

**SUBSTITUTE FOR  
HOUSE BILL NO. 5370**

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending section 7817 (MCL 700.7817), as amended by 2010 PA 325,  
and by adding section 7912a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 7817. Without limiting the authority conferred by section  
2       7816, a trustee has all of the following powers:

3       (a) To take possession, custody, or control of property  
4       transferred to the trust and accept or reject additions to the  
5       trust.

6       (b) To retain property that the trustee receives, including  
7       property in which the trustee is personally interested, in  
8       accordance with the Michigan prudent investor rule.

1 (c) To receive property from a fiduciary or another source  
2 that is acceptable to the trustee.

3 (d) To perform, compromise, or refuse to perform a contract of  
4 the settlor that is an obligation of the trust, as the trustee may  
5 determine under the circumstances. In performing an enforceable  
6 contract by the settlor to convey or lease land, if the contract  
7 for a conveyance requires the giving of a warranty, the deed or  
8 other instrument of conveyance to be given by the trustee shall  
9 contain the warranty required. The warranty is binding on the trust  
10 as though made by the settlor, but does not bind the trustee except  
11 in the trustee's fiduciary capacity. The trustee, among other  
12 possible courses of action, may do either of the following:

13 (i) Execute and deliver a deed of conveyance for cash payment  
14 of money remaining due or the purchaser's note for the money  
15 remaining due secured by a mortgage on the land.

16 (ii) Deliver a deed in escrow with directions that the  
17 proceeds, when paid in accordance with the escrow agreement, be  
18 paid to the trustee, as designated in the escrow agreement.

19 (e) To satisfy a settlor's written charitable pledge  
20 irrespective of whether the pledge constitutes a binding obligation  
21 of the settlor or was properly presented as a claim, if in the  
22 trustee's judgment the settlor would have wanted the pledge  
23 completed under the circumstances.

24 (f) To deposit trust property in a financial institution,  
25 including a financial institution operated by or affiliated with  
26 the trustee and to invest and reinvest trust property as would a  
27 prudent investor acting in accordance with the Michigan prudent

1 investor rule and to deposit securities with a depository or other  
2 financial institution.

3 (g) To acquire property, including property in this or another  
4 state or country, in any manner for cash or on credit, at public or  
5 private sale; and to manage, develop, improve, exchange, partition,  
6 or change the character of trust property.

7 (h) To make an ordinary or extraordinary repair or alteration  
8 in a building or another structure, to demolish an improvement, or  
9 to raze an existing or erect a new party wall or building.

10 (i) To subdivide, develop, or dedicate land to public use; to  
11 make or obtain the vacation of a plat or adjust a boundary; to  
12 adjust a difference in valuation on exchange or partition by giving  
13 or receiving consideration; or to dedicate an easement to public  
14 use without consideration.

15 (j) To enter for any purpose into a lease as lessor or lessee,  
16 with or without an option to purchase or renew, for a period within  
17 or extending beyond the duration of the trust.

18 (k) To enter into a lease or arrangement for exploration and  
19 removal of minerals or another natural resource or to enter into a  
20 pooling or unitization agreement for a period within or extending  
21 beyond the duration of the trust.

22 (l) To abandon or decline to administer property if, in the  
23 trustee's opinion, the property is valueless, or is so encumbered  
24 or in such a condition that it is of no benefit to the trust.

25 (m) To vote a stock or other security in person, by general or  
26 limited proxy, or in another manner provided by law, or enter into  
27 or continue a voting trust agreement.

1           (n) To pay a call, assessment, or other amount chargeable or  
2 accruing against or on account of a security, and sell or exercise  
3 stock subscription or conversion rights.

4           (o) To hold property in the name of a nominee or in another  
5 form without disclosure of the interest of the trust. However, the  
6 trustee is liable for an act of the nominee in connection with the  
7 property so held.

8           (p) To insure the trust property against damage, loss, or  
9 liability and to insure the trustee, the trustee's agents, and the  
10 trust beneficiaries against liability arising from the  
11 administration of the trust.

12           (q) To borrow property, with or without security, for any  
13 purpose from the trustee or others and to mortgage or pledge trust  
14 property for a period within or extending beyond the duration of  
15 the trust.

16           (r) To effect a fair and reasonable compromise with a debtor  
17 or obligor, or extend, renew, or in any manner modify the terms of  
18 an obligation owing to the trust. If the trustee holds a mortgage,  
19 pledge, or another lien on property of another person, the trustee  
20 may, instead of foreclosure, accept a conveyance or transfer of  
21 encumbered property from the property's owner in satisfaction of  
22 the indebtedness secured by a lien.

23           (s) To pay a tax, an assessment, the trustee's compensation,  
24 or another expense incident to the administration of the trust.

25           (t) To sell or exercise a subscription or conversion right or  
26 to consent, directly or through a committee or another agent, to  
27 the reorganization, consolidation, merger, dissolution, or

1 liquidation of a business enterprise.

2 (u) To allocate an item of income or expense to either trust  
3 income or principal, as permitted or provided by law.

4 (v) To employ, and pay reasonable compensation for services  
5 performed by, a person, including an auditor, investment advisor,  
6 accountant, appraiser, broker, custodian, rental agent, realtor, or  
7 agent, even if the person is associated with the trustee, for the  
8 purpose of advising or assisting the trustee in the performance of  
9 an administrative duty; to act without independent investigation  
10 ~~upon~~ **ON** such a person's recommendation; and, instead of acting  
11 personally, to employ 1 or more agents to perform an act of  
12 administration, whether or not discretionary.

13 (w) To employ an attorney to perform necessary legal services  
14 or to advise or assist the trustee in the performance of the  
15 trustee's administrative duties, even if the attorney is associated  
16 with the trustee, and to act without independent investigation ~~upon~~  
17 **ON** the attorney's recommendation. An attorney employed under this  
18 subdivision shall receive reasonable compensation for his or her  
19 employment.

20 (x) To prosecute, defend, arbitrate, settle, release,  
21 compromise, or agree to indemnify an action, claim, or proceeding  
22 in any jurisdiction or under an alternative dispute resolution  
23 procedure. The trustee may act under this subdivision for the  
24 trustee's protection in the performance of the trustee's duties.

25 (y) To sell, exchange, partition, or otherwise dispose of, or  
26 grant an option with respect to, trust property for any purpose  
27 ~~upon~~ **ON** any terms or conditions for a period within or extending

1 beyond the duration of the trust.

2 (z) To continue or participate in a business or enterprise in  
3 any manner, in any form, and for any length of time.

4 (aa) To change the form, in any manner, of a business or  
5 enterprise in which the settlor was engaged at the time of death.

6 (bb) To provide for exoneration of the trustee from personal  
7 liability in a contract entered into on behalf of the trust.

8 (cc) To respond to environmental concerns and hazards  
9 affecting trust property as provided in section 7818.

10 (dd) To collect, pay, contest, settle, release, agree to  
11 indemnify against, compromise, or abandon a claim of or against the  
12 trust, including a claim against the trust by the trustee.

13 (ee) To respond to a tax matter as provided in section 7819.

14 (ff) To make a payment of money, or other property instead of  
15 money, to or for a minor or incapacitated trust beneficiary as  
16 provided in section 7820.

17 (gg) To make a distribution or division of trust property in  
18 cash or in kind, or both; to allot a different kind or  
19 disproportionate portion of, or an undivided interest in, trust  
20 property among beneficiaries and determine the value of allotted  
21 trust property; or to distribute an unclaimed share in the same  
22 manner as described in section 3916.

23 (hh) To transfer the property of a trust to another  
24 jurisdiction and appoint, compensate, or remove a successor  
25 trustee, individual or corporate, for trust property in another  
26 jurisdiction, with any trust powers set out in this part that the  
27 trustee delegates to the successor trustee.

1           (ii) To execute and deliver an instrument that accomplishes or  
2 facilitates the exercise of a power vested in the trustee.

3           (jj) To select a mode of payment under any employee benefit or  
4 retirement plan, annuity, or life insurance payable to the trustee,  
5 exercise rights thereunder, including exercise of the right to  
6 indemnification for expenses and against liabilities, and take  
7 appropriate action to collect the proceeds.

8           (kk) To make loans out of trust property, including loans to a  
9 trust beneficiary on terms and conditions the trustee considers to  
10 be fair and reasonable under the circumstances. The trustee has a  
11 lien on future distributions for repayment of loans made under this  
12 subdivision.

13          (ll) To pledge trust property to guarantee loans made by others  
14 to the trust beneficiary.

15          (mm) To resolve a dispute concerning the interpretation of the  
16 trust or its administration by mediation, arbitration, or other  
17 procedure for alternative dispute resolution.

18          (nn) On termination of the trust, to exercise the powers  
19 appropriate to wind up the administration of the trust and  
20 distribute the trust property to the persons entitled to it.

21          (OO) **SUBJECT TO STATE AND FEDERAL LAW, INCLUDING COPYRIGHT**  
22 **LAW, AND THE APPLICABLE TERMS-OF-SERVICE AGREEMENT, EXERCISE**  
23 **CONTROL OVER AND RIGHTS IN DIGITAL PROPERTY ACCORDING TO THE TERMS**  
24 **OF THE TRUST.**

25          **SEC. 7912A. (1) ON RECEIPT OF A TRUSTEE'S WRITTEN REQUEST**  
26 **UNDER THIS SUBSECTION FOR ACCESS TO DIGITAL PROPERTY, OWNERSHIP OF**  
27 **DIGITAL PROPERTY, OR A COPY OF A DIGITAL ASSET, A DIGITAL CUSTODIAN**

1 SHALL PROVIDE THE TRUSTEE WITH THE REQUESTED ACCESS, OWNERSHIP, OR  
2 COPY, AS APPLICABLE. A TRUSTEE'S WRITTEN REQUEST UNDER THIS  
3 SUBSECTION MUST BE ACCOMPANIED BY A CERTIFICATE OF TRUST.

4 (2) A DIGITAL CUSTODIAN SHALL COMPLY NOT LATER THAN 56 DAYS  
5 AFTER RECEIPT OF A REQUEST MADE UNDER SUBSECTION (1). IF, NOT LATER  
6 THAN 56 DAYS AFTER RECEIVING A REQUEST MADE UNDER SUBSECTION (1),  
7 THE DIGITAL CUSTODIAN FAILS TO COMPLY WITH THE REQUEST, THE TRUSTEE  
8 MAY PETITION THE COURT FOR AN ORDER DIRECTING COMPLIANCE.

9 (3) A DIGITAL CUSTODIAN IS NOT LIABLE FOR AN ACTION DONE IN  
10 COMPLIANCE WITH THIS SECTION.

11 Enacting section 1. This amendatory act does not take effect  
12 unless all of the following bills of the 97th Legislature are  
13 enacted into law:

14 (a) House Bill No. 5366.

15 (b) House Bill No. 5367.

16 (c) House Bill No. 5368.

17 (d) House Bill No. 5369.