

The EPIC Omnibus in a Nutshell

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I. Overview

The Probate and Estate Planning Section of the State Bar spearheaded the EPIC Omnibus. The Section's been working on this legislation for nine years. The Section and bill sponsors tried to move the proposal through three separate legislative sessions.

The enacted Omnibus can be found in four public acts: PA 1 of 2024 (amending the Estates and Protected Individuals Code and Michigan Trust Code) (HB 4416)², PA 2 of 2024 (amending the Motor Vehicle Code) (HB 4417)³, PA 3 of 2024 (amending the Uniform Transfers to Minors Act) (HB 4418)⁴, and PA 4 of 2024 (amending watercraft title provisions in the National Resources and Environmental Protection Act) (HB 4419).⁵ It culminates a nine-year effort to update the Estates and Protected Individuals Code, Uniform Transfers to Minors Act, and post-death transfer provisions for motor vehicles and watercraft. Among other things, the legislation:

1. Clarifies the grounds for making a “subsequent administration” filing;⁶
2. Provides for the designation of standby guardians for legally incapacitated individuals (found throughout Article V, Part 3, MCL 700.5301, et seq.) (more about this below);
3. Increases various financial thresholds and inflation adjustments (more about this below);
4. Improves pet and purpose trusts and places them in more intuitive part of the compiled law;⁷
5. Lessens notice requirements to beneficiaries under trust “wipeout clauses”;⁸
6. Specifies rules governing conflicts of interest in the exercise of powers of appointment—and their effect on “virtual representation”;⁹

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² <https://www.legislature.mi.gov/Home/Document?objectName=2024-PA-0001>

³ <https://www.legislature.mi.gov/Home/Document?objectName=2024-PA-0002>

⁴ <https://www.legislature.mi.gov/Home/Document?objectName=2024-PA-0003>

⁵ <https://www.legislature.mi.gov/Home/Document?objectName=2024-PA-0004>

⁶ MCL 700.3959.

⁷ MCL 700.2722, .7408, .7409, .7105, .7110, and .7402.

⁸ MCL 700.7103.

⁹ MCL 700.1106(1)(r) and .7302.

7. Creates a per-se rule voiding portions of instruments benefiting the drafting lawyer and his or her relatives, in response to *In re Mardigian Estate*, 502 Mich 154, 160, 917 NW2d 325 (2018) (more about this below).
8. Creates a new statutory regime for undisclosed trusts and trust terms (more about this below).

Notably, while some versions of this package allowed patient advocate designations to be advocated by opinions of nurse practitioners, this provision was not included in the final Public Act.

The most significant of these amendments receive a more detailed treatment below.

II. Financial Thresholds and Inflation Adjustments

The updated financial thresholds are as follows:

Section	Description	Prior Amount	New Amount
700.3605	Threshold for demanding that the personal representative obtain a bond	\$2,500	\$25,000
700.3916	Maximum value of unclaimed assets that a personal representative may hold without depositing them to the county treasurer	\$250	\$1,000
700.3917	Minimum service charge by the county treasurer for holding unclaimed funds	\$10	\$15
700.3918	Maximum sum that the personal representative may distribute to persons under a disability in a year without appointment of a conservator or protective order	\$5,000	\$25,000
700.3982	Maximum assets of decedent that may be transferred using a petition and order of assignment (small estate order)	\$15,000	\$50,000 (as further adjusted by liens against real estate)
700.3983	Maximum personal property that may be transferred using an affidavit of decedent's successor (small estate affidavit)	\$15,000	\$50,000
700.5102	Maximum payment or delivery to a person for the benefit of a minor without having to appoint a conservator	\$5,000	\$25,000
700.3981	Release of cash and wearing apparel to a decedent's family members (e.g., funeral homes, police, hospitals, etc.)	\$500	\$1,000
257.236	Maximum cumulative value of vehicles that the Secretary of State may transfer	\$60,000	\$100,000

	before the decedent's successors must open an estate		
324.80312	Maximum cumulative value of watercraft that the Secretary of State may transfer before the decedent's successors must open an estate	\$100,000	\$200,000
554.530	Maximum payment that a personal representative or trustee may transfer to an account under the Uniform Transfer to Minors Act	\$10,000	\$50,000

The above thresholds will be adjusted annually for inflation under MCL 700.1210.

Three of these changes will have significant administrative impacts. First, one will be able to transfer up to \$40,000.00 *after deducting unpaid funeral expenses and the value of liens against real estate* using Petitions and Orders of Assignment under MCL 700.3982. One will be able to transfer up to \$40,000.00 of personal property using Affidavits of Decedents Successors under MCL 700.3983. Second, a decedent's heirs will be able to administratively transfer up to \$100,000.00 worth of motor vehicles and \$200,000.00 of watercraft using the Secretary of State's Certification from Heir to a Vehicle (Form TR-29) under MCL 257.236 and MCL 324.80312. And third, one will be able to distribute up to \$25,000.00 for a person operating under legal disability *per year* without the appointment of a conservator or entry of a protective order under MCL 700.3918 (as to distributions out of estates) and MCL 700.5102 (as to other distributions). A personal representative or trustee may transfer up to \$50,000.00 into an account under the Uniform Transfers to Minors Act without the need to obtain a court order using MCL 554.530. I expect that some courts will attempt to impose additional limitations on the annual-distribution provisions.

III. Mardigian/Lawyer-Drafter Remedial Provisions

In re Mardigian Estate, 502 Mich 154, 160, 917 NW2d 325 (2018), concerned a challenge to an estate plan in which the decedent made over \$14 million in gifts to the lawyer-drafter and the lawyer-drafter's family. The Supreme Court ruled that a lawyer-drafter's violation of the Rules of Professional Conduct did not necessarily void the estate plan. Instead, it ruled that, in situations where the lawyer-drafter has drafted self-benefiting governing instruments, those instruments should be evaluated under the law of undue influence.

The newly created MCL 700.1216 provides that any part of a governing instrument that directly or indirectly makes a "substantial gift" (that is, one of \$5,000 or more) to its lawyer-drafter or persons related that lawyer-drafter is void. The provision does not apply to gifts from the lawyer-drafter's family ascendants or descendants to him or her but does apply to gifts from many collateral family members. Nominations to serve as a fiduciary do not constitute "substantial gifts.

IV. Standby Guardians

The Omnibus takes the concept of standby guardians from the Michigan's Mental Health Code (MHC)¹⁰ and improves upon it, creating mechanisms of designation, acceptance, and a standby's transition into serving as guardian:

- (1) At a hearing convened under this part, the court may designate 1 or more standby guardians. The court may designate as standby guardian a competent person that is suitable and willing to serve in the order of priority under section 5313.
- (2) The nominated standby guardian must receive a copy of the petition nominating the person to serve, the court order establishing or modifying guardianship, and the order designating the standby guardian.
- (3) A standby guardian shall file an acceptance of the person's designation under subsection (2) within 28 days after receiving notice of the order designating the standby guardian.
- (4) If the standby guardian is unable or unwilling to serve, the standby guardian shall promptly notify the court and interested persons in writing.
- (5) A standby guardian does not have authority to act unless the guardian is unavailable for any reason, including any of the following:
 - (a) The guardian dies.
 - (b) The guardian is permanently or temporarily unavailable.
 - (c) The court removes or suspends the guardian.
- (6) During an emergency affecting the legally incapacitated individual's welfare when the guardian is unavailable, the standby guardian may temporarily assume the powers and duties of the guardian. A person may rely on the standby guardian's representation that the standby guardian has the authority to act if the person is given the order issued under subsection (2) and acceptance filed under subsection (3). A person that acts in reliance on the representations and documentation described in this subsection without knowledge that the representations are incorrect is not liable to any person for so acting and may assume without further inquiry the existence of the standby guardian's authority.
- (7) A standby guardian's appointment as guardian is effective, without further proceedings or reiteration of acceptance, immediately on the guardian's unavailability as described in subsection (5). The standby guardian has the same powers and duties as the prior guardian.
- (8) On assuming office, the standby guardian shall promptly notify the court, any known agent appointed under a power of attorney executed under section 5103, and interested persons. On receiving notice under this subsection, the court may enter an order appointing a standby guardian as guardian without the need for additional proceedings. The guardian

¹⁰ 1974 Public Act 258, MCL 330.1001 et seq., MCL 330.1600 through .1644, particularly MCL 330.1640.

appointed under this subsection shall serve the court's order on the interested persons.^[11]

In most other respects, a standby guardian is treated in the same manner as a guardian. The implementing provisions are as follows:

1. Fitting the concept into existing provisions concerning nominations of successor guardian's in one's will, MCL 700.5301;
2. Procedure for appointment, MCL 700.5303(1);
3. Conditions under which a standby may act (current guardian dies, is unavailable, or has been suspended or removed), MCL 700.5301c(5);
4. Procedure for the standby to assume the permanent office, MCL 700.5301c(7)-(8);
5. Notice of rights concerning standby's designation, MCL 700.5305;
6. Rights of individual for whom guardian is sought (with objection and nomination rights that are correlative to a nominated guardian), MCL 700.5306a;
7. Incorporation into guardianship modification procedures, MCL 700.5310;
8. Standby guardian's notice rights, MCL 700.5311.

V. Notice Reform

The Michigan Trust Code modifies two definitions that impact various notice- and administration matters. The definition of "charitable trust" has been qualified:

"Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 7405(1) **if the charitable purpose is a material purpose of the trust.** [MCL 700.7103(c) (revisions bold).]

This narrowed definition impacts the following provisions of the Trust Code:

1. Creation of charitable trusts, MCL 700.7405(1);
2. Standing to enforce charitable trusts, MCL 700.7405(3);
3. Attorney general's right to notice of trust supervision proceedings, MCL 700.7110(4);
4. Necessity of attorney general's consent to nonjudicial settlement agreements, MCL 700.7110(4)(b);
5. Ability of the trust to have a nondisclosure provision, MCL 700.7409a(1);
6. Standing to petition to modify or enforce a charitable trust, MCL 700.7410;
7. Applicability of cy pres principles, MCL 700.7413;
8. Notice of termination of uneconomical trust, MCL 700.7414(1);
9. Filling of vacancy of trustee of charitable trust, MCL 700.7704.

¹¹ MCL 700.5301c.

The definition of “qualified trust beneficiary” has likewise been narrowed so as to exclude “wipe-out beneficiaries”. The revisions are bold:

"Qualified trust beneficiary" means either of the following:

(i) A trust beneficiary whom the settlor intends to benefit as a material purpose of the trust and to whom 1 or more of the following apply on the date the trust beneficiary's qualification is determined:

(A) The trust beneficiary is a distributee or permissible distributee of trust income or principal.

(B) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in sub-subparagraph (A) terminated on that date without causing the trust to terminate.

(C) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(ii) If on the date a trust beneficiary's qualification is determined there is no trust beneficiary described in subparagraph (i), a trust beneficiary to whom 1 or more of the following apply on the date the trust beneficiary's qualification is determined:

(A) The trust beneficiary is a distributee or permissible distributee of trust income or principal.

(B) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in sub-subparagraph (A) terminated on that date without causing the trust to terminate.

(C) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.^[12]

This narrowed definition impacts numerous sections of the Trust Code:

1. The general duty of notice, MCL 700.7814(1);
2. Notice of registration, MCL 700.7814(2)(b);
3. Notices concerning change to principal place of administration and standing to object, MCL 700.7108;
4. Notice of changed trustee compensation MCL 700.7814(2)(d);
5. Annual reporting, MCL 700.7814(3);
6. Notice of acceptance or rejection of trusteeship, MCL 700.7701;
7. Standing to petition to petition the court to remove a trustee, MCL 700.7706;
8. Notice of trustee's resignation, MCL 700.7705;

¹² MCL 700.7103(g).

9. Notice of delegation among trustees, MCL 700.7703a;
10. Notice concerning the administration of a revocable trust whose settlor is incapacitated, MCL 700.7603;
11. Consent required to modify or terminate a noncharitable trust, MCL 700.7411;
12. Termination of an uneconomical trust, MCL 700.7414;
13. Notice of trust consolidation or division, MCL 700.7417;
14. Administrative decanting, MCL 700.7820a;
15. Nonjudicial settlement agreements, MCL 700.7111(5) (because the “interested persons” means “persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.”).

In probate practice, the nonjudicial settlement agreement and trust reformation and termination provisions will have the greatest impact.

VI. Undisclosed Trusts (and Trust Terms)

The Michigan Trust Code previously mandated that a trustee “provide beneficiaries with the terms of the trust and information about the trust’s property, and . . . notify qualified trust beneficiaries of an irrevocable trust of the existence of the trust and the identity of the trustee.”¹³ Before the Omnibus, one could not create a trust (or terms of a trust) that were confidential from its beneficiaries for any meaningful amount of time.

The Omnibus allows a settlor to bypass this requirement under certain circumstances, adding a new section at MCL 700.7409a and coordinating changes to MCL 700.7814. A settlor may now create a noncharitable trust under which the trustee kept certain “prime disclosure information”¹⁴ confidential from one or more beneficiaries for a nondisclosure period of up to 25 years.

This framework acknowledges that it may become impracticable, undesirable, or illegal under other applicable law to avoid disclosure; as such, the trustee (or holder of the right to receive confidential information) could not be held liable for sharing primary disclosure information with the beneficiaries. The only permitted remedy for such a disclosure is the fiduciary’s removal. The trust protectors or other persons who hold the right to receive prime disclosure information during the nondisclosure period have the same notice and standing rights as qualified trust beneficiaries under trusts without nondisclosure terms.

¹³ MCL 700.7105(2)(i).

¹⁴ “Prime disclosure information” concerning a trust means the fact of the trust’s existence, the identity of the trustee, the terms of the trust, or the nature or extent of the trust property.