



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 597 (Substitute S-1 as reported)
Senate Bill 598 (as reported without amendment)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

CONTENT

Senate Bill 597 (S-1) would create the "Qualified Dispositions in Trust Act" to provide for the creation of irrevocable trusts that would be subject to specific limitations. The bill would do the following:

- Specify that a transferor would have only the powers and rights conferred by the trust instrument, and identify certain rights, powers, or interests for which a trust instrument could provide.
- Limit claims by a creditor against property that was the subject of a qualified disposition, and establish requirements for the avoidance of a qualified disposition.
- Provide that a creditor would not have a claim or cause of action against the trustee and others related to a trust that was the subject of a qualified disposition.
- Allow a written agreement between a transferor and a creditor to provide for certain disclosure to, or consent of, the creditor.
- Require a transferor to sign a qualified affidavit before a qualified disposition was made.
- Establish requirements for a fiduciary qualified disposition.
- Allow a trustee to modify a trust by conforming to requirements outlined in the proposed Act.
- Establish requirements pertaining to multiple qualified dispositions made by means of the same trust instrument.
- Establish requirements for the cessation of a trustee's status and the appointment of a successor trustee.
- Prescribe certain responsibilities of a trust beneficiary and trustee.
- Specify that the probate court would have exclusive jurisdiction over certain actions related to qualified dispositions, and establish venue for such actions.

The proposed Act would apply to qualified dispositions made on or after its effective date. If any provision of the Act conflicted with any provision of Chapter 63 (Uses and Trusts) of the Revised Statutes of 1846 or the Estates and Protected Individuals Code (EPIC), the provisions of the proposed Act would prevail.

The proposed Act would define "disposition" as a transfer of property that either 1) creates a new fiduciary relation between at least one trustee and a trust beneficiary or 2) newly subjects property to a preexisting fiduciary relation between at least one trustee and a trust beneficiary. The transfer could be by conveyance or assignment, by exercise of a power of appointment, including a power to substitute one trustee for another or to add one or more new trustees, or a power of revocation or amendment, or by disclaimer, release, or relinquishment. A disposition, however, would not include a disclaimer, release, or relinquishment of property that was previously the subject of a qualified disposition.

"Qualified disposition" would mean a disposition after which both of the following apply to the subject property:

- The property is owned by one or more trustees at least one of whom is a qualified trustee.
- The property is governed by a trust instrument under which the transferor has only rights, powers, and interests permitted under the proposed Act.

A disposition would not be a qualified disposition to the extent that, at the time of the disposition, the transferor was in arrears on a child support obligation by more than 30 days. A disposition also would not be a qualified disposition if a person related or subordinate to the transferor could act as an advisor. (For purposes of this provision, acting as an advisor would not include the power to direct investment decisions of a trust or to veto a distribution from a trust or the right to remove or appoint a trustee or advisor.)

"Transferor" would mean any of the following, as applicable:

- A person and, for more than one owner of undivided interests, each of several persons, who, as a beneficial owner of certain property, or as the holder of a general power of appointment over certain property, makes a disposition of the property or causes a disposition to be made.
- For a fiduciary disposition (a disposition made by a fiduciary acting in a fiduciary capacity), the person or persons who, as of the time of the fiduciary disposition, most recently fit that description with respect to the property subject to the fiduciary disposition.

"Advisor" would mean a person who is given authority by the terms of a trust instrument to remove, appoint, or both, one or more trustees or to direct, consent to, approve, or veto a trustee's actual or proposed investment or distribution decisions. Any person could serve as advisor.

Senate Bill 598 would amend the Uniform Fraudulent Transfer Act to do the following:

- Specify that a qualified disposition would be fraudulent as to a creditor only if it were made with actual intent to hinder, delay, or defraud any creditor of the debtor.
- Specify that an action could be brought under the Act with respect to a qualified disposition in the time provided under the proposed Qualified Dispositions in Trust Act.

The bills are tie-barred.

MCL 566.31 et al. (S.B. 598)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

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Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.