

# HOUSE BILL NO. 5321

January 09, 2020, Introduced by Reps. Filler, Wakeman and Elder and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 2103, 2104, 2114, 2502, 2504, 2707, 3406, 3715, 3908, 3957, 7817, and 7821 (MCL 700.2103, 700.2104, 700.2114, 700.2502, 700.2504, 700.2707, 700.3406, 700.3715, 700.3908, 700.3957, 700.7817, and 700.7821), section 2114 as amended by 2012 PA 160, section 2504 as amended by 2009 PA 46, section 3715 as amended by 2018 PA 14, and sections 7817 and 7821 as amended by 2010 PA 325, and by adding sections 1215, 1216, 1217, 2810, and 2811 and part 1A of article II; and to repeal acts and parts of



DAW



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acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 1215. (1) Subject to subsection (2), a person has  
2 knowledge of a fact if 1 or more of the following apply:

3           (a) The person has actual knowledge of it.

4           (b) The person has received a notice or notification of it.

5           (c) From all the facts and circumstances known to the person  
6 at the time in question, the person has reason to know it.

7           (2) An organization that conducts activities through employees  
8 has notice or knowledge of a fact only from the time the  
9 information was received by an employee having responsibility to  
10 act or from the time the information would have been brought to the  
11 employee's attention if the organization had exercised reasonable  
12 diligence. An organization exercises reasonable diligence if it  
13 maintains reasonable routines for communicating significant  
14 information to the employee having responsibility to act and there  
15 is reasonable compliance with the routines. Reasonable diligence  
16 does not require an employee of the organization to communicate  
17 information unless the communication is part of the individual's  
18 regular duties or the individual knows a matter that would be  
19 materially affected by the information.

20           Sec. 1216. (1) In addition to other requirements, sections  
21 2120, 2121, and 2707 provide that a posthumously conceived child of  
22 a decedent will be treated as living at a certain time if the  
23 requirements of this section are met. Subject to subsection (2),  
24 the requirements of this section are met only if a notice to  
25 creditors is published as required under section 3801 or 7608 and  
26 all of the following apply:

27           (a) The person whose contact information is included in the



1 notice to creditors under section 3801 or 7608 is provided notice  
2 that genetic material of the decedent is available for possible use  
3 in posthumous conception.

4 (b) The notice regarding genetic material described in  
5 subdivision (a) is provided to the person whose contact information  
6 is included in the notice to creditors under section 3801 or 7608  
7 not later than 9 months after the notice to creditors is published.

8 (c) The form of the notice regarding genetic material  
9 described in subdivision (a) meets either of the following  
10 requirements:

11 (i) The notice is signed by the informant and includes the  
12 informant's name and address.

13 (ii) The notice is provided in a valid will, regardless of  
14 whether the will is admitted to probate.

15 (2) The requirements of this section are deemed to be met if a  
16 notice to creditors is not published as required under section 3801  
17 or 7608 within 9 months after the decedent's death.

18 Sec. 1217. (1) If a personal representative or trustee whose  
19 contact information is included in a notice to creditors published  
20 under section 3801 or 7608 receives or otherwise comes into  
21 possession of notice that genetic material of the decedent is  
22 available for use in posthumous conception, and the notice received  
23 by the personal representative or trustee meets the requirements  
24 described in section 1216(1) (a) to (c), the personal representative  
25 or trustee shall promptly provide a copy or partial copy of the  
26 notice or statement describing the notice to each other fiduciary  
27 known to the personal representative or trustee who may have the  
28 power to control the distribution of the decedent's property or  
29 property distributable because of the decedent's death. A partial



1 copy of a notice provided under this subsection must reproduce as  
 2 much of the copied notice as is necessary to show that the  
 3 informant asserts that genetic material of the decedent is  
 4 available for possible use in posthumous conception and that the  
 5 copied notice meets the other requirements described in section  
 6 1216(1) (a) to (c). A statement provided under this subsection  
 7 instead of a copy or partial copy of a notice must be a signed  
 8 writing indicating that a notice that meets the requirements  
 9 described in section 1216(1) (a) to (c) has been given.

10 (2) Knowledge that genetic material of the decedent is  
 11 available for possible use in posthumous conception is not  
 12 knowledge of an intention to use genetic material to create a child  
 13 after the decedent's death.

14 Sec. 2103. (1) ~~Any~~ **Subject to subsection (2), any** part of the  
 15 intestate estate that does not pass to the decedent's surviving  
 16 spouse under section 2102, or the entire intestate estate if there  
 17 is no surviving spouse, passes in the following order to the  
 18 following individuals who survive the decedent:

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

20 (b) If there is no surviving descendant, the decedent's  
 21 parents equally if both survive or to the surviving parent.

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

25 (d) If there is no surviving descendant, parent, or descendant  
 26 of a parent, but the decedent is survived by 1 or more grandparents  
 27 or descendants of grandparents, ~~1/2 of the estate passes to the~~  
 28 decedent's paternal grandparents equally if both survive, or to the  
 29 surviving paternal grandparent, or to the descendants of the



1 decedent's paternal grandparents or either of them if both are  
 2 deceased, the descendants taking by representation; and the other  
 3 ~~1/2 passes~~ to the decedent's maternal relatives in the same manner.  
 4 If there is no surviving grandparent or descendant of a grandparent  
 5 on either the paternal or the maternal side, the entire estate  
 6 passes to the decedent's relatives on the other side in the same  
 7 manner as the 1/2.

8 **(2) If there is no taker under subsection (1), the decedent's**  
 9 **intestate estate passes as follows:**

10 **(a) If the decedent has 1 deceased spouse who has 1 or more**  
 11 **descendants who survive the decedent, to that deceased spouse's**  
 12 **descendants by representation.**

13 **(b) If the decedent has more than 1 deceased spouse who has 1**  
 14 **or more descendants who survive the decedent, an equal share of the**  
 15 **estate or part of the estate to each set of descendants by**  
 16 **representation.**

17 **Sec. 2104. (1) For purposes of homestead allowance, exempt**  
 18 **property, and intestate succession, both of the following apply:**

19 **(a) An individual who fails to survive the decedent by 120**  
 20 **hours is considered to have predeceased the decedent. ~~for purposes~~**  
 21 **~~of homestead allowance, exempt property, and intestate succession,~~**  
 22 **~~and the decedent's heirs are determined accordingly. If it is not~~**  
 23 **established by clear and convincing evidence that an individual who**  
 24 **~~would otherwise be an heir~~ **was born before a decedent's death****  
 25 **survived the decedent by 120 hours, it is considered that the**  
 26 **individual failed to survive for the required period.**

27 **(b) An individual in gestation at a decedent's death is deemed**  
 28 **to be living at the decedent's death if the individual lives 120**  
 29 **hours or more after birth. If it is not established by clear and**



1 **convincing evidence that an individual in gestation at the**  
 2 **decedent's death lived 120 hours or more after birth, it is deemed**  
 3 **that the individual failed to survive for the required period.**

4 (2) This section does not apply if its application would  
 5 result in a taking of the intestate estate by ~~the~~**this** state under  
 6 section 2105.

7 Sec. 2114. ~~(1) Except as provided in subsections (2), (3), and~~  
 8 ~~(4), for purposes of intestate succession by, through, or from an~~  
 9 ~~individual, an individual is the child of his or her natural~~  
 10 ~~parents, regardless of their marital status. The parent and child~~  
 11 ~~relationship may be established in any of the following manners:~~

12 ~~(a) If a child is born or conceived during a marriage, both~~  
 13 ~~spouses are presumed to be the natural parents of the child for~~  
 14 ~~purposes of intestate succession. A child conceived by a married~~  
 15 ~~woman with the consent of her husband following utilization of~~  
 16 ~~assisted reproductive technology is considered as their child for~~  
 17 ~~purposes of intestate succession. Consent of the husband is~~  
 18 ~~presumed unless the contrary is shown by clear and convincing~~  
 19 ~~evidence. If a man and a woman participated in a marriage ceremony~~  
 20 ~~in apparent compliance with the law before the birth of a child,~~  
 21 ~~even though the attempted marriage may be void, the child is~~  
 22 ~~presumed to be their child for purposes of intestate succession.~~

23 ~~(b) If a child is born out of wedlock or if a child is born or~~  
 24 ~~conceived during a marriage but is not the issue of that marriage,~~  
 25 ~~a man is considered to be the child's natural father for purposes~~  
 26 ~~of intestate succession if any of the following occur:~~

27 ~~(i) The man joins with the child's mother and acknowledges that~~  
 28 ~~child as his child by completing an acknowledgment of parentage as~~  
 29 ~~prescribed in the acknowledgment of parentage act, 1996 PA 305, MCL~~



1 ~~722.1001 to 722.1013.~~

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

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

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

13 ~~(v) Regardless of the child's age or whether or not the~~  
14 ~~alleged father has died, the court with jurisdiction over probate~~  
15 ~~proceedings relating to the decedent's estate determines that the~~  
16 ~~man is the child's father, using the standards and procedures~~  
17 ~~established under the paternity act, 1956 PA 205, MCL 722.711 to~~  
18 ~~722.730.~~

19 ~~(vi) The man is determined to be the father in an action under~~  
20 ~~the revocation of paternity act.~~

21 ~~(c) A child who is not conceived or born during a marriage is~~  
22 ~~an individual born in wedlock if the child's parents marry after~~  
23 ~~the conception or birth of the child.~~

24 ~~(2) An adopted individual is the child of his or her adoptive~~  
25 ~~parent or parents and not of his or her natural parents, but~~  
26 ~~adoption of a child by the spouse of either natural parent has no~~  
27 ~~effect on either the relationship between the child and that~~  
28 ~~natural parent or the right of the child or a descendant of the~~  
29 ~~child to inherit from or through the other natural parent. An~~



1 ~~individual is considered to be adopted for purposes of this~~  
2 ~~subsection when a court of competent jurisdiction enters an~~  
3 ~~interlocutory decree of adoption that is not vacated or reversed.~~

4 (1) ~~(3)~~—The permanent termination of parental rights of a  
5 minor child by an order of a court of competent jurisdiction; by a  
6 release for purposes of adoption given by the parent, but not a  
7 guardian, to the ~~family independence agency~~ **department of health**  
8 **and human services** or a licensed child placement agency, or before  
9 a probate or juvenile court; or by any other process recognized by  
10 the law governing the parent-child status at the time of  
11 termination, excepting termination by emancipation or death, ends  
12 kinship between the parent whose rights are so terminated and the  
13 child for purposes of intestate succession by that parent from or  
14 through that child.

15 (2) ~~(4)~~—Inheritance from or through a child by either ~~natural~~  
16 **genetic** parent or his or her kindred is precluded unless that  
17 ~~natural~~ **genetic** parent has openly treated the child as his or hers,  
18 and has not refused to support the child. **As used in this**  
19 **subsection, "genetic parent" means that term as defined in section**  
20 **2115.**

21 ~~(5) Only the individual presumed to be the natural parent of a~~  
22 ~~child under subsection (1) (a) may disprove a presumption that is~~  
23 ~~relevant to that parent and child relationship, and this exclusive~~  
24 ~~right to disprove the presumption terminates on the death of the~~  
25 ~~presumed parent.~~

26 **PART 1A**

27 **PARENT-CHILD RELATIONSHIP**

28 **Sec. 2115. As used in this part:**

29 (a) "Adoptee" means an individual who is adopted.



1 (b) "Assisted reproduction" means a method of causing  
2 pregnancy other than sexual intercourse.

3 (c) "Divorce" includes an annulment, dissolution, and  
4 declaration of invalidity of a marriage.

5 (d) "Functioned as a parent of the child" means behaving  
6 toward a child in a manner consistent with being the child's parent  
7 and performing functions that are customarily performed by a  
8 parent, including fulfilling parental responsibilities toward the  
9 child, recognizing or holding out the child as the individual's  
10 child, materially participating in the child's upbringing, and  
11 residing with the child in the same household as a regular member  
12 of that household.

13 (e) "Genetic father" means the man whose sperm fertilized the  
14 egg of a child's genetic mother. If the father-child relationship  
15 is established under the presumption of paternity under section  
16 2117, genetic father means only the man for whom that relationship  
17 is established.

18 (f) "Genetic mother" means the woman whose egg was fertilized  
19 by the sperm of a child's genetic father.

20 (g) "Genetic parent" means a child's genetic father or genetic  
21 mother.

22 (h) "Incapacity" means the inability of an individual to  
23 function as a parent of a child because of the individual's  
24 physical or mental condition.

25 (i) "Relative" means a grandparent or a descendant of a  
26 grandparent.

27 Sec. 2116. Except as otherwise provided in section 2119(2) to  
28 (5), if a parent-child relationship exists or is established under  
29 this part, the parent is a parent of the child and the child is a



1 child of the parent for the purpose of intestate succession.

2 Sec. 2117. (1) For purposes of intestate succession by,  
3 through, or from an individual, an individual is the child of his  
4 or her genetic parents, regardless of their marital status. The  
5 parent and child relationship may be established in any of the  
6 following manners:

7 (a) If a child is born or conceived during a marriage, both  
8 spouses are presumed to be the genetic parents of the child for  
9 purposes of intestate succession. If 2 individuals participated in  
10 a marriage ceremony in apparent compliance with the law before the  
11 birth of a child, even though the attempted marriage may be void,  
12 the child is presumed to be their genetic child for purposes of  
13 intestate succession.

14 (b) If a child is born out of wedlock or if a child is born or  
15 conceived during a marriage but is not the issue of that marriage,  
16 a man is deemed to be the child's genetic father for purposes of  
17 intestate succession if any of the following occur:

18 (i) The man joins with the child's mother and acknowledges that  
19 child as his child by completing an acknowledgment of parentage as  
20 prescribed in the acknowledgment of parentage act, 1996 PA 305, MCL  
21 722.1001 to 722.1013.

22 (ii) The man joins the mother in a written request for a  
23 correction of certificate of birth pertaining to the child that  
24 results in issuance of a substituted certificate recording the  
25 child's birth.

26 (iii) The man and child have established a mutually acknowledged  
27 relationship of parent and child that begins before the child  
28 reaches 18 years of age and continues until terminated by the death  
29 of either.



1 (iv) The man is determined to be the child's father and an  
2 order of filiation establishing that paternity is entered as  
3 provided in the paternity act, 1956 PA 205, MCL 722.711 to 722.730.

4 (v) Regardless of the child's age or whether the alleged  
5 father has died, the court with jurisdiction over probate  
6 proceedings relating to the decedent's estate determines that the  
7 man is the child's father, using the standards and procedures  
8 established under the paternity act, 1956 PA 205, MCL 722.711 to  
9 722.730.

10 (vi) The man is determined to be the father in an action under  
11 the revocation of paternity act, 2012 PA 159, MCL 722.1431 to  
12 722.1445.

13 (c) A child who is not conceived or born during a marriage is  
14 an individual born in wedlock if the child's parents marry after  
15 the conception or birth of the child.

16 (2) Only the individual presumed to be the genetic parent of a  
17 child under subsection (1)(a) may rebut a presumption that is  
18 relevant to that parent and child relationship, and this exclusive  
19 right to rebut the presumption terminates on the death of the  
20 presumed parent.

21 Sec. 2118. (1) A parent-child relationship exists between an  
22 adoptee and the adoptee's adoptive parent or parents. For purposes  
23 of this subsection, both of the following apply:

24 (a) An individual who is in the process of being adopted by a  
25 married couple when 1 of the spouses dies is treated as adopted by  
26 the deceased spouse if the adoption is subsequently granted to the  
27 decedent's surviving spouse.

28 (b) A child of a genetic parent who is in the process of being  
29 adopted by a genetic parent's spouse when the spouse dies is



1 treated as adopted by the deceased spouse if the genetic parent  
2 survives the deceased spouse by 120 hours.

3 (2) If, after a parent-child relationship is established  
4 between a child of assisted reproduction and a parent under section  
5 2120 or between a gestational child and a parent under section  
6 2121, the child is in the process of being adopted by the parent's  
7 spouse when that spouse dies, the child is treated as adopted by  
8 the deceased spouse for the purpose of subsection (1) (b).

9 Sec. 2119. (1) Except as otherwise provided in subsections (2)  
10 to (5), a parent-child relationship does not exist between an  
11 adoptee and the adoptee's genetic parents.

12 (2) A parent-child relationship exists between an individual  
13 who is adopted by the spouse of either genetic parent and any of  
14 the following:

15 (a) The genetic parent whose spouse adopted the individual.

16 (b) The other genetic parent, but only for the purpose of the  
17 right of the adoptee or a descendant of the adoptee to inherit from  
18 or through the other genetic parent.

19 (3) A parent-child relationship exists between both genetic  
20 parents and an individual who is adopted by a relative of a genetic  
21 parent, or by the spouse or surviving spouse of a relative of a  
22 genetic parent, but only for the purpose of the right of the  
23 adoptee or a descendant of the adoptee to inherit from or through  
24 either genetic parent.

25 (4) A parent-child relationship exists between both genetic  
26 parents and an individual who is adopted after the death of both  
27 genetic parents, but only for the purpose of the right of the  
28 adoptee or a descendant of the adoptee to inherit through either  
29 genetic parent.



1 (5) If, after a parent-child relationship is established  
2 between a child of assisted reproduction and a parent or parents  
3 under section 2120 or between a gestational child and a parent or  
4 parents under section 2121, the child is adopted by another or  
5 others, the child's parent or parents under section 2120 or 2121  
6 are treated as the child's genetic parent or parents for purposes  
7 of this section.

8 Sec. 2120. (1) A parent-child relationship does not exist  
9 between a child of assisted reproduction and a third-party donor.

10 (2) A parent-child relationship exists between a child of  
11 assisted reproduction and the child's birth mother.

12 (3) Except as otherwise provided in subsections (7) and (8), a  
13 parent-child relationship exists between a child of assisted  
14 reproduction and the husband of the child's birth mother if the  
15 husband provided the sperm that the birth mother used during his  
16 lifetime for assisted reproduction.

17 (4) Except as otherwise provided in subsections (5), (6), and  
18 (7), and unless a parent-child relationship is established under  
19 subsection (2), a parent-child relationship exists between a child  
20 of assisted reproduction and an individual other than the birth  
21 mother who consented to assisted reproduction by the birth mother  
22 with intent to be treated as the other parent of the child. Consent  
23 to assisted reproduction by the birth mother with intent to be  
24 treated as the other parent of the child is established if either  
25 of the following applies:

26 (a) The individual, before or after the child's birth, signed  
27 a record that, considering all the facts and circumstances,  
28 evidences the individual's consent.

29 (b) In the absence of a signed record under subdivision (a),



1 any of the following apply:

2 (i) The individual functioned as a parent of the child no later  
3 than 2 years after the child's birth.

4 (ii) The individual intended to function as a parent of the  
5 child no later than 2 years after the child's birth but was  
6 prevented from carrying out that intent by death, incapacity, or  
7 other circumstances.

8 (iii) The individual intended to be treated as a parent of a  
9 posthumously conceived child, if that intent is established by  
10 clear and convincing evidence.

11 (5) For the purpose of subsection (4) (a), neither an  
12 individual who signed a record more than 2 years after the birth of  
13 the child nor a relative of that individual who is not also a  
14 relative of the birth mother inherits from or through the child  
15 unless the individual functioned as a parent of the child before  
16 the child reached 18 years of age.

17 (6) For the purposes of subsection (4) (b), all of the  
18 following apply:

19 (a) If the birth mother is married and no divorce proceeding  
20 is pending, in the absence of clear and convincing evidence to the  
21 contrary, her spouse satisfies subsection (4) (b) (i) or (ii).

22 (b) If the birth mother is a surviving spouse and at her  
23 deceased spouse's death no divorce proceeding was pending, and if,  
24 before death or incapacity, the deceased spouse deposited the sperm  
25 or eggs that were used to conceive the child, in the absence of  
26 clear and convincing evidence to the contrary, her deceased spouse  
27 satisfies subsection (4) (b) (ii) or (iii).

28 (7) If a married couple is divorced before placement of eggs,  
29 sperm, or embryos, a child resulting from the assisted reproduction



1 is not a child of the birth mother's former spouse unless the  
2 former spouse consented in a record that if assisted reproduction  
3 were to occur after divorce, the child would be treated as the  
4 former spouse's child.

5 (8) If, in a record, an individual withdraws consent to  
6 assisted reproduction before placement of eggs, sperm, or embryos,  
7 a child resulting from the assisted reproduction is not a child of  
8 that individual unless the individual subsequently satisfies  
9 subsection (4).

10 (9) If, under this section, an individual is a parent of a  
11 child of assisted reproduction who is conceived after the  
12 individual's death, and if the requirements of section 1216 are  
13 met, the child is treated as in gestation at the individual's death  
14 for purposes of section 2104(1)(b) if either of the following  
15 applies:

16 (a) The child is in utero not later than 36 months after the  
17 individual's death.

18 (b) The child is born not later than 45 months after the  
19 individual's death.

20 (10) As used in this section:

21 (a) "Birth mother" means a woman, other than a gestational  
22 carrier under section 2121, who gives birth to a child of assisted  
23 reproduction. Birth mother is not limited to a woman who is the  
24 child's genetic mother.

25 (b) "Child of assisted reproduction" means a child conceived  
26 by means of assisted reproduction by a woman other than a  
27 gestational carrier under section 2121.

28 (c) "Third-party donor" means an individual who produces eggs  
29 or sperm used for assisted reproduction, whether or not for



1 consideration. Third-party donor does not include any of the  
2 following:

3 (i) A husband who provides sperm, or a wife who provides eggs,  
4 that are used for assisted reproduction by the wife.

5 (ii) The birth mother of a child of assisted reproduction.

6 (iii) An individual who has been determined under subsection (4)  
7 to have a parent-child relationship with a child of assisted  
8 reproduction.

9 Sec. 2121. (1) A parent-child relationship is conclusively  
10 established by a court order designating the parent or parents of a  
11 gestational child.

12 (2) A parent-child relationship between a gestational child  
13 and the child's gestational carrier does not exist unless either of  
14 the following applies:

15 (a) The gestational carrier is designated as a parent of the  
16 child in a court order under subsection (1).

17 (b) The gestational carrier is the child's genetic mother and  
18 a parent-child relationship does not exist under this section with  
19 an individual other than the gestational carrier.

20 (3) In the absence of a court order under subsection (1), a  
21 parent-child relationship exists between a gestational child and an  
22 intended parent to whom either of the following applies:

23 (a) The intended parent functioned as a parent of the child no  
24 later than 2 years after the child's birth.

25 (b) The intended parent died while the gestational carrier was  
26 pregnant and if any of the following apply:

27 (i) There were 2 intended parents and the other intended parent  
28 functioned as a parent of the child no later than 2 years after the  
29 child's birth.





1           (ii) There were 2 intended parents, the other intended parent  
2 also died while the gestational carrier was pregnant, and a  
3 relative of either deceased intended parent or the spouse or  
4 surviving spouse of a relative of either deceased intended parent  
5 functioned as a parent of the child no later than 2 years after the  
6 child's birth.

7           (iii) There was no other intended parent and a relative of or  
8 the spouse or surviving spouse of a relative of the deceased  
9 intended parent functioned as a parent of the child no later than 2  
10 years after the child's birth.

11           (4) In the absence of a court order under subsection (1), a  
12 parent-child relationship exists between a gestational child and an  
13 individual whose sperm or eggs were used after the individual's  
14 death or incapacity to conceive a child under a gestational  
15 agreement entered into after the individual's death or incapacity  
16 if the individual intended to be treated as the parent of the  
17 child. The individual's intent may be shown by either of the  
18 following:

19           (a) A record signed by the individual that, considering all  
20 the facts and circumstances, evidences the individual's intent.

21           (b) Other facts and circumstances establishing the  
22 individual's intent by clear and convincing evidence.

23           (5) Except as otherwise provided in subsection (6), and unless  
24 there is clear and convincing evidence of a contrary intent, an  
25 individual is deemed to have intended to be treated as the parent  
26 of a gestational child for purposes of subsection (4) (b) if all of  
27 the following apply:

28           (a) The individual, before death or incapacity, deposited the  
29 sperm or eggs that were used to conceive the child.



1 (b) When the individual deposited the sperm or eggs, the  
2 individual was married and no divorce proceeding was pending.

3 (c) The individual's spouse or surviving spouse functioned as  
4 a parent of the child no later than 2 years after the child's  
5 birth.

6 (6) The presumption under subsection (5) does not apply if  
7 there is either of the following:

8 (a) A court order under subsection (1).

9 (b) A signed record that satisfies subsection (4)(a).

10 (7) If, under this section, an individual is a parent of a  
11 gestational child who is conceived after the individual's death,  
12 and if the requirements of section 1216 are met, the child is  
13 treated as in gestation at the individual's death for purposes of  
14 section 2104(1)(b) if either of the following applies:

15 (a) The child is in utero not later than 36 months after the  
16 individual's death.

17 (b) The child is born not later than 45 months after the  
18 individual's death.

19 (8) This section does not affect law of this state other than  
20 this act regarding the enforceability or validity of a gestational  
21 agreement.

22 (9) As used in this section:

23 (a) "Gestational agreement" means an enforceable or  
24 unenforceable agreement for assisted reproduction in which a woman  
25 agrees to carry a child to birth for an intended parent, intended  
26 parents, or an individual described in subsection (4).

27 (b) "Gestational carrier" means a woman who is not an intended  
28 parent who gives birth to a child under a gestational agreement.  
29 Gestational carrier is not limited to a woman who is the child's

1 genetic mother.

2 (c) "Gestational child" means a child born to a gestational  
3 carrier under a gestational agreement.

4 (d) "Intended parent" means an individual who entered into a  
5 gestational agreement that provides that the individual will be the  
6 parent of a child born to a gestational carrier by means of  
7 assisted reproduction. Intended parent is not limited to an  
8 individual who has a genetic relationship with the child.

9 Sec. 2122. This part does not affect the doctrine of equitable  
10 adoption.

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

14 (a) In writing.

15 (b) Signed by the testator or in the testator's name by some  
16 other individual in the testator's conscious presence and by the  
17 testator's direction.

18 (c) ~~Signed~~ **Either of the following:**

19 (i) **Signed** by at least 2 individuals, each of whom signed  
20 within a reasonable time after he or she witnessed either the  
21 signing of the will as described in subdivision (b) or the  
22 testator's acknowledgment of that signature or acknowledgment of  
23 the will.

24 (ii) **Acknowledged by the testator before a notary public or**  
25 **other individual authorized by law to take acknowledgments.**

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



1 (3) Intent that the document constitutes a testator's will can  
2 be established by extrinsic evidence, including, for a holographic  
3 will, portions of the document that are not in the testator's  
4 handwriting.

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

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

22 \_\_\_\_\_

23 (Signature) Testator

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

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

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

29 The State of \_\_\_\_\_



1 County of \_\_\_\_\_

2 We, \_\_\_\_\_, \_\_\_\_\_, and

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

17 \_\_\_\_\_  
18 (Signature) Testator

19 \_\_\_\_\_  
20 (Signature) Witness

21 \_\_\_\_\_  
22 (Signature) Witness

23 Sworn to and signed in my presence by \_\_\_\_\_, the  
24 testator, and sworn to and signed in my presence by  
25 \_\_\_\_\_ and \_\_\_\_\_, witnesses, on  
26 \_\_\_\_\_, \_\_\_\_\_.

27 month/day year

28 \_\_\_\_\_  
29 (SEAL) Signed



1 \_\_\_\_\_  
2 (official capacity of officer)

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

10 I, \_\_\_\_\_, the testator, sign my name to this  
11 document on \_\_\_\_\_, \_\_\_\_\_. I have taken an oath, administered  
12 by the officer whose signature and seal appear on this document,  
13 swearing that the statements in this document are true. I declare  
14 to that officer that this document is a codicil to my will; that I  
15 sign it willingly or willingly direct another to sign for me; that  
16 I execute it as my voluntary act for the purposes expressed in this  
17 codicil; and that I am 18 years of age or older, and under no  
18 constraint or undue influence; and that I have sufficient mental  
19 capacity to make this codicil.

20 \_\_\_\_\_  
21 (Signature) Testator

22 We, \_\_\_\_\_ and \_\_\_\_\_, the witnesses, sign  
23 our names to this document and have taken an oath, administered by  
24 the officer whose signature and seal appear on this document, to  
25 swear that all of the following statements are true: the individual  
26 signing this document as the testator executes the document as a  
27 codicil to his or her will, signs it willingly or willingly directs  
28 another to sign for him or her, and executes it as his or her  
29 voluntary act for the purposes expressed in this codicil; each of

1 us, in the testator's presence, signs this codicil as witness to  
2 the testator's signing; and, to the best of our knowledge, the  
3 testator is 18 years of age or older, is under no constraint or  
4 undue influence, and has sufficient mental capacity to make this  
5 codicil.

6 \_\_\_\_\_  
7 (Signature) Witness

8 \_\_\_\_\_  
9 (Signature) Witness

10 The State of \_\_\_\_\_  
11 County of \_\_\_\_\_

12 Sworn to and signed in my presence by \_\_\_\_\_, the  
13 testator, and sworn to and signed in my presence by

14 \_\_\_\_\_ and \_\_\_\_\_, witnesses, on  
15 \_\_\_\_\_, \_\_\_\_\_.

16 month/day year

17 \_\_\_\_\_  
18 (SEAL) Signed

19 \_\_\_\_\_  
20 (official capacity of officer)

21 (4) If necessary to prove the will's due execution, a  
22 signature affixed to a self-proving sworn statement attached to a  
23 will is considered a signature affixed to the will.

24 (5) Instead of the testator and witnesses each making a sworn  
25 statement before an officer authorized to administer oaths as  
26 prescribed in subsections (1) to (3), a will or codicil may be made  
27 self-proved by a written statement that is not a sworn statement.

28 This statement ~~shall~~**must** state, or incorporate by reference to an  
29 attestation clause, the facts regarding the testator and the



1 formalities observed at the signing of the will or codicil as  
 2 prescribed in subsections (1) to (3). The testator and witnesses  
 3 shall sign the statement, which must include its execution date and  
 4 must begin with substantially the following language: "I certify  
 5 (or declare) under penalty for perjury under the law of the state  
 6 of Michigan that...".

7 ~~Sec. 2707. (1) An adopted individual or an individual born out~~  
 8 ~~of wedlock, and his or her respective descendants if appropriate to~~  
 9 ~~the class, are included in class gifts and other terms of~~  
 10 ~~relationship in accordance with the rules for intestate succession.~~  
 11 ~~Terms of relationship that do not differentiate relationships by~~  
 12 ~~blood from those by affinity, such as "uncles", "aunts", "nieces",~~  
 13 ~~or "nephews", are construed to exclude relatives by affinity. Terms~~  
 14 ~~of relationship that do not differentiate relationships by the half~~  
 15 ~~blood from those by the whole blood, such as "brothers", "sisters",~~  
 16 ~~"nieces", or "nephews", are construed to include both types of~~  
 17 ~~relationships.~~

18 ~~(2) In addition to the requirements of subsection (1), in~~  
 19 ~~construing a dispositive provision of a transferor who is not a~~  
 20 ~~natural parent, an individual born to the natural parent is not~~  
 21 ~~considered the child of that parent unless the individual lived~~  
 22 ~~while a minor as a regular member of the household of that natural~~  
 23 ~~parent or of that natural parent's parent, brother, sister, spouse,~~  
 24 ~~or surviving spouse.~~

25 ~~(3) In addition to the requirements of subsection (1), in~~  
 26 ~~construing a dispositive provision of a transferor who is not an~~  
 27 ~~adopting parent, an adopted individual is not considered the child~~  
 28 ~~of the adopting parent unless the adopted individual lived while a~~  
 29 ~~minor, either before or after the adoption, as a regular member of~~



1 ~~the household of the adopting parent.~~

2 (1) A class gift that uses a term of relationship to identify  
3 the class members includes a child of assisted reproduction, a  
4 gestational child, and, except as otherwise provided in subsections  
5 (4) and (5), an adoptee and a child born to parents who are not  
6 married to each other, and their respective descendants if  
7 appropriate to the class, in accordance with the rules for  
8 intestate succession regarding parent-child relationships. For the  
9 purpose of determining whether a contrary intention exists under  
10 section 2701, a provision in a governing instrument that relates to  
11 the inclusion or exclusion in a class gift of a child born to  
12 parents who are not married to each other but does not specifically  
13 refer to a child of assisted reproduction or a gestational child  
14 does not apply to a child of assisted reproduction or a gestational  
15 child.

16 (2) Terms of relationship in a governing instrument that do  
17 not differentiate relationships by blood from those by marriage,  
18 such as uncles, aunts, nieces, or nephews, are construed to exclude  
19 relatives by marriage, unless either of the following apply:

20 (a) When the governing instrument was executed, the class was  
21 and foreseeably would be empty.

22 (b) The language or circumstances otherwise establish that  
23 relatives by marriage were intended to be included.

24 (3) Terms of relationship in a governing instrument that do  
25 not differentiate relationships by the half blood from those by the  
26 whole blood, such as brothers, sisters, nieces, or nephews, are  
27 construed to include both types of relationships.

28 (4) In construing a dispositive provision of a transferor who  
29 is not the genetic parent, a child of a genetic parent is not



1 deemed the child of that genetic parent unless the genetic parent,  
2 a relative of the genetic parent, or the spouse or surviving spouse  
3 of the genetic parent or of a relative of the genetic parent  
4 functioned as a parent of the child before the child reached 18  
5 years of age.

6 (5) In construing a dispositive provision of a transferor who  
7 is not the adoptive parent, an adoptee is not deemed the child of  
8 the adoptive parent unless any of the following apply:

9 (a) The adoption took place before the adoptee reached 18  
10 years of age.

11 (b) The adoptive parent was the adoptee's stepparent or foster  
12 parent.

13 (c) The adoptive parent functioned as a parent of the adoptee  
14 before the adoptee reached 18 years of age.

15 (6) The following rules apply for purposes of the class-  
16 closing rules:

17 (a) A child in utero at a particular time is treated as living  
18 at that time if the child lives 120 hours after birth.

19 (b) If a child of assisted reproduction or a gestational child  
20 is conceived posthumously and the distribution date is the deceased  
21 parent's death, if the requirements of section 1216 are met, the  
22 child is treated as living on the distribution date if the child  
23 lives 120 hours after birth and was in utero not later than 36  
24 months after the deceased parent's death or born not later than 45  
25 months after the deceased parent's death.

26 (c) An individual who is in the process of being adopted when  
27 the class closes is treated as adopted when the class closes if the  
28 adoption is subsequently granted.

29 (7) As used in this section:



1 (a) "Adoptee" means that term as defined in section 2115.

2 (b) "Child of assisted reproduction" means that term as  
3 defined in section 2120.

4 (c) "Distribution date" means the date when an immediate or  
5 postponed class gift takes effect in possession or enjoyment.

6 (d) "Functioned as a parent of the adoptee" means behaving  
7 toward an adoptee in a manner consistent with being the adoptee's  
8 parent and performing functions that are customarily performed by a  
9 parent, including fulfilling parental responsibilities toward the  
10 adoptee, recognizing or holding the adoptee as the individual's  
11 adoptee, materially participating in the adoptee's upbringing, and  
12 residing with the adoptee in the same household as a regular member  
13 of that household.

14 (e) "Functioned as a parent of the child" means that term as  
15 defined in section 2115.

16 (f) "Genetic parent" means that term as defined in section  
17 2115.

18 (g) "Gestational child" means that term as defined in section  
19 2121.

20 (h) "Relative" means that term as defined in section 2115.

21 Sec. 2810. The court may reform the terms of a governing  
22 instrument, even if unambiguous, to conform the terms to the  
23 transferor's intention if it is proved by clear and convincing  
24 evidence that both the transferor's intent and the terms of the  
25 governing instrument were affected by a mistake of fact or law,  
26 whether in expression or inducement.

27 Sec. 2811. To achieve the transferor's tax objectives, the  
28 court may modify the terms of a governing instrument in a manner  
29 that is not contrary to the transferor's probable intention. The

1 **court may provide that the modification has retroactive effect.**

2 ~~Sec. 3406. (1) If evidence concerning execution of an attested~~  
 3 ~~will that is not self-proved is necessary in a contested case, the~~  
 4 ~~testimony of at least 1 of the attesting witnesses, if within the~~  
 5 ~~state and if competent and able to testify, is required. Due~~  
 6 ~~execution of an attested or unattested will may be proved by other~~  
 7 ~~evidence.~~

8 ~~(2) If a will is self-proved, compliance with signature~~  
 9 ~~requirements for execution is conclusively presumed and other~~  
 10 ~~requirements of execution are presumed subject to rebuttal without~~  
 11 ~~the testimony of any witness upon filing the will and the~~  
 12 ~~acknowledgment and sworn statements annexed or attached to the~~  
 13 ~~will, unless there is proof of fraud or forgery affecting the~~  
 14 ~~acknowledgment or a sworn statement.~~

15 ~~(3) If a witness is competent at the time he or she signs the~~  
 16 ~~will, the witness's subsequent incompetency from whatever cause~~  
 17 ~~does not prevent admission of the will to probate, if it is~~  
 18 ~~otherwise satisfactorily proved.~~ **In a contested case in which the**  
 19 **proper execution of a will is at issue, all of the following apply:**

20 **(a) If the will is self-proved under section 2504, the will**  
 21 **satisfies the requirements for execution without the testimony of**  
 22 **any attesting witness, upon filing the will and the acknowledgment**  
 23 **and affidavits annexed or attached to it, unless there is evidence**  
 24 **of fraud or forgery affecting the acknowledgment or affidavit.**

25 **(b) If the will is notarized under section 2502(1)(c)(ii), but**  
 26 **not self-proved, there is a rebuttable presumption that the will**  
 27 **satisfies the requirements for execution upon filing the will.**

28 **(c) If the will is witnessed under section 2502(1)(c)(i), but**  
 29 **not notarized or self-proved, the testimony of at least 1 of the**



1    **attesting witnesses is required to establish proper execution if**  
 2    **the witness is within this state, competent, and able to testify.**  
 3    **Proper execution may be established by other evidence, including an**  
 4    **affidavit of an attesting witness. An attestation clause that is**  
 5    **signed by the attesting witnesses raises a rebuttable presumption**  
 6    **that the events recited in the clause occurred.**

7            Sec. 3715. (1) Except as restricted or otherwise provided by  
 8    the will or by an order in a formal proceeding, and subject to  
 9    subsection (2) and to the priorities stated in section 3902, a  
 10   personal representative, acting reasonably for the benefit of  
 11   interested persons, may properly do any of the following:

12           (a) Retain property owned by the decedent pending distribution  
 13   or liquidation, including property in which the personal  
 14   representative is personally interested or that is otherwise  
 15   improper for trust investment.

16           (b) Receive property from a fiduciary or another source.

17           (c) Perform, compromise, or refuse performance of a contract  
 18   of the decedent that continues as an estate obligation, as the  
 19   personal representative determines under the circumstances. If the  
 20   contract is for a conveyance of land and requires the giving of  
 21   warranties, the personal representative shall include in the deed  
 22   or other instrument of conveyance the required warranties. The  
 23   warranties are binding on the estate as though the decedent made  
 24   them but do not bind the personal representative except in a  
 25   fiduciary capacity. In performing an enforceable contract by the  
 26   decedent to convey or lease land, the personal representative,  
 27   among other possible courses of action, may do any of the  
 28   following:

29           (i) Execute and deliver a deed of conveyance for cash payment



1 of the amount remaining due or for the purchaser's note for the  
2 amount remaining due secured by a mortgage on the land.

3 (ii) Deliver a deed in escrow with directions that the  
4 proceeds, when paid in accordance with the escrow agreement, be  
5 paid to the decedent's successors, as designated in the escrow  
6 agreement.

7 (d) If, in the judgment of the personal representative, the  
8 decedent would have wanted the pledge satisfied under the  
9 circumstances, satisfy a written charitable pledge of the decedent  
10 irrespective of whether the pledge constitutes a binding obligation  
11 of the decedent or is properly presented as a claim.

12 (e) If funds are not needed to meet a debt or expenses  
13 currently payable and are not immediately distributable, deposit or  
14 invest liquid assets of the estate, including funds received from  
15 the sale of other property, in accordance with the Michigan prudent  
16 investor rule.

17 (f) Acquire or dispose of property, including land in this or  
18 another state, for cash or on credit, at public or private sale;  
19 and manage, develop, improve, exchange, partition, change the  
20 character of, or abandon estate property.

21 (g) Make an ordinary or extraordinary repair or alteration in  
22 a building or other structure, demolish an improvement, or raze an  
23 existing or erect a new party wall or building.

24 (h) Subdivide, develop, or dedicate land to public use, make  
25 or obtain the vacation of a plat or adjust a boundary, adjust a  
26 difference in valuation on exchange or partition by giving or  
27 receiving consideration, or dedicate an easement to public use  
28 without consideration.

29 (i) Enter into a lease as lessor or lessee for any purpose,



1 with or without an option to purchase or renew, for a term within  
2 or extending beyond the period of administration.

3 (j) Enter into a lease or arrangement for exploration and  
4 removal of minerals or another natural resource, or enter into a  
5 pooling or unitization agreement.

6 (k) Abandon property ~~when, if~~, in the opinion of the personal  
7 representative, it is valueless, or is so encumbered or in such a  
8 condition as to be of no benefit to the estate.

9 (l) Vote stocks or another security in person or by general or  
10 limited proxy.

11 (m) Pay a call, assessment, or other amount chargeable or  
12 accruing against or on account of a security, unless barred by a  
13 provision relating to claims.

14 (n) Hold a security in the name of a nominee or in other form  
15 without disclosure of the estate's interest. However, the personal  
16 representative is liable for an act of the nominee in connection  
17 with the security so held.

18 (o) Insure the estate property against damage, loss, and  
19 liability and insure the personal representative against liability  
20 as to third persons.

21 (p) Borrow property with or without security to be repaid from  
22 the estate property or otherwise, and advance money for the  
23 estate's protection.

24 (q) Effect a fair and reasonable compromise with a debtor or  
25 obligor, or extend, renew, or in any manner modify the terms of an  
26 obligation owing to the estate. If the personal representative  
27 holds a mortgage, pledge, or other lien upon another person's  
28 property, the personal representative may, ~~in lieu~~ **instead** of  
29 foreclosure, accept a conveyance or transfer of encumbered property





1 from the property's owner in satisfaction of the indebtedness  
2 secured by lien.

3 (r) Pay a tax, an assessment, the personal representative's  
4 compensation, or another expense incident to the estate's  
5 administration.

6 (s) Sell or exercise a stock subscription or conversion right.

7 (t) Consent, directly or through a committee or other agent,  
8 to the reorganization, consolidation, merger, dissolution, or  
9 liquidation of a corporation or other business enterprise.

10 (u) Allocate items of income or expense to either estate  
11 income or principal, as permitted or provided by law.

12 (v) Employ, and pay reasonable compensation for reasonably  
13 necessary services performed by, a person, including, but not  
14 limited to, an auditor, investment advisor, or agent, even if the  
15 person is associated with the personal representative, to advise or  
16 assist the personal representative in the performance of  
17 administrative duties; act on the person's recommendations without  
18 independent investigation; and, instead of acting personally,  
19 employ 1 or more agents to perform an act of administration,  
20 whether or not discretionary.

21 (w) Employ an attorney to perform necessary legal services or  
22 to advise or assist the personal representative in the performance  
23 of the personal representative's administrative duties, even if the  
24 attorney is associated with the personal representative, and act  
25 without independent investigation ~~upon~~**on** the attorney's  
26 recommendation. An attorney employed under this subdivision ~~shall~~  
27 **must** receive reasonable compensation for his or her employment.

28 (x) Prosecute or defend a claim or proceeding in any  
29 jurisdiction for the protection of the estate and of the personal

1 representative in the performance of the personal representative's  
2 duties.

3 (y) Sell, mortgage, or lease estate property or an interest in  
4 estate property for cash, credit, or part cash and part credit, and  
5 with or without security for unpaid balances.

6 (z) Continue a business or venture in which the decedent was  
7 engaged at the time of death as a sole proprietor or a general  
8 partner, including continuation as a general partner by a personal  
9 representative that is a corporation, in any of the following  
10 manners:

11 (i) In the same business form for a period of not more than 4  
12 months after the date of appointment of a general personal  
13 representative if continuation is a reasonable means of preserving  
14 the value of the business, including goodwill.

15 (ii) In the same business form for an additional period of time  
16 if approved by court order in a formal proceeding to which the  
17 persons interested in the estate are parties.

18 (iii) Throughout the period of administration if the personal  
19 representative incorporates the business or converts the business  
20 to a limited liability company and if none of the probable  
21 distributees of the business who are competent adults object to its  
22 incorporation or conversion and its retention in the estate.

23 (aa) Change the form of a business or venture in which the  
24 decedent was engaged at the time of death through incorporation or  
25 formation as a limited liability company or other entity offering  
26 protection against or limiting exposure to liabilities.

27 (bb) Provide for the personal representative's exoneration  
28 from personal liability in a contract entered into on the estate's  
29 behalf.



1 (cc) Respond to an environmental concern or hazard affecting  
2 estate property as provided in section 3722.

3 (dd) Satisfy and settle claims and distribute the estate as  
4 provided in this act.

5 (ee) Make, revise, or revoke an available allocation, consent,  
6 or election in connection with a tax matter as appropriate in order  
7 to carry out the decedent's estate planning objectives and to  
8 reduce the overall burden of taxation, both in the present and in  
9 the future. This authority includes, but is not limited to, all of  
10 the following:

11 (i) Electing to take expenses as estate tax or income tax  
12 deductions.

13 (ii) Electing to allocate the exemption from the tax on  
14 generation skipping transfers among transfers subject to estate or  
15 gift tax.

16 (iii) Electing to have all or a portion of a transfer for a  
17 spouse's benefit qualify for the marital deduction.

18 (iv) Electing the date of death or an alternate valuation date  
19 for federal estate tax purposes.

20 (v) Excluding or including property from the gross estate for  
21 federal estate tax purposes.

22 (vi) Valuing property for federal estate tax purposes.

23 (vii) Joining with the surviving spouse or the surviving  
24 spouse's personal representative in the execution and filing of a  
25 joint income tax return and consenting to a gift tax return filed  
26 by the surviving spouse or the surviving spouse's personal  
27 representative.

28 (ff) Divide portions of the estate, including portions to be  
29 allocated into trust, into 2 or more separate portions or trusts



1 with substantially identical terms and conditions, and allocate  
 2 property between them, in order to simplify administration for  
 3 generation skipping transfer tax purposes, to segregate property  
 4 for management purposes, or to meet another estate or trust  
 5 objective.

6 **(gg) If the personal representative has received notice or has**  
 7 **knowledge of an intention to use genetic material to create a child**  
 8 **after the decedent's death, take into account whether the**  
 9 **posthumous birth of a child of assisted reproduction or gestational**  
 10 **child may have an effect on the distribution of the decedent's**  
 11 **estate. As used in this subdivision:**

12 **(i) "Child of assisted reproduction" means that term as defined**  
 13 **in section 2120.**

14 **(ii) "Gestational child" means that term as defined in section**  
 15 **2121.**

16 (2) If the personal representative is the state or county  
 17 public administrator, all of the following apply:

18 (a) The personal representative shall not sell the decedent's  
 19 real property without approval of the court. The court shall only  
 20 approve the sale if, after a hearing with notice to interested  
 21 persons as specified in the Michigan court rules, the court  
 22 considers evidence of the value of the property and considers any  
 23 information submitted by the county treasurer under section 3705(7)  
 24 and otherwise determines that the sale is in the estate's best  
 25 interest. In determining whether to approve the sale of real  
 26 property under this subdivision, the court shall consider any  
 27 information submitted by the county treasurer under section  
 28 3705(7).

29 (b) If the personal representative is the county public



1 administrator, and if the decedent's real property is occupied by  
 2 an heir of the decedent, the county public administrator shall  
 3 provide the state public administrator with all pleadings filed in  
 4 the case.

5 (c) Unless waived by the court, the personal representative  
 6 shall advance any of the personal representative's court filing  
 7 fees associated with the administration of the estate.

8 (d) If the decedent's estate includes real property subject to  
 9 tax or mortgage foreclosure, for real estate fees or fees related  
 10 to identifying real property subject to foreclosure, or both,  
 11 payable to persons employed by the personal representative,  
 12 including an attorney, real estate agent, or asset recovery agent,  
 13 both of the following apply:

14 (i) Except as otherwise provided by the court, if the net  
 15 proceeds from the sale of the real property payable to the estate  
 16 exceed \$30,000.00, the total fees described in this ~~subsection~~  
 17 **subdivision** must not exceed 10% of the net proceeds from the sale  
 18 of the real property payable to the estate.

19 (ii) If the net proceeds from the sale of real property payable  
 20 to the estate are ~~less than~~ \$30,000.00 **or less**, the court shall  
 21 determine the reasonableness of the fees described in this  
 22 ~~subsection~~**subdivision**.

23 (3) As used in subsection (2), "net proceeds from the sale of  
 24 the real property" means the sale price of the real property less  
 25 the amount paid to satisfy the tax or mortgage, or both.

26 Sec. 3908. **(1)** After the probable charges against the estate  
 27 are known, the personal representative may mail or deliver a  
 28 proposal for distribution to all persons who have a right to object  
 29 to the proposed distribution. The right of a distributee to object



1 to the proposed distribution on the basis of the kind or value of  
 2 property the distributee is to receive, if not waived earlier in  
 3 writing, terminates if the distributee fails to object in a writing  
 4 received by the personal representative within 28 days after  
 5 mailing or delivery of the proposal.

6 **(2) The personal representative is not liable for making a**  
 7 **distribution of all or part of a decedent's estate that affects the**  
 8 **interests of a posthumously conceived child of assisted**  
 9 **reproduction or gestational child if the personal representative**  
 10 **made the distribution before receiving notice or acquiring**  
 11 **knowledge of an intention to use genetic material to create a child**  
 12 **after the decedent's death. As used in this subsection:**

13 **(a) "Child of assisted reproduction" means that term as**  
 14 **defined in section 2120.**

15 **(b) "Gestational child" means that term as defined in section**  
 16 **2121.**

17 **Sec. 3957. (1) ~~Unless~~ Except as provided in subsections (2)**  
 18 **and (3), unless** previously adjudicated in a formal testacy  
 19 proceeding or in a proceeding settling a personal representative's  
 20 accounts, or otherwise barred, a claimant's claim to recover from a  
 21 distributee who is liable to pay the claim and the right of an heir  
 22 or devisee, or of a successor personal representative acting in  
 23 their behalf, to recover property improperly distributed or its  
 24 value from a distributee are forever barred at the later of 3 years  
 25 after the decedent's death or 1 year after the time of the  
 26 property's distribution. However, all claims of the decedent's  
 27 creditors are barred in accordance with the time periods specified  
 28 in section 3803.

29 **(2) Except as provided in subsection (3), for a posthumously**



1 conceived child of assisted reproduction or gestational child, the  
2 child's right, if any, as an heir or devisee, or that of a  
3 successor personal representative acting in the child's behalf, to  
4 recover property improperly distributed or its value from a  
5 distributee is forever barred at the later of 4 years after the  
6 decedent's death or 1 year after the time of the property's  
7 distribution. As used in this subsection:

8 (a) "Child of assisted reproduction" means that term as  
9 defined in section 2120.

10 (b) "Gestational child" means that term as defined in section  
11 2121.

12 (3) This section does not bar an action to recover property or  
13 value received as a result of fraud.

14 Sec. 7817. Without limiting the authority conferred by section  
15 7816, a trustee has all of the following powers:

16 (a) To take possession, custody, or control of property  
17 transferred to the trust and accept or reject additions to the  
18 trust.

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

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

24 (d) To perform, compromise, or refuse to perform a contract of  
25 the settlor that is an obligation of the trust, as the trustee may  
26 determine under the circumstances. In performing an enforceable  
27 contract by the settlor to convey or lease land, if the contract  
28 for a conveyance requires the giving of a warranty, the deed or  
29 other instrument of conveyance to be given by the trustee shall



1 **must** contain the warranty required. The warranty is binding on the  
2 trust as though made by the settlor, but does not bind the trustee  
3 except in the trustee's fiduciary capacity. The trustee, among  
4 other possible courses of action, may do either of the following:

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

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

11 (e) To satisfy a settlor's written charitable pledge  
12 irrespective of whether the pledge constitutes a binding obligation  
13 of the settlor or was properly presented as a claim, if in the  
14 trustee's judgment the settlor would have wanted the pledge  
15 completed under the circumstances.

16 (f) To deposit trust property in a financial institution,  
17 including a financial institution operated by or affiliated with  
18 the trustee and to invest and reinvest trust property as would a  
19 prudent investor acting in accordance with the Michigan prudent  
20 investor rule and to deposit securities with a depository or other  
21 financial institution.

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

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

29 (i) To subdivide, develop, or dedicate land to public use; to





1 make or obtain the vacation of a plat or adjust a boundary; to  
2 adjust a difference in valuation on exchange or partition by giving  
3 or receiving consideration; or to dedicate an easement to public  
4 use without consideration.

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

8 (k) To enter into a lease or arrangement for exploration and  
9 removal of minerals or another natural resource or to enter into a  
10 pooling or unitization agreement for a period within or extending  
11 beyond the duration of the trust.

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

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

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

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

25 (p) To insure the trust property against damage, loss, or  
26 liability and to insure the trustee, the trustee's agents, and the  
27 trust beneficiaries against liability arising from the  
28 administration of the trust.

29 (q) To borrow property, with or without security, for any



1 purpose from the trustee or others and to mortgage or pledge trust  
2 property for a period within or extending beyond the duration of  
3 the trust.

4 (r) To effect a fair and reasonable compromise with a debtor  
5 or obligor, or extend, renew, or in any manner modify the terms of  
6 an obligation owing to the trust. If the trustee holds a mortgage,  
7 pledge, or another lien on property of another person, the trustee  
8 may, instead of foreclosure, accept a conveyance or transfer of  
9 encumbered property from the property's owner in satisfaction of  
10 the indebtedness secured by a lien.

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

13 (t) To sell or exercise a subscription or conversion right or  
14 to consent, directly or through a committee or another agent, to  
15 the reorganization, consolidation, merger, dissolution, or  
16 liquidation of a business enterprise.

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

19 (v) To employ, and pay reasonable compensation for services  
20 performed by, a person, including an auditor, investment advisor,  
21 accountant, appraiser, broker, custodian, rental agent, realtor, or  
22 agent, even if the person is associated with the trustee, for the  
23 purpose of advising or assisting the trustee in the performance of  
24 an administrative duty; to act without independent investigation  
25 upon such a person's recommendation; and, instead of acting  
26 personally, to employ 1 or more agents to perform an act of  
27 administration, whether or not discretionary.

28 (w) To employ an attorney to perform necessary legal services  
29 or to advise or assist the trustee in the performance of the



1 trustee's administrative duties, even if the attorney is associated  
 2 with the trustee, and to act without independent investigation upon  
 3 the attorney's recommendation. An attorney employed under this  
 4 subdivision ~~shall~~**must** receive reasonable compensation for his or  
 5 her employment.

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

11 (y) To sell, exchange, partition, or otherwise dispose of, or  
 12 grant an option with respect to, trust property for any purpose  
 13 upon any terms or conditions for a period within or extending  
 14 beyond the duration of the trust.

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

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

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

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

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

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

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



1 (gg) To make a distribution or division of trust property in  
2 cash or in kind, or both; to allot a different kind or  
3 disproportionate portion of, or an undivided interest in, trust  
4 property among beneficiaries and determine the value of allotted  
5 trust property; or to distribute an unclaimed share in the same  
6 manner as described in section 3916.

7 (hh) To transfer the property of a trust to another  
8 jurisdiction and appoint, compensate, or remove a successor  
9 trustee, individual or corporate, for trust property in another  
10 jurisdiction, with any trust powers set out in this part that the  
11 trustee delegates to the successor trustee.

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

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

19 (kk) To make loans out of trust property, including loans to a  
20 trust beneficiary on terms and conditions the trustee considers to  
21 be fair and reasonable under the circumstances. The trustee has a  
22 lien on future distributions for repayment of loans made under this  
23 subdivision.

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

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

29 (nn) On termination of the trust, to exercise the powers



1 appropriate to wind up the administration of the trust and  
 2 distribute the trust property to the persons entitled to it.

3 (oo) After the trustee receives notice or has knowledge of an  
 4 intention to use genetic material to create a child, to take into  
 5 account whether the posthumous birth of a child of assisted  
 6 reproduction or gestational child may have an effect on the  
 7 distribution of the trust estate. As used in this subdivision:

8 (i) "Child of assisted reproduction" means that term as defined  
 9 in section 2120.

10 (ii) "Gestational child" means that term as defined in section  
 11 2121.

12 Sec. 7821. (1) Upon termination or partial termination of a  
 13 trust, the trustee may send to the trust beneficiaries a proposal  
 14 for distribution. The right of any trust beneficiary to object to  
 15 the proposed distribution terminates if the trust beneficiary does  
 16 not notify the trustee of an objection within 28 days after the  
 17 proposal was sent, but only if the proposal informed the trust  
 18 beneficiary of the right to object and of the time allowed for  
 19 objection.

20 (2) Upon the occurrence of an event terminating or partially  
 21 terminating a trust, the trustee shall proceed expeditiously to  
 22 distribute the trust property to the persons entitled to it,  
 23 subject to the right of the trustee to retain a reasonable reserve  
 24 for the payment of debts, taxes, and expenses, including attorney  
 25 fees and other expenses incidental to the allowance of the  
 26 trustee's accounts.

27 (3) A release by a trust beneficiary of a trustee from  
 28 liability for breach of trust is invalid to the extent either of  
 29 the following applies:



1 (a) The release was induced by improper conduct of the  
2 trustee.

3 (b) The trust beneficiary, at the time of the release, did not  
4 know of the material facts relating to the breach.

5 **(4) A trustee is not liable for making a distribution of all**  
6 **or part of the trust estate that affects the interests of a**  
7 **posthumously conceived child of assisted reproduction or**  
8 **gestational child if the trustee made the distribution before**  
9 **receiving notice or acquiring knowledge of an intention to use**  
10 **genetic material to create a child. As used in this subsection:**

11 (a) "Child of assisted reproduction" means that term as  
12 defined in section 2120.

13 (b) "Gestational child" means that term as defined in section  
14 2121.

15 Enacting section 1. Sections 2108 and 7104 of the estates and  
16 protected individuals code, 1998 PA 386, MCL 700.2108 and 700.7104,  
17 are repealed.

18 Enacting section 2. Both of the following apply to sections  
19 amended and added by this amendatory act:

20 (a) The amended and added sections apply to a decedent who  
21 dies on or after the effective date of this amendatory act.

22 (b) The amended and added sections apply to all governing  
23 instruments created or executed before, on, or after the effective  
24 date of this amendatory act.

