and property shall be preserved for the
3 individual's future support. The personal representative is not
4 responsible for the proper use of money or property by the recip-
5 ient if distribution is made under the authority of this
6 section.

7 Sec. 3919. (1) If there is a personal representative of the
8 decedent's domicile willing to receive it, a nonresident
9 decedent's estate being administered by a personal representative
10 appointed in this state shall be distributed to the domiciliary
11 personal representative for the benefit of the decedent's succes-
12 sors unless any of the following apply:

13 (a) By virtue of the decedent's will, if any, and applicable
14 choice of law rules, the successors are identified under the law
15 of this state without reference to the law of the decedent's
16 domicile.

17 (b) After reasonable inquiry, this state's personal repre-
18 sentative is unaware of the existence or identity of a domicili-
19 ary personal representative.

20 (c) The court orders otherwise in a proceeding for a closing
21 order under section [3951] or incident to the closing of a super-
22 vised administration.

23 (2) If subsection (1) is not applicable to an estate, dis-
24 tribution of the decedent's estate shall be made in accordance
25 with the other provisions of this article.

26 Sec. 3920. (1) An estate, inheritance, or other death tax
27 levied or assessed under the laws of this or another state,

1 political subdivision, or country or under a United States
2 revenue act concerning property included in the gross estate
3 under the law, [
4

5] but excluding taxes for which sources of pay-
6 ment are provided within sections 2206, 2207, 2207A, 2207B, and
7 2603 of the internal revenue code, shall be apportioned in the
8 following manner:

9 (a) If a part of the property concerning which the tax is
10 levied or assessed passed under a will, then, unless the govern-
11 ing instrument directs otherwise, the tax shall be charged as
12 follows:

13 (i) If any portion of that property passed under the will as
14 a devise to be satisfied by reference to a specific property or
15 type of property, fund, money, or other nonresiduary form, the
16 net amount of the tax attributable to that portion shall be
17 charged to and paid from the residuary estate without requiring
18 contribution from a person receiving or benefiting from the non-
19 residuary interest and without apportionment among the residuary
20 beneficiaries. If the residuary estate is insufficient to pay
21 the tax attributable to all nonresiduary interests, the balance
22 of the tax shall be apportioned pro rata among the recipients of
23 those interests generating the tax based on the value of those
24 interests.

25 (ii) The net amount of a tax attributable to the residuary
26 estate shall be apportioned pro rata among the residuary
27 beneficiaries based on the value of the residuary interests

1 generating the tax. If a residuary interest is a temporary
2 interest, the tax attributable to it shall be charged to princi-
3 pal and not apportioned between temporary and remainder
4 interests.

5 (b) If a part of the property concerning which the tax is
6 levied or assessed is held under the terms of an inter vivos
7 trust, then, unless the governing instrument directs otherwise,
8 the tax shall be charged as follows:

9 (i) If a portion of the trust is directed to pass or to be
10 held in further trust by reference to a specific property or type
11 of property, fund, money, or other nonresiduary form, the net
12 amount of the tax attributable to that portion shall be charged
13 to and paid from the principal of the residuary share of the
14 trust without requiring contribution from a person receiving or
15 benefiting from the nonresiduary interest and without appor-
16 tionment among the residuary beneficiaries. If the residuary share
17 of the trust is insufficient to pay the tax attributable to all
18 nonresiduary interests, the balance of the tax shall be appor-
19 tioned pro rata among the recipients of those interests generat-
20 ing the tax based on the value of those interests.

21 (ii) The net amount of tax attributable to the residuary
22 share of the trust shall be charged as follows:

23 (A) The net amount of tax attributable to each residuary
24 temporary interest shall be charged to that portion of residuary
25 principal that supports the temporary interest without
26 apportionment.

1 (B) The net amount of tax attributable to the balance of the
2 residuary share shall be apportioned pro rata among the residuary
3 beneficiaries by charge to the principal of their interest based
4 on the value of the residuary interests.

5 (c) Except as otherwise directed by the governing instru-
6 ment, tax liability remaining after the application of subdivi-
7 sions (a) and (b), including, but not limited to, a tax imposed
8 with respect to property passing by survivorship, to property
9 passing by intestacy, [and] to an annuity not created under a will
or
10 an inter vivos trust, [
11

12] shall be apportioned pro rata among, and paid
13 by, the recipients and beneficiaries of the properties or inter-
14 ests, based on the value of the properties and interests generat-
15 ing the tax. Except as otherwise directed by the governing
16 instrument, with respect to a temporary interest not in trust,
17 the amount charged to the recipients or beneficiaries shall not
18 be apportioned between temporary and remainder interests, but
19 shall be charged to and paid out of the principal of the property
20 or fund.

21 (2) As used in this section and sections 3921 to 3923:

22 (a) "Governing instrument" means a will, trust agreement, or
23 other document that controls the devolution of property at death
24 with respect to which the tax is being levied.

25 (b) "Net estate" means the gross estate, as defined by the
26 estate, inheritance, or death tax law of the particular state,

1 country, or political subdivision whose tax is being apportioned,
2 less the deductions allowed.

3 (c) "Temporary interest" means an interest in income or an
4 estate for a specific period of time, for life, or for some other
5 period controlled by reference to extrinsic events.

6 (d) "Value" means the pecuniary worth of the interest
7 involved as finally determined for purposes of the tax then under
8 consideration, without regard to a diminution of the interest by
9 reason of the charge of a part of the tax.

10 Sec. 3921. (1) Unless specific directions to that effect
11 are contained in the governing instrument under which the fidu-
12 ciary is acting, section 3920 shall not be construed to require
13 the personal representative or other concerned fiduciary to pay
14 an estate, inheritance, or other death tax levied or assessed by
15 a foreign country.

16 (2) The net amount of tax attributable to the interests
17 encompassed by subdivision (a), subdivision (b), or subdivision
18 (c) of section 3920(1) considered separately shall be the part of
19 the net amount of tax as finally determined, with any interest
20 and penalties on that amount, as the value of the interests gen-
21 erating the tax and included in the subdivision bears to the
22 amount of the net estate. However, for an inheritance or similar
23 tax, the tax that is imposed on each beneficiary's interest, as
24 determined under the law of the state, country, or political sub-
25 division then under consideration, shall be considered the tax
26 attributable to the interest. In prorating taxes within each
27 subdivision of section 3920(1) based on the value of those

1 interests generating the tax, each separate tax that an interest
2 may incur shall be prorated in the same manner. In determining
3 the proportion that each interest bears to the total value of all
4 interests generating each tax, only interests generating that
5 particular tax are considered. Property or interests generating
6 a tax do not include property or interests, whether passing under
7 a will, trust, or otherwise, to the extent the property or inter-
8 est is exempt or is initially deductible from the gross estate,
9 without regard to any subsequent diminution of the deduction by
10 reason of the charge of a part of the tax to the property or
11 interest.

12 (3) A direction in a governing instrument for tax, alloca-
13 tion, and payment in a manner different [from] that provided in
14 sections 3920 to 3923 is effective to allocate and pay tax only
15 from property whose devolution is subject to that instrument's
16 control and with respect to which the tax is being levied.
17 However, a direction to allocate and pay tax contained in a will
18 is effective to allocate and pay tax even if the will does not
19 control the devolution of property at death with respect to which
20 the tax is being levied, including a direction in a will to allo-
21 cate and pay tax from a trust of which the testator was the set-
22 tlor and that was revocable by the settlor, or would have been
23 revocable if the settlor was not incapacitated, until the
24 settlor's death. If there is a conflict between directions in a
25 will to allocate and pay tax and the terms of another governing
26 instrument, the directions in the will control.

1 (4) A tax apportionment based on the net estate under
2 sections 3920 to 3923 shall be determined without regard to a
3 diminution in deductions resulting from the charge of a part of
4 the tax to a deductible interest.

5 Sec. 3922. (1) Unless the governing instrument provides
6 otherwise, if a credit is given under the United States estate
7 tax laws for a tax paid to another country or a political subdi-
8 vision, the credit shall be apportioned under sections 3920 to
9 3923 among the recipients or interests finally charged with the
10 payment of the foreign tax in reduction of a United States estate
11 tax chargeable to the recipients or interests, whether or not the
12 United States estate tax is attributable to the foreign
13 interests. An excess of the credit shall be applied in reduction
14 of the part of United States estate tax chargeable to the resi-
15 due, and an excess of the credit over the United States estate
16 tax chargeable to the residue shall be apportioned pro rata among
17 those persons or interests finally charged with the balance of
18 the payment of United States estate tax.

19 (2) Unless otherwise directed by the governing instrument,
20 the personal representative shall pay the tax out of the estate,
21 or if a personal representative is not acting under appointment,
22 a person receiving or holding an interest generating the tax
23 shall pay the tax. In a case in which property required to be
24 included in the gross estate does not come into the personal
25 representative's possession, the personal representative shall
26 recover from the following persons the proportionate amount of
27 tax chargeable to them under this act:

1 (a) From the fiduciary in possession of the trust principal
2 or of property subject to the power of appointment in cases in
3 which inter vivos trust property or property subject to a power
4 of appointment is included in the gross estate.

5 (b) In all other cases, from the recipients or beneficiaries
6 of property or interests with respect to which the tax is levied
7 or assessed.

8 (3) Subsection (2) does not authorize the recovery of taxes
9 from a company issuing insurance included in the gross estate, or
10 from a bank, trust company, savings and loan association, or sim-
11 ilar institution with respect to an account in the name of the
12 decedent and another person that passed by operation of law on
13 the decedent's death. If the fiduciary brings an action to
14 recover a share of tax apportioned to an interest not within the
15 fiduciary's control, the judgment that the fiduciary obtains may
16 include costs and reasonable attorney fees.

17 (4) A personal representative or other fiduciary is not
18 required to transfer property until the amount of a tax due from
19 the transferee is paid or, if apportionment of the tax has not
20 been determined, until adequate security is furnished for the
21 payment. The fiduciary is not required to distribute property
22 that the fiduciary reasonably anticipates may be necessary to pay
23 a state or federal tax and related interest or penalties.

24 (5) On petition of the person required to pay a tax, the
25 probate court having jurisdiction over the administration of a
26 decedent's estate may determine the apportionment of the tax. If
27 there are no probate proceedings, on the petition of a person

1 required to pay a tax, the probate court of the county where the
2 decedent was domiciled at death shall determine the apportionment
3 of the tax.

4 Sec. 3923. (1) If the probate court finds that it is ineq-
5 uitable to apportion interest and penalties in the manner pro-
6 vided in sections 3920 to 3922 because of special circumstances,
7 the court may direct apportionment in the manner it finds
8 equitable.

9 (2) If the probate court finds that the assessment of penal-
10 ties and interest assessed in relation to a tax is due to delay
11 caused by the negligence of the fiduciary, the court may charge
12 the fiduciary with the amount of the assessed penalties and
13 interest.

14 (3) In an action or proceeding to recover from a person
15 interested in the estate the amount of a tax apportioned to the
16 person in accordance with this act, the court's determination in
17 respect to the apportionment is prima facie correct.

18 Sec. 3924. (1) For the purpose of settling a claim as to
19 which an action is not pending in another court for damages for
20 wrongful death or for a claim existing under this state's laws
21 relating to the survival of actions, if a personal representative
22 petitions the court in writing asking leave to settle the claim
23 and after notice to all persons who may be entitled to damages as
24 provided in section 2922 of the revised judicature act of 1961,
25 being section 600.2922 of the Michigan Compiled Laws, the court
26 may conduct a hearing and approve or reject the settlement.

1 (2) The proceeds of a court settlement of a cause of action
2 for wrongful death shall be distributed in accordance with all of
3 the following:

4 (a) The personal representative shall file with the court a
5 petition for authority to distribute the proceeds. Upon the
6 filing of the petition, the court shall order a hearing.

7 (b) Unless waived, notice of hearing must be given to all
8 persons who may be entitled to damages as provided in
9 section 2922 of the revised judicature act of 1961. A notice
10 under this subdivision must contain both of the following:

11 (i) The name and address of the personal representative and
12 of the personal representative's attorney.

13 (ii) A statement that, to recover damages under this sec-
14 tion, the person who may be entitled to damages must present a
15 claim for damages to the personal representative on or before the
16 date set for hearing on the petition for distribution of the pro-
17 ceeds, and that failure to present a claim for damages within the
18 time provided bars the person from making a claim to any of the
19 proceeds.

20 (c) If an interested person is a minor, disappeared person,
21 or incapacitated individual for whom a fiduciary is not appoint-
22 ed, the court shall first appoint a fiduciary or guardian ad
23 litem, and the notice as provided in subdivision (b) shall be
24 given to the fiduciary or guardian ad litem.

25 (d) After a hearing on the personal representative's peti-
26 tion, the court shall order payment from the proceeds of the
27 decedent's reasonable medical, hospital, funeral, and burial

1 expenses for which the estate is liable. The proceeds shall not
2 be applied to the payment of any other charges against the
3 decedent's estate. The court shall then enter an order distrib-
4 uting the proceeds to those persons designated in section 2922 of
5 the revised judicature act of 1961 who suffered damages and to
6 the decedent's estate for compensation for conscious pain and
7 suffering, if any, in the amount the court considers fair and
8 equitable considering the relative damages sustained by each of
9 the persons and the decedent's estate.

10 (e) If none of the persons entitled to the proceeds is a
11 minor, disappeared person, or incapacitated individual and all of
12 the persons entitled to the proceeds execute a [sworn] stipula-
13 tion or agreement in writing in which each person's portion of
14 the proceeds is specified, the court order shall be entered in
15 accordance with the stipulation or agreement.

16 (f) A person who may be entitled to damages under this sec-
17 tion must present a claim for damages to the personal representa-
18 tive on or before the date set for hearing on the petition for
19 distribution of the proceeds. Failure to present a claim for
20 damages within the time provided by this section bars the person
21 from making a claim to any of the proceeds.

22 (g) If a claim for wrongful death is pending in another
23 court, the procedures prescribed in section 2922 of the revised
24 judicature act of 1961 are applicable to the distribution of pro-
25 ceeds of a settlement or judgment.

1 PART 10

2 CLOSING ESTATES

3 Sec. [3951]. (1) If the personal representative does not
4 complete estate administration within [1 year] after the origi-
5 nal appointment by petitioning for a settlement order under
6 section [3952 or 3953 or by filing a sworn statement under
7 section 3954], the personal representative shall file with the
8 court and send to all interested persons a notice that the estate
9 remains under administration and specifying the reason for con-
10 tinuation of administration. This notice of continued adminis-
11 tration must be filed not later than [28] days after the anniver-
12 sary of the personal representative's appointment and, if admin-
13 istration remains incomplete, not later than [28] days after each
14 subsequent anniversary of the appointment.

15 (2) If the notice described in subsection (1) is not filed,
16 an interested person may petition the court for a hearing on the
17 necessity for continued administration or petition for a settle-
18 ment order under either section [3952 or 3953]. In response to
19 such a petition, the court may issue appropriate orders to assure
20 prompt estate settlement.

21 (3) If the notice described in subsection (1) is not filed
22 and an interested [person's] petition is not pending, the court may
23 notify the personal representative and all interested persons
24 that the court will close the estate administration and terminate
25 the personal representative's authority within [63] days unless
26 within that time period any of the following occur:

1 (a) The personal representative files a notice under
2 subsection (1), a petition for settlement under either
3 section [3952 or 3953, or a sworn statement under
4 section 3954.]

5 (b) An interested person files a petition requesting a hear-
6 ing on the necessity for continued administration or a petition
7 for an order of settlement under either section [3952 or 3953].

8 Sec. [3952]. (1) A personal representative or an interested
9 person may petition for an order of complete estate settlement.
10 The personal representative may petition at any time, and an
11 interested person may petition after 1 year from the original
12 personal representative's appointment. However, the court shall
13 not accept a petition under this section until the time expires
14 for presenting a claim that arises before the decedent's death.

15 (2) A petition under this section may request the court to
16 determine testacy, if not previously determined, to consider the
17 final account, to compel or approve an accounting and distribu-
18 tion, to construe a will or determine heirs, and to adjudicate
19 the estate's final settlement and distribution. After notice to
20 all interested persons and a hearing, the court may enter an
21 order or orders, on appropriate conditions, determining the per-
22 sons entitled to distribution of the estate, and as circumstances
23 require, approving settlement, directing or approving estate dis-
24 tribution, and discharging the personal representative from fur-
25 ther claim or demand of an interested person.

26 (3) If 1 or more heirs or devisees were omitted as parties
27 in, or were not given notice of, a previous formal testacy

1 proceeding, on proper petition for an order of complete estate
2 settlement under this section and after notice to the omitted or
3 unnotified persons and other interested [persons] determined to be
4 interested on the assumption that the previous order concerning
5 testacy is conclusive as to those given notice of the earlier
6 proceeding, the court may determine testacy as it affects the
7 omitted persons, and confirm or alter the previous testacy order
8 as it affects all interested persons as appropriate in the light
9 of the new proofs. In the absence of objection by an omitted or
10 unnotified person, evidence received in the original testacy pro-
11 ceeding constitutes prima facie proof of due execution of a will
12 previously admitted to probate, or of the fact that the decedent
13 left no valid will if the prior proceeding determined this fact.

14 Sec. [3953]. (1) A personal representative administering an
15 estate under an informally probated will or a devisee under an
16 informally probated will may petition for a settlement order for
17 the estate that does not adjudicate the decedent's testacy
18 status. The personal representative may petition at any time,
19 and a devisee may petition after 1 year after the original per-
20 sonal representative's appointment. However, the court shall not
21 accept a petition under this section until the time expires for
22 presenting a claim that arises before the decedent's death.

23 (2) A petition under this section may request the court to
24 consider the final account, to compel or approve an accounting
25 and distribution, to construe the will, or to adjudicate the
26 estate's final settlement and distribution. After notice to all
27 devisees and the personal representative and a hearing, the court

1 may enter appropriate orders, on appropriate conditions,
2 determining the persons entitled to distribution of the estate
3 under the will, and, as circumstances require, approving settle-
4 ment, directing or approving estate distribution, and discharging
5 the personal representative from further claim or demand of a
6 devisee who is a party to the proceeding and those the devisee
7 represents. If it appears that a part of the estate is intes-
8 tate, the proceedings shall be dismissed or amendments made to
9 meet the provisions of section [3952].

10 Sec. [3954]. (1) Unless prohibited by court order and except
11 for an estate being administered in a supervised administration
12 proceeding, a personal representative may close an estate by
13 filing with the court, no earlier than 5 months after the date of
14 a general personal representative's original appointment, a [sworn
15] statement stating that the personal representative or a pre-
16 vious personal representative has done all of the following:

17 (a) Determined that notice was published and the time
18 limited for presentation of creditors claims has expired.

19 (b) Fully administered the decedent's estate by making pay-
20 ment, settlement, or other disposition of all claims that were
21 presented, of administration and estate expenses, and of estate,
22 inheritance, and other death taxes, except as specified in the
23 statement, including distribution of the estate property to the
24 persons entitled. If a claim remains undischarged, the statement
25 shall state whether the personal representative distributed the
26 estate subject to possible liability with the distributee's

1 agreement or shall state in detail other arrangements that have
2 been made to accommodate outstanding liabilities.

3 (c) Sent a copy of the statement to all estate distributees
4 and to all creditors or other claimants of whom the personal rep-
5 resentative is aware whose claims are neither paid nor barred.

6 (d) Furnished a full account in writing of the personal
7 representative's administration to the distributees whose inter-
8 ests are affected by the administration. [The account shall clearly
state the amount paid out of the estate in fiduciary fees, attorney
fees, and other professional fees.]

9 (2) If a proceeding involving the personal representative is
10 not pending in the court 1 year after the closing statement is
11 filed, the personal representative's appointment terminates.

12 Sec. [3955]. After estate property is distributed and
13 subject to section [3957], an undischarged claim not barred may be
14 prosecuted in a proceeding against 1 or more distributees. A
15 distributee is not liable to a claimant for an amount received as
16 exempt property or as a homestead or family allowance, or for an
17 amount in excess of the value of the distributee's distribution
18 as of the time of distribution. As between distributees, each
19 shall bear the cost of satisfaction of an unbarred claim as if
20 the claim had been satisfied in the course of administration. If
21 a distributee fails to notify other distributees of the demand
22 made upon the distributee by the claimant in sufficient time to
23 permit them to join in a proceeding in which the claim is assert-
24 ed, the distributee loses the right of contribution against other
25 distributees.

26 Sec. [3956]. Unless previously barred by adjudication and
27 except as provided in the closing statement, the right of a

1 successor or creditor whose claim is not otherwise barred against
2 the personal representative for breach of fiduciary duty is
3 barred unless a proceeding to assert the claim is commenced
4 within 6 months after the filing of the closing statement. The
5 right barred under this section does not include the right to
6 recover from a personal representative for fraud, misrepresenta-
7 tion, or inadequate disclosure related to the settlement of the
8 decedent's estate.

9 Sec. [3957]. Unless previously adjudicated in a formal tes-
10 tacy proceeding or in a proceeding settling a personal
11 representative's accounts, or otherwise barred, a claimant's
12 claim to recover from a distributee who is liable to pay the
13 claim and the right of an heir or devisee, or of a successor per-
14 sonal representative acting in their behalf, to recover property
15 improperly distributed or its value from a distributee are for-
16 ever barred at the later of 3 years after the decedent's death or
17 1 year after the time of the property's distribution. However,
18 all claims of the decedent's creditors are barred in accordance
19 with the time periods specified in section 3803. This section
20 does not bar an action to recover property or value received as a
21 result of fraud.

22 Sec. [3958]. If an objection to the closing statement is not
23 filed within [28] days after the filing date, the personal repre-
24 sentative, the personal representative's sureties, or a successor
25 of either is entitled to receive a certificate from the register
26 that the personal representative appears to have fully
27 administered the estate in question. The certificate is evidence

1 of discharge of a lien on property given to secure the personal
2 representative's obligation in lieu of bond or a surety. The
3 certificate does not preclude action against the personal repre-
4 sentative or the surety.

5 Sec. [3959]. If estate property is discovered after an
6 estate is settled and either the personal representative is dis-
7 charged or 1 year has expired after a closing statement is filed,
8 or if there is other good cause to reopen a previously adminis-
9 tered estate, including an estate administratively closed, upon
10 petition of an interested person and notice as the court directs,
11 the court may appoint the same or a successor personal represen-
12 tative to administer the subsequently discovered estate. If a
13 new appointment is made, unless the court orders otherwise, the
14 provisions of this act apply as appropriate. A claim previously
15 barred shall not be asserted in the subsequent administration.

16

PART 11

17 [COLLECTION OF PERSONAL PROPERTY BY SWORN STATEMENT,
18 SMALL ESTATES, AND SUMMARY ADMINISTRATIVE PROCEEDINGS]

19 Sec. [3981]. A hospital, convalescent or nursing home,
20 morgue, or law enforcement agency holding \$500.00 or less and
21 wearing apparel of a decedent may deliver the money and wearing
22 apparel to an individual furnishing identification and [a sworn
23 statement] that the individual is the decedent's spouse, child, or
24 parent and that there is no application or petition pending for
25 administration of the decedent's estate. The hospital, home,
26 morgue, or law enforcement agency making the delivery is released
27 to the same extent as if delivery were made to a legally

1 qualified personal representative of the decedent's estate and is
 2 not required to see to the property's disposition. The individ-
 3 ual to whom delivery is made is answerable for the property to a
 4 person with a prior right and accountable to a personal represen-
 5 tative of the decedent's estate appointed after the delivery.

[Sec. 3982. (1) Upon a showing of evidence, satisfactory to the court, of payment of the expenses for the decedent's funeral and burial and if the balance of a decedent's gross estate consists of property of the value of \$15,000.00 or less, the court may order that the property be turned over to the surviving spouse or, if there is not a spouse, to the decedent's heirs.

(2) Upon a showing of evidence, satisfactory to the court, that the decedent's funeral or burial expenses are unpaid or were paid by a person other than the estate, and if the balance of the gross estate after payment of the expenses would consist of property of the value of \$15,000.00 or less, the court shall order that the property be first used to pay the unpaid funeral and burial expenses, or to reimburse the person that paid those expenses, and may order that the balance be turned over to the surviving spouse or, if there is not a spouse, to the decedent's heirs.

(3) Other than a surviving spouse who qualifies for allowances under this act or the decedent's minor children, an heir who receives property through an order under this section is responsible, for 63 days after the date of the order, for any unsatisfied debt of the decedent up to the value of the property received through the order. The court shall state in the order the condition on the distribution of property provided by this subsection.

(4) If a decedent's estate meets the criteria for using the procedure under either this section or section 3983 and if a person is authorized by this act to use either procedure, a person, other than the court, shall not require the authorized person to use 1 procedure rather than the other.

(5) A dollar amount prescribed by this section shall be adjusted as provided in section 1210.]

6 Sec. [3983. (1) After 28] days after a decedent's death, a
 7 person indebted to the decedent or having possession of tangible
 8 personal property or an instrument evidencing a debt, obligation,
 9 stock, or chose in action belonging to the decedent shall pay the
 10 indebtedness or deliver the tangible personal property or the
 11 instrument to a person claiming to be the decedent's successor
 12 upon being presented [with the decedent's death certificate and a
 13 sworn statement] made by or on behalf of the
 14 successor stating all of the following:

15 (a) The [estate does not include real property and the] value
 16 of the entire estate, wherever located, net of
 17 liens and encumbrances, does not exceed \$15,000.00, adjusted as
 18 provided in section 1210.

19 (b) [Twenty-eight] days have elapsed since the decedent's
 20 death.

21 (c) An application or petition for the appointment of a per-
 22 sonal representative is not pending or has not been granted in
 23 any jurisdiction.

24 (d) The claiming successor is entitled to payment or deliv-
 25 ery of the property.

26 [(e) The name and address of each other person that is entitled to a share of the property and the portion to which each is entitled.]

(2) A transfer agent of a security shall change the regis-
 27 tered ownership on the books of a corporation from the decedent
 28 to the successor or successors upon the presentation of [a sworn
 29 statement] as provided in subsection (1).

[(3) The state court administrative office shall develop and make available a standardized form for use as a sworn statement that can be used for the procedure authorized under subsection (1). The form shall include a notice that a false statement may subject the person swearing to the statement to prosecution for perjury.]

SB0209, As Passed House, September 24, 1998

01006'97 *

S.B. 209 as amended September 24, 1998

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1 Sec. [3984]. (1) A person paying, delivering, transferring,
2 or issuing personal property or the evidence of personal property
3 under [a sworn statement as provided in section 3983] is discharged
 and
4 released to the same extent as if the person dealt with the
5 decedent's personal representative. The person is not required
6 to see to the application of the personal property or evidence of
7 the application, or to inquire into the truth of a statement in
8 the [sworn statement].

9 (2) If a person to whom [a sworn statement] is delivered under
10 section [3983] refuses to pay, deliver, transfer, or issue per-
11 sonal property or evidence of personal property, the property may
12 be recovered or its payment, delivery, transfer, or issuance com-
13 pelled upon proof of a person's right to the property in a pro-
14 ceeding brought for the purpose by or on behalf of the persons
15 entitled to the property. A person to whom payment, delivery,
16 transfer, or issuance is made is answerable and accountable for
17 the property to a personal representative of the estate or to
18 another person having a superior right.

19 Sec. [3987]. If it appears from the inventory and appraisal
20 that the value of the entire estate, less liens and encumbrances,
21 does not exceed homestead allowance, family allowance, exempt
22 property, administration costs and expenses, reasonable funeral
23 expenses, and reasonable, necessary medical and hospital expenses
24 of the decedent's last illness, the personal representative,
25 without giving notice to creditors, may immediately disburse and
26 distribute the estate to the persons entitled to the estate and
27 may file a closing statement as provided in section [3988].

01006'97 *

1 Sec. [3988]. (1) Unless prohibited by court order and except
2 for an estate being administered by a supervised personal repre-
3 sentative, a personal representative may close an estate adminis-
4 tered under the summary procedures of section [3987] by filing
5 with the court, at any time after disbursement and distribution
6 of the estate, a [sworn] statement stating all of the
7 following:

8 (a) To the best knowledge of the personal representative,
9 the value of the entire estate, less liens and encumbrances, did
10 not exceed homestead allowance, family allowance, exempt proper-
11 ty, administration costs and expenses, reasonable funeral
12 expenses, and reasonable, necessary medical and hospital expenses
13 of the decedent's last illness.

14 (b) The personal representative has fully administered the
15 estate by disbursing and distributing it to the persons entitled
16 to the estate.

17 (c) The personal representative has sent a copy of the clos-
18 ing statement to all estate distributees and to all creditors or
19 other claimants of whom the personal representative is aware
20 whose claims are neither paid nor barred, and has furnished a
21 full account in writing of the estate administration to the dis-
22 tributees whose interests are affected.

 [(2) The sworn statement filed under this section has the same
effect as a sworn statement filed under section 3954. If an
objection to the sworn statement is not filed within 28 days after
the filing date, the register shall issue a certificate described in
section 3958.]

23 [(3)] If an action or proceeding involving the personal repre-
24 sentative is not pending in the court 1 year after the closing
25 statement is filed under this section, the personal
26 representative's appointment terminates.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

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1 ARTICLE IV
2 FOREIGN PERSONAL REPRESENTATIVES AND
3 ANCILLARY ADMINISTRATION
4 PART 1
5 DEFINITIONS

6 Sec. 4101. As used in this article:

7 (a) "Local administration" means administration by a per-
8 sonal representative appointed in this state under an appointment
9 proceeding described in article III.

10 (b) "Local personal representative" includes a personal rep-
11 resentative appointed in this state under an appointment proceed-
12 ing described in article III and excludes a foreign personal rep-
13 resentative who acquires the power of a local personal represen-
14 tative under section 4203.

15 (c) "Resident creditor" means a person domiciled or doing
16 business in this state that is, or could be, a claimant against a
17 nonresident decedent's estate.

18 PART 2
19 POWERS OF FOREIGN PERSONAL REPRESENTATIVES

20 Sec. 4201. At any time after the expiration of [63] days
21 after a nonresident decedent's death, a person indebted to the
22 nonresident decedent, or having possession or control of personal
23 property or of an instrument evidencing a debt, obligation,
24 stock, or chose in action belonging to the nonresident decedent,
25 may pay the debt or deliver the personal property or the instru-
26 ment to the domiciliary foreign personal representative of the
27 nonresident decedent upon being presented with proof of the

1 domiciliary personal representative's appointment and [a
2 sworn statement] made by or on behalf of the representative stating
all

3 of the following:

4 (a) The date of the nonresident decedent's death.

5 (b) That local administration, or an application or petition
6 for local administration, is not pending in this state.

7 (c) That the domiciliary foreign personal representative is
8 entitled to payment or delivery.

9 Sec. 4202. (1) Payment or delivery made in good faith on
10 the basis of proof of authority and [a sworn statement] as provided
in

11 section 4201 releases the debtor or person having possession of
12 the personal property to the same extent as if payment or deliv-
13 ery is made to a local personal representative.

14 (2) Payment or delivery under section 4201 shall not be made
15 if a resident creditor of the nonresident decedent notifies the
16 debtor of the nonresident decedent or the person having posses-
17 sion of the personal property belonging to the nonresident dece-
18 dent that the debt should not be paid nor the property delivered
19 to the domiciliary foreign personal representative.

20 Sec. 4203. (1) If local administration, or an application
21 or petition for local administration, is not pending in this
22 state, a domiciliary foreign personal representative may file
23 with a court in this state, in a county in which property belong-
24 ing to the decedent is located, authenticated copies of the
25 representative's appointment and of any official bond the repre-
26 sentative has given.

1 (2) As to property in this state, a domiciliary foreign
2 personal representative who complies with this section may
3 exercise the power of a local personal representative, including,
4 but not limited to, the execution and delivery of a deed under
5 and in satisfaction of a land contract for the purchase of real
6 property located in this state, a discharge of a mortgage, or a
7 discharge of a security interest or financing statement or both,
8 and may maintain an action or proceeding in this state subject to
9 any conditions imposed upon nonresident parties generally.

10 Sec. 4204. (1) A domiciliary foreign personal
11 representative's power under sections 4201 and 4203 shall be
12 exercised only if estate administration or an application for
13 administration is not pending in this state. An application or
14 petition for local administration of the estate terminates the
15 power of the foreign personal representative to act under section
16 4203, but the local court may allow the foreign personal repre-
17 sentative to exercise limited powers to preserve the estate.

18 (2) A person who, before receiving actual notice of a pend-
19 ing local administration, changes his or her position in reliance
20 upon a foreign personal representative's power shall not be prej-
21 udiced by reason of the application or petition for, or grant of,
22 local administration. The local personal representative is
23 subject to all duties and obligations that have accrued by virtue
24 of the exercise of the powers by the foreign personal representa-
25 tive and may be substituted for the foreign personal representa-
26 tive in an action or proceeding in this state.

ARTICLE V

PROTECTION OF AN INDIVIDUAL UNDER DISABILITY

AND HIS OR HER PROPERTY

PART 1

GENERAL PROVISIONS

Sec. 5101. As used in parts 1 to 4 of this article:

(a) "Best interests of the minor" means the sum total of the following factors to be considered, evaluated, and determined by the court:

(i) The love, affection, and other emotional ties existing between the parties involved and the child.

(ii) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue educating and raising the child in the child's religion or creed, if any.

(iii) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(iv) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(v) The permanence, as a family unit, of the existing or proposed custodial home.

(vi) The moral fitness of the parties involved.

(vii) The mental and physical health of the parties involved.

1 (viii) The child's home, school, and community record.

2 (ix) The child's reasonable preference, if the court consid-
3 ers the child to be of sufficient age to express a preference.

4 (x) The party's willingness and ability to facilitate and
5 encourage a close and continuing parent-child relationship
6 between the child and his or her parent or parents.

7 (xi) Domestic violence regardless of whether the violence is
8 directed against or witnessed by the child.

9 (xii) Any other factor considered by the court to be rele-
10 vant to a particular dispute regarding termination of a guardian-
11 ship, removal of a guardian, or parenting time.

12 (b) "Claim" includes, in respect to a protected individual,
13 a liability of the protected individual, whether arising in con-
14 tract, tort, or otherwise, and a liability of the estate that
15 arises at or after the appointment of a conservator, including
16 expenses of administration.

17 (c) "Conservator" includes, but is not limited to, a limited
18 conservator described in section 5419(1).

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1 [(d)] "Mental health professional" means a person who is
2 trained and experienced in the area of mental illness and who is
3 any of the following:

4 (i) A physician who is licensed to practice medicine or
5 osteopathic medicine in this state.

6 (ii) A psychologist who has been granted a full or limited
7 license to practice in this state.

8 (iii) A social worker who is registered as a certified
9 social worker in this state.

10 (iv) A registered nurse who is licensed to practice nursing
11 in this state and who is a graduate of a state-approved school of
12 nursing.

13 [(e)] "Money" means legal tender or a note, draft, certificate
14 of deposit, stock, bond, check, or credit card.

15 [(f)] "Visitor" means an individual appointed in a guardian-
16 ship or protective proceeding who is trained in law, nursing, or
17 social work, is an officer, employee, or special appointee of the
18 court, and has no personal interest in the proceeding.

19 Sec. 5102. (1) A person under a duty to pay or deliver
20 money or personal property to a minor may perform this duty by
21 paying or delivering the money or property, in an aggregate value
22 that does not exceed \$5,000.00 each year, to any of the
23 following:

24 (a) The minor if he or she is married.

25 (b) An individual having the care and custody of the minor
26 with whom the minor resides.

1 (c) A guardian of the minor.

2 (d) A financial institution incident to a deposit in a state
3 or federally insured savings account in the sole name of the
4 minor with notice of the deposit to the minor.

5 (2) This section does not apply if the person making payment
6 or delivery knows that a conservator has been appointed or a pro-
7 ceeding for appointment of a conservator of the minor's estate is
8 pending.

9 (3) Other than the minor or a financial institution, an
10 individual receiving money or property for a minor is obligated
11 to apply the money to the minor's support and education, but
12 shall not pay himself or herself except by way of reimbursement
13 for out-of-pocket expenses for goods and services necessary for
14 the minor's support. An excess amount shall be preserved for the
15 minor's future support and education. A balance not used for
16 those purposes and property received for the minor shall be
17 turned over to the minor when majority is attained. A person who
18 pays or delivers money or property in accordance with this sec-
19 tion is not responsible for the proper application of the money
20 or property.

21 Sec. 5103. By a properly executed power of attorney, a
22 parent or guardian of a minor or [a guardian of an] incapacitated
individual may
23 delegate to another person, for a period not exceeding 6 months,
24 any [of the parent's or guardian's] powers regarding care, custody,
or property of the minor
25 child or ward [, except the power to consent to marriage or
26 adoption of a minor ward or to release of a minor ward for adoption.
27 If a guardian for a minor or incapacitated individual delegates any
power under this section, the guardian shall notify the court within
7 days after execution of the power of attorney, and provide the
court the name, address, and telephone number of the attorney-in-
fact.]

1 Sec. 5104. (1) An interested person who desires to be
2 notified before an order is made in a guardianship proceeding,
3 including a proceeding subsequent to the appointment of a guard-
4 ian under section 5312, or in a protective proceeding under sec-
5 tion 5401 must file a request for notice with the register of the
6 court in which the proceeding is pending and with the attorney of
7 record of the guardian or conservator or, if none, with the
8 guardian or conservator, if any. A request is not effective
9 unless it contains a statement showing the interest of the person
10 making it and the address of that person or an attorney to whom
11 notice is to be given. The request is effective only as to a
12 proceeding that occurs after the filing. [If a guardianship or
protective proceeding is not pending at the time a person files a
request for notice as authorized by this subsection, the person
shall pay a fee for filing the request, which fee shall be in the
same amount as, but is separate from, the fee required to commence
such a proceeding.]

13 (2) A governmental agency paying benefits to the individual
14 to be protected or before whom an application for benefits is
15 pending is an interested person in a protective proceeding.

16 Sec. 5105. The court has jurisdiction of the matter
17 described in this section. If authorized by order of the court
18 that has jurisdiction of the prospective donor, a person 14 years
19 of age or older may give 1 of his or her 2 kidneys to a father,
20 mother, son, daughter, brother, or sister for a transplantation
21 needed by the intended donee. A guardian, parent, spouse, child,
22 or other next of kin of the prospective donor, other than the
23 intended donee, may file a petition for an order under this
24 section. If the prospective donor does not have a guardian, the
25 court shall appoint a guardian ad litem to protect the prospec-
26 tive donor's interests. The court shall hold a hearing on the
27 petition and cause notice of the hearing to be given. The

1 prospective donor shall be present at the hearing and shall be
2 examined by the petitioner or the court, or both. If the court
3 determines that the prospective donor is sufficiently sound of
4 mind to understand the needs and probable consequences of the
5 gift to both the donor and donee and agrees to the gift, the
6 court may enter an order authorizing the making of the gift.

7 Sec. 5106. (1) Subject to subsections (2) and (3), the
8 court may appoint or approve as a guardian, limited or temporary
9 guardian, or conservator under this act, or as a plenary guardian
10 or partial guardian as those terms are defined in section 600 of
11 the mental health code, 1974 PA 258, MCL 330.1600, a nonprofit
12 corporation incorporated under the nonprofit corporation act,
13 1982 PA 162, MCL 450.2101 to 450.3192, which corporation's pri-
14 mary function is to provide fiduciary services in the same manner
15 as other fiduciaries under this act. This section shall not be
16 construed to make a person that is not a nonprofit corporation
17 described in this subsection ineligible to be appointed or
18 approved as a fiduciary.

19 (2) The court shall only appoint a corporation as authorized
20 under subsection (1) if the court finds on the record both of the
21 following:

22 (a) The appointment of the nonprofit corporation is in the
23 ward's or developmentally disabled individual's best interests.

24 (b) Another qualified, suitable person has not come before
25 the court and expressed a willingness to serve in that fiduciary
26 capacity.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

267

1 [(3) The court shall not appoint a corporation as authorized
2 under subsection (1) unless the corporation files a bond in an
3 amount and with the conditions as determined by the court. The
4] sureties and liabilities of the bond shall be as
5 provided in sections 5410 and 5411. The court shall not appoint
6 a corporation described in subsection (1) as a personal represen-
7 tative or trustee.

8 (4) A corporation appointed under this section shall not
9 receive as a result of that appointment a benefit beyond compen-
10 sation specifically authorized for that type of fiduciary by this
11 act or the mental health code, 1974 PA 258, MCL 330.1001 to
12 330.2106.

13 Sec. 5107. (1) Upon entry of an order finding that an indi-
14 vidual is legally incapacitated, the court shall immediately
15 order the department of state police to enter the order into the
16 law enforcement information network.

17 (2) Upon entry of an order finding that an individual is no
18 longer legally incapacitated, the court shall immediately order
19 the department of state police to remove from the law enforcement
20 information network the court order entered into the law enforce-
21 ment information network under subsection (1) that found that the
22 individual was legally incapacitated.

23 (3) The department of state police shall immediately enter
24 an order into the law enforcement information network or shall
25 immediately remove an order from the law enforcement information
26 network as ordered by the court under this section.

PART 2

GUARDIANS OF MINORS

1
2
3 Sec. 5201. A person may become a minor's guardian by paren-
4 tal appointment or court appointment. The guardianship status
5 continues until terminated, without regard to the location from
6 time to time of the guardian or minor ward.

7 Sec. 5202. (1) The parent of an unmarried minor may appoint
8 a guardian for the minor by will or by another writing signed by
9 the parent and attested by at least 2 witnesses.

10 (2) Subject to the right of the minor under section 5203, if
11 both parents are dead or incapacitated or the surviving parent
12 has no parental rights or has been adjudged to be incapacitated,
13 a parental appointment becomes effective when the guardian's
14 acceptance is filed in the court in which a nominating instrument
15 is probated or, in the case of a nontestamentary nominating
16 instrument, in the court at the place where the minor resides or
17 is present. If both parents are dead, an effective appointment
18 by the parent who died later has priority.

19 (3) A parental appointment effected by filing the guardian's
20 acceptance under a will probated in the state of the testator's
21 domicile is effective in this state.

22 (4) Upon acceptance of appointment, the guardian shall give
23 written notice of acceptance to the minor and to the person
24 having the minor's care or the minor's nearest adult relative.

25 Sec. 5203. A minor 14 years of age or older who is the
26 subject of a parental appointment may prevent an appointment or
27 cause it to terminate by filing with the court in which the

1 nominating instrument is filed a written objection to the
2 appointment before it is accepted or within [28] days after its
3 acceptance. An objection may be withdrawn. An objection does
4 not preclude appointment by the court in a proper proceeding of
5 the parental nominee or another suitable person.

6 Sec. 5204. (1) A person interested in the welfare of a
7 minor, or a minor if 14 years of age or older, may petition for
8 the appointment of a guardian for the minor. The court may order
9 the family independence agency or a court employee or agent to
10 conduct an investigation of the proposed guardianship and file a
11 written report of the investigation.

12 (2) The court may appoint a guardian for an unmarried minor
13 if any of the following circumstances exist:

14 (a) The parental rights of both parents or the surviving
15 parent are terminated or suspended by prior court order, by judg-
16 ment of divorce or separate maintenance, by death, by judicial
17 determination of mental incompetency, by disappearance, or by
18 confinement in a place of detention.

19 (b) The parent or parents permit the minor to reside with
20 another person and do not provide the other person with legal
21 authority for the minor's care and maintenance.

22 (c) All of the following:

23 (i) The minor's biological parents have never been married
24 to one another.

25 (ii) The minor's parent who has custody of the minor dies or
26 is missing and the other parent has not been granted legal
27 custody under court order.

1 (c) The court approves a limited guardianship placement plan
2 agreed to by both of the following parties:

3 (i) The parents with custody of the minor or, in the case of
4 only 1 parent having custody of the minor, the sole parent who
5 has custody of the minor.

6 (ii) The person or persons whom the court will appoint as
7 the minor's limited guardian.

8 (2) A minor's parent or parents who desire to have the court
9 appoint a limited guardian for that minor and the person or per-
10 sons who desire to be appointed limited guardian for that minor
11 must develop a limited guardianship placement plan. The parties
12 must use a limited guardianship placement plan form prescribed by
13 the state court administrator. A limited guardianship placement
14 plan form must include a notice that informs a parent who is a
15 party to the plan that substantial failure to comply with the
16 plan without good cause may result in the termination of the
17 parent's parental rights under chapter XIIIA of 1939 PA 288, MCL
18 712A.1 to 712A.32. The proposed limited guardianship placement
19 plan shall be attached to the petition requesting the court to
20 appoint a limited guardian. The limited guardianship placement
21 plan shall include provisions concerning all of the following:

22 (a) The reason the parent or parents are requesting the
23 court to appoint a limited guardian for the minor.

24 (b) Parenting time and contact with the minor by his or her
25 parent or parents sufficient to maintain a parent and child
26 relationship.

1 (c) The duration of the limited guardianship.

2 (d) Financial support for the minor.

3 (e) Any other provisions that the parties agree to include
4 in the plan.

5 Sec. 5206. (1) The court shall review a proposed limited
6 guardianship placement plan filed with the court under section
7 5205 and shall do 1 of the following:

8 (a) Approve the proposed plan.

9 (b) Disapprove the proposed plan.

10 (c) On its own motion, modify a proposed plan and approve it
11 as modified, if the parties agree to the modification. The modi-
12 fied plan shall be filed with the court.

13 (2) A limited guardianship placement plan that has been
14 approved by the court may be modified upon agreement of the par-
15 ties and approval of the court. A modified limited guardianship
16 placement plan shall be filed with the court.

17 (3) The voluntary suspension of parental rights under sec-
18 tion 5205 does not prevent the parent or parents from filing a
19 petition to terminate the limited guardianship at any time as
20 provided in section 5208. Appointment of a limited guardian
21 under this section is a continuing appointment.

22 (4) A limited guardian appointed under this section has all
23 of the powers and duties enumerated in section 5215 except that a
24 minor's limited guardian [shall not consent to marriage or adoption
25 of the minor ward or to the release of the minor ward for adoption.

26]

1 Sec. 5207. (1) The court may review a guardianship for a
2 minor as it considers necessary and shall review a guardianship
3 annually if the minor is under 6 years of age. In conducting the
4 review, the court shall consider all of the following factors:

5 (a) The parent's and guardian's compliance with either of
6 the following, as applicable:

7 (i) A limited guardianship placement plan.

8 (ii) A court-structured plan under subsection (3)(b)(ii)(B)
9 or section 5209(2)(b)(ii).

10 (b) Whether the guardian has adequately provided for the
11 minor's welfare.

12 (c) The necessity of continuing the guardianship.

13 (d) The guardian's willingness and ability to continue to
14 provide for the minor's welfare.

15 (e) The effect upon the minor's welfare if the guardianship
16 is continued.

17 (f) Any other factor that the court considers relevant to
18 the minor's welfare.

19 (2) The court may order the family independence agency or a
20 court employee or agent to conduct an investigation and file a
21 written report of the investigation regarding the factors listed
22 in subsection (1).

23 (3) Upon completion of a guardianship review, the court may
24 do either of the following:

25 (a) Continue the guardianship.

26 (b) Schedule and conduct a hearing on the guardianship's
27 status and do any of the following:

1 (i) If the guardianship is a limited guardianship, do either
2 of the following:

3 (A) Continue the limited guardianship.

4 (B) Order the parties to modify the limited guardianship
5 placement plan as a condition to continuing the limited
6 guardianship.

7 (ii) If the guardianship was established under section 5204,
8 do either of the following:

9 (A) Continue the guardianship.

10 (B) Order the parties to follow a court-structured plan
11 designed to resolve the conditions identified at the review
12 hearing.

13 (iii) Take an action described in section 5209(2).

14 Sec. 5208. (1) A minor's parent or parents may petition the
15 court to terminate a guardianship for the minor as follows:

16 (a) If the guardianship is a limited guardianship, the par-
17 ents or the sole parent with a right to custody of the minor.

18 (b) If the guardianship was established under section 5204,
19 the minor's parent or parents.

20 (2) If a petition is filed to terminate a guardianship under
21 this section, the court may do 1 or more of the following:

22 (a) Order the family independence agency or a court employee
23 or agent to conduct an investigation and file a written report of
24 the investigation regarding the best interests of the minor or
25 give testimony concerning the investigation.

26 (b) Utilize the community resources in behavioral sciences
27 and other professions in the investigation and study of the best

1 interests of the minor and consider their recommendations for the
2 disposition of the petition.

3 (c) Appoint a guardian ad litem or attorney to represent the
4 minor.

5 (d) Take any other action considered necessary in a particu-
6 lar case.

7 (3) This section and section 5209 apply to all guardianships
8 established before, on, or after the effective date of this
9 section.

10 Sec. 5209. (1) After notice and hearing on a petition under
11 section 5208 to terminate a limited guardianship, the court shall
12 terminate the limited guardianship if it determines that the
13 minor's parent or parents have substantially complied with the
14 limited guardianship placement plan. The court may enter orders
15 to facilitate the minor's reintegration into the home of the
16 parent or parents for a period of up to 6 months before the
17 termination.

18 (2) For a petition to terminate a guardianship in which sub-
19 section (1) does not apply, after notice and hearing, the court
20 may do any of the following:

21 (a) Terminate the guardianship if the court determines that
22 it is in the best interests of the minor, and do any of the
23 following:

24 (i) Enter orders to facilitate the minor's reintegration
25 into the parent's home for a period of up to 6 months before the
26 termination.

1 (ii) Order the family independence agency to supervise the
2 transition period when the minor is being reintegrated into his
3 or her parent's home.

4 (iii) Order the family independence agency to provide serv-
5 ices to facilitate the minor's reintegration into his or her
6 parent's home.

7 (b) Continue the guardianship for not more than 1 year after
8 the hearing date if the court determines that it is in the best
9 interests of the minor, and do any of the following:

10 (i) If the guardianship is a limited guardianship, order the
11 parent or parents to comply with 1 of the following:

12 (A) The limited guardianship placement plan.

13 (B) A court-modified limited guardianship placement plan.

14 (C) If the limited guardianship was established before
15 December 20, 1990, a court-structured plan that enables the minor
16 to return to the home of his or her parent or parents.

17 (ii) If the guardianship is ordered under section 5204,
18 order the parent or parents to follow a court-structured plan
19 that enables the minor to return to the home of his or her parent
20 or parents.

21 (iii) If a guardianship is continued under subparagraph (i)
22 or (ii), schedule and conduct a hearing to review the guardian-
23 ship before the expiration of the period of time that the guard-
24 ianship is continued and either terminate the guardianship or
25 limited guardianship or proceed under subdivision (c) or (d).

26 (c) If the minor resides with the guardian or limited
27 guardian for not less than 1 year and if the court finds that the

1 minor's parent or parents have failed to provide the minor with
2 parental care, love, guidance, and attention appropriate to the
3 child's age and individual needs resulting in a substantial dis-
4 ruption of the parent-child relationship, continue the guardian-
5 ship if it is established by clear and convincing evidence that
6 the continuation would serve the best interests of the minor.

7 (d) Appoint an attorney to represent the minor or refer the
8 matter to the family independence agency. The attorney or the
9 family independence agency may file a complaint on behalf of the
10 minor requesting the [family division of the circuit] court to
11 take jurisdiction of the minor under section 2(b) of chapter XIIIA
12 of 1939 PA 288, MCL 712A.2.

13 Sec. 5210. Upon receipt of a copy of a judgment or an order
14 of disposition in a child custody action regarding a minor that
15 is sent to the court as provided in section 6b of the child cus-
16 tody act of 1970, 1970 PA 91, MCL 722.26b, the court shall termi-
17 nate the guardianship or limited guardianship for that minor.

18 Sec. 5211. The venue for a guardianship proceeding for a
19 minor is in the place where the minor resides or is present at
20 the time the proceeding is commenced.

21 Sec. 5212. The court may appoint as guardian a person whose
22 appointment serves the minor's welfare, including a nonprofit
23 corporation described in section 5106. If the minor is 14 years
24 of age or older, the court shall appoint a person nominated by
25 the minor, unless the court finds the appointment contrary to the
26 minor's welfare.

1 Sec. 5213. (1) The petitioner shall give notice of the time
2 and place of hearing of a petition for the appointment of a
3 minor's guardian to each of the following:

4 (a) The minor, if 14 years of age or older.

5 (b) The person who had the principal care and custody of the
6 minor during the [63] days preceding the date of the petition.

7 (c) Each living parent of the minor or, if neither of them
8 is living, the adult nearest of kin to the minor.

9 (2) Upon hearing, if the court finds that a qualified person
10 seeks appointment, venue is proper, the required notices have
11 been given, the requirements of section 5204, or sections 5205
12 and 5206, are satisfied, and the minor's welfare will be served
13 by the requested appointment, the court shall make the
14 appointment. In other cases, the court may dismiss the proceed-
15 ing or make another disposition of the matter that will serve the
16 minor's welfare.

17 (3) If necessary, the court may appoint a temporary guardian
18 with the status of an ordinary guardian of a minor, but the tem-
19 porary guardian's authority shall not exceed 6 months.

20 (4) If, at any time in the proceeding, the court determines
21 that the minor's interests are or may be inadequately represent-
22 ed, the court may appoint an attorney to represent the minor,
23 giving a consideration to the preference of the minor if the
24 minor is 14 years of age or older.

25 Sec. 5214. By accepting a parental or court appointment as
26 guardian, a guardian submits personally to the court's
27 jurisdiction in a proceeding relating to the guardianship that

1 may be instituted by an interested person. The petitioner shall
2 cause notice of a proceeding to be delivered to the guardian or
3 mailed to the guardian by first-class mail at the guardian's
4 address listed in the court records and to the address then known
5 to the petitioner. Letters of guardianship must indicate whether
6 the guardian was appointed by court order or parental
7 nomination.

8 Sec. 5215. A minor's guardian has the powers and responsi-
9 bilities of a parent who is not deprived of custody of the
10 parent's minor and unemancipated child, except that a guardian is
11 not legally obligated to provide for the ward from the guardian's
12 own money and is not liable to third persons by reason of the
13 parental relationship for the ward's acts. A guardian has all of
14 the following powers and duties:

15 (a) The guardian shall take reasonable care of a ward's per-
16 sonal effects and commence a protective proceeding if necessary
17 to protect the ward's other property.

18 (b) The guardian may receive money payable for the ward's
19 support to the ward's parent, guardian, or custodian under the
20 terms of a statutory benefit or insurance system, or a private
21 contract, devise, trust, conservatorship, or custodianship. The
22 guardian may receive the ward's money or property paid or deliv-
23 ered under section 5102. Money or property received under that
24 section shall be applied to the ward's current needs for support,
25 care, and education. The guardian shall exercise due care to
26 conserve any excess for the ward's future needs unless a
27 conservator is appointed for the ward's estate, in which case the

1 excess shall be paid over at least annually to the conservator.
2 The guardian shall not use that money or property for compensa-
3 tion for the guardian's services except as approved by court
4 order or as determined by a duly appointed conservator other than
5 the guardian. A guardian may institute a proceeding to compel a
6 person's performance of a duty to support the ward or to pay
7 money for the ward's welfare.

8 (c) The guardian shall facilitate the ward's education and
9 social or other activities, and shall authorize medical or other
10 professional care, treatment, or advice. A guardian is not
11 liable by reason of this consent for injury to the ward resulting
12 from the negligence or acts of third persons unless it would be
13 illegal for a parent to have consented.

14 (d) A guardian may consent to a minor ward's marriage.

15 (e) Subject to the conditions and restrictions of chapter X
16 of 1939 PA 288, MCL 710.21 to 710.70, a guardian may consent to
17 [marriage or adoption of a minor ward or to the release of a minor
ward for adoption.]

18 (f) A guardian must report the condition of the ward and of
19 the ward's estate that is subject to the guardian's possession or
20 control as ordered by the court on petition of a person inter-
21 ested in the minor's welfare or as required by court rule. The
22 report must detail the condition of the ward, medical or mental
23 health treatment or care to which the ward was subjected, and
24 what reason, if any, exists for the continuation of the
25 guardianship.

[(g) Within 14 days after a change in the ward's place of
residence, the guardian shall give to the court notice of the ward's
new address.]

26 Sec. 5216. (1) A guardian is entitled to reasonable
27 compensation for services as guardian and to reimbursement for

1 room, board, and clothing personally provided to the ward, but
2 only as approved by court order.

3 (2) If a minor dies while under guardianship and a conserva-
4 tor has not been appointed for the minor's estate and if the
5 guardian has possession of any money of the deceased minor, upon
6 petition of the guardian and with or without notice, the court
7 may hear a claim for burial expenses or another claim as the
8 court considers advisable. Upon hearing the claim, the court may
9 enter an order allowing or disallowing the claim or a part of it
10 and may provide in an order of allowance that the claim or a part
11 of it be paid immediately if the payment can be made without
12 injury or serious inconvenience to the minor's estate.

13 Sec. 5217. A guardian's authority and responsibility termi-
14 nate upon the guardian's death, resignation, or removal or upon
15 the minor's death, adoption, marriage, or attainment of
16 majority. However, a termination does not affect the guardian's
17 liability for prior acts or the obligation to account for the
18 ward's money and property. The guardian's resignation does not
19 terminate the guardianship until it is approved by the court. A
20 parental appointment under an informally probated will terminates
21 if the will is later denied probate in a formal proceeding.

22 Sec. 5218. (1) The court at the place where the ward
23 resides has concurrent jurisdiction over resignation, removal,
24 accounting, or another proceeding relating to the guardianship
25 with the court that appointed the guardian or in which acceptance
26 of a parental appointment was filed.

1 (2) If the court located where the ward resides is neither
2 the appointing court nor the court in which acceptance of
3 appointment is filed, the court in which a proceeding subsequent
4 to appointment is commenced in all appropriate cases shall notify
5 the other court, in this or another state, and after consultation
6 with that court, shall determine whether to retain jurisdiction
7 or transfer the proceeding to the other court, whichever will
8 serve the ward's welfare. A copy of an order accepting a resig-
9 nation or removing a guardian shall be sent to the appointing
10 court or the court in which acceptance of appointment is filed.

11 Sec. 5219. (1) A person interested in a ward's welfare or,
12 if 14 years of age or older, the ward may petition for the
13 removal of a guardian on the ground that removal would serve the
14 ward's welfare or for another order that would serve the ward's
15 welfare. A guardian may petition for permission to resign. A
16 petition for removal or for permission to resign may, but need
17 not, include a request for a successor guardian's appointment.

18 (2) Notice of a hearing on a petition for an order after a
19 guardian's appointment must be given to the ward, the guardian,
20 and any other person as ordered by the court or as provided by
21 court rule.

22 (3) After notice and hearing on a petition for removal or
23 for permission to resign, the court may terminate the guardian-
24 ship and make further order that may be appropriate.

25 (4) If the court determines at any time in a proceeding that
26 the ward's interest is or may be inadequately represented, the
27 court may appoint an attorney to represent the minor, giving

1 consideration to the preference of the minor if the minor is 14
2 years of age or older.

3 PART 3

4 GUARDIANS OF INCAPACITATED INDIVIDUALS

5 Sec. 5301. (1) If serving as guardian, the parent of an
6 unmarried incapacitated individual may appoint by will, or other
7 writing signed by the parent and attested by at least 2 wit-
8 nesses, a guardian for the incapacitated individual. If both
9 parents are dead or the surviving parent is adjudged incapaci-
10 tated, a parental appointment becomes effective when, after
11 having given 7 days' prior written notice of intention to do so
12 to the incapacitated individual and to the person having the care
13 of the incapacitated individual or to the nearest adult relative,
14 the guardian files acceptance of appointment in the court in
15 which the will is probated or, in the case of a nontestamentary
16 nominating instrument, in the court at the place where the inca-
17 pacitated individual resides or is present. The notice must
18 state that the appointment may be terminated by filing a written
19 objection in the court as provided by subsection (4). If both
20 parents are dead, an effective appointment by the parent who died
21 later has priority.

22 (2) If serving as guardian, the spouse of a married incapac-
23 itated individual may appoint by will, or other writing signed by
24 the spouse and attested by at least 2 witnesses, a guardian of
25 the incapacitated individual. The appointment becomes effective
26 when, after having given 7 days' prior written notice of
27 intention to do so to the incapacitated individual and to the

1 person having care of the incapacitated individual or to the
2 nearest adult relative, the guardian files acceptance of appoint-
3 ment in the court in which the will is probated or, in the case
4 of a nontestamentary nominating instrument, in the court at the
5 place where the incapacitated individual resides or is present.
6 The notice must state that the appointment may be terminated by
7 filing a written objection in the court as provided by subsection
8 (4).

9 (3) An appointment effected by filing the guardian's accep-
10 tance under a will probated in the state of the decedent's domi-
11 cile is effective in this state.

12 (4) Upon the filing of the incapacitated individual's writ-
13 ten objection to a guardian's appointment under this section in
14 either the court in which the will was probated or, for a nontes-
15 tamentary nominating instrument, the court at the place where the
16 incapacitated individual resides or is present, the appointment
17 is terminated. An objection does not prevent appointment by the
18 court in a proper proceeding of the parental or spousal nominee
19 or another suitable person upon an adjudication of incapacity in
20 a proceeding under sections 5302 to 5317.

21 Sec. 5302. The venue for a guardianship proceeding for an
22 incapacitated individual is in the place where the incapacitated
23 individual resides or is present. If the incapacitated individ-
24 ual is admitted to an institution by order of a court of compe-
25 tent jurisdiction, venue is also in the county in which that
26 court is located.

1 Sec. 5303. (1) An individual in his or her own behalf, or
2 any person interested in the individual's welfare, may petition
3 for a finding of incapacity and appointment of a guardian. The
4 petition shall contain specific facts about the individual's con-
5 dition and specific examples of the individual's recent conduct
6 that demonstrate the need for a guardian's appointment.

7 (2) Upon the filing of a petition under subsection (1), the
8 court shall set a date for hearing on the issue of incapacity.
9 Unless the allegedly incapacitated individual has legal counsel
10 of his or her own choice, the court shall appoint [a guardian ad
11 litem]
12 to represent the person [in the proceeding].

13 Sec. 5304. (1) If necessary, the court may order that an
14 individual alleged to be incapacitated be examined by a physician
15 or mental health professional appointed by the court who shall
16 submit a report in writing to the court at least 5 days before
17 the hearing set under section 5303. A report prepared as pro-
18 vided in this subsection shall not be made a part of the
19 proceeding's public record, but shall be available to the court
20 or an appellate court in which the proceeding is subject to
21 review, to the alleged incapacitated individual, to the petition-
22 er, to their respective legal counsels, and to other persons as
23 the court directs. The report may be used as provided in the
24 Michigan rules of evidence.

25 (2) The alleged incapacitated individual has the right to
26 secure an independent evaluation, at his or her own expense or,
27 if indigent, at the expense of the state. Compensation for an

1 independent evaluation at public expense shall be in an amount
2 that, based upon time and expense, the court approves as
3 reasonable.

4 (3) A report prepared under this section shall contain all
5 of the following:

6 (a) A detailed description of the individual's physical or
7 psychological infirmities.

8 (b) An explanation of how and to what extent each infirmity
9 interferes with the individual's ability to receive or evaluate
10 information in making decisions.

11 (c) A listing of all medications the individual is receiv-
12 ing, the dosage of each medication, and a description of the
13 effects each medication has upon the individual's behavior.

14 (d) A prognosis for improvement in the individual's condi-
15 tion and a recommendation for the most appropriate rehabilitation
16 plan.

17 (e) The signatures of all individuals who performed the
18 evaluations upon which the report is based.

19 (4) The individual alleged to be incapacitated is entitled
20 to be present at the hearing in person, and to see or hear all
21 evidence bearing upon the individual's condition. If the indi-
22 vidual wishes to be present at the hearing, all practical steps
23 shall be taken to ensure his or her presence, including, if nec-
24 essary, moving the hearing site.

25 (5) The individual is entitled to be represented by legal
26 counsel, to present evidence, to cross-examine witnesses,

1 including the court-appointed physician or mental health
2 professional and the visitor, and to trial by jury.

3 (6) The issue of incapacity may be determined at a closed
4 hearing without a jury if requested by the individual alleged to
5 be incapacitated or that individual's legal counsel.

6 Sec. 5305. (1) The duties of a guardian ad litem appointed
7 for an individual alleged to be incapacitated include all of the
8 following:

9 (a) Personally visiting the individual.

10 (b) Explaining to the individual the nature, purpose, and
11 legal effects of a guardian's appointment.

12 (c) Explaining to the individual the hearing procedure and
13 the individual's rights in the hearing procedure, including, but
14 not limited to, the right to contest the petition, to request
15 limits on the guardian's powers, to object to a particular person
16 being appointed guardian, to be present at the hearing, to be
17 represented by legal counsel, and to have legal counsel appointed
18 for the individual if he or she is unable to afford legal
19 counsel.

20 (d) Informing the individual of the name of any person known
21 to be seeking appointment as guardian.

22 (e) Making determinations, and informing the court of those
23 determinations, on all of the following:

24 (i) Whether the individual wishes to be present at the
25 hearing.

26 (ii) Whether the individual wishes to contest the petition.

1 (iii) Whether the individual wishes limits placed on the
2 guardian's powers.

3 (iv) Whether the individual objects to a particular person
4 being appointed guardian.

5 (2) The court shall not order compensation of the guardian
6 ad litem unless the guardian ad litem states on the record or in
7 the guardian ad litem's written report that he or she has com-
8 plied with subsection (1).

9 (3) If the individual alleged to be incapacitated wishes to
10 contest the petition, to have limits placed on the guardian's
11 powers, or to object to a particular person being appointed
12 guardian and if legal counsel has not been secured, the court
13 shall appoint legal counsel to represent the individual alleged
14 to be incapacitated. If the individual alleged to be incapaci-
15 tated is indigent, the state shall bear the expense of legal
16 counsel.

17 (4) If the individual alleged to be incapacitated requests
18 legal counsel or the guardian ad litem determines it is in the
19 best interest of the individual to have legal counsel, and if
20 legal counsel has not been secured, the court shall appoint legal
21 counsel. If the individual alleged to be incapacitated is indi-
22 gent, the state shall bear the expense of legal counsel.

23 (5) If the individual alleged to be incapacitated has legal
24 counsel appointed under subsection (3) or (4), the appointment of
25 a guardian ad litem terminates.

26 Sec. 5306. (1) The court may appoint a guardian if it is
27 satisfied by clear and convincing evidence that the individual

1 for whom a guardian is sought is an incapacitated individual, and
2 that the appointment is necessary as a means of providing con-
3 tinuing care and supervision of the incapacitated individual.
4 Alternately, the court may dismiss the proceeding or enter
5 another appropriate order.

6 (2) A guardian shall be granted only those powers and only
7 for that period of time as is necessary to provide for the demon-
8 strated need of the incapacitated individual, and the guardian-
9 ship shall be designed to encourage the development of maximum
10 self-reliance and independence in the individual. A court order
11 establishing a guardianship shall specify any limitations on the
12 guardian's powers and any time limits on the guardianship.

13 (3) If it is found by clear and convincing evidence that the
14 individual is incapacitated and lacks the capacity to do some,
15 but not all, of the tasks necessary to care for himself or her-
16 self, the court may appoint a limited guardian to provide guard-
17 ianship services to the individual, but the court shall not
18 appoint a full guardian.

19 (4) If it is found by clear and convincing evidence that the
20 individual is incapacitated and is totally without capacity to
21 care for himself or herself, the court shall specify that finding
22 of fact in an order and may appoint a full guardian.

23 Sec. 5307. By accepting appointment, a guardian personally
24 submits to the court's jurisdiction in a proceeding relating to
25 the guardianship that may be instituted by an interested person.
26 Notice of a proceeding shall be delivered to the guardian or
27 mailed to the guardian by first-class mail at the guardian's

1 address as listed in the court records and to his or her address
2 as then known to the petitioner.

3 Sec. 5308. The guardian's authority and responsibility for
4 an incapacitated individual terminates upon the death of the
5 guardian or ward, upon the determination of incapacity of the
6 guardian, or upon removal or resignation as provided in section
7 5310. Testamentary appointment of a guardian under a will pro-
8 bated under article III terminates if the will is later denied
9 probate under a supervised probate proceeding.

10 Sec. 5309. The court shall review a guardianship not later
11 than 1 year after the guardian's appointment and not later than
12 every 3 years after each review.

13 Sec. 5310. (1) On petition of the guardian and subject to
14 the filing and approval of a report prepared as required by sec-
15 tion 5314, the court shall accept the guardian's resignation and
16 make any other order that is appropriate.

17 (2) The ward or a person interested in the ward's welfare
18 may petition for an order removing the guardian, appointing a
19 successor guardian, modifying the guardianship's terms, or termi-
20 nating the guardianship. A request for this order may be made by
21 informal letter to the court or judge. A person who knowingly
22 interferes with the transmission of this kind of request to the
23 court or judge is subject to a finding of contempt of court.

24 (3) Except as otherwise provided in the order finding inca-
25 pacity, upon receiving a petition or request under this section,
26 the court shall set a date for a hearing to be held within 28
27 days after the receipt of the petition or request. An order

1 finding incapacity may specify a minimum period, not exceeding
2 [182] days, during which a petition or request for a finding that a
3 ward is no longer incapacitated, or for an order removing the
4 guardian, modifying the guardianship's terms, or terminating the
5 guardianship, shall not be filed without special leave of the
6 court.

7 (4) Before removing a guardian, appointing a successor
8 guardian, modifying the guardianship's terms, or terminating a
9 guardianship, and following the same procedures to safeguard the
10 ward's rights as apply to a petition for a guardian's appoint-
11 ment, the court may send a visitor to the present guardian's res-
12 idence and to the place where the ward resides or is detained to
13 observe conditions and report in writing to the court.

14 Sec. 5311. (1) In a proceeding for the appointment or
15 removal of an incapacitated individual's guardian, other than the
16 appointment of a temporary guardian or temporary suspension of a
17 guardian, notice of hearing must be given to each of the
18 following:

19 (a) The ward or the individual alleged to be incapacitated
20 and that individual's spouse, parents, and adult children.

21 (b) A person who is serving as the guardian or conservator
22 or who has the individual's care and custody.

23 (c) If known, a person named as attorney in fact under a
24 durable power of attorney.

25 (d) If no other person is notified under subdivision (a),
26 (b), or (c), at least 1 of the individual's closest adult
27 relatives, if any can be found.

1 (2) Notice must be served personally on the alleged
2 incapacitated individual. Notice to all other persons must be
3 given as prescribed by court rule. Waiver of notice by the indi-
4 vidual alleged to be incapacitated is not effective unless the
5 individual attends the hearing or a waiver of notice is confirmed
6 in an interview with the visitor.

7 (3) In a proceeding for a guardian's appointment under sec-
8 tions 5303 and 5304, a copy of the petition must be attached to
9 the hearing notice, and the notice to the alleged incapacitated
10 individual must contain all of the following information:

11 (a) The nature, purpose, and legal effects of the appoint-
12 ment of a guardian.

13 (b) The alleged incapacitated individual's rights in the
14 proceeding, including the right to appointed legal counsel.

15 Sec. 5312. (1) If an individual does not have a guardian,
16 an emergency exists, and no other person appears to have author-
17 ity to act in the circumstances, the court shall provide notice
18 to the individual alleged to be incapacitated and shall hold a
19 hearing. Upon a showing that the individual is incapacitated,
20 the court may exercise the power of a guardian, or appoint a tem-
21 porary guardian with only the powers and for the period of time
22 as ordered by the court. A hearing with notice as provided in
23 section 5311 shall be held within 28 days after the court has
24 acted under this subsection.

25 (2) If an appointed guardian is not effectively performing
26 the guardian's duties and the court further finds that the
27 incapacitated individual's welfare requires immediate action, the

1 court may appoint, with or without notice, a temporary guardian
2 for the incapacitated individual for a specified period not to
3 exceed 6 months.

4 (3) A temporary guardian is entitled to the care and custody
5 of the ward, and the authority of a permanent guardian previously
6 appointed by the court is suspended as long as a temporary guard-
7 ian has authority. A temporary guardian may be removed at any
8 time. A temporary guardian shall make reports as the court
9 requires. In other respects, the provisions of this act concern-
10 ing guardians apply to temporary guardians.

11 Sec. 5313. (1) A competent person, including a nonprofit
12 corporation described in section 5106, may be appointed guardian
13 of an incapacitated individual. The court shall not appoint as a
14 guardian an agency, public or private, that financially benefits
15 from directly providing housing, medical, or social services to
16 the incapacitated individual.

17 (2) In appointing a guardian under this section, the court
18 shall appoint a person, if suitable and willing to serve, desig-
19 nated by the individual who is the subject of the petition,
20 including a designation made in a durable power of attorney. If
21 a specific designation is not made or a person designated is not
22 suitable or willing to serve, the court may appoint as a guardian
23 a person named as attorney in fact through a durable power of
24 attorney.

25 (3) If a person is not designated under subsection (2) or a
26 person designated under subsection (2) is not suitable or willing
27 to serve, the court may appoint as a guardian an individual who

1 is related to the subject of the petition in the following order
2 of preference:

3 (a) The incapacitated individual's spouse. This subdivision
4 shall be considered to include a person nominated by will or
5 other writing signed by a deceased spouse.

6 (b) An adult child of the incapacitated individual.

7 (c) A parent of the incapacitated individual. This subdivi-
8 sion shall be considered to include a person nominated by will or
9 other writing signed by a deceased parent.

10 (d) A relative of the incapacitated individual with whom the
11 individual has resided for more than 6 months before the filing
12 of the petition.

13 (e) A person nominated by the person who is caring for the
14 individual or paying benefits to the individual.

15 (4) If none of the persons listed in subsection (3) is suit-
16 able or willing to serve, the court may appoint any competent
17 person who is suitable and willing to serve.

18 Sec. 5314. [Whenever meaningful communication is possible, an
incapacitated individual's guardian should consult with the
incapacitated individual before making a major decision affecting
the incapacitated individual.] Except as limited under section 5306,
an inca-

19 pacitated individual's guardian is responsible for the ward's
20 care, custody, and control, but is not liable to third persons by
21 reason of that responsibility for the ward's acts. In particular
22 and without qualifying the foregoing, a guardian has all of the
23 following powers and duties, except as modified by court order:

24 (a) To the extent that it is consistent with the terms of an
25 order by a court of competent jurisdiction relating to detention
26 or commitment of the ward, the guardian is entitled to custody of
27 the person of the guardian's ward and may establish the ward's

1 place of residence within or without this state. The guardian
2 must notify the court within 14 days of a change in the ward's
3 place of residence.

4 (b) If entitled to custody of the ward, the guardian must
5 make provision for the ward's care, comfort, and maintenance and,
6 when appropriate, arrange for the ward's training and education.
7 The guardian has the responsibility of securing services to
8 restore the ward to the best possible state of mental and physi-
9 cal well-being so that the ward can return to self-management at
10 the earliest possible time. Without regard to custodial rights
11 of the ward's person, the guardian must take reasonable care of
12 the ward's clothing, furniture, vehicles, and other personal
13 effects and commence a protective proceeding if the ward's other
14 property is in need of protection.

15 (c) A guardian may give the consent or approval that may be
16 necessary to enable the ward to receive medical or other profes-
17 sional care, counsel, treatment, or service.

18 (d) If a conservator for the ward's estate is not appointed,
19 a guardian may:

20 (i) Institute a proceeding to compel a person under a duty
21 to support the ward or to pay sums for the ward's welfare to per-
22 form that duty.

23 (ii) Receive money and tangible property deliverable to the
24 ward and apply the money and property for the ward's support,
25 care, and education. The guardian shall not use money from the
26 ward's estate for room and board that the guardian or the
27 guardian's spouse, parent, or child have furnished the ward

1 unless a charge for the service is approved by court order made
2 upon notice to at least 1 of the ward's next of kin, if notice is
3 possible. The guardian shall exercise care to conserve any
4 excess for the ward's needs.

5 (e) The guardian shall report the condition of the ward and
6 the ward's estate that is subject to the guardian's possession or
7 control, as required by the court, but not less often than
8 annually. A report under this subdivision must contain all of
9 the following:

10 (i) The ward's current mental, physical, and social
11 condition.

12 (ii) Any improvement or deterioration in the ward's mental,
13 physical, and social condition that occurred during the past
14 year.

15 (iii) The ward's present living arrangement and any changes
16 in his or her living arrangement that occurred during the past
17 year.

18 (iv) Whether the guardian recommends a more suitable living
19 arrangement for the ward.

20 (v) Medical treatment received by the ward.

21 (vi) Services received by the ward.

22 (vii) A list of the guardian's visits with, and activities
23 on behalf of, the ward.

24 (viii) A recommendation as to the need for continued
25 guardianship.

26 (f) If a conservator is appointed, the guardian shall pay to
27 the conservator, for management as provided in this act, the

1 amount of the ward's estate received by the guardian in excess of
2 the amount the guardian expends for the ward's current support,
3 care, and education. The guardian shall account to the conserva-
4 tor for the amount expended.

5 Sec. 5315. (1) A guardian of an individual for whom a con-
6 servator also is appointed controls the ward's custody and care
7 and is entitled to receive reasonable amounts for those services
8 and for room and board furnished to the ward as agreed upon
9 between the guardian and the conservator if the amounts agreed
10 upon are reasonable under the circumstances. The guardian may
11 request the conservator to expend the ward's estate by payment to
12 a third person or institution for the ward's care and
13 maintenance.

14 (2) If a ward dies while under guardianship and a conserva-
15 tor has not been appointed for the ward's estate and if the
16 guardian has possession of money of the deceased ward, upon peti-
17 tion of the guardian and with or without notice, the court may
18 hear a claim for burial expenses or any other claim as the court
19 considers advisable. Upon hearing the claim, the court may enter
20 an order allowing or disallowing the claim or a part of the claim
21 and may provide in the order of allowance that the claim or a
22 part of it be paid immediately if the payment can be made without
23 injury or serious inconvenience to the ward's estate.

24 Sec. 5316. To encourage self-reliance and independence in
25 an incapacitated individual, the court may authorize the individ-
26 ual to function without the consent or supervision of the
27 individual's guardian or conservator in handling part of his or

1 her money or property, including authorizing the individual to
2 maintain an account with a financial institution. To the extent
3 the individual is authorized to function autonomously, a person
4 may deal with the individual as though the individual is mentally
5 competent.

6 Sec. 5317. (1) The court in the county where the ward
7 resides has concurrent jurisdiction over resignation, removal,
8 accounting, and other proceedings relating to the guardianship
9 with the court that appointed the guardian or in which acceptance
10 of a parental or spousal appointment was filed.

11 (2) If the court in the county where the ward resides is not
12 the court in which acceptance of appointment is filed, the court
13 in which a proceeding is commenced after the appointment in
14 appropriate cases shall notify the other court, in this or
15 another state, and after consultation with that court, shall
16 determine whether to retain jurisdiction or transfer the proceed-
17 ing to the other court, whichever is in the best interests of the
18 ward. After this determination is made, the court accepting a
19 resignation or removing a guardian shall direct this fiduciary to
20 prepare and submit a final report to both courts. A copy of an
21 order accepting a resignation or removing a guardian and a copy
22 of the final report must be sent to the court in which acceptance
23 of appointment is filed. The court entering this order may
24 permit closing of the guardianship in the court in which accep-
25 tance of appointment is filed, without notice to interested
26 persons.

1 [Sec. 5318. If a third person is dealing with a guardian
2 or is assisting a guardian in the conduct of a transaction, the
3 third person may assume the existence of trust powers and their
4 proper exercise by the guardian without inquiry. The third person
5 is not bound to inquire whether the guardian may act or is properly
6 exercising the power. Unless the third person has actual knowledge
7 that the guardian is exceeding the guardian's powers or improperly
8 exercising them, a third person is fully protected in dealing with
9 the guardian as if the guardian possessed and properly exercised the
10 powers the guardian purports to exercise. A third person is not
11 bound to assume the proper application of estate assets paid or
delivered to the guardian. This section does not apply to a third
person dealing with a limited guardian.]

12

PART 4

13 PROTECTION OF PROPERTY OF AN INDIVIDUAL UNDER DISABILITY OR OF A

14

MINOR

15 Sec. 5401. (1) Upon petition and after notice and hearing
16 in accordance with this part, the court may appoint a conservator
17 or make another protective order for cause as provided in this
18 section.

19 (2) The court may appoint a conservator or make another pro-
20 tective order in relation to a minor's estate and affairs if the
21 court determines that the minor owns money or property that
22 requires management or protection that cannot otherwise be pro-
23 vided, has or may have business affairs that may be jeopardized
24 or prevented by minority, or needs money for support and educa-
25 tion and that protection is necessary or desirable to obtain or
26 provide money.

1 (3) The court may appoint a conservator or make another
2 protective order in relation to an individual's estate and
3 affairs if the court determines both of the following:

4 (a) The individual is unable to manage property and business
5 affairs effectively for reasons such as mental illness, mental
6 deficiency, physical illness or disability, chronic use of drugs,
7 chronic intoxication, confinement, detention by a foreign power,
8 or disappearance.

9 (b) The individual has property that will be wasted or dis-
10 sipated unless proper management is provided, or money is needed
11 for the individual's support, care, and welfare or for those
12 entitled to the individual's support, and that protection is nec-
13 essary or desirable to obtain or provide money.

14 (4) The court may appoint a conservator in relation to the
15 estate and affairs of an individual who is mentally competent,
16 but due to age or physical infirmity is unable to manage his or
17 her property and affairs effectively and who, recognizing this
18 disability, requests a conservator's appointment.

19 Sec. 5402. After the service of notice in a proceeding
20 seeking a conservator's appointment or other protective order and
21 until the proceeding's termination, the court in which the peti-
22 tion is filed has the following jurisdiction:

23 (a) Exclusive jurisdiction to determine the need for a con-
24 servator or other protective order until the proceeding is
25 terminated.

26 (b) Exclusive jurisdiction to determine how the protected
27 individual's estate that is subject to the laws of this state is

1 managed, expended, or distributed to or for the use of the
2 protected individual or any of the protected individual's depen-
3 dents or other claimants.

4 (c) Concurrent jurisdiction to determine the validity of a
5 claim against the protected individual or the protected
6 individual's estate, and questions of title concerning estate
7 property.

8 Sec. 5403. Venue for a proceeding under this part is as
9 follows:

10 (a) In the court at the place in this state where the indi-
11 vidual to be protected resides whether or not a guardian has been
12 appointed in another place.

13 (b) If the individual to be protected does not reside in
14 this state, in the court at a place where property of the indi-
15 vidual is located.

16 Sec. 5404. (1) The individual to be protected, a person who
17 is interested in the individual's estate, affairs, or welfare,
18 including a parent, guardian, or custodian, or a person who would
19 be adversely affected by lack of effective management of the
20 individual's property and business affairs may petition for a
21 conservator's appointment or for another appropriate protective
22 order.

23 (2) The petition must set forth to the extent known the
24 petitioner's interest; the name, age, residence, and address of
25 the individual to be protected; the name and address of the
26 guardian, if any; the name and address of the nearest relative
27 known to the petitioner; a general statement of the individual's

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

302

1 property with an estimate of the value of the property, including
2 compensation, insurance, a pension, or an allowance to which the
3 individual is entitled; and the reason why a conservator's
4 appointment or another protective order is necessary. If a
5 conservator's appointment is requested, the petition shall also
6 set forth the name and address of the person whose appointment is
7 sought and the basis of the claim to priority for appointment.

8 Sec. 5405. (1) On a petition for a conservator's appoint-
9 ment or another protective order, the requirements for notice
10 described in section 5311 apply, subject to the following:

11 (a) If the individual to be protected has disappeared or is
12 otherwise situated so as to make personal service of notice
13 impracticable, notice to the individual shall be given by mail or
14 publication as provided in section 1401.

15 (b) If the individual to be protected is a minor, section
16 [5213(1)] also applies.

17 (2) Notice of a hearing on a petition for an order after a
18 conservator's appointment or another protective order must be
19 given to the protected individual, a conservator of the protected
20 individual's estate, and any other person as ordered by the court
21 or as provided by court rule.

22 Sec. 5406. (1) Upon receipt of a petition for a
23 conservator's appointment or another protective order because of
24 minority, the court shall set a date for hearing. If, at any
25 time in the proceeding, the court determines that the minor's
26 interests are or may be inadequately represented, the court may
27 appoint an attorney to represent the minor, giving consideration

1 to the minor's choice if 14 years of age or older. An attorney
2 appointed by the court to represent a minor has the powers and
3 duties of a guardian ad litem.

4 (2) Upon receipt of a petition for a conservator's appoint-
5 ment or another protective order for a reason other than minori-
6 ty, the court shall set a date for hearing. Unless the individ-
7 ual to be protected has chosen counsel [or is mentally competent but
8 aged or physically infirm, the court shall appoint a guardian ad
9 litem to represent the person in the proceeding.] If the alleged
10 ability is mental illness, mental deficiency, physical illness or
11 disability, chronic use of drugs, or chronic intoxication, the
12 court may direct that the individual [alleged to need protection
13 be examined by a physician or mental health professional appointed
14 by the court, preferably a physician or mental health professional
15 who is not connected with an institution in which the individual is
16 a patient or is detained. The individual alleged to need protection
17 has the right to secure an independent evaluation at his or her own
18 expense.] The court may send a visitor to
19 interview the individual to be protected. The visitor may be a
20 guardian ad litem or a court officer or employee.

18 (3) The court may utilize, as an additional visitor, the
19 service of a public or charitable agency to evaluate the condi-
20 tion of the individual to be protected and make appropriate rec-
21 ommendations to the court.

22 (4) The individual to be protected is entitled to be present
23 at the hearing in person, and all practical steps must be taken
24 to ensure the individual's presence including, if necessary,
25 moving the site of the hearing. The individual is entitled to be
26 represented by counsel, to present evidence, to cross-examine
27 witnesses, including a court-appointed physician or other

1 qualified person and a visitor, and to trial by jury. The issue
2 may be determined at a closed hearing or without a jury if the
3 individual to be protected or counsel for the individual so
4 requests.

5 (5) Any person may [request] for permission to participate in
6 the proceeding, and the court may grant the request, with or
7 without hearing, upon determining that the best interest of the
8 individual to be protected will be served by granting the
9 request. The court may attach appropriate conditions to the
10 permission.

11 (6) After hearing, upon finding that a basis for a
12 conservator's appointment or another protective order is estab-
13 lished [by clear and convincing evidence] , the court shall make the
14 appointment or other appropriate
15 protective order.

16 Sec. 5407. (1) The court shall exercise the authority con-
17 ferred in this part to encourage the development of maximum
18 self-reliance and independence of a protected individual and
19 shall make protective orders only to the extent necessitated by
20 the protected individual's mental and adaptive limitations and
21 other conditions warranting the procedure. Accordingly, the
22 court may authorize a protected individual to function without
23 the consent or supervision of the individual's conservator in
24 handling part of his or her money or property, including autho-
25 rizing the individual to maintain an account with a financial
26 institution. To the extent the individual is authorized to func-
27 tion autonomously, a person may deal with the individual as
though the individual is mentally competent.

1 (2) The court has the following powers that may be exercised
2 directly or through a conservator in respect to a protected
3 individual's estate and business affairs:

4 (a) While a petition for a conservator's appointment or
5 another protective order is pending and after preliminary hearing
6 and without notice to others, the court has the power to preserve
7 and apply property of the individual to be protected as may be
8 required for the support of the individual or the individual's
9 dependents.

10 (b) After hearing and upon determining that a basis for an
11 appointment or other protective order exists with respect to a
12 minor without other disability, the court has all those powers
13 over the minor's estate and business affairs that are or may be
14 necessary for the best interests of the minor and members of the
15 minor's immediate family.

16 (c) After hearing and upon determining that a basis for an
17 appointment or other protective order exists with respect to an
18 individual for a reason other than minority, the court, for the
19 benefit of the individual and members of the individual's immedi-
20 ate family, has all the powers over the estate and business
21 affairs that the individual could exercise if present and not
22 under disability, except the power to make a will. Those powers
23 include, but are not limited to, all of the following:

24 (i) To make gifts.

25 (ii) To convey or release a contingent or expectant interest
26 in property including marital property rights and a right of

1 survivorship incident to joint tenancy or tenancy by the
2 entirety.

3 (iii) To exercise or release a power held by the protected
4 individual as trustee, personal representative, custodian for a
5 minor, conservator, or donee of a power of appointment.

6 (iv) To enter into a contract.

7 (v) To create a revocable or irrevocable trust of estate
8 property that may extend beyond the disability or life of the
9 protected individual.

10 (vi) To exercise an option of the protected individual to
11 purchase securities or other property.

12 (vii) To exercise a right to elect an option and change a
13 beneficiary under an insurance or annuity policy and to surrender
14 the policy for its cash value.

15 (viii) To exercise a right to an elective share in the
16 estate of the individual's deceased spouse.

17 (ix) To renounce or disclaim an interest by testate or
18 intestate succession or by inter vivos transfer.

19 (3) The court may exercise or direct the exercise of the
20 following powers only if satisfied, after the notice and hearing,
21 that it is in the protected individual's best interests and that
22 the individual either is incapable of consenting or has consented
23 to the proposed exercise of the power:

24 (a) To exercise or release a power of appointment of which
25 the protected individual is donee.

26 (b) To renounce or disclaim an interest.

1 (c) To make a gift in trust or otherwise exceeding 20% of a
2 year's income of the estate.

3 (d) To change a beneficiary under an insurance and annuity
4 policy.

5 (4) A determination that a basis for a conservator's
6 appointment or another protective order exists has no effect on
7 the protected individual's capacity.

8 Sec. 5408. (1) If it is established in a proper proceeding
9 that a basis exists as described in section 5401 for affecting an
10 individual's property and business affairs, the court, without
11 appointing a conservator, may authorize, direct, or ratify a
12 transaction necessary or desirable to achieve a security, serv-
13 ice, or care arrangement meeting the protected individual's fore-
14 seeable needs. Protective arrangements include, but are not
15 limited to, payment, delivery, deposit, or retention of money or
16 property; sale, mortgage, lease, or other transfer of property;
17 entry into an annuity contract, contract for life care, deposit
18 contract, or contract for training and education; or an addition
19 to or establishment of a suitable trust.

20 (2) If it is established in a proper proceeding that a basis
21 exists as described in section 5401 for affecting an individual's
22 property and business affairs, the court, without appointing a
23 conservator, may authorize, direct, or ratify a contract, trust,
24 or other transaction relating to the protected individual's prop-
25 erty and business affairs if the court determines that the trans-
26 action is in the protected individual's best interests.

1 (3) Before approving a protective arrangement or other
2 transaction under this section, the court shall consider the
3 interests of the protected individual's creditors and dependents
4 and, in view of the disability, whether the protected individual
5 needs the continuing protection of a conservator. The court may
6 appoint a special conservator to assist in the accomplishment of
7 a protective arrangement or other transaction authorized under
8 this section. The special conservator has the authority con-
9 ferred by the order and serves until discharged by order after
10 reporting to the court on all matters done under the appointment
11 order.

12 Sec. 5409. (1) The court may appoint an individual, a cor-
13 poration authorized to exercise fiduciary powers, or a nonprofit
14 corporation described in section 5106 to serve as conservator of
15 a protected individual's estate. The following are entitled to
16 consideration for appointment in the following order of
17 priority:

18 (a) A conservator, guardian of property, or similar fidu-
19 ciary appointed or recognized by the appropriate court of another
20 jurisdiction in which the protected individual resides.

21 (b) An individual or corporation nominated by the protected
22 individual if he or she is 14 years of age or older and of suffi-
23 cient mental capacity to make an intelligent choice, including a
24 nomination made in a durable power of attorney.

25 (c) The protected individual's spouse.

26 (d) An adult child of the protected individual.

1 (e) A parent of the protected individual or a person
2 nominated by the will of a deceased parent.

3 (f) A relative of the protected individual with whom he or
4 she has resided for more than 6 months before the petition is
5 filed.

6 (g) A person nominated by the person who is caring for or
7 paying benefits to the protected individual.

[(h) If none of the persons listed in subdivisions (a) to (g)
are suitable and willing to serve, any person that the court
determines is suitable and willing to serve.]

8 (2) A person named in subsections (1)(a), (c), (d), (e), or
9 (f) may designate in writing a substitute to serve instead, and
10 that designation transfers the priority to the substitute. If
11 persons have equal priority, the court shall select the person
12 the court considers best qualified to serve. Acting in the pro-
13 tected individual's best interest, the court may pass over a
14 person having priority and appoint a person having a lower prior-
15 ity or no priority.

16 Sec. 5410. The court may require a conservator to furnish a
17 bond conditioned upon faithful discharge of all duties of the
18 trust according to law, with sureties as the court specifies.
19 Unless otherwise directed, the bond shall be in the amount of the
20 aggregate capital value of the estate property in the
21 conservator's control plus 1 year's estimated income minus the
22 value of securities deposited under arrangements requiring a
23 court order for their removal and the value of land that the
24 fiduciary, by express limitation of power, lacks power to sell or
25 convey without court authorization. Instead of sureties on a
26 bond, the court may accept other security for the performance of

1 the bond, including a pledge of securities or a mortgage of
2 land.

3 Sec. 5411. (1) The following requirements and provisions
4 apply to a bond required under section 5410:

5 (a) Unless otherwise provided by the terms of the approved
6 bond, sureties are jointly and severally liable with the conser-
7 vator and with each other.

8 (b) By executing an approved bond of a conservator, a surety
9 consents to the jurisdiction of the court that issued letters to
10 the primary obligor in a proceeding pertaining to the
11 conservator's fiduciary duties and naming the surety as a party
12 respondent. Notice of a proceeding must be delivered to the
13 surety or mailed by registered or certified mail to the address
14 listed with the court where the bond is filed and to the address
15 as then known to the petitioner.

16 (c) On petition of a successor conservator or an interested
17 person, a proceeding may be initiated against a surety for breach
18 of the obligation of the conservator's bond.

19 (d) The conservator's bond is not void after the first
20 recovery but may be proceeded against from time to time until the
21 whole penalty is exhausted.

22 (2) A proceeding shall not be commenced against a surety on
23 a matter as to which an action or proceeding against the primary
24 obligor is barred by adjudication or limitation.

25 Sec. 5412. (1) Before receiving letters, a conservator must
26 qualify by filing with the appointing court a required bond and a
27 statement of acceptance of the duties of the office.

1 (2) In filing the statement of acceptance, the conservator
2 may exclude from the scope of the conservator's responsibility,
3 for a period not exceeding [91 days], real estate or an ownership
4 interest in a business entity if the conservator reasonably
5 believes the real estate or property owned by the business entity
6 is or may be contaminated by a hazardous substance, or is or has
7 been used for an activity directly or indirectly involving a haz-
8 arduous substance that could result in liability to the estate or
9 otherwise impair the value of property held in the estate. The
10 conservator shall identify the real estate or ownership interest
11 being excluded and specify the time period of exclusion.

12 (3) If the conservator identifies excluded property under
13 subsection (2), the conservator's responsibilities extend to the
14 excluded property at the end of the exclusion period or upon
15 prior notice of acceptance of that property filed by the conser-
16 vator with the court, unless, before the end of the exclusion
17 period, the conservator requests the court to appoint a special
18 conservator with respect to the excluded property or to exercise
19 administrative authority over the excluded property by direct
20 judicial order.

21 (4) In response to a request by the general conservator
22 under subsection (3), the court may do either of the following:

23 (a) Appoint a special conservator with the duty and author-
24 ity to collect and manage the excluded property, but only to the
25 extent necessary for proper settlement of the estate, to preserve
26 the property, to account with respect to the property, and to

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

312

1 distribute or otherwise dispose of the property as directed by
2 the general conservator or other court order.

3 (b) Direct administration of the excluded property by judi-
4 cial order without the appointment of a conservator with respect
5 to the property.

6 (5) By accepting appointment, a conservator submits person-
7 ally to the court's jurisdiction in a proceeding relating to the
8 estate that may be instituted by an interested person. Notice of
9 a proceeding shall be delivered to the conservator or mailed by
10 registered or certified mail to the address listed in the peti-
11 tion for appointment or as reported to the court after appoint-
12 ment and to the address as then known to the petitioner.

13 Sec. 5413. If not otherwise compensated for services
14 rendered, a visitor, guardian ad litem, attorney, physician, con-
15 servator, or special conservator appointed in a protective pro-
16 ceeding, [
17

18] is entitled to reasonable compensation from
19 the estate.

20 Sec. 5414. The court may remove a conservator for good
21 cause, upon notice and hearing, or accept a conservator's
22 resignation. Upon the conservator's death, resignation, or
23 removal, the court may appoint another conservator. A conserva-
24 tor so appointed succeeds to the title and powers of the
25 predecessor.

26 Sec. 5415. (1) A person interested in the welfare of an
27 individual for whom a conservator is appointed may file a

1 petition in the appointing court for an order to do any of the
2 following:

3 (a) Require bond or security or additional bond or security,
4 or reduce bond.

5 (b) Require an accounting for the administration of the
6 trust.

7 (c) Direct distribution.

8 (d) Remove the conservator and appoint a temporary or suc-
9 cessor conservator.

10 (e) Grant other appropriate relief.

11 (2) A conservator may petition the appointing court for
12 instructions concerning fiduciary responsibility. Upon notice
13 and hearing, the court may give appropriate instructions or make
14 an appropriate order.

15 Sec. 5416. In relation to powers conferred by this part or
16 implicit in the title acquired by virtue of the proceeding, a
17 conservator shall act as a fiduciary and observe the standard of
18 care applicable to a trustee.

19 Sec. 5417. (1) Within [63] days after appointment or within
20 another time period specified by court rule, a conservator must
21 prepare and file with the appointing court a complete inventory
22 of the estate subject to the conservatorship together with an
23 oath or affirmation that the inventory is believed to be complete
24 and accurate so far as information permits. The conservator must
25 provide a copy of the inventory to the protected individual if
26 [the individual can be located] and if the individual is 14 years of
age or older and

27 has sufficient mental capacity to understand the arrangement. A

1 copy must also be provided to a parent or guardian with whom the
2 protected individual resides.

3 (2) The conservator must keep suitable records of the admin-
4 istration and exhibit those records on the request of an inter-
5 ested person.

6 Sec. 5418. A conservator shall account to the court for
7 administration of the trust not less than annually unless the
8 court directs otherwise, upon resignation or removal, and at
9 other times as the court directs. On termination of the pro-
10 tected individual's minority or disability, a conservator shall
11 account to the court or to the formerly protected individual or
12 that individual's successors. Subject to appeal or vacation
13 within the time permitted, an order, after notice and hearing,
14 allowing an intermediate account of a conservator adjudicates as
15 to liabilities concerning the matters considered in connection
16 with the accounts, and an order, after notice and hearing, allow-
17 ing a final account adjudicates as to all previously unsettled
18 liabilities of the conservator to the protected individual or the
19 protected individual's successors relating to the
20 conservatorship. In connection with any account, the court may
21 require a conservator to submit to a physical check of the estate
22 to be made in any manner the court specifies.

23 Sec. 5419. (1) Appointment of a conservator vests in the
24 conservator title as trustee to all of the protected individual's
25 property, or to the part of that property specified in the order,
26 held at the time of or acquired after the order, including title
27 to property held for the protected individual by a custodian or

1 attorney-in-fact. An order specifying that only a part of the
2 protected individual's property vests in the conservator creates
3 a limited conservatorship.

4 (2) Except as otherwise provided in this act, the protected
5 individual's interest in property vested in a conservator by this
6 section is not transferable or assignable by the protected
7 individual. Though ineffective to affect property rights, an
8 attempted transfer or assignment by the protected individual may
9 generate a claim for restitution or damages that, subject to pre-
10 sentation and allowance, may be satisfied as provided in section
11 5429.

12 (3) Property vested in a conservator by this section and the
13 protected individual's interest in that property is not subject
14 to levy, garnishment, or similar process other than an order
15 issued in the protective proceeding made as provided in section
16 5429.

17 Sec. 5420. (1) Letters of conservatorship are evidence of
18 transfer of all of the protected individual's property, or the
19 part of that property specified in the letters, to the
20 conservator. An order terminating a conservatorship is evidence
21 of transfer of the property subjected to the conservatorship from
22 the conservator to the protected individual or that individual's
23 successors.

24 (2) Subject to the requirements of general statutes govern-
25 ing the filing or recordation of documents of title to land or
26 other property, letters of conservatorship or an order
27 terminating a conservatorship may be filed or recorded to give

1 record notice of title as between the conservator and the
2 protected individual.

3 Sec. 5421. A sale or encumbrance to a conservator, to the
4 conservator's spouse, agent, or attorney, or to a corporation,
5 trust, or other organization in which the conservator has a sub-
6 stantial beneficial interest, or a transaction involving the
7 estate being administered by the conservator that is affected by
8 a substantial conflict between fiduciary and personal interests,
9 is voidable unless the transaction is approved by the court after
10 notice as directed by the court.

11 Sec. 5422. (1) A person who in good faith either assists or
12 deals with a conservator for value in a transaction other than
13 those requiring a court order as provided in section 5407 is pro-
14 tected as if the conservator properly exercised the power. The
15 fact that a person knowingly deals with a conservator does not
16 alone require the person to inquire into the existence of a power
17 or the propriety of its exercise, but a restriction on a
18 conservator's powers that is endorsed on letters as provided in
19 section 5427 is effective as to third persons. A person is not
20 bound to see to the proper application of estate property paid or
21 delivered to a conservator.

22 (2) The protection expressed in this section extends to a
23 procedural irregularity or jurisdictional defect that occurs in a
24 proceeding leading to the issuance of letters and is not a sub-
25 stitution for protection provided by a comparable provision of
26 the law relating to a commercial transaction or to simplifying a
27 transfer of securities by a fiduciary.

1 Sec. 5423. (1) Subject to a limitation provided in section
2 5427, a conservator has all of the powers conferred in this sec-
3 tion and the additional powers conferred by law on trustees in
4 this state. In addition, a conservator of the estate of an
5 unmarried minor, as to whom no one has parental rights, has the
6 powers, responsibilities, and duties of a guardian described in
7 section 5215 until the individual is no longer a minor or
8 marries. The parental rights conferred on a conservator by this
9 section do not preclude a guardian's appointment as provided in
10 part 2.

11 (2) Acting reasonably in an effort to accomplish the purpose
12 of the appointment and without court authorization or confirma-
13 tion, a conservator may do any of the following:

14 (a) Collect, hold, or retain estate property, including land
15 in another state, until judging that disposition of the property
16 should be made. Property may be retained even though it includes
17 property in which the conservator is personally interested.

18 (b) Receive an addition to the estate.

19 (c) Continue or participate in the operation of a business
20 or other enterprise.

21 (d) Acquire an undivided interest in estate property in
22 which the conservator, in a fiduciary capacity, holds an undi-
23 vided interest.

24 (e) Invest or reinvest estate property. If the conservator
25 exercises the power conferred by this subdivision, the conserva-
26 tor must invest or reinvest the property in accordance with the
27 Michigan prudent investor rule.

1 (f) Deposit estate money in a state or federally insured
2 financial institution including one operated by the conservator.

3 (g) Acquire or dispose of estate property, including land in
4 another state, for cash or on credit, at public or private sale,
5 or manage, develop, improve, exchange, partition, change the
6 character of, or abandon estate property.

7 (h) Make an ordinary or extraordinary repair or alteration
8 in a building or other structure, demolish an improvement, or
9 raze an existing or erect a new party wall or building.

10 (i) Subdivide, develop, or dedicate land to public use; make
11 or obtain the vacation of a plat or adjust a boundary; adjust a
12 difference in valuation on exchange or partition by giving or
13 receiving consideration; or dedicate an easement to public use
14 without consideration.

15 (j) Enter for any purpose into a lease as lessor or lessee
16 with or without option to purchase or renew for a term within or
17 extending beyond the term of the conservatorship.

18 (k) Enter into a lease or arrangement for exploration and
19 removal of a mineral or other natural resource or enter into a
20 pooling or unitization agreement.

21 (l) Grant an option involving disposition of estate property
22 or take an option for the acquisition of property.

23 (m) Vote a security, in person or by general or limited
24 proxy.

25 (n) Pay a call, assessment, or another amount chargeable or
26 accruing against or on account of a security.

1 (o) Sell or exercise stock subscription or conversion
2 rights.

3 (p) Consent, directly or through a committee or other agent,
4 to the reorganization, consolidation, merger, dissolution, or
5 liquidation of a corporation or other business enterprise.

6 (q) Hold a security in the name of a nominee or in other
7 form without disclosure of the conservatorship so that title to
8 the security may pass by delivery. However, the conservator is
9 liable for an act of the nominee in connection with the stock so
10 held.

11 (r) Insure the estate property against damage or loss or the
12 conservator against liability with respect to third persons.

13 (s) Borrow money to be repaid from estate property or
14 otherwise.

15 (t) Advance money for the protection of the estate or the
16 protected individual, and for all expense, loss, or liability
17 sustained in the estate's administration or because of the hold-
18 ing or ownership of estate property, for which the conservator
19 has a lien on the estate as against the protected individual for
20 an advance so made.

21 (u) Pay or contest a claim; settle a claim by or against the
22 estate or the protected individual by compromise, arbitration, or
23 otherwise; and release, in whole or in part, a claim belonging to
24 the estate to the extent that the claim is uncollectible.

25 (v) Pay a tax, assessment, conservator's compensation, or
26 other expense incurred in the estate's collection, care,
27 administration, and protection.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

320

1 (w) Allocate an item of income or expense to either estate
2 income or principal, as provided by law, including creation of a
3 reserve out of income for depreciation, obsolescence, or amorti-
4 zation, or for depletion in a mineral or timber property.

5 (x) Pay money distributable to a protected individual or the
6 protected individual's dependent by paying the money to the dis-
7 tributee or by paying the money for the use of the distributee to
8 the distributee's guardian, or if none, to a relative or other
9 person having custody of the distributee.

10 (y) Employ a person, including an [] auditor, invest-
11 ment advisor, or agent, even though the person is associated with
12 the conservator, to advise or assist in the performance of an
13 administrative duty; act upon the person's recommendation without
14 independent investigation; and, instead of acting personally,
15 employ an agent to perform an act of administration, whether or
16 not discretionary.

[(z) Employ an attorney to perform necessary legal services or
to advise or assist the conservator in the performance of the
conservator's administrative duties. An attorney employed under
this subdivision shall receive reasonable compensation for that
employment.]

17 [(aa)] Prosecute or defend an action, claim, or proceeding in
18 any jurisdiction for the protection of estate property and of the
19 conservator in the performance of a fiduciary duty.

20 [(bb)] Execute and deliver an instrument that will accomplish
21 or facilitate the exercise of a power vested in the conservator.

22 [(cc)] Respond to an environmental concern or hazard affecting
23 property as provided in section 5424.

24 Sec. 5424. (1) To respond to an environmental concern or
25 hazard affecting property, the conservator may do any of the
26 following:

1 (a) Inspect property and the operation of business activity
2 on property held by the conservator, including property held in
3 or operated by a sole proprietorship, partnership, corporation,
4 or limited liability company for the purpose of determining com-
5 pliance with environmental law affecting the property, and
6 respond to an actual or threatened violation of an environmental
7 law affecting property held by the conservator.

8 (b) Take action necessary to prevent, abate, or otherwise
9 remedy an actual or threatened violation of an environmental law
10 affecting property held by the conservator, either before or
11 after the initiation of an enforcement action by a governmental
12 body.

13 (c) Settle or compromise at any time a claim against the
14 estate that is asserted by a governmental body or private party
15 involving the alleged violation of an environmental law affecting
16 property held in the trust or estate.

17 (d) Disclaim a power granted by a document, statute, or rule
18 of law that, in the sole discretion of the conservator, may cause
19 the conservator to incur personal liability under an environmen-
20 tal law.

21 (e) Decline to serve or resign as a conservator if the con-
22 servator reasonably believes that there is or may be a conflict
23 of interest between the conservator in its fiduciary capacity and
24 in its individual capacity because of a potential claim or
25 liability that may be asserted against the conservator on behalf
26 of the estate because of the type or condition of property held
27 in the estate.

1 (f) Charge the cost of an inspection, review, abatement,
2 response, cleanup, claim settlement, or remedial action autho-
3 rized in this section against the estate income or principal.

4 (2) The powers listed in subsection (1) are by way of enu-
5 meration and not limitation on the conservator's power to respond
6 to an environmental concern or hazard.

7 (3) A conservator is not personally liable to a beneficiary
8 or other party for a decrease in the value of estate property by
9 reason of the conservator's compliance with an environmental law,
10 specifically including a reporting requirement under such a law.
11 Neither the acceptance by the conservator of property nor a fail-
12 ure by the conservator to inspect property or a business opera-
13 tion creates an inference that there is or may be liability under
14 an environmental law with respect to the property or business
15 operation. The authority granted by this section is solely to
16 facilitate the administration and protection of estate property
17 and is not to impose greater responsibility or liability on the
18 conservator than imposed by law absent these provisions.

19 Sec. 5425. A conservator may expend or distribute estate
20 income or principal without court authorization or confirmation
21 for the support, education, care, or benefit of the protected
22 individual or the protected individual's dependents in accordance
23 with the following principles:

24 (a) The conservator shall consider a recommendation relating
25 to the appropriate standard of support, education, and benefit
26 for the protected individual or a dependent made by a parent or
27 guardian, if any. The conservator shall not be surcharged for

1 money paid to a person or organization furnishing support,
2 education, or care to the protected individual or a dependent in
3 compliance with the recommendation of the protected individual's
4 parent or guardian unless the conservator knows that the parent
5 or guardian derives personal financial benefit from that payment,
6 including a benefit by relief from a personal duty of support, or
7 that the recommendation is clearly not in the protected
8 individual's best interests.

9 (b) The conservator shall expend or distribute money reason-
10 ably necessary for the support, education, care, or benefit of
11 the protected individual or a dependent with due regard to all of
12 the following:

13 (i) The estate size, the conservatorship's probable dura-
14 tion, and the likelihood that the protected individual, at some
15 future time, may be fully able to be wholly self-sufficient and
16 able to manage business affairs and the estate.

17 (ii) The accustomed standard of living of the protected
18 individual and the dependents.

19 (iii) Other money or sources used for the protected
20 individual's support.

21 (c) The conservator may expend estate money for the support
22 of an individual legally dependent on the protected individual
23 and others who are members of the protected individual's house-
24 hold who are unable to support themselves and who are in need of
25 support.

26 (d) The conservator may pay money to be expended under this
27 section to any person, including the protected individual, to

1 reimburse for an expenditure that the conservator might have made
2 or in advance for a service to be rendered to the protected indi-
3 vidual, if it is reasonable to expect the service will be per-
4 formed and an advance payment is customary or reasonably neces-
5 sary under the circumstances.

6 (e) In discharging a responsibility conferred by court order
7 or this part, a conservator shall implement the principles
8 described in section 5407(1) to the extent possible.

9 Sec. 5426. (1) If the estate is more than sufficient to
10 provide for the purposes implicit in the distributions authorized
11 by section 5425, a conservator for the protected individual,
12 other than a minor, has the power to make a gift to charity or
13 another object, as the protected individual might have been
14 expected to make, in amounts that do not exceed an annual total
15 of 20% of the estate income.

16 (2) If a minor who has not been adjudged disabled under sec-
17 tion 5401(3) attains majority, after the conservator meets all
18 claims and expenses of administration and accounts to the court
19 if required to do so by the court or by court rule, the conserva-
20 tor shall pay over and distribute all money and property to the
21 formerly protected individual as soon as possible.

22 (3) If satisfied that a protected individual's disability,
23 other than minority, has ceased, and after meeting all claims and
24 expenses of administration, the conservator shall pay over and
25 distribute all money and property to the formerly protected indi-
26 vidual as soon as possible.

1 (4) If a protected individual dies, the conservator shall
2 deliver to the court for safekeeping a will of the deceased
3 protected individual that has come into the conservator's posses-
4 sion, shall inform the personal representative or a beneficiary
5 named in the will of the delivery, and shall retain the estate
6 for delivery to a duly appointed personal representative of the
7 decedent or another person entitled to the delivery. If within
8 [42] days after the protected individual's death another person is
9 not appointed personal representative and an application or peti-
10 tion for appointment is not before the court, the conservator may
11 [petition] to exercise a personal representative's powers and duties
12 in order to be able to proceed to administer and distribute the
13 decedent's estate. Upon [petition] for an order granting a per-
14 sonal representative's powers to a conservator, after notice to a
15 person nominated as personal representative by a will of which
16 [the petitioner is aware and after notice as described in section
17 1401, the court may grant the petition upon]
18 determining that there is no objection and may endorse the let-
19 ters of the conservator to note that the formerly protected indi-
20 vidual is deceased and that the conservator has all of the powers
21 and duties of a personal representative. An order made and
22 entered under this section has the effect of an order for a per-
23 sonal representative's appointment as provided in section 3307
24 and parts 6 to 10 of article III. However, after administration,
25 the estate in the conservator's name may be distributed to the
26 decedent's successors without prior retransfer to the conservator
as personal representative.

1 Sec. 5427. Subject to the restrictions in section 5407(3),
2 at the time of appointment or later, the court may confer on a
3 conservator, in addition to the powers conferred by sections 5423
4 to 5426, any power that the court itself could exercise under
5 section 5407(2)(b) and (c). At the time of appointment or later,
6 the court may limit the powers of a conservator otherwise con-
7 ferred by sections 5423 to 5426 or previously conferred by the
8 court, and may at any time remove or modify a limitation. If the
9 court limits a power conferred on the conservator by sections
10 5423 to 5426 or specifies, as provided in section 5419(1), that
11 title to some, but not all, of the protected individual's prop-
12 erty vests in the conservator, the limitation or specification of
13 property subject to the conservatorship shall be endorsed upon
14 the letters of appointment.

15 Sec. 5428. (1) When doing any of the following, the conser-
16 vator and the court shall take into account the protected
17 individual's estate plan as known to them, including a will, a
18 revocable trust of which the individual is settlor, and a con-
19 tract, transfer, or joint ownership arrangement originated by the
20 protected individual with provisions for payment or transfer of a
21 benefit or interest at the individual's death to another or
22 others:

23 (a) Investing the estate.

24 (b) Selecting estate property for distribution under section
25 5425 or 5426(1).

1 (c) Utilizing a power of revocation or withdrawal available
2 for the protected individual's support and exercisable by the
3 conservator or the court.

4 (2) The conservator may examine the protected individual's
5 will.

6 Sec. 5429. (1) A conservator may pay or secure from the
7 estate a claim against the estate or against the protected indi-
8 vidual arising before or [during] the conservatorship upon the pre-
9 sentation of the claim and allowance in accordance with the pri-
10 orities in subsection (4). A claim may be presented by either of
11 the following methods:

12 (a) The claimant may deliver or mail to the conservator a
13 written statement of the claim indicating its basis, the name and
14 mailing address of the claimant, and the amount claimed.

15 (b) The claimant may file a written statement of the claim
16 with the court in the form prescribed by court rule and may
17 deliver or mail a copy of the statement to the conservator.

18 (2) The court shall consider a claim presented when the con-
19 servator receives the written statement of claim or when the
20 claim is filed with the court, whichever happens first. A
21 presented claim is allowed if it is not disallowed by written
22 statement mailed by the conservator to the claimant within 63
23 days after the presentation of the claim. The presentation of a
24 claim tolls a statute of limitations relating to the claim until
25 28 days after the claim's disallowance.

26 (3) A claimant whose claim has not been paid may petition
27 the court for determination of the claim at any time before it is

1 barred by the applicable statute of limitations and, upon due
2 proof, may procure an order for the claim's allowance, payment,
3 or security from the estate. If a proceeding is pending against
4 a protected individual at the time of the appointment of a con-
5 servator or is initiated against the protected individual after
6 the appointment, the moving party shall give notice of the pro-
7 ceeding to the conservator if the proceeding could result in cre-
8 ating a claim against the estate.

9 (4) If it appears that the estate in conservatorship is
10 likely to be exhausted before all existing claims are paid, the
11 conservator shall distribute the estate in money or in kind in
12 payment of claims in the following order:

13 (a) Costs and expenses of administration.

14 (b) Claims of the federal or state government having prior-
15 ity under law.

16 (c) Claims incurred by the conservator for care, mainte-
17 nance, and education that were previously provided to the pro-
18 tected individual or the protected individual's dependents.

19 (d) Claims arising before the conservatorship.

20 (e) All other claims.

21 (5) A preference shall not be given in the payment of a
22 claim over another claim of the same class, and a claim due and
23 payable is not entitled to a preference over a claim not due.
24 However, if it appears that the assets of the conservatorship are
25 adequate to meet all existing claims, acting in the protected
26 individual's best interest, the court may order the conservator
27 to give a mortgage or other security on the conservatorship

1 estate to secure payment at some future date of any or all claims
2 listed in subsection (4)(e).

3 (6) If a protected individual dies while under conservator-
4 ship, upon petition of the conservator and with or without
5 notice, the court may hear a claim for burial expense or another
6 claim as the court considers advisable. Upon hearing the claim,
7 the court may enter an order allowing or disallowing the claim or
8 a part of it and may provide in an order of allowance that the
9 claim or a part of it shall be paid immediately if payment can be
10 made without injury or serious inconvenience to the protected
11 individual's estate.

12 Sec. 5430. (1) Unless otherwise provided in the contract, a
13 conservator is not individually liable on a contract properly
14 entered into in a fiduciary capacity in the course of estate
15 administration unless the conservator fails to reveal the repre-
16 sentative capacity and identify the estate in the contract.

17 (2) A conservator is personally liable for an obligation
18 arising from ownership or control of estate property or for torts
19 committed in the course of estate administration only if person-
20 ally at fault.

21 (3) A claim based on a contract entered into by a conserva-
22 tor in a fiduciary capacity, an obligation arising from ownership
23 or control of the estate, or a tort committed in the course of
24 estate administration may be asserted against the estate by pro-
25 ceeding against the conservator in the conservator's fiduciary
26 capacity, whether or not the conservator is personally liable for
27 the claim.

1 (4) A question of liability between the estate and the
2 conservator personally may be determined in a proceeding for
3 accounting, surcharge, indemnification, or other appropriate pro-
4 ceeding or action.

5 Sec. 5431. The protected individual, conservator, or
6 another interested person may petition the court to terminate the
7 conservatorship. A protected individual seeking termination is
8 entitled to the same rights and procedures as in an original pro-
9 ceeding for a protective order. Upon determining, after notice
10 and hearing, that the minority or disability of the protected
11 individual has ceased, the court shall terminate the
12 conservatorship. Upon termination, title to the estate property
13 passes to the formerly protected individual or to successors
14 [subject to the provision in the order for expenses of
15 administration and to directions for] the conservator to execute
16 appropriate instruments to evidence the transfer.

17 Sec. 5432. (1) A person indebted to a protected individual
18 or having possession of property or of an instrument evidencing a
19 debt, stock, or chose in action belonging to a protected individ-
20 ual may pay or deliver the money, property, or instrument to a
21 conservator, guardian of the estate, or other similar fiduciary
22 appointed by a court of the protected individual's state of resi-
23 dence upon being presented with proof of appointment and [a sworn
24 statement] made by or on behalf of the fiduciary stating both of the
25 following:

26 (a) That no protective proceeding that relates to the
27 protected individual is pending in this state.

1 (b) That the foreign fiduciary is entitled to payment or to
2 receive delivery.

3 (2) If the person to whom the [sworn statement] is presented is
4 not
5 aware of a protective proceeding pending in this state, payment
6 or delivery in response to the demand and [sworn statement]
7 discharges
8 the debtor or possessor.

9 Sec. 5433. If a conservator has not been appointed in this
10 state and a petition in a protective proceeding is not pending in
11 this state, a conservator appointed in the state in which the
12 protected individual resides may file in a court of this state,
13 in a county in which property belonging to the protected individ-
14 ual is located, an authenticated copy of letters of appointment
15 and of any bond. After the filing, the domiciliary foreign con-
16 servator may exercise as to property in this state all the powers
17 of a conservator appointed in this state and may maintain an
18 action or proceeding in this state subject to any conditions
19 imposed upon nonresident parties generally.

18 PART 5

19 DURABLE POWER OF ATTORNEY AND DESIGNATION OF PATIENT ADVOCATE

20 Sec. 5501. A durable power of attorney is a power of attor-
21 ney by which a principal designates another as the principal's
22 attorney in fact in writing and the writing contains the words
23 "This power of attorney is not affected by the principal's subse-
24 quent disability or incapacity, or by the lapse of time", or
25 "This power of attorney is effective upon the disability or inca-
26 pacity of the principal", or similar words showing the
27 principal's intent that the authority conferred is exercisable

1 notwithstanding the principal's subsequent disability or
2 incapacity and, unless the power states a termination time, not-
3 withstanding the lapse of time since the execution of the
4 instrument.

5 Sec. 5502. An act done by an attorney in fact under a dura-
6 ble power of attorney during a period of disability or incapacity
7 of the principal has the same effect and inures to the benefit of
8 and binds the principal and the principal's successors in inter-
9 est as if the principal were competent and not disabled. Unless
10 the instrument states a termination time, the power is exercis-
11 able notwithstanding the lapse of time since the execution of the
12 instrument. A durable power of attorney that authorizes the
13 agent to convey or otherwise exercise power over real estate does
14 not need to contain the real estate's legal description.

15 Sec. 5503. (1) If, following execution of a durable power
16 of attorney, a court of the principal's domicile appoints a con-
17 servator, estate guardian, or other fiduciary charged with the
18 management of all of the principal's property or all of his or
19 her property except specified exclusions, the attorney in fact is
20 accountable to the fiduciary as well as to the principal. The
21 fiduciary has the same power to revoke or amend the power of
22 attorney that the principal would have had if he or she were not
23 disabled or incapacitated.

24 (2) By a durable power of attorney, a principal may nominate
25 the conservator, guardian of his or her estate, or guardian of
26 his or her person for consideration by the court if a protective
27 proceeding for the principal's person or estate is commenced

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

333

1 after execution of the power of attorney. The court shall make
2 its appointment in accordance with the principal's most recent
3 nomination in a durable power of attorney except for good cause
4 or disqualification.

5 Sec. 5504. (1) The death of a principal who has executed a
6 written power of attorney, durable or otherwise, does not revoke
7 or terminate the agency as to the attorney in fact or other
8 person who, without actual knowledge of the principal's death,
9 acts in good faith under the power. An action taken as provided
10 in this subsection, unless otherwise invalid or unenforceable,
11 binds the principal's successors in interest.

12 (2) The disability or incapacity of a principal who has pre-
13 viously executed a written power of attorney that is not a dura-
14 ble power does not revoke or terminate the agency as to the
15 attorney in fact or other person who, without actual knowledge of
16 the principal's disability or incapacity, acts in good faith
17 under the power. An action taken as provided in this subsection,
18 unless otherwise invalid or unenforceable, binds the principal
19 and his or her successors in interest.

20 Sec. 5505. (1) If an attorney in fact acts in good-faith
21 reliance on a power of attorney, durable or otherwise, and exe-
22 cutes [a sworn statement] stating that, at the time of the action,
the
23 attorney in fact did not have actual knowledge of the principal's
24 death, disability, or incapacity or of the power's termination by
25 revocation, the [sworn statement] is, in the absence of fraud,
conclusive
26 proof of the power's nontermination or nonrevocation.

1 (2) If the exercise of the power of attorney requires
2 execution and delivery of an instrument that is recordable, the
3 [sworn statement] when authenticated for record is also recordable.

4 (3) This section does not affect a provision in a power of
5 attorney for its termination by expiration of time or occurrence
6 of an event other than express revocation or a change in the
7 principal's capacity.

8 Sec. 5506. (1) An individual 18 years of age or older who
9 is of sound mind at the time the designation is made may desig-
10 nate in writing another individual who is 18 years of age or
11 older to exercise powers concerning care, custody, and medical
12 treatment decisions for the individual making the designation.
13 For purposes of this section and sections 5507 to 5512, an indi-
14 vidual who is named in a designation to exercise powers concern-
15 ing care, custody, and medical treatment decisions is known as a
16 patient advocate and an individual who makes a designation is
17 known as a patient.

18 (2) A designation under this section must be in writing,
19 signed, witnessed as provided in subsection (3), dated, executed
20 voluntarily, and, before its implementation, made part of the
21 patient's medical record with the patient's attending physician
22 and, if applicable, with the facility where the patient is
23 located. The designation must include a statement that the
24 authority conferred under this section is exercisable only when
25 the patient is unable to participate in medical treatment
26 decisions.

1 (3) A designation under this section must be executed in the
2 presence of and signed by 2 witnesses. A witness under this
3 section shall not be the patient's spouse, parent, child, grand-
4 child, sibling, presumptive heir, known devisee at the time of
5 the witnessing, physician, or patient advocate or an employee of
6 a life or health insurance provider for the patient, of a health
7 facility that is treating the patient, or of a home for the aged
8 as defined in section 20106 of the public health code, 1978 PA
9 368, MCL 333.20106, where the patient resides. A witness shall
10 not sign the designation unless the patient appears to be of
11 sound mind and under no duress, fraud, or undue influence.

12 Sec. 5507. (1) A patient advocate designation may include a
13 statement of the patient's desires on care, custody, and medical
14 treatment. The patient may authorize the patient advocate to
15 exercise 1 or more powers concerning the patient's care, custody,
16 and medical treatment that the patient could have exercised on
17 his or her own behalf.

18 (2) A patient may designate in the designation a successor
19 individual as a patient advocate who may exercise powers concern-
20 ing care, custody, and medical treatment decisions for the
21 patient if the first individual named as patient advocate does
22 not accept, is incapacitated, resigns, or is removed.

23 (3) Before a patient advocate designation is implemented, a
24 copy of the designation must be given to the proposed patient
25 advocate and must be given to a successor patient advocate before
26 the successor acts as patient advocate. Before acting as a

1 patient advocate, the proposed patient advocate must sign an
2 acceptance of the designation.

3 (4) The acceptance of a designation as a patient advocate
4 must include substantially all of the following statements:

5 1. This designation is not effective unless the patient is
6 unable to participate in medical treatment decisions.

7 2. A patient advocate shall not exercise powers concerning
8 the patient's care, custody, and medical treatment that the
9 patient, if the patient were able to participate in the decision,
10 could not have exercised on his or her own behalf.

11 3. This designation cannot be used to make a medical treat-
12 ment decision to withhold or withdraw treatment from a patient
13 who is pregnant that would result in the pregnant patient's
14 death.

15 4. A patient advocate may make a decision to withhold or
16 withdraw treatment that would allow a patient to die only if the
17 patient has expressed in a clear and convincing manner that the
18 patient advocate is authorized to make such a decision, and that
19 the patient acknowledges that such a decision could or would
20 allow the patient's death.

21 5. A patient advocate shall not receive compensation for
22 the performance of his or her authority, rights, and responsibil-
23 ities, but a patient advocate may be reimbursed for actual and
24 necessary expenses incurred in the performance of his or her
25 authority, rights, and responsibilities.

26 6. A patient advocate shall act in accordance with the
27 standards of care applicable to fiduciaries when acting for the

1 patient and shall act consistent with the patient's best
2 interests. The known desires of the patient expressed or evi-
3 denced while the patient is able to participate in medical treat-
4 ment decisions are presumed to be in the patient's best
5 interests.

6 7. A patient may revoke his or her designation at any time
7 and in any manner sufficient to communicate an intent to revoke.

8 8. A patient advocate may revoke his or her acceptance to
9 the designation at any time and in any manner sufficient to com-
10 municate an intent to revoke.

11 9. A patient admitted to a health facility or agency has
12 the rights enumerated in section 20201 of the public health code,
13 1978 PA 368, MCL 333.20201.

14 Sec. 5508. (1) The authority under a patient advocate des-
15 ignation is exercisable by a patient advocate only when the
16 patient is unable to participate in medical treatment decisions.
17 The patient's attending physician and another physician or
18 licensed psychologist shall determine upon examination of the
19 patient when the patient is unable to participate in medical
20 treatment decisions, shall put the determination in writing,
21 shall make the determination part of the patient's medical
22 record, and shall review the determination not less than
23 annually. If the patient's religious beliefs prohibit an exami-
24 nation and this is stated in the designation, the patient must
25 indicate in the designation how it shall be determined when the
26 patient advocate exercises powers concerning decisions on behalf
27 of the patient.

1 (2) If a dispute arises as to whether the patient is unable
2 to participate in medical treatment decisions, a petition may be
3 filed with the court in the county in which the patient resides
4 or is found requesting the court's determination as to whether
5 the patient is unable to participate in medical treatment
6 decisions. If a petition is filed under this subsection, the
7 court shall appoint a guardian ad litem to represent the patient
8 for the purposes of this subsection. The court shall conduct a
9 hearing on a petition under this subsection as soon as possible
10 and not later than 7 days after the court receives the petition.
11 As soon as possible and not later than 7 days after the hearing,
12 the court shall determine whether or not the patient is able to
13 participate in medical treatment decisions. If the court deter-
14 mines that the patient is unable to participate in medical treat-
15 ment decisions, the patient advocate's authority, rights, and
16 responsibilities are effective. If the court determines that the
17 patient is able to participate in medical treatment decisions,
18 the patient advocate's authority, rights, and responsibilities
19 are not effective.

20 Sec. 5509. (1) An individual designated as a patient advo-
21 cate has the following authority, rights, responsibilities, and
22 limitations:

23 (a) A patient advocate shall act in accordance with the
24 standards of care applicable to fiduciaries in exercising his or
25 her powers.

26 (b) A patient advocate shall take reasonable steps to follow
27 the desires, instructions, or guidelines given by the patient

1 while the patient was able to participate in care, custody, or
2 medical treatment decisions, whether given orally or as written
3 in the designation.

4 (c) A patient advocate shall not exercise powers concerning
5 the patient's care, custody, and medical treatment that the
6 patient, if the patient were able to participate in the decision,
7 could not have exercised on his or her own behalf.

8 (d) This designation cannot be used to make a medical treat-
9 ment decision to withhold or withdraw treatment from a patient
10 who is pregnant that would result in the pregnant patient's
11 death.

12 (e) A patient advocate may make a decision to withhold or
13 withdraw treatment that would allow a patient to die only if the
14 patient has expressed in a clear and convincing manner that the
15 patient advocate is authorized to make such a decision, and that
16 the patient acknowledges that such a decision could or would
17 allow the patient's death.

18 (f) A patient advocate under this section shall not delegate
19 his or her powers to another individual without prior authoriza-
20 tion by the patient.

21 (2) A patient advocate designation is suspended when the
22 patient regains the ability to participate in medical treatment
23 decisions. The suspension is effective as long as the patient is
24 able to participate in medical treatment decisions. If the
25 patient subsequently is determined under section 5508 to be
26 unable to participate in medical treatment decisions, the patient

1 advocate's authority, rights, responsibilities, and limitations
2 are again effective.

3 Sec. 5510. (1) A patient advocate designation is revoked by
4 any of the following:

5 (a) The patient's death.

6 (b) An order of removal by the probate court under
7 section 5511(4).

8 (c) The patient advocate's resignation or removal by the
9 court, unless a successor patient advocate has been designated.

10 (d) The patient's revocation of the designation. Even if
11 the patient is unable to participate in medical treatment deci-
12 sions, a patient may revoke a designation at any time and in any
13 manner by which he or she is able to communicate an intent to
14 revoke the designation. If there is a dispute as to the intent
15 of the patient to revoke the designation, the court may make a
16 determination on the patient's intent to revoke the designation.
17 If the revocation is not in writing, an individual who witnesses
18 a revocation of a designation shall describe in writing the cir-
19 cumstances of the revocation, must sign the writing, and shall
20 notify, if possible, the patient advocate of the revocation. If
21 the patient's physician or health facility has notice of the
22 patient's revocation of a designation, the physician or health
23 facility shall note the revocation in the patient's medical
24 records and bedside chart and must notify the patient advocate.
25 (e) A subsequent designation that revokes the prior designa-
26 tion either expressly or by inconsistency.

1 (f) The occurrence of a provision for revocation contained
2 in the designation.

3 (g) If a designation is executed during a patient's marriage
4 naming the patient's spouse as the patient advocate, the designa-
5 tion is suspended during the pendency of an action for separate
6 maintenance, annulment, or divorce and is revoked upon the entry
7 of a judgment of separate maintenance, annulment, or divorce,
8 unless the patient has named a successor individual to serve as a
9 patient advocate. If a successor patient advocate is named, that
10 individual acts as the patient advocate.

11 (2) The revocation of a patient advocate designation under
12 subsection (1) does not revoke or terminate the agency as to the
13 patient advocate or other person who acts in good faith under the
14 designation and without actual knowledge of the revocation.
15 Unless the action is otherwise invalid or unenforceable, an
16 action taken without knowledge of the revocation binds the
17 patient and his or her heirs, devisees, and personal
18 representatives. [A sworn statement] executed by the patient
advocate
19 stating that, at the time of doing an act in accordance with the
20 designation, he or she did not have actual knowledge of the revo-
21 cation of the designation is, in the absence of fraud, conclusive
22 proof that the patient advocate did not have actual knowledge of
23 the revocation at the time of the act.

24 Sec. 5511. (1) Irrespective of a previously expressed or
25 evidenced desire, a current desire by a patient to have provided,
26 and not withheld or withdrawn, a specific life-extending care,
27 custody, or medical treatment is binding on the patient advocate,

1 if known by the patient advocate, regardless of the then ability
2 or inability of the patient to participate in care, custody, or
3 medical treatment decisions or the patient's competency.

4 (2) A person providing, performing, withholding, or with-
5 drawing care, custody, or medical treatment as a result of the
6 decision of an individual who is reasonably believed to be a
7 patient advocate and who is reasonably believed to be acting
8 within the authority granted by the designation is liable in the
9 same manner and to the same extent as if the patient had made the
10 decision on his or her own behalf.

11 (3) A person providing care, custody, or medical treatment
12 to a patient is bound by sound medical practice and by a patient
13 advocate's instructions if the patient advocate complies with
14 sections 5506 to 5512, but is not bound by the patient advocate's
15 instructions if the patient advocate does not comply with these
16 sections.

17 (4) If a dispute arises as to whether a patient advocate is
18 acting consistent with the patient's best interests or is not
19 complying with sections 5506 to 5512, a petition may be filed
20 with the court in the county in which the patient resides or is
21 found requesting the court's determination as to the continuation
22 of the designation or the removal of the patient advocate.

23 Sec. 5512. (1) A patient advocate cannot make a medical
24 treatment decision under the authority of or under the process
25 created by this section and sections 5506 to 5511 to withhold or
26 withdraw treatment from a pregnant patient that would result in
27 the pregnant patient's death.

1 (2) A health care provider shall not require a patient
2 advocate designation to be executed as a condition of providing,
3 withholding, or withdrawing care, custody, or medical treatment.

4 (3) A life or health insurer shall not do any of the follow-
5 ing because of the execution or implementation of a patient advo-
6 cate designation or because of the failure or refusal to execute
7 or implement such a designation:

8 (a) Refuse to provide or continue coverage to the patient.

9 (b) Limit the amount of coverage available to a patient.

10 (c) Charge a patient a different rate.

11 (d) Consider the terms of an existing policy of life or
12 health insurance to have been breached or modified.

13 (e) Invoke a suicide or intentional death exemption or
14 exclusion in a policy covering the patient.

15 (4) A patient advocate designation shall not be construed to
16 condone, allow, permit, authorize, or approve suicide or
17 homicide.

18 (5) Except as provided in subsections (2) and (3), this sec-
19 tion and sections 5506 to 5511 only apply to or affect an indi-
20 vidual who has executed a patient advocate designation or an
21 individual acting for or on behalf of another individual who has
22 executed a patient advocate designation.

23 (6) Nothing in this section or sections 5506 to 5511 shall
24 be considered to authorize or compel care, custody, or medical
25 treatment decisions for a patient who objects on religious
26 grounds.

1 (7) A designation executed before the effective date of this
2 section with the intent of accomplishing a similar purpose as
3 this section is valid but is subject to this section,
4 section 5506(1), and sections 5507 to 5511; must be in writing,
5 signed, witnessed or notarized, dated, and executed voluntarily;
6 and, before its implementation, must be made part of the
7 patient's medical record.

8 Sec. 5513. If a provision of this article conflicts with a
9 provision of the mental health code, 1974 PA 258, MCL 330.1001 to
10 330.2106, that act controls.

1 ARTICLE VI
2 [NONPROBATE TRANSFERS ON DEATH
3 PART 1

EFFECT OF DEATH

Sec. 6101. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of similar nature is nontestamentary. This subsection includes a written provision in the instrument that is intended to result in 1 or more of the following:

(a) Money or another benefit due to, controlled by, or owned by a decedent before death is paid after the decedent's death to a person, including a testamentary trustee, whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before, at the same time as, or after the instrument.

(b) Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand.

(c) Property the decedent controls or owns before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before, at the same time as, or after the instrument.

(2) This section does not limit creditors' rights under another law of this state or another state or under federal law.

PART 3

UNIFORM TOD SECURITY REGISTRATION

Sec. 6301. As used in this part:]

4 (a) "Beneficiary form" means a registration of a security
5 that indicates the present owner of the security and the owner's
6 intention regarding the person who will become the security's
7 owner upon the owner's death.

8 (b) "Register" means to issue a certificate showing the
9 ownership of a certificated security or, in the case of an uncer-
10 tificated security, to initiate or transfer an account showing
11 ownership of securities.

12 (c) "Registering entity" means a person who originates or
13 transfers a security title by registration, and includes a broker
14 maintaining security accounts for customers and a transfer agent
15 or other person acting for or as an issuer of securities.

16 (d) "Security" means a share, participation, or other inter-
17 est in property, in a business, or in an obligation of an enter-
18 prise or other issuer, and includes a certificated security,
19 uncertificated security, and security account.

20 [(e) "Security account" includes all of the following:

21 (i) A reinvestment account associated with a security.

22 (ii) A securities account with a broker, financial institution,
23 or subsidiary or affiliate of a financial institution.

24 (iii) A cash balance in an account with a broker, financial
25 institution, or subsidiary or affiliate of a financial institution,
26 whether or not credited to the account before the owner's death.

SB0209, As Passed House, September 24, 1998

01006'97 *

S.B. 209 as amended September 24, 1998

346

1 (iv) Cash, interest, earnings, or dividends earned or
2 declared on a security in an account, reinvestment account,
3 or account with a broker, financial institution, or subsidiary or
4 affiliate of a financial institution, whether or not credited to the
account before the owner's death.

(v) A cash balance or other property held for or due to the
owner of a security as a replacement for or product of an account
security, whether or not credited to the account before the owner's
death.]

5 Sec. 6302. Only an individual whose registration of a
6 security shows sole ownership by 1 individual or multiple owner-
7 ship by 2 or more with right of survivorship, rather than as
8 tenants in common, may obtain registration in beneficiary form.
9 Multiple owners of a security registered in beneficiary form hold
10 as joint tenants with right of survivorship, as tenants by the
11 entirety, or as owners of community property held in survivor-
12 ship form, and not as tenants in common.

13 Sec. 6303. A security may be registered in beneficiary form
14 if the form is authorized by this or a similar statute of the
15 state of organization of the issuer or registering entity, the
16 location of the registering entity's principal office, or the
17 office of its transfer agent or its office making the registra-
18 tion or by this or a similar statute of the law of the state
19 listed as the owner's address at the time of registration. A
20 registration governed by the law of a jurisdiction in which this
21 or similar legislation is not in force or was not in force when a
22 registration in beneficiary form was made is nevertheless pre-
23 sumed to be valid and authorized as a matter of contract law.

24 Sec. 6304. Whether evidenced by certificate or account, a
25 security is registered in beneficiary form when the registration
26 includes a designation of a beneficiary to take the ownership at
27 the death of the owner or the deaths of all multiple owners.

01006'97 *

1 Sec. 6305. Registration in beneficiary form may be shown by
2 the words "transfer on death" or the abbreviation "TOD", or by
3 the words "pay on death" or the abbreviation "POD", after the
4 name of the registered owner and before the name of a
5 beneficiary.

6 Sec. 6306. The designation of a TOD beneficiary on a regis-
7 tration in beneficiary form does not effect ownership until the
8 owner's death. A registration of a security in beneficiary form
9 may be canceled or changed at any time by the sole owner or all
10 the surviving owners without the consent of the beneficiary.

11 Sec. 6307. On death of a sole owner or the last to die of
12 all multiple owners, ownership of securities registered in bene-
13 ficiary form passes to the beneficiary or beneficiaries who sur-
14 vived all owners. On proof of death of all owners and compliance
15 with any applicable requirements of the registering entity, a
16 security registered in beneficiary form may be reregistered in
17 the name of the beneficiary or beneficiaries who survived the
18 death of all owners. Until division of the security after the
19 death of all owners, multiple beneficiaries surviving the death
20 of all owners hold their interests as tenants in common. If no
21 beneficiary survives the death of all owners, the security
22 belongs to the estate of the deceased sole owner or the estate of
23 the last to die of all multiple owners.

24 Sec. 6308. (1) A registering entity is not required to
25 offer or to accept a request for security registration in benefi-
26 ciary form. If a registration in beneficiary form is offered by
27 a registering entity, the owner requesting registration in

1 beneficiary form assents to the protections given to the
2 registering entity by this [part].

3 (2) By accepting a request for registration of a security in
4 beneficiary form, the registering entity agrees that the regis-
5 tration will be implemented on the deceased owner's death as pro-
6 vided in this [part].

7 (3) A registering entity is discharged from all claims to a
8 security by a deceased owner's estate, creditors, heirs, or devi-
9 sees if the entity registers a transfer of the security in
10 accordance with section 6307 and does so in good-faith reliance
11 on all of the following:

12 (a) The registration.

13 (b) This [part].

14 (c) Information provided to it by [a sworn statement] of the
15 deceased
16 owner's personal representative, or by the surviving beneficiary
17 or by the surviving beneficiary's representatives, or other
18 information available to the registering entity.

19 (4) This [part's] protections do not extend to a reregis-
20 tration or payment made after a registering entity receives writ-
21 ten notice from a claimant to an interest in the security object-
22 ing to implementation of a registration in beneficiary form. No
23 other notice or other information available to the registering
24 entity affects its right to protection under this [part].

25 (5) The protection provided by this [part] to the register-
26 ing entity of a security does not affect the rights of beneficia-
27 ries in disputes between themselves and other claimants to
ownership of the security transferred or its value or proceeds.

1 Sec. 6309. (1) A transfer on death resulting from a
2 registration in beneficiary form is effective by reason of the
3 contract regarding the registration between the owner and the
4 registering entity and this [part], and is not testamentary.

5 (2) This [part] does not limit the rights of creditors of
6 security owners against beneficiaries and other transferees under
7 other laws of this state.

8 Sec. 6310. (1) A registering entity offering to accept reg-
9 istrations in beneficiary form may establish the terms and condi-
10 tions under which it will receive requests for registrations in
11 beneficiary form or for implementation of registrations in bene-
12 ficiary form, including requests for cancellation of previously
13 registered TOD beneficiary designations and requests for reregis-
14 tration to effect a change of beneficiary. The terms and condi-
15 tions so established may provide for proving death, avoiding or
16 resolving a problem concerning fractional shares, designating
17 primary and contingent beneficiaries, and substituting a named
18 beneficiary's descendants to take in the place of the named bene-
19 ficiary in the event of the beneficiary's death.

20 (2) Substitution may be indicated by appending to the name
21 of the primary beneficiary the letters LDPS, standing for "lineal
22 descendants per [stirpes]". This designation substitutes a
23 deceased beneficiary's descendants who survive the owner for a
24 beneficiary who fails to survive, the descendants to be identi-
25 fied and to share in accordance with the law of the beneficiary's
26 domicile at the owner's death governing inheritance by an
27 intestate's descendants. Other forms of identifying

1 beneficiaries who are to take on 1 or more contingencies, and
2 rules for providing proofs and assurances needed to satisfy rea-
3 sonable concerns by registering entities regarding conditions and
4 identities relevant to accurate implementation or registrations
5 in beneficiary form, may be contained in a registering entity's
6 terms and conditions.

7 (3) The following are illustrations of registrations in ben-
8 eficiary form that a registering entity may authorize:

9 (a) Sole owner-sole beneficiary:

10 "John S. Brown TOD or POD John S. Brown Jr."

11 (b) Multiple owners-sole beneficiary:

12 "John S. Brown and Mary B. Brown JT TEN TOD John S. Brown
13 Jr."

14 (c) Multiple owners-primary and secondary substituted
15 beneficiaries:

16 "John S. Brown and Mary B. Brown JT TEN TOD John S. Brown
17 Jr. SUB BENE Peter Q. Brown" or "John S. Brown, Mary B. Brown JT
18 TEN TOD John S. Brown Jr. LDPS."

1

ARTICLE VII

[TRUST ADMINISTRATION]

2

PART 1

3

TRUST REGISTRATION

4 Sec. 7101. (1) The trustee of a trust having its principal
5 place of administration in this state may register the trust in
6 the court at the place designated in the trust instrument or, if
7 none is designated, then at the principal place of
8 administration. The principal place of the trust's administra-
9 tion is the trustee's usual place of business where the records
10 pertaining to the trust are kept or the trustee's residence if
11 the trustee does not have such a place of business. For a corpo-
12 rate trustee, the usual place of business is the business loca-
13 tion of the primary trust officer for the trust.

14 (2) For cotrustees, if not designated in the trust instru-
15 ment, the principal place of administration is 1 of the
16 following:

17 (a) If there is only 1 corporate cotrustee, the corporate
18 trustee's usual place of business.

19 (b) If there is only 1 professional fiduciary who is an
20 individual and no corporate trustee, the professional fiduciary's
21 usual place of business or residence.

22 (c) If (a) or (b) does not apply, the usual place of busi-
23 ness or residence of any of the cotrustees as agreed upon by
24 them.

25 Sec. 7102. (1) A trust is registered by the filing of a
26 statement that states the trustee's name and address and in which
27 the trustee acknowledges the trusteeship. The statement must

1 indicate if the trust has been registered elsewhere. The
2 statement must identify the trust in 1 of the following manners:

3 (a) For a testamentary trust, by the name of the testator
4 and the date and place of domiciliary probate.

5 (b) For a written inter vivos trust, by the name of each
6 settlor and the original trustee and the date of the trust
7 instrument and all amendments existing on the date of
8 registration.

9 (c) For an oral trust, by information identifying the set-
10 tlor or other source of money and describing the trust's time and
11 manner of creation and the trust's terms, including the subject
12 matter, beneficiaries, and time of performance.

13 (2) The trust instrument and amendments are not required to
14 be filed with the court as part of the trust registration. If a
15 trust is registered elsewhere, registration in this state is
16 ineffective until the earlier registration is released by order
17 of the court where that registration occurred or by an instrument
18 executed by the trustee and all beneficiaries. The order or
19 instrument shall be filed with the registration in this state.

20 Sec. 7103. (1) By registering a trust or accepting the
21 trusteeship of a registered trust, the trustee submits personally
22 to the court's jurisdiction in a proceeding under section 7201
23 relating to the trust that is initiated by an interested person
24 while the trust remains registered. Notice of a proceeding must
25 be given to the trustee in accordance with section 1401 at the
26 trustee's address as stated in the registration or as reported to

1 the court and to the trustee's address then known to the
2 petitioner.

3 (2) To the extent of all beneficial interests in the trust
4 and if notice is given in accordance with section 1401, each ben-
5 eficiary of a trust properly registered in this state is subject
6 to the jurisdiction of the court of registration for the purposes
7 of a proceeding under section 7201.

8 Sec. 7104. For purposes of a proceeding commenced by a
9 trust beneficiary before registration, a trustee of a trust that
10 is not registered in a proper place is subject to the personal
11 jurisdiction of a court in which the trust could have been
12 registered. In addition, a trustee who, within [28] days after
13 receipt of a written demand by a trust settlor or beneficiary,
14 fails to register a trust as required by the trust instrument is
15 subject to removal and denial of compensation or to surcharge as
16 the court may direct.

17 Sec. 7105. A foreign corporate trustee is required to qual-
18 ify as a foreign corporation doing business in this state if it
19 maintains a trust's principal place of administration within the
20 state. A foreign cotrustee is not required to qualify in this
21 state solely because its cotrustee maintains the principal place
22 of administration in this state. Unless otherwise doing business
23 in this state, local qualification by a foreign trustee, corpo-
24 rate or individual, is not required for the trustee to receive
25 distribution from a local estate, to hold, invest in, manage, or
26 acquire property located in this state, or to maintain
27 litigation. This section does not affect a determination of what

1 other acts require qualification as doing business in this
2 state.

3 PART 2

4 COURT JURISDICTION CONCERNING TRUSTS

5 Sec. 7201. (1) The court has exclusive jurisdiction of pro-
6 ceedings concerning trusts as provided in section 1302(b) and (d)
7 and concurrent jurisdiction regarding matters affecting trusts as
8 provided in section 1303.

9 (2) Neither registration of a trust nor another proceeding
10 concerning a trust results in continuing supervisory
11 proceedings. Subject to court jurisdiction as invoked by an
12 interested [person] or as otherwise exercised as provided by law,
13 the management and distribution of a trust estate, submission of
14 an account or report to beneficiaries, payment of a trustee's
15 fees and other trust obligations, acceptance and change of trust-
16 eeship, and any other aspect of trust administration shall pro-
17 ceed expeditiously consistent with the terms of the trust, free
18 of judicial intervention, and without court order or approval, or
19 other court action.

20 Sec. 7202. Venue for a proceeding under section 7201
21 involving a registered trust is in the place of registration.
22 Venue for a proceeding under section 7201 involving a trust not
23 registered in this state is in any place where the trust properly
24 could have been registered and as otherwise specified by the
25 rules of civil procedure.

26 Sec. 7203. (1) If a party objects, the court shall not
27 entertain a proceeding under section 7201 involving a trust

1 registered or having its principal place of administration in
2 another state, unless either of the following applies:

3 (a) All appropriate parties could not be bound by litigation
4 in the courts of the state where the trust is registered or has
5 its principal place of administration.

6 (b) If the interests of justice would otherwise seriously be
7 impaired.

8 (2) The court may condition a stay or dismissal of a pro-
9 ceeding under this section on the consent of a party to jurisdic-
10 tion of the state in which the trust is registered or has its
11 principal place of business, or the court may grant a continuance
12 or enter another appropriate order.

13 Sec. 7204. The court where a trust is registered has con-
14 current jurisdiction with other courts of this state of an action
15 or proceeding to determine the existence or nonexistence of the
16 trust if created other than by will, of an action or proceeding
17 against a creditor or debtor of the trust, and of another action
18 or proceeding involving a trustee and a third party. Venue is
19 determined by the rules generally applicable to civil actions.

20 Sec. 7205. On petition of an interested person, after
21 notice to all interested persons, the court may review the pro-
22 priety of employment of a person by a trustee including an attor-
23 ney, auditor, investment advisor, or other specialized agent or
24 assistant, and the reasonableness of the compensation of a person
25 so employed and the reasonableness of the compensation determined
26 by the trustee for the trustee's own services. The court may

1 order a person who receives excessive compensation from a trust
2 to make an appropriate refund.

3 Sec. 7206. A proceeding under section 7201 is initiated by
4 filing a petition in the court and giving notice to interested
5 [persons] as provided in section 1401. The court may order notifi-
6 cation of additional persons. A judgment or order is valid for
7 each person who is given notice of the proceeding even if not all
8 interested [persons] are notified.

9 Sec. 7207. (1) On petition of an interested [person], the
10 court may approve an interpretation, construction, modification,
11 or other settlement that is agreed upon in writing by all pres-
12 ently identified and competent beneficiaries whose interests in
13 the trust may be affected to resolve a contest, controversy, or
14 question of construction or interpretation concerning the exis-
15 tence, administration, or termination of an irrevocable trust.

16 (2) If the present or future interest of an unborn, unascer-
17 tained, missing, or disappeared person; of a trustee or a trust
18 beneficiary described in the trust document but not yet estab-
19 lished; or of a minor or other person without legal capacity is
20 not represented or is not represented adequately under the provi-
21 sions of section 1209 or section 1403, the court may appoint 1 or
22 more guardians ad litem to represent the interest or interests.

23 (3) The court shall approve an agreement described in sub-
24 section (1) if it appears to have been reached in good faith and
25 its effects are just and reasonable under all of the relevant
26 facts and circumstances.

1 (4) The order in response to a petition under subsection (1)
2 is binding on each party who is represented in the proceeding and
3 on others in accordance with section 1403(b). After issuance of
4 the order, the agreement as approved by the court shall be con-
5 sidered a part of the governing instrument of the trust.

6 PART 3

7 DUTIES AND LIABILITIES OF TRUSTEES

8 Sec. 7301. Except as specifically provided, the general
9 duty of a trustee to administer a trust expeditiously for the
10 benefit of the beneficiaries is not altered by this act.

11 Sec. 7302. Except as otherwise provided by the terms of the
12 trust, the trustee shall act as would a prudent person in dealing
13 with the property of another, including following the standards
14 of the Michigan prudent investor rule. If the trustee has spe-
15 cial skills or is named trustee on the basis of representation of
16 special skills or expertise, the trustee is under a duty to use
17 those skills.

18 Sec. 7303. (1) Subject to subsection (2), the trustee of a
19 revocable trust shall keep the settlor reasonably informed of the
20 trust and its administration. Unless otherwise provided in the
21 trust instrument, the trustee of a revocable trust does not have
22 a duty to inform a trust beneficiary of the trust and its admin-
23 istration, other than the settlor or, if the settlor is an inca-
24 pacitated person, the settlor's designated agent.

25 (2) Unless otherwise provided in the trust instrument, if
26 the trustee reasonably believes the settlor of a revocable trust
27 is an incapacitated person and has no designated agent, the

1 trustee shall keep each beneficiary, who, if the settlor were
2 then deceased, would be a current trust beneficiary, reasonably
3 informed of the trust and its administration. Notwithstanding
4 the provisions of the trust instrument, upon good cause shown,
5 the court may order the trustee to keep other beneficiaries rea-
6 sonably informed of the trust and its administration.

7 (3) For a revocable trust, within [28] days after acceptance
8 of trust or the death of the settlor, whichever is later, and for
9 all other trusts, within [28] days after acceptance of the trust,
10 the trustee shall inform in writing each beneficiary of the
11 trust's existence, of the court in which the trust is registered,
12 if it is registered, of the trustee's name and address, and of
13 the beneficiary's right to request and receive both a copy of the
14 trust's terms that describe or affect the beneficiary's interest
15 and relevant information about the trust property. In addition,
16 all of the following apply:

17 (a) Upon reasonable request, the trustee shall provide a
18 beneficiary with a copy of the trust's terms that describe or
19 affect the beneficiary's interest and with relevant information
20 about the trust property.

21 (b) Unless the settlor directs or requests in the trust
22 instrument that the trustee provide accounts to less than all
23 interested trust beneficiaries, all of the following apply:

24 (i) At least annually and on termination of the trust or a
25 change of the trustee, the trustee shall provide a statement of
26 account to each current trust beneficiary and shall keep each

1 current trust beneficiary informed of the trust and its
2 administration.

3 (ii) Upon reasonable request, the trustee shall provide a
4 statement of account to each interested trust beneficiary who is
5 not also a current trust beneficiary and shall keep each of those
6 persons reasonably informed of the trust and its administration.

7 (iii) The trustee shall provide a statement of account and
8 other information to a beneficiary as the court directs.

9 (iv) In the trustee's discretion, the trustee may provide a
10 statement of account and other information to any beneficiary.

11 (c) If the settlor requests or directs the trustee in the
12 trust instrument to provide accounts and information to less than
13 all interested trust beneficiaries, the trustee shall provide
14 statements of account and information as provided in the trust
15 instrument. At the court's direction, the trustee shall provide
16 statements of account and other information to persons excluded
17 by the settlor's request or direction to the extent and in the
18 manner the court directs.

19 Sec. 7304. A trustee need not provide bond to secure per-
20 formance of the trustee's duties unless required by the terms of
21 the trust, reasonably requested by a beneficiary, or found by the
22 court to be necessary to protect the interests of the beneficia-
23 ries who are not able to protect themselves and whose interests
24 are not otherwise adequately represented. On petition of the
25 trustee or an interested person, the court may excuse a require-
26 ment of bond, reduce the amount of the bond, release the surety,
27 or permit the substitution of another bond with the same or

1 different sureties. If bond is required, the bond shall be filed
2 in the court of registration or another appropriate court in an
3 amount and with the sureties and liabilities as provided in sec-
4 tions 3604 and 3606 relating to the bond of a personal
5 representative.

6 Sec. 7305. A trustee is under a continuing duty to adminis-
7 ter the trust at a place appropriate to the purposes of the trust
8 and to its sound, efficient management. If the principal place
9 of administration becomes inappropriate for any reason, the court
10 may enter an order furthering efficient administration and the
11 interests of beneficiaries, including, if appropriate, release of
12 registration, removal of the trustee, and appointment of a
13 trustee in another state. A trust provision relating to the
14 place of administration, to changes in the place of administra-
15 tion, or to change of trustee controls unless compliance would be
16 contrary to efficient administration or the purposes of the
17 trust. The view of an adult beneficiary shall be given weight in
18 determining the suitability of the trustee and the place of
19 administration.

20 Sec. 7306. (1) Unless otherwise provided in the contract, a
21 trustee is not personally liable on a contract properly entered
22 into in the trustee's fiduciary capacity in the course of admin-
23 istration of the trust estate unless the trustee fails to reveal
24 the trustee's representative capacity and identify the trust
25 estate in the contract.

26 (2) A trustee is personally liable for an obligation arising
27 from ownership or control of the trust estate property or for a

1 tort committed in the course of administration of the trust
2 estate only if the trustee is personally at fault.

3 (3) A claim based on a contract entered into by a trustee in
4 trustee's fiduciary capacity, on an obligation arising from
5 ownership or control of the trust estate, or on a tort committed
6 in the course of trust administration may be asserted against the
7 trust estate by proceeding against the trustee in the trustee's
8 fiduciary capacity, whether or not the trustee is personally
9 liable for the claim.

10 (4) The question of liability as between the trust estate
11 and the trustee individually may be determined in a proceeding
12 for accounting, surcharge, or indemnification or in another
13 appropriate proceeding.

14 Sec. 7307. (1) Unless previously barred by adjudication,
15 consent, or limitation, a claim against a trustee for breach of
16 trust is barred unless a proceeding to assert the claim is com-
17 menced within [1 year] after receipt of an annual or final
18 account as to each beneficiary who receives the annual or final
19 account. Those barred include all of the following:

20 (a) A beneficiary when an interested trust beneficiary pos-
21 sessed the same interest preceding that of the beneficiary
22 receives an annual or final account.

23 (b) An object, taker in default, or another who may receive
24 property by virtue of the exercise of or failure to exercise a
25 presently exercisable or testamentary general or special power of
26 appointment if the person possessing the power of appointment
27 receives the annual or final account.

1 (c) A person described in section 1403(b) as bound by
2 another if that other receives the annual or final account.

3 (2) A beneficiary or another person is considered to receive
4 an annual or final account if the account is provided to the
5 person in 1 of the manners specified for a notice by section
6 1401.

7 (3) For purposes of subsections (1) and (2), an accounting
8 shall be considered an annual or final account if the account
9 does all of the following:

10 (a) Is stated in a manner and with terminology that is rea-
11 sonably understandable.

12 (b) Begins with a concise summary of its purpose and
13 content.

14 (c) Contains sufficient information to put interested [persons
15] on notice as to all significant transactions affecting
16 administration during the accounting period.

17 (d) Includes both the carrying values, representing the
18 value of property at tax cost, and current values at the begin-
19 ning and end of the accounting period.

20 (e) Shows gains and losses incurred during the accounting
21 period separately in the same schedule.

22 (f) Shows significant transactions that do not affect the
23 amount for which the trustee is accountable.

24 Sec. 7308. (1) A person who succeeds to the position of
25 trustee of a revocable trust upon the death, resignation, or
26 incapacity of a trustee who was also the trust settlor is not

1 (b) To retain property that the trustee receives, including
2 property in which the trustee is personally interested, in
3 accordance with the Michigan prudent investor rule.

4 (c) To receive property from a fiduciary or another source
5 that is acceptable to the trustee.

6 (d) To perform, compromise, or refuse to perform a contract
7 of the settlor that is an obligation of the trust, as the trustee
8 may determine under the circumstances. In performing an enforce-
9 able contract by the settlor to convey or lease land, if the con-
10 tract for a conveyance requires the giving of a warranty, the
11 deed or other instrument of conveyance to be given by the trustee
12 must contain the warranty required. The warranty is binding on
13 the trust as though made by the settlor, but does not bind the
14 trustee except in the trustee's fiduciary capacity. The trustee,
15 among other possible courses of action, may do either of the
16 following:

17 (i) Execute and deliver a deed of conveyance for cash pay-
18 ment of money remaining due or the purchaser's note for the money
19 remaining due secured by a mortgage on the land.

20 (ii) Deliver a deed in escrow with directions that the pro-
21 ceeds, when paid in accordance with the escrow agreement, be paid
22 to the trustee, as designated in the escrow agreement.

23 (e) To satisfy a settlor's written charitable pledge irre-
24 spective of whether the pledge constitutes a binding obligation
25 of the settlor or was properly presented as a claim, if in the
26 trustee's judgment the settlor would have wanted the pledge
27 completed under the circumstances.

1 (f) To deposit trust money in a bank, including a bank
2 operated by the trustee and to invest and reinvest trust property
3 as would a prudent investor acting in accordance with the
4 Michigan prudent investor rule.

5 (g) To acquire property, including property in this or
6 another state or country, in any manner for cash or on credit, at
7 public or private sale; and to manage, develop, improve,
8 exchange, partition, or change the character of trust property.

9 (h) To make an ordinary or extraordinary repair or alter-
10 ation in a building or another structure, to demolish an improve-
11 ment, or to raze an existing or erect a new party wall or
12 building.

13 (i) To subdivide, develop, or dedicate land to public use;
14 to make or obtain the vacation of a plat or adjust a boundary; to
15 adjust a difference in valuation on exchange or partition by
16 giving or receiving consideration; or to dedicate an easement to
17 public use without consideration.

18 (j) To enter for any purpose into a lease as lessor or
19 lessee, with or without an option to purchase or renew, for any
20 term.

21 (k) To enter into a lease or arrangement for exploration and
22 removal of minerals or another natural resource or to enter into
23 a pooling or unitization agreement.

24 (l) To abandon property if, in the trustee's opinion, the
25 property is valueless, or is so encumbered or in such a condition
26 that it is of no benefit to the trust.

1 (m) To vote a stock or other security in person, by general
2 or limited proxy, or in another manner provided by law.

3 (n) To pay a call, assessment, and another amount chargeable
4 or accruing against or on account of a security.

5 (o) To hold property in the name of a nominee or in another
6 form without disclosure of the interest of the trust. However,
7 the trustee is liable for an act of the nominee in connection
8 with the property so held.

9 (p) To insure the trust property against damage, loss, or
10 liability and to insure the trustee against liability as to a
11 third person.

12 (q) To borrow money for any purpose from the trustee or
13 others and to mortgage or pledge trust property.

14 (r) To effect a fair and reasonable compromise with a debtor
15 or obligor, or extend, renew, or in any manner modify the terms
16 of an obligation owing to the trust. If the trustee holds a
17 mortgage, pledge, or another lien on property of another person,
18 the trustee may, instead of foreclosure, accept a conveyance or
19 transfer of encumbered property from the property's owner in sat-
20 isfaction of the indebtedness secured by a lien.

21 (s) To pay a tax, an assessment, the trustee's compensation,
22 or another expense incident to the administration of the trust.

23 (t) To sell or exercise a subscription or conversion right
24 or to consent, directly or through a committee or another agent,
25 to the reorganization, consolidation, merger, dissolution, or
26 liquidation of a business enterprise.

1 (u) To allocate an item of income or expense to either trust
2 income or principal, as permitted or provided by law.

3 (v) To employ, and pay reasonable compensation for services
4 performed by, a person, including an [] auditor, invest-
5 ment advisor, accountant, appraiser, broker, custodian, rental
6 agent, realtor, or agent, even if the person is associated with
7 the trustee, for the purpose of advising or assisting the trustee
8 in the performance of an administrative duty; to act without
9 independent investigation upon such a person's recommendation;
10 and, instead of acting personally, to employ 1 or more agents to
11 perform an act of administration, whether or not discretionary.

[(w) To employ an attorney to perform necessary legal services
or to advise or assist the trustee in the performance of the
trustee's administrative duties. An attorney employed under this
subdivision shall receive reasonable compensation for that
employment.]

12 [(x)] To prosecute, defend, arbitrate, settle, release, com-
13 promise, or agree to indemnify a claim or proceeding in any
14 jurisdiction or under an alternative dispute resolution
15 procedure. The trustee may act under this subsection for the
16 trustee's protection in the performance of the trustee's duties.

17 [(y)] To sell, exchange, partition, or otherwise dispose of,
18 or grant an option with respect to, trust property for any pur-
19 pose upon any terms or conditions.

20 [(z)] To continue or participate in a business or venture in
21 any manner, in any form, and for any length of time.

22 [(aa)] To change the form, in any manner, of a business or ven-
23 ture in which the settlor was engaged at the time of death.

24 [(bb)] To provide for exoneration of the trustee from personal
25 liability in a contract entered into on behalf of the trust.

26 [(cc)] To respond to environmental concerns and hazards
27 affecting trust property as provided in section 7407.

SB0209, As Passed House, September 24, 1998

S.B. 209 as amended September 24, 1998

368

1 [(dd)] To collect, pay, contest, settle, release, agree to
2 indemnify against, compromise, or abandon a claim of or against
3 the trust, including a claim against the trust by the trustee.

4 [(ee)] To respond to a tax matter as provided in section
5 7408.

6 [(ff)] To divide trust property into 2 or more separate por-
7 tions or trusts with substantially identical terms and conditions
8 and to allocate property between them, in order to simplify
9 administration for generation skipping transfer tax purposes, to
10 segregate property for management purposes, or to meet another
11 trust objective.

12 [(gg)] To make a payment of money, or other property instead
13 of money, to or for a minor or incapacitated individual as pro-
14 vided in section 7409.

15 [(hh)] To make a distribution or division of trust property in
16 cash or in kind, or both; to allot a different kind or disporpor-
17 tionate portion of, or an undivided interest in, trust property
18 among beneficiaries and determine the value of allotted trust
19 property; or to distribute an unclaimed share as described in
20 section 3916.

21 [(ii)] To transfer the property of a trust to another juris-
22 diction and appoint, compensate, or remove a successor trustee,
23 individual or corporate, for trust property in another jurisdic-
24 tion, with any trust powers set out in this part that the trustee
25 delegates to the successor trustee.

26 [(jj)] To execute and deliver an instrument that accomplishes
27 or facilitates the exercise of a power vested in the trustee.

1 [(3)] A trust that contains substantially identical provisions
2 as another trust established for the same beneficiary or benefi-
3 ciaries may be consolidated and administered as 1 trust. If the
4 rule against perpetuities speaks from different dates with refer-
5 ence to the trusts or if there are other variations in terms,
6 consolidation may still take place, but the property of the
7 trusts shall be maintained in separate accounts if necessary to
8 recognize and give effect to the differences.

9 Sec. 7402. For cause shown and on the petition of the
10 trustee or an affected beneficiary and on appropriate notice to
11 the affected parties, the court may relieve a trustee from a
12 restriction on the trustee's powers that would otherwise be
13 placed on the trustee by the trust instrument or by this part.

14 Sec. 7403. (1) If the trustee's duty and the trustee's
15 individual interest or the trustee's interest as a trustee of
16 another trust conflict in the exercise of a trust power, the
17 power may be exercised if any of the following are true:

18 (a) The trust agreement expressly authorizes the
19 transaction.

20 (b) The transaction is approved by the court after notice to
21 interested persons.

22 (c) The transaction is otherwise permitted by statute.

23 (2) Under this section, personal profit or advantage to an
24 affiliated or subsidiary company or association is personal
25 profit to a corporate trustee.

26 Sec. 7404. With respect to a third person dealing with a
27 trustee or assisting a trustee in the conduct of a transaction,

1 the existence of a trust power and its proper exercise by the
2 trustee may be assumed without inquiry. The third person is not
3 bound to inquire whether the trustee may act or is properly exer-
4 cising the power. A third person, without actual knowledge that
5 the trustee is exceeding a trust power or improperly exercising
6 it, is fully protected in dealing with the trustee as if the
7 trustee possessed and properly exercised the power the trustee
8 purports to exercise. A third person is not bound to assure the
9 proper application of trust property paid or delivered to the
10 trustee.

11 Sec. 7405. Unless otherwise provided in the trust instru-
12 ment, if 1 of several trustees dies, resigns, or is removed, the
13 remaining trustees have all rights, title, and powers of all pre-
14 vious trustees. If the trust instrument provides that a succes-
15 sor trustee be appointed to fill a vacancy, the remaining trust-
16 ees may exercise the powers of all previous trustees until the
17 successor is appointed.

18 Sec. 7406. (1) If there are more than 2 trustees and the
19 trust instrument expressly makes provision for the execution of
20 any of the trustees' powers by all of them or by any 1 or more of
21 them, the provisions of the trust instrument govern.

22 (2) If there is no governing provision in the trust instru-
23 ment, cotrustees may provide, by written agreement signed by all
24 of them and filed with and approved by the court where the trust
25 would be registered, as determined in accordance with section
26 7101, that any 1 or more of the powers designated in section 7401
27 may be exercised by any designated 1 or more of the trustees.

1 (3) Subject to subsection (1), if 2 or more trustees own
2 securities, their acts with respect to voting have 1 of the fol-
3 lowing effects:

4 (a) If only 1 trustee votes, in person or by proxy, that
5 trustee's act binds all of the trustees.

6 (b) If more than 1 trustee votes, in person or by proxy, the
7 act of the majority so voting binds all of the trustees.

8 (c) If more than 1 trustee votes, in person or by proxy, but
9 the vote is evenly split on a particular matter, each faction is
10 entitled to vote the securities proportionately.

11 (4) Subject to subsections (1) to (3), all other acts and
12 duties shall be performed by both of the trustees if there are 2
13 or by a majority of the trustees if there are more than 2. A
14 trustee who has not joined in exercising a power is not liable to
15 a beneficiary or another person for the consequences of the exer-
16 cise of that power. A dissenting trustee is not liable for the
17 consequences of an act in which the dissenting trustee joins at
18 the direction of the other trustees, if the dissenting trustee
19 expressed dissent in writing to a cotrustee at or before the time
20 of joinder.

21 (5) A trustee is not relieved of liability by entering into
22 an agreement under this section.

23 Sec. 7407. (1) In connection with an environmental concern
24 or hazard, a trustee may do any of the following:

25 (a) Inspect property or the operation of a business activity
26 on property, including property held in or operated by a sole
27 proprietorship, partnership, corporation, or limited liability

1 company or any other type of entity, for the purpose of
2 determining compliance with environmental law affecting the prop-
3 erty and to respond to an actual or threatened violation of an
4 environmental law affecting property held or tendered to the
5 trustee.

6 (b) Take action necessary to prevent, abate, or otherwise
7 remedy an actual or threatened violation of an environmental law
8 affecting property held by the trustee, either before or after a
9 governmental body initiates an enforcement action.

10 (c) Refuse to accept property in trust if the trustee deter-
11 mines that the property to be transferred to the trust either is
12 or may be contaminated by a hazardous substance or has been or is
13 being used for an activity directly or indirectly involving a
14 hazardous substance that could result in liability to the trust
15 or otherwise impair the value of the trust property.

16 (d) Settle or compromise at any time a claim against the
17 trust that a governmental body or private party may assert
18 involving the alleged violation of an environmental law affecting
19 property held in the trust.

20 (e) Disclaim a power granted by a document, statute, or rule
21 of law that, in the sole discretion of the trustee, may cause the
22 trustee to incur personal liability under an environmental law.

23 (f) Decline to serve or resign as a trustee if the trustee
24 reasonably believes that there is or may be a conflict of inter-
25 est between it in its fiduciary capacity and in its individual
26 capacity because of a potential claim or liability that may be

1 asserted against the trustee on the trust's behalf because of the
2 type or condition of property held in trust.

3 (g) Appoint an independent special trustee to hold title to,
4 and take a reasonably required action, as provided in this sec-
5 tion, relating to environmental law in regard to, property
6 tendered to the trust, until the time that the trustee determines
7 no substantial risk exists if the tendered property becomes part
8 of the trust property or abandons the tendered property.

9 (h) Charge the cost of an inspection, review, abatement,
10 response, cleanup, settlement of claim, or remedial action autho-
11 rized by this section against the trust property.

12 (2) A trustee is not personally liable to a beneficiary or
13 other party for a decrease in value of trust property by reason
14 of the trustee's compliance with an environmental law, specifi-
15 cally including a reporting requirement under that law. The
16 trustee's acceptance of property or failure to inspect property
17 or a business operation does not create an inference that there
18 is or may be liability under an environmental law with respect to
19 the property or business operation. The authority granted by
20 this section is solely to facilitate the administration and pro-
21 tection of trust property and is not to impose greater responsi-
22 bility or liability on the trustee than imposed by law absent
23 this section.

24 Sec. 7408. (1) A trustee may do any of the following in
25 connection with a tax matter:

26 (a) Make, revise, or revoke an available allocation,
27 consent, or election affecting a tax that is appropriate in order

1 to carry out the settlor's estate planning objectives and to
2 reduce the overall burden of taxation, both in the present and in
3 the future. This authority includes, but is not limited to, all
4 of the following:

5 (i) Electing to take expenses as estate tax or income tax
6 deductions.

7 (ii) Electing to allocate the exemption from the tax on gen-
8 eration skipping transfers among transfers subject to estate or
9 gift tax.

10 (iii) Electing to have all or a portion of a transfer for a
11 spouse's benefit qualify for the marital deduction.

12 (iv) Electing the date of death or an alternate valuation
13 date for federal estate tax purposes.

14 (b) Exclude or include property from the gross estate for
15 federal estate tax purposes.

16 (c) Value property for federal estate tax purposes.

17 (d) Join with the surviving spouse or the surviving spouse's
18 personal representative in the execution and filing of joint
19 income tax return and consenting to a gift tax return filed by
20 the surviving spouse or the surviving spouse's personal
21 representative.

22 (2) A trustee's decision on a matter described in subsection
23 (1)(a) binds all beneficiaries.

24 (3) After making a decision described in subsection (1)(a),
25 a trustee may make compensating adjustments between principal and
26 income.

1 to probate administration is insufficient to satisfy the
2 following expenses, claims, and allowances:

3 (a) The administration expenses of the settlor's estate.

4 (b) An enforceable and timely presented claim of a creditor
5 of the settlor, including a claim for the settlor's funeral and
6 burial expenses.

7 (c) Homestead, family, and exempt property allowances.

8 (2) A trust established as part of, and all payments from,
9 an employee annuity described in section 403 of the internal rev-
10 enue code, an individual retirement account described in section
11 408 of the internal revenue code, a Keogh (HR-10 plan), or a
12 retirement or other plan that is qualified under section 401 of
13 the internal revenue code shall not be considered to be a trust
14 described in subsection (1).

15 (3) This section does not impair a right that an individual
16 has under a qualified domestic relations order as that term is
17 defined in section 414(p) of the internal revenue code.

18 (4) For purposes of this section, property held or received
19 by a trust to the extent that the property would not have been
20 subject to a claim against the settlor's estate if it had been
21 paid directly to a trust created under the settlor's will or
22 other than to the settlor's estate, or property received from a
23 trust other than a trust described in this section, shall not be
24 considered trust property available for the payment of the admin-
25 istration expenses, a claim against the settlor's estate, or an
26 allowance described in subsection (1).

1 Sec. 7502. (1) A trustee of a trust described in section
2 7501(1) shall pay to the personal representative of the settlor's
3 estate the amount from time to time that the personal representa-
4 tive certifies in writing to the trustee is required to pay the
5 administration expenses of the settlor's estate; an enforceable
6 and timely presented claim of a creditor of the settlor, includ-
7 ing a claim for the settlor's funeral and burial expenses; and
8 homestead, family, and exempt property allowances. Without
9 liability to a trust beneficiary or another party, the trustee
10 may rely on the certificate of the personal representative. In
11 the event there is no personal representative appointed for the
12 settlor's estate, the trustee shall pay directly to the creditor
13 an enforceable and timely served claim of a creditor of the set-
14 tlor, including a claim for the settlor's funeral and burial
15 expenses. When there is no personal representative appointed for
16 the settlor's estate, a trust described in section 7501(1) is not
17 liable for payment of homestead, family, or exempt property
18 allowance. A payment made by a trustee is subject to this sec-
19 tion, but the payment shall be made exclusively out of property,
20 or the proceeds of property, that is includable in the settlor's
21 gross estate for federal estate tax purposes, other than assets
22 proscribed in section 7501(2), (3), and (4).

23 (2) Unless a settlor provides in his or her will or, in the
24 absence of such a provision, designates in the trust the money or
25 property passing under a trust to be used as described in section
26 7501, the administration expenses of the settlor's estate; an
27 enforceable and timely filed claim of a creditor of the settlor,

1 including a claim for the settlor's funeral and burial expenses;
2 or homestead, family, and exempt property allowances, to be paid
3 in accordance with subsection (1), shall be paid from the prop-
4 erty of the trust in the following order:

5 (a) Property of the trust residue remaining after all dis-
6 tributions that are to be satisfied by reference to a specific
7 property or type of property, fund, money, or statutory amount.

8 (b) Property that is not to be distributed out of specified
9 or identified property or a specified or identified item of
10 property.

11 (c) Property that is to be distributed out of specified or
12 identified property or a specified or identified item of
13 property.

14 Sec. 7503. (1) The following rules apply to section
15 7502(2):

16 (a) Upon the failure or insufficiency of money or property
17 out of which payment should be made, to the extent of the insuf-
18 ficiency, a distribution of property from the trust that is to be
19 satisfied out of specified or identified property shall be clas-
20 sed as a distribution to be satisfied out the general trust prop-
21 erty not otherwise disposed of in the trust instrument.

22 (b) A distribution of property from the trust given for
23 valuable consideration shall abate with other distributions of
24 the same class only to the extent of the excess over the amount
25 of the value of the consideration until all others of the same
26 class are exhausted.

1 (c) Except as otherwise provided in this section,
2 distributions of property from the trust shall abate equally and
3 ratably and without preference or priority as between real and
4 personal property.

5 (d) If a specified or identified item of property that has
6 been designated for distribution in the trust instrument or that
7 is charged with a distribution is sold or taken by the trustee,
8 other beneficiaries shall contribute according to their respec-
9 tive interests to the beneficiary whose property is sold or
10 taken, and before distribution, the trustee shall determine the
11 amounts of the respective contributions, which shall be paid or
12 withheld before distribution is made.

13 (2) Costs and expenses of trust administration, including
14 trustee compensation and attorney fees, shall be paid by the
15 trustee before and in preference to the administration expenses
16 of the settlor's estate, an enforceable and timely filed claim of
17 a creditor of the settlor, and homestead, family, and exempt
18 property allowances. If, after paying costs and expenses of
19 trust administration, the trust property is insufficient to pay
20 in full all charges for which the trust is liable under section
21 7501(1), the trustee shall make payment in the following order of
22 priority:

23 (a) Costs and expenses of administration of the decedent's
24 estate.

25 (b) Homestead, family, and exempt property allowances.

26 (c) Reasonable funeral and burial expenses.

1 (d) Debts and taxes with priority under federal law.

2 (e) Reasonable and necessary medical and hospital expenses
3 of the decedent's last illness, including compensation of a
4 person attending the decedent.

5 (f) Debts and taxes with priority under other laws of this
6 state.

7 (g) All other claims.

8 (3) A preference shall not be given in the payment of a
9 charge over another charge of the same class under subsection
10 (2), and a charge due and payable is not entitled to a preference
11 over a charge not due.

12 (4) If the decedent was the settlor of more than 1 trust
13 described in section 7501(1), the charges described in that sec-
14 tion are payable pro rata from those trusts, based on the gross
15 values of the respective trusts on the date of the decedent's
16 death. Each trustee is entitled to right of contribution as nec-
17 essary to effect the pro rata liability. The allocation and con-
18 tribution, however, are subject to provisions in the trusts
19 regarding the allocation and burden of the charges. If there is
20 conflict between the governing instruments regarding the alloca-
21 tion and burden of the charges, the decedent's will controls.

22 Sec. 7504. If there is no personal representative of the
23 settlor's estate to whom letters of administration have been
24 issued so that the publication and notice requirements of section
25 3801 have not been discharged, then each trustee of a trust
26 described in section 7501(1) must cause a notice to creditors to
27 be published and served in the same manner, with the same duties,

1 and with the same protection for the trustee and the attorney for
2 the trustee as described in section 3801 for a personal
3 representative. The notice must comply with an applicable court
4 rule and contain the name of the trust's deceased settlor; the
5 trust's name or other designation, if any; the date the trust was
6 established; the name and address of each trustee serving at the
7 time of or as a result of the settlor's death; and the name and
8 address of the trustee's attorney, if any. The notice must state
9 the date of publication.

10 Sec. 7505. (1) If notice to claimants is given by a trustee
11 as provided in section 7504, a claimant shall present a claim
12 against a trust described in section 7501(1) in either of the
13 following ways:

14 (a) The claimant may mail or deliver to the trustee a writ-
15 ten statement of the claim indicating its basis, the name and
16 address of the claimant, and the amount claimed. The claim is
17 considered presented on the trustee's receipt of the claim. If a
18 claim is not yet due, the date when it will become due must be
19 stated. If the claim is contingent or unliquidated, the nature
20 of the uncertainty must be stated. If the claim is secured, the
21 security must be described. Failure to describe correctly the
22 security, the nature of any uncertainty, and the due date of a
23 claim not yet due does not invalidate a claim's presentation.

24 (b) The claimant may commence a proceeding to obtain payment
25 of a claim against the trust in a court where the trustee is
26 subject to jurisdiction. The commencement of the proceeding must
27 occur within the time limit for presenting the claim.

1 Presentation of a claim is not required in regard to matters
2 claimed in proceedings against the trust or settlor that were
3 pending at the time of the settlor's death.

4 (2) If a personal representative is appointed for the
5 settlor's estate, presentation of a claim against the settlor's
6 estate must be made in the manner described in section 3804, and
7 such a presentation is sufficient to assert liability against a
8 trust described in section 7501(1) without an additional presen-
9 tation of the claim against the trustee.

10 Sec. 7506. (1) If not barred earlier by another statute of
11 limitations, a claim against the settlor of a trust described in
12 section 7501(1) that arose at or before the settlor's death that
13 a person seeks to recover from the trust is barred against the
14 trust, each trustee of the trust, and a trust beneficiary, unless
15 presented within 1 of the following times:

16 (a) If notice is given in compliance either with section
17 3801 or section 7504, within 4 months after the date of publica-
18 tion of notice to creditors.

19 (b) For a creditor known to the personal representative at
20 the time of publication or during the 4 months following publica-
21 tion, or known to the trustee at or during such a time if publi-
22 cation occurred under section 7504, within [28 days] after the sub-
23 sequent sending of notice or 4 months after the date of publica-
24 tion of notice to creditors, whichever is later.

25 (c) If the notice requirements of either section 3801 or
26 section 7504 are not met, within 3 years after the settlor's
27 death.

1 (2) This section does not affect or prevent any of the
2 following:

3 (a) A proceeding to enforce a mortgage, pledge, or other
4 lien upon property held in the trust.

5 (b) A proceeding to establish the settlor's or the trustee's
6 liability for which the settlor or the trustee is protected by
7 liability insurance to the limits of the insurance protection
8 only.

9 (c) Collection of compensation for services rendered and
10 reimbursement of expenses advanced by the trustee or by an attor-
11 ney, auditor, investment adviser, or other specialized agent or
12 assistant for the trustee.

13 Sec. 7507. If there is no personal representative appointed
14 for the settlor's estate and notice is given in accordance with
15 section 7504, the allowance or disallowance of a claim presented
16 in the manner described in section 7505(1) and within a time
17 period described in section 7506 is governed by the following
18 provisions:

19 (a) The trustee may deliver or mail a notice to the claimant
20 stating that the claim has been disallowed in whole or in part.
21 If, after allowing or disallowing a claim, the trustee changes a
22 decision concerning the claim, the trustee shall notify the
23 claimant. The trustee may not change a decision disallowing a
24 claim if the time for the claimant to file a petition for allow-
25 ance has passed or if the time to commence a proceeding on the
26 claim has run and the claim has been barred. A claim that is
27 disallowed in whole or in part by the trustee is barred to the

1 extent not allowed unless the claimant files a petition for
2 allowance in the court or commences a proceeding against the
3 trustee not later than 63 days after the mailing of the notice of
4 disallowance or partial allowance if the notice warns the claim-
5 ant of the impending bar. Failure by the trustee to deliver or
6 mail to a claimant notice of action on the claim within 63 days
7 after the time for the claim's presentation has expired consti-
8 tutes a notice of allowance.

9 (b) After allowing or disallowing a claim, the trustee may
10 change the allowance or disallowance as provided in this
11 subdivision. Before payment, the trustee may change the allow-
12 ance to a disallowance in whole or in part, but not after allow-
13 ance by a court order or judgment, or an order directing payment
14 of the claim. The trustee shall notify the claimant of the
15 change to disallowance, and the disallowed claim is then subject
16 to bar as provided in subdivision (a). The trustee may change a
17 disallowance to an allowance, in whole or in part, until it is
18 barred under subdivision (a). After a claim is barred, it may be
19 allowed and paid only if the trust is solvent and all whose
20 interests would be affected consent.

21 (c) Upon the trustee's or a claimant's petition, the court
22 may allow in whole or in part a claim properly presented in due
23 time and not barred by subdivision (a).

24 (d) A judgment in a proceeding in another court against a
25 trustee to enforce a claim against a decedent's estate consti-
26 tutes an allowance of the claim.

1 (e) Unless otherwise provided in a judgment in another court
2 entered against the trustee, an allowed claim bears interest at a
3 rate determined under section 6013 of the revised judicature act
4 of 1961, 1961 PA 236, MCL 600.6013, for the period commencing 63
5 days after the time for original presentation of the claim has
6 expired, unless based on a contract that provides for interest,
7 in which case the claim bears interest in accordance with the
8 contract.

9 Sec. 7508. (1) Upon the expiration of 4 months after the
10 date of the publication of the notice to creditors, the trustee
11 shall proceed to pay the claims allowed against the trust in the
12 order of priority prescribed in section 7503(2)(c) to (e), after
13 making provision for costs and expenses of trust administration,
14 for each claim already presented that is not yet allowed or whose
15 allowance is appealed, and for each unbarred claim that may yet
16 be presented. A claimant whose claim is allowed, but not paid as
17 provided in this section, may petition the court to secure an
18 order directing the trustee to pay the claim to the extent that
19 money of the trust is available for the payment.

20 (2) At any time, the trustee may pay a claim that is not
21 barred, with or without formal presentation, but is individually
22 liable to another claimant whose claim is allowed and who is
23 injured by the payment if either of the following occurs:

24 (a) Payment is made before the expiration of the time limit
25 stated in subsection (1) and the trustee fails to require the
26 payee to give adequate security for the refund of any of the
27 payment necessary to pay another claimant.

1 (b) Payment is made, due to the negligence or willful fault
2 of the trustee, in a manner that deprives the injured claimant of
3 priority.

4 (3) If a claim is allowed, but the whereabouts of the claim-
5 ant is unknown at the time the trustee attempts to pay the claim,
6 upon petition by the trustee and after notice the court considers
7 advisable, the court may disallow the claim. If the court disal-
8 lows a claim under this subsection, the claim is barred.

9 Sec. 7509. Payment of a secured claim shall be upon the
10 basis of the amount allowed if the creditor surrenders the
11 security. Otherwise payment shall be upon the basis of 1 of the
12 following:

13 (a) If the creditor exhausts the security before receiving
14 payment, upon the claim amount allowed less the fair value of the
15 security.

16 (b) If the creditor does not have the right to exhaust the
17 security or does not do so, upon the claim amount allowed less
18 the value of the security as determined by converting it into
19 money according to the terms of the agreement under which the
20 security is delivered to the creditor, or as determined by the
21 creditor and trustee by agreement, arbitration, compromise, or
22 litigation.

23 Sec. 7510. A claim that will become due at a future time, a
24 contingent claim, or an unliquidated claim is governed by the
25 following:

26 (a) If a claim becomes due or certain before the
27 distribution of the trust, and if the claim is allowed or

1 established by a proceeding, the claim shall be paid in the same
2 manner as presently due and absolute claims of the same class.

3 (b) For a claim not covered by subdivision (a), the trustee
4 or, on petition of the trustee or the claimant in a proceeding
5 for the purpose, the court may provide for payment as follows:

6 (i) If the claimant consents, the claimant may be paid the
7 present or agreed value of the claim, taking any uncertainty into
8 account.

9 (ii) Arrangement for future payment, or possible payment, on
10 the happening of the contingency or on liquidation may be made by
11 creating a trust, giving a mortgage, obtaining a bond or security
12 from a distributee, or otherwise.

13 Sec. 7511. In allowing a claim, the trustee may deduct a
14 counterclaim that the trustee has against the claimant. In
15 determining a claim against a trust, the court shall reduce the
16 amount allowed by the amount of a counterclaim and, if the total
17 counterclaims exceed the claim, render a judgment against the
18 claimant in the amount of the excess. A counterclaim, liquidated
19 or unliquidated, may arise from a transaction other than that
20 upon which the claim is based. A counterclaim may give rise to
21 relief exceeding in amount or different in kind from that sought
22 in the claim.

1 ARTICLE VIII

2 EFFECTIVE DATE AND REPEALER

3 Sec. 8101. (1) This act takes effect [April 1, 2000].

4 (2) Except as provided elsewhere in this act, on this act's
5 effective date, all of the following apply:

6 (a) The act applies to a governing instrument executed by a
7 decedent dying after that date.

8 (b) The act applies to a proceeding in court pending on that
9 date or commenced after that date regardless of the time of the
10 decedent's death except to the extent that in the opinion of the
11 court the former procedure should be made applicable in a partic-
12 ular case in the interest of justice or because of the infeas-
13 ibility of applying this act's procedure.

14 (c) A fiduciary, including a person administering the estate
15 of a minor or incompetent, holding an appointment on that date
16 continues to hold the appointment, but has only the powers con-
17 ferred by this act and is subject to the duties imposed with
18 respect to an event occurring or action taken after that date.

19 (d) This act does not impair an accrued right or an action
20 taken before that date in a proceeding. If a right is acquired,
21 extinguished, or barred upon the expiration of a prescribed
22 period of time that commences to run by the provision of a stat-
23 ute before this act's effective date, the provision remains in
24 force with respect to that right.

25 (e) A rule of construction or presumption provided in this
26 act applies to a governing instrument executed before that date
27 unless there is a clear indication of a contrary intent.

