

**SUBSTITUTE FOR
HOUSE BILL NO. 4033**

A bill to allow certain fiduciaries to convert income trusts to unitrusts, convert express unitrusts to income trusts, and change the percentage or method used to calculate unitrust amounts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "unitrust act".

2 Sec. 2. As used in this act:

3 (a) "Applicable value" means the measure of the net fair
4 market value of a trust taken into account under section 11.

5 (b) "Entity" means a person other than an individual.

6 (c) "Express unitrust" means a trust for which, under the
7 terms of the trust without regard to this act, income or net income
8 must or may be calculated as a unitrust amount.

9 (d) "Income" means that term as defined in section 102 of the



1 uniform principal and income act, 2004 PA 159, MCL 555.502.

2 (e) "Income beneficiary" means that term as defined in section
3 102 of the uniform principal and income act, 2004 PA 159, MCL
4 555.502.

5 (f) "Income trust" means a trust that is not a unitrust.

6 (g) "Independent person" means a person that is not any of the
7 following:

8 (i) With respect to a trust, a qualified trust beneficiary, a
9 nonfiduciary settlor of the trust, or an individual whose legal
10 obligation to support a beneficiary may be satisfied by a
11 distribution from the trust.

12 (ii) A spouse, parent, brother, sister, or descendant of an
13 individual described in subparagraph (i).

14 (iii) A corporation, partnership, limited liability company, or
15 other entity in which persons described in subparagraph (i) or (ii),
16 in the aggregate, have voting control.

17 (iv) An employee of a person described in subparagraph (i), (ii),
18 or (iii).

19 (h) "Net fair market value of a trust" means the fair market
20 value of the assets of the trust less the noncontingent liabilities
21 to which those assets are subject in the hands of the trustee.

22 (i) "Net income" means that term as defined in section 102 of
23 the uniform principal and income act, 2004 PA 159, MCL 555.502.

24 (j) "Person" means an individual or corporation, including a
25 fiduciary of an estate or trust, a business trust, partnership,
26 limited liability company, association, joint venture, public
27 corporation, government or governmental subdivision, agency, or
28 instrumentality, or any other legal or commercial entity.

29 (k) "Principal" means that term as defined in section 102 of



1 the uniform principal and income act, 2004 PA 159, MCL 555.502.

2 (l) "Qualified trust beneficiary" means that term as defined in
3 section 7103 of the estates and protected individuals code, 1998 PA
4 386, MCL 700.7103.

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

8 (n) "Settlor" means that term as defined in section 7103 of
9 the estates and protected individuals code, 1998 PA 386, MCL
10 700.7103.

11 (o) "Special tax benefit" means any of the following:

12 (i) Exclusion of a transfer to a trust from gifts described in
13 section 2503(b) of the internal revenue code of 1986, 26 USC 2503,
14 because of the qualification of an income interest in the trust as
15 a present interest in property.

16 (ii) Status as a qualified subchapter S trust described in
17 section 1361(d)(3) of the internal revenue code of 1986, 26 USC
18 1361, at a time the trust holds stock of an S corporation described
19 in section 1361(a)(1) of the internal revenue code of 1986, 26 USC
20 1361.

21 (iii) An estate or gift tax marital deduction for a transfer to
22 a trust under section 2056 or 2523 of the internal revenue code of
23 1986, 26 USC 2056 and 2523, that depends or depended in whole or in
24 part on the right of the settlor's spouse to receive the net income
25 of the trust.

26 (iv) Exemption in whole or in part of a trust from the federal
27 generation-skipping transfer tax imposed by section 2601 of the
28 internal revenue code of 1986, 26 USC 2601, because the trust was
29 irrevocable on September 25, 1985, if there is any possibility that



1 either of the following could happen:

2 (A) A distribution under the terms of the trust that would be
3 a taxable distribution as defined in section 2612(b) of the
4 internal revenue code of 1986, 26 USC 2612, if the trust were not
5 exempt in whole or in part from the federal generation-skipping
6 transfer tax.

7 (B) A termination under the terms of the trust that would be a
8 taxable distribution as defined in section 2612(a) of the internal
9 revenue code of 1986, 26 USC 2612, if the trust were not exempt in
10 whole or in part from the federal generation-skipping transfer tax.

11 (v) An inclusion ratio, as defined in section 2642(a) of the
12 internal revenue code of 1986, 26 USC 2642, of the trust that is
13 less than 1, if there is any possibility that either of the
14 following could happen:

15 (A) A taxable distribution, as defined in section 2612(b) of
16 the internal revenue code of 1986, 26 USC 2612, could be made from
17 the trust.

18 (B) A taxable termination, as defined in section 2612(a) of
19 the internal revenue code of 1986, 26 USC 2612, could occur with
20 respect to the trust.

21 (p) "Terms of a trust" means that term as defined in section
22 102 of the uniform principal and income act, 2004 PA 159, MCL
23 555.502.

24 (q) "Trustee" means that term as defined in section 102 of the
25 uniform principal and income act, 2004 PA 159, MCL 555.502.

26 (r) "Unitrust" means a trust for which net income is a
27 unitrust amount. Unitrust includes an express unitrust.

28 (s) "Unitrust amount" means an amount computed by multiplying
29 a determined value of a trust by a determined percentage. For a



unitrust administered under a unitrust policy, the unitrust amount means the applicable value, multiplied by the unitrust rate.

(t) "Unitrust policy" means a policy described in sections 8 to 13 and adopted under section 6.

(u) "Unitrust rate" means the rate used to compute the unitrust amount for a unitrust administered under a unitrust policy.

Sec. 3. Except as otherwise provided in the terms of a trust or this act, this act applies to a trust if this state is the trust's principal place of administration as described in section 7108 of the estates and protected individuals code, 1998 PA 386, MCL 700.7108.

Sec. 4. (1) Except as otherwise provided in subsection (2), this act applies to both of the following:

(a) An income trust, unless the terms of the trust expressly prohibit use of this act by a specific reference to this act or an explicit expression of intent that net income is not to be calculated as a unitrust amount.

(b) A unitrust, except to the extent the terms of the trust explicitly do any of the following:

(i) Prohibit use of this act by a specific reference to this act.

(ii) Prohibit conversion to an income trust.

(iii) Limit changes to the method of calculating the unitrust amount.

(2) This act does not apply to a trust described in section 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii) or (b) of the internal revenue code of 1986, 26 USC 170, 642, 664, and 2702.



1 (3) Subject to subsection (4), the terms of a trust prevail
2 over any provision of this act.

3 (4) For purposes of subsection (1) and this subsection,
4 references in the terms of a trust to income, net income, unitrust
5 amounts, or to the trustee's discretion in distributing any of
6 these are not, in the absence of additional evidence, a sufficient
7 indication of an intent contrary to the application of this act or
8 to the doing of anything that this act authorizes a trustee to do.

9 (5) Substituting a unitrust amount for net income or net
10 income for a unitrust amount under this act does not otherwise
11 affect terms of the trust concerning distributions, including
12 discretionary terms.

13 (6) This act does not create a duty to take or consider action
14 under this act or to inform a beneficiary about the applicability
15 of this act apart from the notice conditionally required under
16 section 6(2) (a).

17 (7) A trustee that in good faith takes an action that is
18 authorized by this act is not liable to a person affected by the
19 action.

20 Sec. 5. (1) The court shall not order a trustee to change a
21 decision to exercise or not to exercise a discretionary power
22 conferred by this act unless the court determines that the decision
23 was an abuse of the trustee's discretion. A trustee's decision is
24 not an abuse of discretion merely because the court would have
25 exercised the power in a different manner or would not have
26 exercised the power.

27 (2) If the court determines that a trustee has abused the
28 trustee's discretion, the court may, by following the rules
29 provided in section 105(3) of the uniform principal and income act,



2004 PA 159, MCL 555.505, place the beneficiaries in the positions they would have occupied if the discretion had not been abused.

(3) Upon petition by the trustee, the court having jurisdiction over a trust shall determine whether a proposed exercise or nonexercise by the trustee of a discretionary power conferred by this act will result in an abuse of the trustee's discretion.

Sec. 6. (1) By complying with subsections (2) and (5), the trustee may do any of the following:

(a) Convert an income trust to a unitrust if the trustee adopts in a record a unitrust policy for the trust providing both of the following:

(i) That in administering the trust, the net income of the trust will be a unitrust amount rather than net income determined without regard to this act.

(ii) The percentage and method used to calculate the unitrust amount.

(b) Change the percentage or method used to calculate a unitrust amount for a unitrust if the trustee adopts in a record a unitrust policy or an amendment or replacement of a unitrust policy providing changes in the percentage or method used to calculate the unitrust amount.

(c) Convert a unitrust to an income trust if the trustee adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to this act rather than a unitrust amount.

(2) The trustee may take an action under subsection (1) if all of the following conditions are satisfied:

(a) The trustee sends a notice in a record, in the manner



1 required by section 7, describing the proposed action.

2 (b) At least 1 member of each class of the qualified trust
3 beneficiaries receiving the notice under subdivision (a) is 1 of
4 the following:

5 (i) A legally competent individual.

6 (ii) An existing entity.

7 (iii) Represented in the manner provided in part 3 of article
8 VII of the estates and protected individuals code, 1998 PA 386, MCL
9 700.7301 to 700.7305.

10 (c) The trustee does not receive, by the date specified in the
11 notice as required under section 7(4)(d), an objection in a record
12 to the action proposed under subsection (1) from a person to which
13 the notice required under subdivision (a) is sent.

14 (3) A person described in section 7(1) may oppose the proposed
15 action in a court proceeding whether or not the person did either
16 of the following:

17 (a) Consented under section 7(3).

18 (b) Objected under section 7(4)(c).

19 (4) If, after sending a notice under subsection (2), the
20 trustee decides not to take the action proposed in the notice, the
21 trustee shall notify in a record each person described in section
22 7(1) of the decision not to take the action and the reasons for the
23 decision.

24 (5) In deciding how to take an action authorized by subsection
25 (1), the trustee shall consider all factors relevant to the
26 purposes of the trust and the interests of the beneficiaries.

27 (6) A trustee may release or delegate the power to convert an
28 income trust to a unitrust under subsection (1)(a), change the
29 percentage or method used to calculate a unitrust amount under

1 subsection (1)(b), or convert a unitrust to an income trust under
2 subsection (1)(c), for reasons analogous to the reasons for
3 releasing a power to adjust between principal and income described
4 in section 104(6) of the uniform principal and income act, 2004 PA
5 159, MCL 555.504. The release may be permanent or for a specified
6 period, including a period measured by the life of an individual.

7 (7) Though a trustee that is not an independent person may
8 exercise certain discretionary powers under this act, if a trust
9 does not have a trustee that is an independent person, the trustee
10 of that trust may appoint, without court approval, 1 or more
11 special trustees that are independent persons to exercise
12 discretionary powers under this act if the appointment complies
13 with any limits imposed by the terms of the trust on who is
14 eligible to serve as a cotrustee or successor trustee. Each special
15 trustee described in this subsection shall serve as trustee for the
16 purpose or purposes, according to the conditions and limitations,
17 and for the duration specified by the appointing trustee.

18 Sec. 7. (1) A notice required by section 6(2)(a) must be sent
19 in a manner authorized under section 7109 of the estates and
20 protected individuals code, 1998 PA 386, MCL 700.7109, to all of
21 the following:

22 (a) The qualified trust beneficiaries.

23 (b) Each person acting as a trust director as that term is
24 defined in section 7703a of the estates and protected individuals
25 code, 1998 PA 386, MCL 700.7703a.

26 (c) Each person that is not then a trustee or person described
27 in subdivision (b) but that has a then-exercisable power under the
28 terms of the trust to appoint or remove a trustee or person
29 described in subdivision (b).



1 (2) The representation provisions of part 3 of article VII of
2 the estates and protected individuals code, 1998 PA 386, MCL
3 700.7301 to 700.7305, apply with regard to notice and consent under
4 this section.

5 (3) A person may consent in a record at any time to action
6 proposed under section 6(1). A notice required by section 6(2)(a)
7 is not required to be sent to a person that consents in a record.

8 (4) A notice required by section 6(2)(a) must include all of
9 the following:

10 (a) A description of the action proposed under section 6(1).

11 (b) For a conversion of an income trust to a unitrust, a copy
12 of the unitrust policy adopted under section 6(1)(a), or for a
13 change in the percentage or method used to calculate the unitrust
14 amount, a copy of the unitrust policy or amendment or replacement
15 of the unitrust policy adopted under section 6(1)(b).

16 (c) A statement that the person to which the notice is sent
17 may object to the proposed action by stating in a record the basis
18 for the objection and sending or delivering the record to the
19 trustee.

20 (d) The date by which an objection described in subdivision
21 (c) must be received by the trustee, which must be at least 30 days
22 after the date the notice is sent.

23 (e) The date on which the action is proposed to be taken and
24 the date on which the action is proposed to take effect.

25 (f) The name and contact information of the trustee.

26 Sec. 8. (1) In administering a unitrust under this act, the
27 trustee shall follow a unitrust policy adopted under section
28 6(1)(a) or (b) or amended or replaced under section 6(1)(b).

29 (2) A unitrust policy must provide all of the following:



1 (a) The unitrust rate or the method for determining the
2 unitrust rate under section 10.

3 (b) The method for determining the applicable value under
4 section 11.

5 (c) The rules described in sections 9 to 13 that apply in the
6 administration of the unitrust, either because the rules are
7 mandatory, as provided in sections 11(1) and 12(1), or because the
8 rules are optional, as provided elsewhere in sections 10 to 13, and
9 the trustee has elected to adopt the rules.

10 Sec. 9. (1) If a trust qualifies for a special tax benefit or
11 has no trustee that is an independent person, all of the following
12 apply:

13 (a) The unitrust rate established under section 10 must not be
14 less than 3% or more than 5%.

15 (b) A unitrust policy may provide methods described in section
16 11(2) only for the following:

17 (i) Obtaining an appraisal of any asset for which fair market
18 value is not readily available.

19 (ii) Identification and treatment of cash or property held for
20 distribution.

21 (iii) Use of an average of fair market values over a stated
22 number of preceding periods.

23 (iv) Determining the liabilities of the trust, including
24 treatment of liabilities to conform with the treatment of assets
25 under subparagraphs (i) to (iii).

26 (c) The only period that may be selected under section 12(1)
27 for use under sections 10 and 11 is the calendar year.

28 (d) A unitrust policy may provide standards described in
29 section 12(2) only for 1 or more of the following:



1 (i) Using fewer preceding periods under section 11(2)(e)(i) if
2 the trust was not in existence in a preceding period.

3 (ii) Prorating the unitrust amount on a daily basis for a part
4 of a period in which the trust or the administration of the trust
5 as a unitrust or the interest of any beneficiary commences or
6 terminates.

7 (e) The trustee of a trust that qualifies for a given special
8 tax benefit may provide methods and standards for determining the
9 timing of distributions under section 13(a)(i) only to the extent
10 consistent with the trust's qualification for that benefit.

11 (2) If a trust that does not qualify for any special tax
12 benefit has cotrustees, and 1 or more of the cotrustees is an
13 independent person, a majority of the cotrustees that are
14 independent persons may exercise discretionary powers under this
15 act on behalf of the trust without regard to the limitations in
16 subsection (1).

17 Sec. 10. (1) Except as otherwise provided in section 9(1)(a),
18 a unitrust rate may be either of the following:

19 (a) A fixed unitrust rate.

20 (b) A unitrust rate that is determined for each period using
21 either of the following:

22 (i) A market index or other published data.

23 (ii) A mathematical blend of market indices or other published
24 data over a stated number of preceding periods.

25 (2) Except as otherwise provided in section 9(1)(a), a
26 unitrust policy may provide 1 or more of the following:

27 (a) A limit on how high the unitrust rate determined under
28 subsection (1)(b) may rise.

29 (b) A limit on how low the unitrust rate determined under



1 subsection (1)(b) may fall.

2 (c) A limit on how much the unitrust rate determined under
3 subsection (1)(b) may increase over the unitrust rate for the
4 preceding period or a mathematical blend of unitrust rates over a
5 stated number of preceding periods.

6 (d) A limit on how much the unitrust rate determined under
7 subsection (1)(b) may decrease below the unitrust rate for the
8 preceding period or a mathematical blend of unitrust rates over a
9 stated number of preceding periods.

10 (e) A mathematical blend of any of the unitrust rates
11 determined under subsection (1)(b) and subdivisions (a) to (d).

12 Sec. 11. (1) A unitrust policy must provide the method for
13 determining the fair market value of an asset for the purpose of
14 determining the unitrust amount, including both of the following:

15 (a) The frequency of valuing the asset, which does not need to
16 require a valuation in every period.

17 (b) The date for valuing the asset in each period in which the
18 asset is to be valued.

19 (2) Except as otherwise provided in section 9(1)(b), a
20 unitrust policy may provide methods for determining the amount of
21 the net fair market value of the trust to take into account in
22 determining the applicable value, including 1 or more of the
23 following:

24 (a) Obtaining an appraisal of an asset for which fair market
25 value is not readily available.

26 (b) Exclusion of specific assets or groups or types of assets.

27 (c) Other exceptions or modifications of the treatment of
28 specific assets or groups or types of assets.

29 (d) Identification and treatment of cash or property held for



1 distribution.

2 (e) Use of either of the following:

3 (i) An average of fair market values over a stated number of
4 preceding periods.

5 (ii) Another mathematical blend of fair market values over a
6 stated number of preceding periods.

7 (f) A limit on how much the applicable value of all assets,
8 groups of assets, or individual assets may increase over either of
9 the following:

10 (i) The corresponding applicable value for the preceding
11 period.

12 (ii) A mathematical blend of applicable values over a stated
13 number of preceding periods.

14 (g) A limit on how much the applicable value of all assets,
15 groups of assets, or individual assets may decrease below either of
16 the following:

17 (i) The corresponding applicable value for the preceding
18 period.

19 (ii) A mathematical blend of applicable values over a stated
20 number of preceding periods.

21 (h) The treatment of accrued income and other features of an
22 asset that affect value.

23 (i) Determining the liabilities of the trust, including
24 treatment of liabilities to conform with the treatment of assets
25 under subdivisions (a) to (h).

26 Sec. 12. (1) A unitrust policy must provide the period used
27 under sections 10 and 11. Except as otherwise provided in section
28 9(1)(c), the period may be any of the following:

29 (a) A calendar year.



(b) A 12-month period other than a calendar year.

(c) A calendar quarter.

(d) A 3-month period other than a calendar quarter.

(e) Another period.

(2) Except as otherwise provided in section 9(1)(d), a unitrust policy may provide standards for any of the following:

(a) Using fewer preceding periods under section 10(1)(b)(ii) or (2)(c) or (d) in either of the following situations:

(i) The trust was not in existence in a preceding period.

(ii) Market indices or other published data are not available for a preceding period.

(b) Using fewer preceding periods under section 11(2)(e)(i) or (ii), (f)(ii), or (g)(ii) in either of the following situations:

(i) The trust was not in existence in a preceding period.

(ii) Fair market values are not available for a preceding period.

(c) Prorating the unitrust amount on a daily basis for a part of a period in which the trust or the administration of the trust as a unitrust or the interest of any beneficiary commences or terminates.

Sec. 13. Except as otherwise provided in section 9(1)(e), a unitrust policy may do 1 or more of the following:

(a) Provide methods and standards for 1 or more of the following:

(i) Determining the timing of distributions.

(ii) Making distributions in cash or in kind or partly in cash and partly in kind.

(iii) Correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating



1 the unitrust amount.

2 (b) Specify sources and the order of sources, including
3 categories of income for federal income tax purposes, from which
4 distributions of a unitrust amount are paid.

5 (c) Provide other standards and rules that the trustee
6 determines serve the interests of the beneficiaries.

7 Sec. 14. In applying and construing this act, consideration
8 should be given to the need to promote uniformity of the law with
9 respect to this act's subject matter among states that enact the
10 uniform law on which this act is based, namely Article 3 of the
11 Uniform Fiduciary Income and Principal Act.

12 Sec. 15. This act modifies, limits, or supersedes the
13 Electronic Signatures in Global and National Commerce Act, 15 USC
14 7001 to 7006, but does not modify, limit, or supersede section
15 101(c) of that act, 15 USC 7001, or authorize electronic delivery
16 of any of the notices described in section 103(b) of that act, 15
17 USC 7003.

18 Sec. 16. This act applies to a trust existing or created on or
19 after the effective date of this act.