

# HOUSE BILL No. 5370

February 26, 2014, Introduced by Reps. Jenkins, Cotter, Geiss, LaFontaine, Leonard, Lauwers and Kowall and referred to the Committee on Judiciary.

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.

9       (c) To receive property from a fiduciary or another source

1 that is acceptable to the trustee.

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

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

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

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

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

1 financial institution.

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

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

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

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

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

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

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

27 (n) To pay a call, assessment, or other amount chargeable or

1 accruing against or on account of a security, and sell or exercise  
2 stock subscription or conversion rights.

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

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

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

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

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

24 (t) To sell or exercise a subscription or conversion right or  
25 to consent, directly or through a committee or another agent, to  
26 the reorganization, consolidation, merger, dissolution, or  
27 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, investment advisor,  
5 accountant, appraiser, broker, custodian, rental agent, realtor, or  
6 agent, even if the person is associated with the trustee, for the  
7 purpose of advising or assisting the trustee in the performance of  
8 an administrative duty; to act without independent investigation  
9 ~~upon~~ **ON** such a person's recommendation; and, instead of acting  
10 personally, to employ 1 or more agents to perform an act of  
11 administration, whether or not discretionary.

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

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

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

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

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

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

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

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

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

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

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

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

27           (ii) To execute and deliver an instrument that accomplishes or

1 facilitates the exercise of a power vested in the trustee.

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

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

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

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

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

20 (oo) **SUBJECT TO THE APPLICABLE TERMS-OF-SERVICE AGREEMENT,**  
21 **EXERCISE CONTROL OVER AND RIGHTS IN DIGITAL PROPERTY ACCORDING TO**  
22 **THE TERMS OF THE TRUST.**

23 **SEC. 7912A. (1) ON RECEIPT OF A TRUSTEE'S WRITTEN REQUEST**  
24 **UNDER THIS SUBSECTION FOR ACCESS TO DIGITAL PROPERTY, OWNERSHIP OF**  
25 **DIGITAL PROPERTY, OR A COPY OF A DIGITAL ASSET, A DIGITAL CUSTODIAN**  
26 **SHALL PROVIDE THE TRUSTEE WITH THE REQUESTED ACCESS, OWNERSHIP, OR**  
27 **COPY, AS APPLICABLE. A TRUSTEE'S WRITTEN REQUEST UNDER THIS**

1 SUBSECTION MUST BE ACCOMPANIED BY A CERTIFICATE OF TRUST.

2 (2) A DIGITAL CUSTODIAN SHALL COMPLY NOT LATER THAN 56 DAYS  
3 AFTER RECEIPT OF A REQUEST MADE UNDER SUBSECTION (1). IF THE  
4 DIGITAL CUSTODIAN FAILS TO COMPLY, THE TRUSTEE MAY PETITION THE  
5 COURT FOR AN ORDER DIRECTING COMPLIANCE. IF, NOT LATER THAN 56 DAYS  
6 AFTER RECEIVING A REQUEST MADE UNDER SUBSECTION (1), THE DIGITAL  
7 CUSTODIAN FAILS TO COMPLY WITH THE REQUEST, THE TRUSTEE MAY  
8 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) Senate Bill No.\_\_\_\_ or House Bill No. 5368 (request no.  
15 01198'13).

16 (b) Senate Bill No.\_\_\_\_ or House Bill No. 5367 (request no.  
17 04550'13).

18 (c) Senate Bill No.\_\_\_\_ or House Bill No. 5366 (request no.  
19 04551'13).

20 (d) Senate Bill No.\_\_\_\_ or House Bill No. 5369 (request no.  
21 04552'13).