

# HOUSE BILL No. 6366

August 30, 2006, Introduced by Rep. Schuitmaker and referred to the Committee on  
Judiciary.

A bill to amend 1998 PA 386, entitled  
"Estates and protected individuals code,"  
by amending sections 2702 and 2722 (MCL 700.2702 and 700.2722),  
section 2702 as amended by 2000 PA 54.

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

1           Sec. 2702. (1) For the purposes of this act, except as  
2 provided in subsection (4), an individual who is not established by  
3 clear and convincing evidence to have survived an event, including  
4 the death of another individual, by 120 hours is considered to have  
5 predeceased the event.

6           (2) Except as provided in subsection (4), for purposes of a  
7 provision of a governing instrument that relates to an individual  
8 surviving an event, including the death of another individual, an  
9 individual who is not established by clear and convincing evidence

1 to have survived the event by 120 hours is considered to have  
2 predeceased the event.

3 (3) Except as provided in subsection (4), if it is not  
4 established by clear and convincing evidence that 1 of 2 co-owners  
5 with right of survivorship survived the other co-owner by 120  
6 hours, 1/2 of the co-owned property passes as if 1 had survived by  
7 120 hours and 1/2 as if the other had survived by 120 hours. If  
8 there are more than 2 co-owners and it is not established by clear  
9 and convincing evidence that at least 1 of them survived the others  
10 by 120 hours, the property passes in the proportion that 1 bears to  
11 the whole number of co-owners. For the purposes of this subsection,  
12 "co-owners with right of survivorship" includes joint tenants,  
13 tenants by the entirety, and other co-owners of property or  
14 accounts held under circumstances that entitles 1 or more to the  
15 whole of the property or account on the death of the other or  
16 others.

17 (4) Survival by 120 hours is not required under any of the  
18 following circumstances:

19 (a) The governing instrument contains language dealing  
20 explicitly with simultaneous deaths or deaths in a common disaster  
21 and that language is operable under the facts of the case. Language  
22 dealing explicitly with simultaneous deaths includes language in a  
23 governing instrument that creates a presumption that applies if the  
24 evidence is not sufficient to determine the order of deaths.

25 (b) The governing instrument expressly indicates that an  
26 individual is not required to survive an event, including the death  
27 of another individual, by any specified period or expressly

1 requires the individual to survive the event by a specified period.  
2 Survival of the event or the specified period, however, must be  
3 established by clear and convincing evidence.

4 ~~—— (c) The imposition of a 120-hour requirement of survival would~~  
5 ~~cause a nonvested property interest or a power of appointment to~~  
6 ~~fail to qualify for validity under section 2(1)(a), (2)(a), or~~  
7 ~~(3)(a) of the uniform statutory rule against perpetuities, 1988 PA~~  
8 ~~418, MCL 554.72, or to become invalid under section 2(1)(b),~~  
9 ~~(2)(b), or (3)(b) of the uniform statutory rule against~~  
10 ~~perpetuities, 1988 PA 418, MCL 554.72.~~

11 (C) ~~(d)~~ The application of a 120-hour requirement of  
12 survival to multiple governing instruments would result in an  
13 unintended failure or duplication of a disposition. Survival,  
14 however, must be established by clear and convincing evidence.

15 Sec. 2722. (1) Subject to subsection (3), if a trust is for a  
16 specific lawful noncharitable purpose or for lawful noncharitable  
17 purposes to be selected by the trustee, and if there is no definite  
18 or definitely ascertainable beneficiary designated, the trust may  
19 be performed by the trustee for 21 years, but no longer, whether or  
20 not the terms of the trust contemplate a longer duration.

21 (2) Subject to this subsection and subsection (3), a trust for  
22 the care of a designated domestic or pet animal is valid. The trust  
23 terminates when no living animal is covered by the trust. A  
24 governing instrument shall be liberally construed to bring the  
25 transfer within this subsection, to presume against the merely  
26 precatory or honorary nature of the disposition, and to carry out  
27 the general intent of the transferor. Extrinsic evidence is

1 admissible in determining the transferor's intent.

2 (3) In addition to the provisions of subsection (1) or (2), a  
3 trust covered by either of those subsections is subject to the  
4 following provisions:

5 (a) Except as expressly provided otherwise in the trust  
6 instrument, no portion of the principal or income may be converted  
7 to the use of the trustee or to a use other than for the trust's  
8 purposes or for the benefit of a covered animal.

9 (b) Upon termination, the trustee shall transfer the  
10 unexpended trust property in the following order:

11 (i) As directed in the trust instrument.

12 (ii) If the trust was created in a nonresiduary clause in the  
13 transferor's will or in a codicil to the transferor's will, under  
14 the residuary clause in the transferor's will.

15 (iii) If no taker is produced by the application of subparagraph  
16 (i) or (ii), to the transferor's heirs under section 2720.

17 (c) For the purposes of sections 2714 to 2716, the residuary  
18 clause is treated as creating a future interest under the terms of  
19 a trust.

20 (d) The intended use of the principal or income can be  
21 enforced by an individual designated for that purpose in the trust  
22 instrument or, if none, by an individual appointed by a court upon  
23 petition to it by an individual.

24 (e) Except as ordered by the court or required by the trust  
25 instrument, no filing, report, registration, periodic accounting,  
26 separate maintenance of funds, appointment, or fee is required by  
27 reason of the existence of the fiduciary relationship of the

1 trustee.

2 (f) The court may reduce the amount of the property  
3 transferred if it determines that that amount substantially exceeds  
4 the amount required for the intended use. The amount of the  
5 reduction, if any, passes as unexpended trust property under  
6 subdivision (b).

7 (g) If a trustee is not designated or no designated trustee is  
8 willing or able to serve, the court shall name a trustee. The court  
9 may order the transfer of the property to another trustee if the  
10 transfer is necessary to ensure that the intended use is carried  
11 out, and if a successor trustee is not designated in the trust  
12 instrument or if no designated successor trustee agrees to serve or  
13 is able to serve. The court may also make other orders and  
14 determinations as are advisable to carry out the intent of the  
15 transferor and the purpose of this section.

16 (h) The trust is not subject to the **FORMER** uniform statutory  
17 rule against perpetuities, 1988 PA 418. ~~—, MCL 554.71 to 554.78.~~

18 Enacting section 1. This amendatory act does not take effect  
19 unless Senate Bill No.\_\_\_\_ or House Bill No. 6365(request no.  
20 07009'06) of the 93rd Legislature is enacted into law.